



# BILLET D'ÉTAT

XIV  
2005

WEDNESDAY, 28th SEPTEMBER, 2005

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# ***BILLET D'ÉTAT***

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

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I have the honour to inform you that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE, on WEDNESDAY, the 28<sup>th</sup> SEPTEMBER, 2005**, at 9.30am, to consider the items contained in this Billet d'État which have been submitted for debate by the Policy Council.

**G. R. ROWLAND**  
Bailiff and Presiding Officer

The Royal Court House  
Guernsey  
9<sup>th</sup> September 2005

**PROJET DE LOI**

entitled

**THE PROTECTION FROM HARASSMENT  
(BAILIWICK OF GUERNSEY) LAW, 2005**

The States are asked to decide:-

I.- Whether they are of the opinion to approve the Projet de Loi entitled “The Protection from Harassment (Bailiwick of Guernsey) Law, 2005”, and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for her Royal Sanction thereto.

**PROJET DE LOI**

entitled

**THE SMOKING (PROHIBITION IN PUBLIC PLACES  
AND WORKPLACES) (GUERNSEY) LAW, 2005**

The States are asked to decide:-

II.- Whether they are of the opinion to approve the Projet de Loi entitled “The Smoking (Prohibition in Public Places and Workplaces) (Guernsey) Law, 2005”, and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for her Royal Sanction thereto.

**THE LEGAL AID LAW (BAILIWICK OF GUERNSEY)  
(COMMENCEMENT) ORDINANCE, 2005**

The States are asked to decide:-

III.- Whether they are of the opinion to approve the draft Ordinance entitled “The Legal Aid Law (Bailiwick of Guernsey) (Commencement) Ordinance, 2005” and to direct that the same shall have effect as an Ordinance of the States.

**THE PERFORMERS’ RIGHTS  
(BAILIWICK OF GUERNSEY) ORDINANCE, 2005**

The States are asked to decide:-

IV.- Whether they are of the opinion to approve the draft Ordinance entitled “The Performers’ Rights (Bailiwick of Guernsey) Ordinance, 2005” and to direct that the same shall have effect as an Ordinance of the States.

## **THE COPYRIGHT (BAILIWICK OF GUERNSEY) ORDINANCE, 2005**

The States are asked to decide:-

V.- Whether they are of the opinion to approve the draft Ordinance entitled “The Copyright (Bailiwick of Guernsey) Ordinance, 2005” and to direct that the same shall have effect as an Ordinance of the States.

### **POLICY COUNCIL**

#### **NOTRE DAME CHURCH AND PRESBYTERY**

#### **Executive Summary**

This States Report proposes that legislation be enacted to vest Notre Dame Church and Presbytery in Portsmouth Roman Catholic Diocesan Trustees Registered in place of the heirs of the original trustees, who cannot be readily identified and so traced.

#### **Report**

HM Procureur has recently written to the Policy Council in the following terms:-

“The Roman Catholic Diocese of Portsmouth, within which the Bailiwick of Guernsey is comprised, was created on 19<sup>th</sup> May, 1882 by division of the Diocese of Southwark. The properties of the Diocese in Guernsey are, for the most part, owned by Portsmouth Roman Catholic Diocesan Trustees Registered, an English body corporate established to hold Diocesan properties. However, this is not the position with respect to Notre Dame Church and Presbytery at Burnt Lane, St. Peter Port, in the following circumstances.

The Church and Presbytery were originally acquired from the heirs of Jean Francois Le Mené, pursuant to a Conveyance registered on 16<sup>th</sup> February, 1874, by the Very Reverend James Danell, the then Bishop of Southwark, the Very Reverend John Crookall, Provost of Southwark Cathedral Chapter, and the Reverend Augustinus Boone, the then Priest of the Church, as trustees for the Catholic Church, but in the Reverend Boone's case only for so long as he served as priest. It was further provided that the Bishop of Southwark would always be one of the trustees, with power to appoint other trustees when they died, resigned or otherwise became incapable of acting, and that on every occasion a change of trustee occurred, the property should be transferred to the new trustee jointly with the other trustees. There are no records of any subsequent changes of trustees.

Over a number of years, Portsmouth Roman Catholic Diocesan Trustees Registered have acquired local Catholic Church properties from their trustees, or

their respective heirs when a named trustee had died. It is now desired to transfer Notre Dame Church and Presbytery to Portsmouth Roman Catholic Diocesan Trustees Registered, but title is uncertain because the original trustees have long since died and not been replaced, and the trustees' heirs are the legal owners of these premises, but holding on and subject to the trusts of the original Conveyance. However, these heirs are presently unknown. It is clearly appropriate, there being no possibility of the heirs of the original trustees having any beneficial interest in the premises having regard to the capacity in, and purpose for, which their predecessors acquired them in 1874, that a Projet de Loi be enacted by which title to the premises would statutorily vest in Portsmouth Roman Catholic Diocesan Trustees Registered on the basis set out below. It has been represented that the heirs of the original trustees would be extremely difficult to identify and locate, and the expense and inconvenience of so doing, even if it were possible, would be disproportionate to the benefit and convenience of regularising title to the premises at which Roman Catholic services are still practised by Projet de Loi.

The 1874 conveyance to the original trustees was made by the heirs of the Le Mené family, who were French who provided the premises for the benefit of French Catholics resident in Guernsey on condition that the religion and offices of the Roman Catholic Church would be celebrated in perpetuity. I am informed that, with the passage of time, the provision that the services should benefit French Catholics has been relaxed; at present the Priest is not French, and sacraments are not celebrated, or public worship offered, in the French language. That being so, if the States were minded to approve the principle of the premises being statutorily vested in Portsmouth Roman Catholic Diocesan Trustees Registered, the legislation should also give statutory recognition to this alteration, and provide that the Church is to be used for the celebration of divine service according to the rites of the Catholic Church for all, rather than French, Catholics. The 1874 Conveyance also provided that if the Catholic religion and office ceased to be celebrated in the Church for a period of six months, then the heirs or successors of the original grantors, being the heirs of Jean Francois Le Mené, should be able to re-enter into possession of the premises, which original condition should be repeated in the Projet de Loi to preserve and protect the rights reserved by them.

*Importantly, any subsisting and enforceable rentes, encumbrances and servitudes in respect of the premises would remain unaffected by the transfer; and also any subsisting personal liabilities of the present owners to third parties, e.g. an occupier's liability claim, would be extinguished but be enforceable against Portsmouth Roman Catholic Diocesan Trustees Registered as the new owners."*

The Policy Council agrees that it would be appropriate to enact legislation to vest Notre Dame Church and Presbytery in Portsmouth Roman Catholic Diocesan Trustees Registered in place of the heirs of the original trustees and that, as recommended by

HM Procureur, the opportunity should be taken to include in the legislation provision that

- (a) Notre Dame Church is to be used for the celebration of divine service according to the rites of the Catholic Church;
- (b) the rights of the heirs or successors of Jean Francois Le Mené, shall continue in force;
- (c) subsisting and enforceable rentes, encumbrances and servitudes shall continue to be enforceable; and
- (d) any personal liabilities in respect of the premises would be extinguished as against the present owners but be enforceable against the new owners.

A draft Projet de Loi has been prepared and is included in the same Billet d'Etat as this States Report.

### **Recommendation**

The Policy Council recommends the States to approve the draft Projet de Loi entitled "The Notre Dame du Rosaire Church and Presbytery Law, 2005".

L C Morgan  
Chief Minister

8<sup>th</sup> August 2005

**(NB The Treasury and Resources Department has no comment on the proposal)**

The States are asked to decide:-

VI.- Whether, after consideration of the Report dated 8<sup>th</sup> August, 2005, of the Policy Council, they are of the opinion:-

1. That legislation be enacted as recommended in that Report.
2. To approve the Projet de Loi entitled "The Notre Dame du Rosaire Church and Presbytery Law, 2005" and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

## PRIAULX LIBRARY

### NEW TRUSTEE

The States are asked:-

VII.- To elect a Trustee of the Priaulx Library to replace Mr P L De Garis who has resigned as a Trustee.

**(NB Advocates of the Royal Court are not eligible for election)**

*(This item was included as Article VIII on Billet d'État IX but consideration was postponed to a later meeting of the States. The following background is provided for the information of Members of the States:-*

*The Priaulx Library Trustees are responsible for managing the capital sum which was donated in 1880 by the founder of the Library, Osmond de Beauvoir Priaulx, to provide income to be applied towards the running costs of the Library. At the end of 2004 the value of the capital sum was £3,958.*

*The composition of the body of Trustees was determined by formal agreement (registered at the Greffe) between the States and Osmond de Beauvoir Priaulx. One Trustee is a member of the Priaulx family and the other two are appointed by the States. The term of office of the States-appointed Trustees is not fixed and the agreement provides that on the death or resignation of a States-appointed Trustee the States shall appoint a successor. The agreement also provides that no Advocate of the Royal Court shall be appointed by the States as a Trustee.*

*The Priaulx Library Trustess are members of the Priaulx Library Council, which is responsible for managing the Priaulx Library. The Council currently meets monthly on a Tuesday.)*

## PUBLIC SERVICES DEPARTMENT

### NEW MEMBER

The States are asked:-

VIII.- To elect a sitting member of the States as a member of the Public Services Department to complete the unexpired portion of the term of office of the late Deputy M E W Burbridge, namely to serve until May 2008 in accordance with Rule 7 of the Constitution and Operation of States Departments and Committees.

*(This item was included as Article II on Billet d'État XIII but consideration was postponed until the September meeting of the States.)*

## **SCRUTINY COMMITTEE**

### **NEW MEMBER**

The States are asked:-

IX.- To elect a sitting member of the States as a member of the Scrutiny Committee to complete the unexpired portion of the term of office of the late Deputy M E W Burbridge, namely to serve until May 2008 in accordance with Rule 7 of the Constitution and Operation of States Departments and Committees.

*(This item was included as Article III on Billet d'État XIII but consideration was postponed until the September meeting of the States.)*

## **GUILLE-ALLÈS LIBRARY COUNCIL**

### **NEW MEMBER**

The States are asked:-

X.- To elect a sitting member of the States as a member of the Guille-Allès Library Council to complete the unexpired portion of the term of office of the late Deputy M E W Burbridge, namely to 31<sup>st</sup> May, 2007.

*(This item was included as Article V on Billet d'État XIII but consideration was postponed until the September meeting of the States.)*

## **POLICY COUNCIL**

### **WIRE TRANSFER LEGISLATION**

#### **Executive Summary**

Following the introduction of a proposed EU Regulation to implement the Financial Action Task Force Special Recommendation VII on Wire Transfers, enactment of legislation is necessary to enable transfer of funds between the Bailiwick of Guernsey and the UK to be treated as they are at present.

Without such legislation, the transfer of funds would be treated as international transfers, requiring more detailed customer information. The BACS payment system, which serves only the UK and the Crown Dependencies and which accounts for some 85% of transfers between the UK and the Dependencies, does not have the capacity to provide the detailed customer information required under the European Commission's proposals.

Consequently, without the enactment of the legislation there will not be a cost effective way of transferring volume payments between Guernsey and the UK.

#### **Report**

Following the events of 11 September 2001 in the United States, the Financial Action Task Force on Money Laundering (FATF) extended its mandate by issuing Special Recommendations to combat terrorist financing.

Special Recommendation VII (SRVII) has the objective of preventing terrorists and other criminals from having unfettered access to wire transfers for moving their funds and for detecting such misuse when it occurs. Specifically, it aims to ensure that basic information on the originator (i.e. the customer) of wire transfers is immediately available (i) to appropriate law enforcement and/or prosecutorial authorities to assist them in detecting, investigating, prosecuting terrorists or other criminals and tracing the assets of terrorists or other criminals, (ii) to financial intelligence units for analysing suspicious or unusual activity and disseminating it as necessary, and (iii) to beneficiary financial institutions (i.e. the recipient of wire transfers) to facilitate the identification and reporting of suspicious transactions

In order to foster a coherent and consistent approach across the EU, in May 2003 the European Council (the main decision-making body of the European Union), issued a proposed Regulation to transpose SRVII directly in all the Member States. The European Commission (EC) was of the opinion that the EU should be regarded as one jurisdiction, not twenty-five, in respect of the transposition of SRVII, as it felt this would guarantee the smooth functioning of the payment infrastructure in the EU.

The FATF Interpretative Note to SRVII provides different rules for “domestic transfers” (transfers within a single jurisdiction) and “international/cross-border transfers” (transfers between two jurisdictions). International/cross border transfers are subject to more onerous requirements in respect of the amount of originator information to be included in the transfers. The EC applied the notion of domestic transfers to all intra-EU transfers (ie all the Member States were to be treated as a single jurisdiction) and the notion of international transfers to transfers between the EU and third countries. As a consequence of this approach, transfers between Member States and Guernsey would be treated as international transfers and, therefore, would need to be accompanied by full originator information. Domestic transfer requirements would be applicable to transfers between Member States – for domestic transfers much of the originator information needs to be provided only on request by, for example, a law enforcement authority and within three business days of the request.

This situation would have resulted in financial institutions in the Bailiwick being subject to more stringent requirements than their counterparts in the European Community. Also, the BACS payment system (which serves only the UK and the Crown Dependencies) does not have the capacity to provide the detailed originator information for international transfers between the Dependencies and the UK required under the EC’s proposals for transfers between Member States and third countries. Consequently, there would not have been a cost effective way of transferring volume payments between Guernsey and the UK. This would have had serious repercussions. Over 85% of payments between the Crown Dependencies and the UK use BACS and it is estimated that over 18 million transfers with a total value of over £21 billion are made between the UK and the Crown Dependencies by the BACS system each year. Alternative and much more expensive arrangements for most payments between Guernsey and the UK would have been required if the Regulation had been enacted in the proposed form.

The Policy Council and the Guernsey Financial Services Commission worked closely with their counterparts in Jersey and the Isle of Man, and held many discussions and corresponded regularly with both HM Treasury and the Department of Constitutional Affairs (DCA) to ensure that representation on the concerns of the Bailiwick of Guernsey was made to the EC. The Law Officers have also been consulted. The Commission also liaised regularly with the banking industry in Guernsey in order to obtain information on the implications of the EC’s plans, such as the volume and value of BACS payments, and to provide industry with information on developments.

The Crown Dependencies were not the only jurisdictions to have concerns. The Faroe Islands and Greenland who are in monetary union with Denmark and use the Danish payments and clearing system were similarly affected. It appeared that the third country aspects of the proposed regulation had not been fully considered by the EC and a joint proposal was made to the EC by the UK and Denmark. This proposal was for the Regulation to include a derogation to permit third countries which are part of a Member State’s payment clearing system, to maintain any arrangements already in place, provided that the territories in question have in their laws provisions corresponding to the requirements of the Regulation.

In September 2004 the executive political authorities in the Crown Dependencies jointly agreed the text of a derogation for inclusion in the draft EU Regulation. They also provided an assurance to the DCA that the Crown Dependencies would provide HM Treasury with a copy of legislation mirroring the provisions of the draft Regulation. This assurance was provided on the understanding that, if HM Treasury was satisfied that the legislation complied in full with all the provisions of the EU Regulation, the United Kingdom would send an application to the EC for the derogation to be approved.

The proposed Regulation which was presented by the EC to the European Parliament and the Council in July 2005 recognises that a number of countries and territories, which do not form part of the territory of the European Community, share a monetary union or form part of the currency area of a Member State and have established membership of the payment and clearing systems of that Member State. In order to avoid a significant negative effect on the economies of those countries or territories, which could result from the application of the Regulation to transfers of funds between the Member States concerned and those countries or territories, the Regulation provides for the possibility for such transfers of funds to be treated as transfers within that Member State (ie as domestic transfers) where:

- a) it shares a monetary union with the Member State concerned or forms part of the currency area of the Member State concerned;
- b) it is a member of the payment and clearing systems of the Member State concerned;
- c) it requires payment service providers under its jurisdiction to apply the same rules as those established under the Regulation. The most significant of the rules is the requirement for complete information on the originator (ie his name, address and account number) to be provided to appropriate law enforcement and/or prosecutorial authorities, financial intelligence units and beneficiary financial institutions, within three working days of receiving a request.

In order to meet all of the above conditions the Bailiwick of Guernsey will need to implement legislation which mirrors the rules established under the proposed Regulation. The most expedient means of achieving this is by way of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 as amended. This Law allows the States by Ordinance to make such provision, as they may consider necessary or expedient for the purpose of the implementation of any Community provision.

The benefits to the Bailiwick of implementing the proposed legislation would be:

- a) to allow the continued use of BACS, which is the most cost effective way of transferring volume payments between Guernsey and the UK;
- b) to ensure that customers are not disadvantaged;

- c) to ensure that the finance industry in the Bailiwick is not subject to more stringent requirements on the contents of wire transfers, than its counterparts in the European Community; and .
- d) to implement the requirements of SRVII.

**Recommendation**

The Policy Council recommends the States to agree that legislation be enacted as set out above.

L C Morgan  
Chief Minister

22<sup>nd</sup> August 2005

**(NB The Treasury and Resources Department has no comment on the proposal)**

The States are asked to decide:-

XI.- Whether, after consideration of the Report dated 22<sup>nd</sup> August, 2005, of the Policy Council, they are of the opinion:-

- 1 To enact legislation as set out in that Report.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

## TREASURY & RESOURCES DEPARTMENT

### LATE PAYMENT AND LATE REPAYMENT OF TAX

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

21<sup>st</sup> June 2005

Dear Sir

#### 1. **Executive Summary**

- 1.1 The Income Tax (Guernsey) Law 1975 (“the Law”) contains a provision, enabling the Administrator to impose a penalty where tax is not paid by the due date (section 199).

The present procedures for imposing a penalty for late payment are both cumbersome and time consuming and, as a consequence, proceedings are not taken in every single case where tax is paid late. It is considered that this may not be compliant with human rights legislation.

Furthermore, whereas section 199 enables the Administrator to impose penalties for late payment, there is no equivalent legislation enabling the Administrator to make any form of payment to a taxpayer where his income tax repayment is not made timeously.

This States Report sets out proposals to:

- replace the existing penalties for late payment with a surcharge, which would be applied automatically, at six monthly intervals, where amounts due remain outstanding, and
- apply a similar surcharge to tax which is brought into charge later than would ordinarily be the case due to the delivery of a “late” or incorrect tax return, and
- introduce a supplement, which would be added to an income tax repayment where it is not repaid within a certain time after the receipt, by the Administrator, of an income tax return.

- 1.2. It is proposed that the introduction of these amendments to the Law be phased in during 2006.
- 1.3. In addition, the Law contains different periods for tax to be paid (variously, twenty-one days or thirty days). It is proposed that this opportunity be taken to regularise those references so that, in all cases, the period is thirty days.
- 1.4. Finally, the Law presently allows a period of twenty-one days in which a taxpayer may lodge an appeal against an assessment, penalty order, etc, issued by the Administrator. It is also proposed that this opportunity be taken to regularise the appeal period with the amount of time that is to be allowed for tax to be paid (i.e. to extend the period from twenty-one days to thirty days).
- 1.5. It is intended that, in relation to the late payment surcharge and repayment supplements, the processes be computerised as far as possible. It is estimated that the cost of amending computer software in the Income Tax computer would be in the region of £78,000. These costs will be funded from out of existing Treasury and Resources Department funds.

## 2. **Late payment and late repayment of tax, etc – Detailed Proposals**

- 2.1. Section 199 of the Law provides that:

“A person who fails or neglects to pay any amount due from him under this Law, including any penalty imposed thereunder, within one month of the date of such amount becoming due shall be liable to a penalty calculated at a rate not exceeding five per centum per mensem of such amount.”

- 2.2. Regrettably, many taxpayers do not pay the amounts due from them, under the Law, by the due date. The reasons for this vary and include those persons:
  - who dispute their liability and delay payment until the dispute is settled (typically by an appeal to the Guernsey Tax Tribunal);
  - who, whilst not disputing the amount payable, do not pay the amount due (this often results in the commencement of legal proceedings to obtain judgment in relation to the debt);
  - who do not dispute the amount due and wish to make payment but, for whatever reason, do not have the funds readily available to do so (many such cases result in arrangements for the outstanding sum to be paid by a series of instalments);
  - who simply do not pay due to a misunderstanding or oversight.
- 2.3. Details of the amounts due and when payment must be made is included in statements of account, which accompany assessments, and in Penalty Orders, issued by the Administrator.

- 2.4. Where a person does not pay the amount due from them, the Administrator will consider commencing proceedings under the provisions of section 199 of the Law. The administration of such, formal, proceedings is cumbersome and is a significant drain on the Administrator's finite resources.
- 2.5. Presently, the decision whether or not to impose a penalty for late payment is made by the Administrator on a case by case basis. It has become apparent that, under the legislation enacted by the States to incorporate the principles contained in Article 14 of the European Convention on Human Rights in local legislation, such treatment may be regarded as discriminatory. It would be extremely difficult, administratively and legally, to justify the imposition of a penalty in one case, but its excusal in another case, without recourse to objective criteria laid down in law, which would enable the Administrator's decision in any particular case to be challenged. Accordingly, it will be necessary to apply any measures for non-payment of tax to all taxpayers.

To do this using the current system provided for in the Law would require significant additional resources, in terms of staff time, which are not available to the Administrator.

- 2.6. Many people accept, albeit reluctantly, the reasons for the imposition of a penalty for late payment because they recognise that whilst the States does not have use of the money it is unable to spend it on the provision of public services.
- 2.7. A considerable number of people, however (particularly those that consider they are unable to pay the tax due through no fault of their own) feel aggrieved at the imposition of a penalty for late payment. Indeed, many persons consider the fact that as what is imposed is called a penalty, this infers some sort of deliberate attempt to deny the States the sum involved.
- 2.8. It is the Department's view that the Law should make it clear that any charge for late payment will apply, notwithstanding the reason for non-payment, and the use of the term "penalty" in respect of payment should cease in view of the stigma that is attached to it by many people.
- 2.9. The Department proposes, therefore, that the current provisions of section 199, as detailed in paragraph 2.1 above, be repealed and replaced by a system of late payment surcharges. These would be applied automatically where arrears exist in certain circumstances, and would follow the principles set out below:
- (i) A surcharge would be imposed if payment had not been made by the due date.

For example, an employer who did not timeously pay over deductions of tax they have made under the Employees' Tax Instalment ("ETI") Scheme would incur a surcharge as at the date the tax should have been paid over (i.e. the 15th of the month after the end of the relevant quarter)

– so in respect of the first quarter (January, February and March) a surcharge would arise if the tax was not paid by 15 April.

This would apply also to tax which the taxpayer had asked the Administrator not to collect (because he believed it not to be payable) but which did, in fact, subsequently turn out to be due but only if the relevant return was submitted later than 15 January in the year following the year in which it was issued (or twelve months from the date of issue if later).

Some examples of how, and when, surcharges may arise in such circumstances are shown in the Appendix attached.

- (ii) The surcharge would be at a rate (to be determined, from time to time, by the Treasury & Resources Department, by Regulation) which would be a percentage of the amount outstanding at the time the surcharge is applied. It is envisaged that the rate of the surcharge would be set at 5% initially.
- (iii) If the amount was still outstanding after a further six months, an additional surcharge would be imposed, and further additional surcharges would continue to be applied at successive six monthly intervals, on the same basis, until full payment was made. In addition, a surcharge would also arise on any previous surcharge, or additional surcharge, which remained unpaid.
- (iv) In addition to the surcharges and additional surcharges, the Administrator would continue to pursue collection of the arrears through the appropriate legal channels, if appropriate.
- (v) Where the Administrator received a return of income after the later of 15 January in the year following the year in which the return was issued, or twelve months from the date it was issued, surcharges and additional surcharges would apply to any additional tax assessed as a consequence of that return as if that tax had been due one half on 30 June and one half on 31 December in that year of charge.

For example: Mr Y receives his first assessment for tax of £8,000 for the Year of Charge 2008 on 1 April 2008. The tax is due, therefore, £4,000 on 30 June 2008 and £4,000 on 31 December 2008. The tax is paid on time.

A return requesting details of his income for the calendar year 2008 was issued in January 2009 but not submitted until 30 September 2011, i.e. more than twelve months after it was issued.

The assessment is revised, in October 2011, and additional tax of £3,000 is found to be due. Although the due date for that tax to be paid is in

November 2011, the surcharges and additional surcharges would apply as if £1,500 had been due on 30 June 2008 and £1,500 on 31 December 2008.

- (vi) Furthermore, if a person fails to notify the Administrator of their chargeability to income tax, for any year of charge or if the Administrator discovers income which was not disclosed in the appropriate return, surcharges and additional surcharges would apply to any tax arising for that year of charge as if the assessment had been made in sufficient time for the tax to be payable one half on 30 June and one half on 31 December in the year of charge to which it relates.

For example: Mrs A does not tell the Administrator that she has lived in Guernsey since 2007 and has been liable to tax.

Subsequently the Administrator discovers this and, as a consequence, in October 2010, he issues assessments for 2007 (tax £5,000), 2008 (tax £7,000) and 2009 (tax £10,000) on the basis that she failed to notify her liability to tax for those years.

Although the due date for the tax to be paid, for all three years, falls in November 2010, surcharges and additional surcharges will be imposed as if the due dates had been:

2007	£2,500	30 June 2007
2007	£2,500	31 December 2007
2008	£3,500	30 June 2008
2008	£3,500	31 December 2008
2009	£5,000	30 June 2009
2009	£5,000	31 December 2009

- (vii) It is proposed that exceptions to the above should be provided for as follows:
- (a) where the amount of any surcharges or additional surcharges imposed on any one day falls below a sum to be set by the Treasury & Resources Department by Regulation (a “de minimis” limit); initially it is proposed that this be set at £50 (i.e. equivalent to the surcharge on outstanding tax of £1,000); and
  - (b) in other cases, by Regulation, or by the Administrator issuing a statement of practice, where it is considered appropriate to do so.

- 2.10. As a transitional provision, it is proposed also that a surcharge, as outlined above, would only apply so long as the amount overdue was not already subject to a penalty under the provisions of the present section 199 (or the amount overdue was itself such a penalty) as to do otherwise would lead to a “double penalty”.

- 2.11. It is proposed that surcharges and additional surcharges would be payable thirty days from the date of imposition. Presently, under the Law, there are different payment dates for different types of charge. For example, under section 81(2) a penalty is payable thirty days after imposition, whereas the minimum period for the payment of tax is twenty-one days after issue of an assessment.

For the sake of uniformity, the Department further proposes, therefore, that this opportunity be taken to regularise the payment of all taxes, surcharges, penalties, etc, so that they become due and payable after thirty days. The Department does not consider that this relatively short extension (nine days) of the payment date would be detrimental to the overall collection of General Revenue. Indeed, one of the common complaints as to why a payment date has been missed is that twenty-one days may often clash with a person's absence from the island (whether on holiday, business, etc). This proposed extension to thirty days should help alleviate this problem.

If the due date for payment for all taxes, etc, is to be extended from twenty-one days to thirty days, the Department believes that it would also be appropriate to extend the present period during which an appeal may be lodged (which, under section 76 of the Law, in relation to notices of assessment, orders imposing a penalty or other orders or directions, is twenty-one days) to thirty days.

There are similar provisions in sections 130(1) and (2), 155(5) and 157A(7) of the Law.

Indeed, the Administrator has received representations, including representations made by the Guernsey Society of Chartered & Certified Accountants, that a twenty-one day appeal period can be overly restrictive, resulting in a significant number of late applications for appeals to be accepted (there are provisions within section 76 of the Law for late appeals to be admitted in certain circumstances).

The Department does not believe that an extension of the appeal period from twenty-one days to thirty days would be detrimental to the administration of the Law and proposes that the Law should be revised accordingly.

- 2.12. There have been calls, in the past, for the introduction of provisions whereby the Administrator would be required to pay interest to a taxpayer when making a repayment of tax. The Treasury & Resources Department believes that, in view of the proposals being made above for late payment surcharges, it is now appropriate to introduce a system along similar lines whereby supplements are attached to repayments made in certain situations.
- 2.13. It is, therefore, proposed that:
- (i) A supplement (which would be at the same rate as the late payment surcharge) would be added to any repayment of income tax made more

than one year after the end of the month in which a fully completed income tax return is received, and an additional supplement would arise for each further full period of six months thereafter that the repayment remains unpaid (i.e. on the same basis as an additional late payment surcharge would arise). There would be no “de minimis” limit applied to a supplement or additional supplement.

An additional supplement would be applied, not only to the amount of the repayment but also any previous supplement or additional supplement (i.e. on the same basis as additional surcharges would be applied to previous surcharges and additional surcharges which remain unpaid).

For example, Mrs B paid tax for the Year of Charge 2008 of:

£2,500 on 30 June 2008 and  
£2,500 on 31 December 2008,

on the basis of an interim assessment issued in April 2008.

An income tax return, for the Year of Charge 2009, was sent to Mrs B on 2 January 2009. She completed the return and submitted it to the Administrator on 31 March 2010.

Although the return was complete the Administrator raised some enquiries on the return and did not issue a revised assessment until 30 June 2012. This gave rise to a repayment due to Mrs B of £1,000. This was repaid on 15 July 2012.

Mrs B would be due the following:

Repayment made 15 July 2012	£1,000.00
1. Supplement on 31 March 2011 @ 5%*	<u>£ 50.00</u>
Subtotal	£1,050.00
2. Additional supplement on 30 September 2011 @ 5%	<u>£ 52.50</u>
Subtotal	£1,102.50
3. Additional supplement on 31 March 2012 @ 5%	<u>£ 55.13</u>
Total	<u>£1,157.63</u>

Total supplement/additional supplements payable, therefore, of £157.63.

[\*ie 12 months after the end of the month in which the return was submitted.]

- (ii) The supplement would be paid in respect of any tax repaid for any year of charge which is affected by the contents of that return.

- (iii) For the purposes of deciding the date from which a supplement should be added, a “fully completed income tax return” would be treated as one in which all relevant sections have been completed to show the actual income received or charges paid for the year and, where relevant, supporting documentation, such as accounts and computations, are attached, enabling the Administrator to make a “final” assessment. Thus where a return is submitted with sections containing estimates of income or annotated “details to follow”, it would only be regarded as having been received “fully completed” when those details of income received/charges paid are in fact provided to the Administrator. A return would be treated as “fully completed”, however, if all that was outstanding was the finalisation of double taxation relief (as this would not affect the Administrator’s ability to revise the assessment itself).

Furthermore, the Administrator would be allowed to use his discretion to allow the payment of a supplement (and additional supplements if appropriate) if the only reason for otherwise denying payment is that a minor or inconsequential error or mistake in a return had resulted in it not being considered as “fully completed” on submission.

(Presently, where a company submits accounts and a tax computation but not a fully completed return, the Administrator will not pursue completion of the return. Under the proposed system, however, all companies would be required to submit a completed return before becoming eligible for the repayment supplement.)

- 2.14. The Treasury & Resources Department believes it appropriate for the legislation to make it clear that (subject to the exception contained in paragraph 2.9(i) above) for the purposes of computing surcharges and additional surcharges, the original due date for payment of any amount is not affected by the Administrator’s agreement not to pursue collection of the amount due, for whatever reason, nor because of any subsequent reduction of the amount due.
- 2.15. It is also proposed that a facility be introduced to allow appeals against the amount or imposition of a surcharge or an additional surcharge (on the grounds that it is not payable or has been miscalculated or, in the case of an additional surcharge only, that it should not be imposed if there had been an inordinate delay between the submission of the relevant return and its assessment by the Administrator) and the amount, or non-payment of, a supplement or additional supplement (on the grounds that it is payable or has been miscalculated).
- 2.16. The Treasury & Resources Department believes that the cost of amending the Income Tax Office computer software in order to provide for a system of surcharges for late payment and a supplement for repayments of income tax is in the region of £78,000.
- 2.17. The amendments proposed in this report will constitute quite significant changes to the Income Tax Office computer system. As a consequence it is important

that any changes are fully tested before implementation. For that reason it is proposed that the amendments be phased in during the course of 2006 rather than all being introduced at the same time.

It is proposed that the changes would become effective as follows:

- Repayment supplements for all taxpayers – with effect from 1 January 2006.
  - Late payment surcharges for employers – with effect from 15 April 2006 (i.e. in connection with the first quarter ETI returns for 2006).
  - All other late payment surcharges – with effect from 30 June 2006 (i.e. the due date of the first instalment of income tax for 2006).
- 2.18. The Department has consulted with the Guernsey Society of Chartered & Certified Accountants with regard to these proposals.

3. **Recommendations**

- 3.1. The Treasury & Resources Department recommends the States to approve amendments to the Law, as set out above, and to direct the preparation of the necessary legislation.

Yours faithfully

L S Trott  
Minister

**APPENDIX****Example 1**

An interim assessment for 2009 is sent to Mr X on 4 May 2009; the tax charged is £8,000 - £4,000 due 30 June 2009 and £4,000 due 31 December 2009. Mr X believes that £3,000 is not payable and asks the Administrator not to collect that, pending submission of his tax return. He pays the remaining £5,000, on the due dates. A tax return for income of 2009 is sent to Mr X on 3 January 2010. The return is submitted on 10 November 2010. The Administrator revises the assessment on 5 January 2011, which shows that £1,800 of the £3,000 not collected should have been paid. So long as the £1,800 is paid within twenty-one days of the date of the revised assessment, no surcharge will arise (although it is proposed that twenty-one days should change to thirty days – see paragraph 2.11 of the Report).

**Example 2**

If, in Example 1, the return was submitted after 15 January 2011, the additional £1,800 would have been subject to a surcharge/additional surcharge (see paragraph 2.9.(iii) of the Report) from the original due dates (i.e. 30 June and 31 December 2009).

**Example 3**

Furthermore, if, in Example 2 above, the return had been submitted on 3 January 2012 (i.e. two years after issue) and the additional £1,800 was not paid until, say, 3 March 2012, Mr X would have been subject to the following:

Tax due 30 June 2009	£ 900.00
1. Surcharge on 30 June 2009 @ 5%* <sup>①</sup>	£ 0.00* <sup>②</sup>
Subtotal	£ 900.00
2. Additional surcharge* <sup>③</sup> on 31 December 2009 @ 5%	£ 45.00* <sup>④</sup>
Subtotal	£ 945.00
3. Additional surcharge on 30 June 2010 @ 5%	£ 47.25
Subtotal	£ 992.25
4. Additional surcharge on 31 December 2010 @ 5%	£ 49.61
Subtotal	£1,041.86
5. Additional surcharge on 30 June 2011 @ 5%	£ 52.09
Subtotal	£1,093.95
6. Additional surcharge on 31 December 2011 @ 5%	£ 54.69
Total	£1,148.64

Tax due 31 December 2009	£ 900.00
1. Surcharge due 31 December 2009 @ 5%	£ 45.00* <sup>④</sup>
Subtotal	£ 945.00
2. Additional surcharge due 30 June 2010 @ 5%	£ 47.25
Subtotal	£ 992.25
3. Additional surcharge due on 31 December 2010 @ 5%	£ 49.61
Subtotal	£1,041.86
4. Additional surcharge due on 30 June 2011 @ 5%	£ 52.09
Subtotal	£1,093.95
5. Additional surcharge due on 31 December 2011 @ 5%	£ 54.69
Total	<u>£1,148.64</u>

[\*<sup>①</sup> See paragraph 2.9(ii) of the Report for details of the rate of the surcharge.]

[\*<sup>②</sup> £900 @ 5% = £45; as this is below the proposed de minimis level (see paragraph 2.9.(vii) of the Report) no surcharge is imposed.]

[\*<sup>③</sup> See paragraph 2.9.(iii) of the Report for an explanation of additional surcharges.]

[\*<sup>④</sup> As the combined total of surcharges/additional surcharges on 31 December 2009 exceeded £50 (the proposed de minimis limit) they are imposed.]

Total surcharges/additional surcharges are imposed, therefore, of £497.28 (in this example that equates to the equivalent of 1% per month – which is the rate presently used by the Administrator in proceedings under section 199 of the Law).

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**(NB The Policy Council supports the proposals)**

The States are asked to decide:-

XII.- Whether, after consideration of the Report dated 21<sup>st</sup> June, 2005, of the Treasury and Resources Department, they are of the opinion:-

1. To amend the Income Tax (Guernsey) Law 1975, as amended, as set out in that Report.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

## COMMERCE AND EMPLOYMENT DEPARTMENT

### REVIEW OF COMMERCIAL LEGISLATION

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

14<sup>th</sup> July 2005

Dear Sir

#### **1. Executive Summary**

This report contains proposals for amendments to existing legislation and for new legislation in relation to the regulation of companies (and, to a minor extent, limited partnerships), the activities of companies and the manner in which they can conduct themselves and their business.

A number of projects have been in progress aimed at reviewing commercial legislation and these have been consolidated by the Department into a comprehensive review of such legislation.

The detailed proposals in this report represent only part of that comprehensive review which the Department intends to bring to the States in due course. The aim of the review is to create a legal infrastructure in which companies can do business, want to do business in Guernsey, and can remain competitive in relation to other jurisdictions.

#### **2. Introduction**

Following the Machinery of Government changes, the Commerce and Employment Department has been responsible for recommending to the States changes to Guernsey Company Law.

The Guernsey Financial Services Commission recognised some time ago that, with the passage of time, some aspects of commercial legislation in Guernsey have become less attractive compared to those in competing jurisdictions.

The Commerce and Employment Department shares this view and believes that a full review of company and other commercial legislation is essential to create and sustain:

- conditions that help maintain a prosperous and resilient business environment which is able to respond quickly to changing local and international

circumstances,

- conditions in which the Island can retain its competitiveness and remain an attractive place to do business in relation to other international jurisdictions,
- conditions that maintain the international reputation of the Island; and
- a legislative framework that remains an enabler of business activity.

Having inherited responsibility for Company Law Reform the Department commissioned representatives from St James Chambers and the Guernsey Bar to prepare a Green Paper designed to promote discussion on various amendments to Guernsey Company Law. This has recently been finalised and is currently the subject of wide consultation both within the business community and with other interested parties. Once that consultation is complete, a further States Report will be presented for consideration recommending enactment of a new Company Law in 2006.

In addition to the Green Paper, a further review of specific aspects of commercial law has been initiated as a result of a series of Blue Skies brainstorming meetings with representatives of the financial services sector. These meetings identified areas for further enhancement and focus and resulted in a number of working parties progressing initiatives which will ultimately require recommendations to be placed before the States for changes in the following areas:

- Funds and Protection of Investors
- Trust Laws
- Companies Register

There is further related work at an earlier stage of development which will be the subject of consultation with industry and subsequent reports to the States, e.g. dealing with matters such as personal insolvency.

The work of these Groups and individuals is progressing well, and the Department would like to recognise the contribution they have made and to acknowledge the significant part they have played (and continue to play) in the ongoing review process.

While the Green Paper has initiated a widespread review of Company Law, the Department is conscious that much of the earlier work that had been carried out under the auspices of the GFSC is now mature and will complement the anticipated changes to Guernsey's Company Law regime. Accordingly, the Department has taken the decision to bring forward the proposals in this report as it believes that little is to be gained from delaying those changes. It is in the best interests of the commercial life of this Island to progress these matters sooner rather than later.

### 3. Proposed Amendments to Legislation

#### 3.1 Limited Partnerships

The Guernsey International Fund Association (GIFA) has recommended that the statutory requirement set out in section 8 of the Limited Partnerships (Guernsey) Law, 1995, be repealed. This section requires any persons wishing to register a limited partnership to provide the Greffe with a copy of the limited partnership agreement. This will remove some of the burden with registering a limited partnership and will bring our Limited Partnership Law into line with other jurisdictions. The other requirements in the law regarding the registration of a limited partnership will remain unchanged and include a requirement to file the following information with the Greffier: the written consent for the registration of the partnership given by the Policy Council under the Control of Borrowing legislation, the name of the limited partnership, the nature and principal place of its business, its registered office, the full name and address of the general partner, the term for which a partnership is entered to and the date of commencement of that term.

Following other recommendations by GIFA, it is also proposed to make further amendments to the limited partnership law, to which the Guernsey Society of Chartered and Certified Accountants does not object.

- that the obligation for all limited partnerships to appoint an auditor (currently subject to certain exceptions) who has to prepare an auditors' report to the partners be abolished except in the following circumstances (i) any limited partnership should be able to, at its own discretion, appoint an auditor and provide audited accounts to the partners and (ii) more than 50% by value of the limited partners should be able to require the appointment of an auditor to provide the limited partners with audited accounts, (iii) separate rules, legislation or a public body under such rules or legislation should be able to require the appointment of an auditor and the provision of audited accounts.
- that a partnership or body corporate may be appointed as an auditor of a limited partnership
- that in section 18(1) of the Limited Partnerships Law in relation to any financial year of the limited partnership, "financial year" shall mean a maximum period of 18 months.
- that in section 18(3) of the Limited Partnerships Law the requirement to file accounts within a period of four months shall be increased to six months.

The above suggestions would not affect other legislation which applies to limited partnerships (e.g. conditions may be imposed on limited partnerships under the Control of Borrowing legislation) and will reduce "red tape" to ensure Guernsey is on a level playing field with other jurisdictions.

## 3.2 Company Law

### 3.2.1 Administration

The Department proposes that the Companies (Guernsey) Law, 1994 be amended to include provisions on administration – currently, only a specialised form of Guernsey company, protected cell companies, are subject to statutory administration provisions.

For other companies, the only statutory regime available where they are unable to pay their debts is winding up, which may be regarded as being excessive in the case of a company which is only in temporary difficulties.

Administration is an arrangement in which, following a request by an appropriate person, an administrator is appointed by the Court to manage a company which is in financial difficulties, but for a limited period of time. The aim of an administrator is the survival of the company and the whole or any part of its undertaking as a going concern or the more advantageous realisation of the company's assets than would be effected on a winding up.

Detailed proposals relating to administration are set out in Schedule 1.

As indicated above, protected cell company legislation currently includes provisions on administration. In order to ensure a common approach in relation to administration in all legislation, the Department also proposes that existing protected cell company legislation be amended, where appropriate, to conform with the principles set out in Schedule 1. This will require amendments to the Protected Cell Companies Ordinance, 1997.

### 3.2.2 Treasury Shares

Existing Guernsey company law does not provide for 'treasury' shares.

The concept of treasury shares was introduced into English law in 2003, permitting companies to buy back their own shares and hold them in 'treasury' for possible future sale. Prior to this change, English companies which bought back shares had to cancel them immediately (i.e. the shares ceased to exist) and the company's share capital was thereby reduced.

Shares held in treasury are in effective suspense awaiting either cancellation or reallocation; but they can be held as such indefinitely. The registered shareholder is the company itself and, although the shares exist, they do not have any voting rights, dividends on them are suspended and the shares have no entitlements on a winding up.

The aim of providing for treasury shares is to enable a company to time the purchase of shares from investors, the placement of those shares into treasury and any consequent action such as the sale of the shares to new investors and to balance supply and demand for the shares in the company.

These advantages are particularly attractive to closed-ended collective investment funds which are an important feature of Guernsey's finance sector.

The Department believes that provision for treasury shares will enhance the competitiveness of the Guernsey fund administration sector and proposes that the Companies (Guernsey) Law, 1994 be amended to reflect the provisions of English Law

### 3.2.3 Disqualification of Directors

The proper governance of companies has become increasingly important and it is likely that the international focus on corporate governance, the proper risk management of companies and the proper conduct of directors and management in the execution of their responsibilities will intensify.

In order to demonstrate that the Island is serious about the conduct of directors and senior management in relation to their responsibilities and to bring the Island into line with other jurisdictions, the Department proposes that the current maximum period of five years for which the Court may prohibit a person:

- from being a director or other officer of any company or any specified company;
- from participating in, or being in any way concerned in, directly or indirectly, the management, formation or promotion of any company or any specified company;

be increased to a maximum of 15 years.

### 3.2.4 Registration of Special Resolutions

Section 73(2) of the Companies (Guernsey) Law, 1994 requires a copy of every special resolution of a company to be delivered by the company to the Greffier within specified periods, (ordinarily 21 days), who shall, as soon as is reasonably practicable, enter that resolution in the Register of Companies. Section 72(3)(a) provides that, if there is a failure to comply with this provision of subsection (2), and without prejudice to any provision of the 1994 Law requiring a resolution to be approved by the court, the resolution shall be void *ab initio*, and additionally, by section 72(3)(b) the company is guilty of an offence.

This provision regarding registration of special resolutions was derived from the Companies (Guernsey) Law, 1908, which was principally derived from the UK Companies Act, 1862. However neither the 1862 Act, nor its successors, the Companies Acts of 1929 and 1948, provided that a special resolution which had not been delivered, and so was not registered, was void *ab initio*. The retention in Guernsey's Companies Law of this provision can be a cause of great inconvenience and uncertainty, particularly if the resolution is posted by the company to the Greffe within 21 days of its being passed but is delayed, or goes missing, in course of post. The consequence, that a resolution which has been sent within 21 days but has not been received by the Greffe should be void is draconian indeed, especially as a company,

being entitled to believe that a copy of its resolution will reach the Greffe in due course of its being posted, may have proceeded on the basis that the resolution is valid.

For a Guernsey company which functions as a collective investment vehicle, in which a special resolution would be utilised *inter alia* to convert or amend its share capital and the rights attaching thereto, the consequence of a special resolution having been passed, and in good faith sent to the Greffe within 21 days but, for some extraneous reason, not being received by the Greffe, and so registered, could be severe, particularly if dealings in the company's shares had continued after the resolution had been passed.

H.M. Procureur has advised that the review of Guernsey's 1994 Companies Law mentioned above would have proposed removing the drastic consequence of a want of transmission to, or receipt by, the Greffe, but a recent case has highlighted the desirability of the repeal of section 72(3)(a). However, a company which does not cause a special resolution to be sent to the Greffe for registration should remain guilty of an offence under section 72(3)(b). Accordingly, the Department recommends the repeal of section 72(3)(a) of the Companies (Guernsey) Law, 1994, and such consequential or supplemental amendments to that Law in relation to the delivery, receipt and registration of special resolutions as are considered necessary or expedient.

### 3.3 Protected Cell Company (PCC) legislation

The concept of PCCs is one that was developed in Guernsey, and is an example of this jurisdiction being in the vanguard of new product formulation for predominantly the captive insurance and funds sections of our financial services industry.

In essence the PCC is a company comprising assets that are contained in structurally distinct parts known as "cells", which are legally and functionally separate and independent of each other. In addition, the portion of the total capital designated to a specific cell is neither liable for the general obligations, commitments or liabilities of the company itself nor for the specific liabilities of the other cells.

The Department recommends that the Protected Cell Companies Ordinance, 1997 legislation be amended in one specific respect as follows:

- to clarify the position concerning cellular asset dealings in a PCC along the lines set out in Schedule 2.

Furthermore, the Department is considering

- The potential for a PCC to report to cellular shareholders on a more relevant basis than is currently the case.

Consultation will be undertaken on these suggestions and the results brought back to the States in a separate Report in due course.

### 3.4 Uncertificated Securities

The Department would like to develop a legal framework that will enable Guernsey to develop as a centre of excellence for business that is transacted electronically and it has noted the importance, outside the Island, of explicit provisions in legislation that demonstrate that the Island has a positive approach to e-commerce.

Although, for example, local companies can arrange for a paperless transfer of securities from one person to another to take place by including appropriate provisions within their Articles of Association, it would be helpful to international practitioners and would enhance Guernsey's desired reputation as a progressive centre for business, if there were explicit provisions in law on such transfers.

Accordingly, the Department proposes that new legislation should be enacted which would allow the Department to make regulations for title to securities to be evidenced and transferred without a written instrument.

Detailed proposals for such legislation are set out in Schedule 3.

#### **4. Consultation**

Where advised, the proposals contained in this report have been circulated to interested parties and the Law Officers have also been consulted throughout.

#### **5. Staffing and Financial Implications**

The proposals contained in this report will have no financial impact on the Department and will be administered with existing staff.

#### **6. Conclusions**

The specific proposals contained in this report are supported by industry. The Department believes the changes are necessary in order to create a legal infrastructure in which companies can do business, want to do business in Guernsey and can remain competitive in relation to other jurisdictions.

#### **7. Recommendations**

The Department recommends the States to approve the proposals for the revision of company and other commercial legislation in accordance with the principles set out in section 3 of this report.

Yours faithfully

Stuart Falla  
Minister

## Schedule 1

### Proposed provisions relating to administration

- 1) An application could be made to the Court for an administration order and for the appointment of an administrator by:
  - a) the company itself,
  - b) the directors of the company,
  - c) the shareholders of the company,
  - d) any creditor (whether contingent or prospective); or
  - e) in respect of supervised companies and other companies engaged in financial services business, the Guernsey Financial Services Commission.

An administration order would direct that, during the period for which it is in force, the affairs, business and property of the company would be managed by the administrator. Specific qualifications for an administrator would not be specified, but as with the appointment of a liquidator, it would be a matter for the Court to consider the merits of each application and appoint an appropriate administrator in light of all the relevant circumstances.

- 2) Notice of an application to the Court would be served on the company, the Commission in respect of supervised companies and companies engaged in financial services business, and such other persons (including any creditors) as the Court might direct. Notice would also be published in La Gazette Officielle.
- 3) An administration order would, while in force, prevent the company from being wound up and prevent legal proceedings against the company except with the consent of the administrator or the leave of the Court. Rights of set-off and secured interests would be unaffected by this provision.
- 4) Any company documents and those issued by the administrator would contain details of the administrator's name and a statement that the affairs, business and property of the company were being managed by the administrator.
- 5) The administrator would be able to do all things necessary for the management of the company and would be able to apply to the Court for directions in relation to the performance of his/her functions. The administrator would also be required to take into his/her custody or control all the property to which the company was or appeared to be entitled.
- 6) The administrator would be able to apply to the Court for the administration order to be discharged or varied.

- 7) The administrator's remuneration would be fixed by the Court. Remuneration, together with properly incurred expenses, would be payable from the company's assets in priority to other claims (as is the case for a liquidator).
- 8) After an administration order was made, the Greffier would enter a copy of the order in the register of companies and the administrator would publish a notice of the order in La Gazette Officielle.
- 9) The administrator would have the power to require relevant persons (for example, officers and certain employees of the company) to provide a statement on the affairs of the company, verified by affidavit. Failure to comply with such a requirement would be a criminal offence.
- 10) While the administration order was in force a creditor, member of the company or the Guernsey Financial Services Commission (in the case of a supervised company or a company engaged in financial services business) would be able to apply to the Court for an order on the grounds that:
  - a) the company was being managed by the administrator in a manner which unfairly prejudiced the interests of creditors or members,
  - b) any actual or proposed act or omission of the administrator was or would be prejudicial; or
  - c) that it would otherwise be desirable or expedient for an order to be made.

The Court would consider an application and, if appropriate, make an order granting relief in respect of the matters complained of. Such an order might (for example) regulate the management of the company, require the administrator to refrain from any particular course of action or discharge the administration order altogether.

- 11) There would be provision dealing with the release from office, and vacation of office, of an administrator;
- 12) There would be provision empowering the States, by Ordinance, to amend the provisions of company law dealing with the administration, winding up and the liquidation of companies. Such a provision would allow any future change to these important provisions to be dealt with quickly by the States by Ordinance, rather than having to enact a Projet de Loi which requires Privy Council assent.

## Schedule 2

Proposed amendment of protected cell company legislation.

1) Provision would be made to enable a protected cell company, in the ordinary course of its business or the business of any of its cells, to effect an “arrangement” (a dealing with, or a transfer, disposition or attribution of, the cellular or non-cellular assets, rights or liabilities of a protected cell company) between:

- a) any of the company's cells, or
- (b) the company and any of its cells,

but such an arrangement could not include a transaction between the company and another person and such an arrangement would not require a cell transfer order.

2) A person being:

- a) the protected cell company,
- (b) a director, liquidator or administrator of such a company,
- (c) the receiver or administrator of any cell of such a company affected by an arrangement,
- (d) a manager of the business of such a company,
- (e) a manager of the business of or attributable to any cell of such a company affected by the arrangement, or
- (f) with leave of the Court, any other person who has, directly or indirectly, some interest in, or who is otherwise affected by, the arrangement.

could apply to the Court to make an order, on such terms and conditions as it thinks fit (which could be subsequently varied or rescinded), in respect of the execution, administration or enforcement of an arrangement or any cellular or non-cellular assets of a protected cell company subject to, or affected by, an arrangement, including an order as to their attribution, transfer, disposition, tracing, vesting, preservation, application, recovery or delivery.

3) An order of the Court could be made ex parte.

4) Where a protected cell company was obliged (by an order of the Court) to make a transfer, distribution or attribution from the cellular assets attributable to one cell of the company to the cellular assets attributable to another cell, and the cellular assets attributable to the first cell were insufficient, the Court could

order that the company must so far as possible make up the deficiency from its non-cellular assets, but without prejudice to the liability of any other person.

- 5) A protected cell company would be required to make appropriate, necessary or expedient adjustments to its accounting records, (including those of or attributable to its cells) in respect of an arrangement.
- 6) The section would have extra-territorial application.

**Schedule 3**

Proposed provisions relating to uncertificated securities.

- 1) The Department would have the power, (after consultation with the Guernsey Financial Services Commission), to make regulations for title to securities to be evidenced and transferred without an instrument of transfer.
- 2) In such regulations it could provide for:
  - a) any requirements and procedures (or their regulation) for the:
    - i) recording and transferring title to securities, and
    - ii) keeping any register of members or of persons with such title,
  - b) the regulation of persons responsible for or involved in the operation of any requirements and procedures,
  - c) the rights and obligations of persons in relation to securities dealt with under such requirements and procedures,
  - d) the giving of effect to:
    - i) the transmission of title to securities by operation of law,
    - ii) any restrictions on the transfer of title to securities arising by virtue of the provisions of any legislation, rule of law, instrument, court order or agreement, and
    - iii) any power conferred on a person, by any provision mentioned in subparagraph (ii), to deal with securities on behalf of the person entitled, and
  - e) in relation to the persons responsible for or involved in the operation of requirements and procedures:
    - i) the consequences of their insolvency, bankruptcy, death or incapacity, and
    - ii) the transfer by or from them to other persons of their functions in relation to those requirements and procedures.
- 3) Regulations would also contain any safeguards the Department considered to be appropriate for the protection of the public or any section of the public and the reputation and best economic interests of the Bailiwick of Guernsey.
- 4) Regulations could also include:

- i) provision for offences and penalties,
- ii) a prohibition on any act covered by the regulations except under the authority of (and in accordance with the conditions attached to) a licence,
- iii) provision for (with such exceptions, adaptations and modifications as the Department thinks appropriate), the amendment, adaptation, modification, extension or disapplication of any provision of any enactment or any rule of law,
- iv) provision for any fees,
- v) provision to empower any person with functions under the regulations to delegate all or any of those functions to any other person willing to discharge them,
- vi) provision for matters arising out of or related to title to securities and the evidencing and transfer thereof, and
- vii) provision to make any such provision of any such extent as might be made by Projet de Loi, but may not provide that a person shall be guilty of an offence as a result of any retrospective effect of the regulations.

Note: securities means general securities and derivatives within the meaning of the Protection of Investors (Bailiwick of Guernsey) Law, 1987, units in a collective investment scheme, shares or stock in, or securities of, an open-ended investment company and any other securities of any class or description that may be specified by the Department.

**(NB The Policy Council supports the proposals).**

**(NB The Treasury and Resources Department has no comment on the proposals)**

The States are asked to decide:-

XIII.- Whether, after consideration of the Report dated 14<sup>th</sup> July, 2005, of the Commerce and Employment Department, they are of the opinion:-

1. To approve the proposals for the revision of company and other commercial legislation in accordance with the principles set out in section 3 of that Report.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

**COMMERCE AND EMPLOYMENT DEPARTMENT****REQUÊTE – MISUSE OF FIREWORKS**

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

21<sup>st</sup> July 2005

Dear Sir,

**1. Executive Summary**

In January 2004, the States approved a Requête, which directed the then Board of Industry and Committee for Home Affairs jointly to report to the States on the present situation with regard to the control and use of fireworks in Guernsey. Subsequently it was agreed that as successor to the Board of Industry the Commerce and Employment Department would take the lead on the issue. The Department investigated the current arrangements for the control of fireworks, and issued a Consultation Document that was circulated to interested parties and made available to the general public. The Department has noted that currently in the Island controls on fireworks are achieved partly through legislation, but also by voluntary agreement with suppliers and firework display organisers. **Having examined the evidence, the Department believes that there is not a problem of sufficient magnitude that would warrant resources being allocated to the introduction, implementation, and enforcement of new legislation specifically to control fireworks in Guernsey.** In general terms the current arrangements are effective, and in particular the current policies of educating the public and encouraging a responsible attitude towards fireworks, especially during the November 5<sup>th</sup> period, should continue. **This Report recommends therefore that no additional legislation should be enacted at the present time.**

**Background**

2. In January 2004, a Requête was laid before the States, which resulted in the States resolving to direct the States Board of Industry and the States Committee for Home Affairs jointly to report to the States:
  - (a) On the misuse of fireworks;

- (b) On the number of nights on which fireworks displays, whether private or organised, are or may be held;
  - (c) On the desirability and practicability of providing by legislation for control of the misuse of fireworks and the holding of firework displays;
  - (d) On the desirability and practicability of providing by legislation for the States Board of Industry to licence retail sales of fireworks; and
  - (e) In the case of firework displays and retail sales of fireworks, on the involvement of the Constables and Douzaines of the relevant parishes.
3. The specific premises of the Requête were that:
- (a) Considerable annoyance and distress is caused to many members of the community by the number of nights in October and November when fireworks are ignited.
  - (b) Misuse of fireworks regularly damages private and public property, and presents a serious risk of injury.
  - (c) New safety requirements or recommendations, that sales of fireworks are not made to under 20 year old, have not succeeded in curbing their misuse.
  - (d) Voluntary arrangements to reduce the number of days on which private or organised fireworks displays are held have not been effective.
  - (e) Insufficient control exists over the sales of fireworks to the public, and in particular to young persons.
4. In terms of the political response to the Requête, the Home Affairs Committee stated that it “fully supports the use of education and persuasion to reduce the misuse of fireworks and does not believe that any benefit would be achieved through further legislating to control the use of fireworks”. The Board of Industry’s view was that it was “unanimously of the opinion that there is a limit to the improvements that could be made through education and appeals for co-operation”. It therefore supported the Requête and welcomed the opportunity to work with the Committee for Home Affairs and others to review the issues and report to the States with recommendations.
5. Subsequently, and as successor to the Board of Industry, the Department of Employment and Commerce agreed to take the lead in investigating the issue further. The Home Department has been consulted on the contents of this Report, and its comments are appended as Appendix 1.

### **Investigations**

6. In carrying out its investigations the Department examined a number of areas, including:
  - (a) The legislation which is currently in force within the Island for controlling the importation, storage, sale and usage of fireworks.
  - (b) The current situation and practice within the Island related to the use of fireworks and fireworks displays, and their control.
  - (c) Recent debates and discussions which have taken place in other jurisdictions, in particular the Isle of Man and the United Kingdom. In this regard, it should be noted that the UK, following a Private Member's Bill, has recently introduced the Fireworks Act 2003, supplemented by the Fireworks Regulations 2004, which are now in force.
  
7. As a result of these investigations it was discovered that Guernsey was not unique in expressing concerns about the use of fireworks and that these concerns had been reflected elsewhere, as the introduction of the new legislation in the United Kingdom illustrates. These concerns, particularly within the Island, are not related primarily to safety issues – in fact there are generally very few incidents of injury or damage caused by fireworks in the Island - but rather to the nuisance that fireworks can cause if they are used without adequate consideration for others.
  
8. An overall assessment of the current position is that the objectives reflected in the UK legislation are similar to what constitutes current practice locally, albeit that within the Island control is currently achieved through a mixture of legislation and codes of practice agreed with both suppliers and display organisers, rather than purely through legislation itself. The principal focal points of the issues raised by the Requête could therefore be summarised as being the need or otherwise for formalising current practice in legislation, and the opportunities that new legislation would make available for tightening up on current practice.

### **Consultation**

9. The Department decided that it was important to consult interested parties, as well as the general public, and the Consultation Document attached as Appendix 2 was drawn up, summarising the results of investigations to date. This document reviews the current situation with regard to the use of fireworks within Guernsey, examines how control is currently exercised by legislation or other methods, and presents for consideration possible options for future controls. It was forwarded to a number of organisations with interests related to the use of fireworks, and to the Parish Constables to whom reference was made

in the Requête. In addition the document was made available on the States website, as well as on demand at the Board's offices. A total of 22 responses to the Consultation Document were received.

10. Fundamentally, the Document raised two issues:
  - (a) Whether it was felt that there was a need to introduce more specific legislation to control the sale and use of fireworks.
  - (b) What additional measures should be put in place, through legislation or otherwise, to control the purchase and use of fireworks, in addition to, or instead of, those that exist at the present time.
11. In terms of the need for legislation, most responses were either in favour of legislation, made the assumption that legislation would need to be enacted to achieve what was felt to be necessary, or raised no objection to new legislation being put in place.
12. However, the following views were also expressed:
  - (a) The Police stated that in their view "currently there is no overriding justification to increase the legislative armoury in this area".
  - (b) The Parish of St Pierre du Bois stated that "the current codes of practice appear to be working satisfactorily and we would prefer these to be consolidated and expanded rather than new legislation introduced".
  - (c) The Ambulance and Rescue Service stated that "it does not believe that any benefit would be achieved through further legislating to control the use of fireworks".
13. As for the overall comments that were received, while there were some more individual points expressed, there was a broad consensus around the following areas:
  - (a) A widely, indeed almost unanimously, expressed concern that the November 5<sup>th</sup> period had become too protracted and that the celebrations should take place only on the 5<sup>th</sup> November itself, or on one or two alternative nights in case of bad weather. There was little or no support for permitting fireworks before the date itself. Allowing a three day period both prior to, and after the date would allow a choice between the weekend and the day itself no matter on what day the 5<sup>th</sup> fell, but this option was not followed by respondents.
  - (b) A wish that, outside of November 5<sup>th</sup> period, only professionally organised displays should be permitted. This roughly equates to current practice. Some respondents went further with regard to displays outside

the November the 5<sup>th</sup> period, in that a proposal was received that, except for public displays (e.g. Liberation Day, North Show) all displays, for example to celebrate weddings, conferences, etc., should be banned. On the other hand, the professionalism and sense of responsibility of the current firework display operators was praised, and to implement such a ban would close down almost all of their business. The question must be asked as to whether this would be justified.

- (c) Professionally organised displays are already subject to control in that they must meet statutory Health and Safety requirements. In addition to this, an opinion was expressed that there should be a legal requirement for the organisers of such displays to give official notice of the display through the Guernsey Press, and by circulating an advance warning of the display to all households within a quarter of a mile of the display site (one suggestion added half a mile for livestock holders), and to the Parish Constables. Again, this equates to current practice, but is not a legal requirement. Both St Peter Port and St Martins' Constables went further in recommending that such displays should be by way of a permit system that would be administered by the Parishes. However, such a system would add a layer of bureaucracy to the organisation of firework displays, which may not be considered to be necessary at the present time.
- (d) In terms of the sale of fireworks, a general feeling that the current voluntary system of control seemed to work well, with an opinion nevertheless expressed that it would be preferable for the requirements to be expressed through legislation. In effect such legislation would reinforce the current agreement by banning the sale of fireworks to the general public except during a short period before the 5<sup>th</sup> November. A number of respondents gave the opinion that the period of sale of fireworks, or more accurately the period of collection of fireworks prior to the 5<sup>th</sup> November should be the minimum possible, even restricted to one or two days. However, this would be impractical due to the current legal requirements under the Explosives Law, as well as Health and Safety requirements, for the storage and distribution of fireworks. Indeed, having such a large quantity of fireworks on site at the same time could constitute a significant fire risk. Currently the period of sale is restricted to as short a period as practicable through the agreement and advice of the Chief Health and Safety Officer. Indeed it estimated that in most years it is practical for this period to be limited to a little over one week.

14. Other more detailed points made included:

- (a) Only category 1 & 2 fireworks should be available for use by the public, and not category 3, as is currently permitted. At present, the "minimum safe distance" for category 2 fireworks is 10 metres, and for category 3,

25 metres. Many persons do however have gardens that can accommodate category 3 fireworks. It is understood that retailers will give advice as to which fireworks are suitable for individual circumstances, if requested.

- (b) There should be a curfew on times when fireworks can be let off, with different times suggested between 9:30 pm and 11:00 pm. A compromise might be 10:30 pm. An exception could be made for New Year's Eve when a later curfew of 12:30 am could be imposed.
- (c) There was agreement that possession of a firework in a public place by an underage person could be made an offence. The age limit should be 18, which is now the accepted age of majority. This is less than the age of 20 that has been specified by the Chief Health and Safety Officer for the purchase of fireworks, but as the established age of majority is now 18, this provision may be difficult to sustain under new legislation. Penalties for underage purchase could also be increased.
- (d) A time limit, say of 15 minutes, should be introduced for professionally organised, private displays, and a limit on the number of firework displays permitted per year. The latter suggestion would however raise issues of equity as to the criteria under which some applications for displays would be rejected and others approved.
- (e) More stringent requirements on the noise level of fireworks should be implemented. However, currently the latter are in line with UK legislation and there would be practical and commercial difficulties in introducing specific requirements related solely to Guernsey.

### **Conclusion**

- 15. The Department has given careful consideration to the systems currently in place for the control of fireworks in Guernsey, to the comments received through the consultation exercise, and to the practicality of implementing some of the suggestions made. In doing so, it has had to come to a balanced view, evaluating the evidence and arguments put forward, in order to decide on what, if any, appropriate steps should be taken for the future.
- 16. In particular, the Department has considered whether there is any real need for further legislation, which might, for example, place a legal limit on the number of days around November 5<sup>th</sup> when fireworks can be used. Such legislation would also provide an opportunity to formalise the voluntary procedures and practices that are currently in place, and implement some of the relatively minor additional controls that have been identified through the consultation process.
- 17. Such legislation might, for example, make the following provisions:

- (a) the use of fireworks by the general public should be restricted by legislation to the 5<sup>th</sup> November each year, or in the event of inclement weather to such other date or dates as specified by the Commerce and Employment Department.
  - (b) outside this period fireworks should only be permitted as part of a display provided by a professional firework display organiser, and all such displays should be subject to the following conditions:
    - (i) The Chief Health and Safety Inspector being satisfied that all necessary Health and Safety requirements have been met;
    - (ii) At least 3 days notice being given in the local newspaper;
    - (iii) The Constables of the Parish being informed of the date, time and venue of the display;
    - (iv) Letters giving notice of the display being circulated to all householders and livestock holders within a quarter of a mile of the site where the display takes place.
  - (c) the sale of fireworks to the general public should be prohibited apart from during the period immediately preceding the 5<sup>th</sup> November, this period to be decided annually by Chief Health and Safety Officer, and to be as short as circumstances will reasonably allow.
  - (d) there should be a curfew of 10:30pm for all firework displays, with the exception of New Year's Eve, when the curfew should be 12:30 am.
  - (e) it should be made an offence for a person under the age of 18 to be in possession of a firework in a public place.
18. On balance, and having taken into account all of the information received, the Department is of the view that there is no justification at present for further legislation to control the sale and use of fireworks in Guernsey. The present system, combining legislation with a voluntary code of practice, has served the Island well, and continues to do so. The Department fully supports the work of the various agencies involved, and in particular the Fireworks Consultative Committee<sup>1</sup>, in encouraging a responsible attitude to the use of fireworks, and in particular, through publicity and the issue of guidelines and codes of practice, attempting to minimise the nuisance that their inconsiderate use can cause to others. The work of the Committee needs to be recognised and encouraged. Bearing this in mind, the Department does not believe that anything substantial

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<sup>1</sup> Membership comprises representatives of the Fire Brigade, Police, Ambulance and Rescue Service, Health and Safety Executive, GSPCA, Health Promotion Unit, Age Concern, Customs and Excise, and a professional "pyrotechnician".

would be achieved by devoting scarce resources to the creation of new legislation, and just as importantly, to its enforcement.

**Recommendation**

19. The Commerce and Employment Department therefore recommends the States to note the contents of this Report, but to take no action at the present time to introduce further legislation to control the sale and use of fireworks in Guernsey.

Yours faithfully

Stuart Falla  
Minister

**Appendix 1**

Minister  
Commerce and Employment Department  
Raymond Falla House  
P O Box 459  
Longue Rue  
St Martins  
Guernsey  
GY1 6AF

15 July 2005

Dear Deputy Falla

**REQUETE – MISUSE OF FIREWORKS**

Thank you for your letter of 23 June 2005 and draft States Report on the above subject.

The Home Department gave full consideration to your proposals and agreed that, on balance, there is not a problem of sufficient magnitude that would warrant resources being allocated to the introduction, implementation and enforcement of new legislation specifically to control fireworks in Guernsey. The Department also believes that legislation would be difficult to enforce, especially given current scarce resources, and would rather, at this stage, wish to see the good work of the Firework Consultative Group continuing through education, persuasion and voluntary code of practice.

You should be aware that, notwithstanding the above comments, the Department is currently examining the Explosives Law (which dates from 1875) specifically regarding controls in relation to instruments of terrorism and the extension of the current powers on importation to include exportation.

The Department is grateful for the work undertaken by the Commerce and Employment Department and for taking the lead in this “joint” matter.

Yours sincerely

M W Torode  
Minister  
Home Department

**Appendix 2**

**COMMERCE AND EMPLOYMENT DEPARTMENT**

**REQUÊTE – MISUSE OF FIREWORKS**

**CONSULTATION PAPER**

## 1.0 INTRODUCTION

1.1 A Requête was laid before the States in January 2004, with the result that the States resolved to direct the States Board of Industry and the States Committee for Home Affairs jointly to report to the States:

- (a) On the misuse of fireworks;
- (b) On the number of nights on which fireworks displays, whether private or organised, are or may be held;
- (c) On the desirability and practicability of providing by legislation for control of the misuse of fireworks and the holding of firework displays;
- (d) On the desirability and practicability of providing by legislation for the States Board of Industry to licence retail sales of fireworks; and
- (e) In the case of firework displays and retail sales of fireworks, on the involvement of the Constables and Douzaines of the relevant parishes.

1.2 This Requête was the expression of a growing concern in some parts of the community in recent years about the use of fireworks for entertainment and recreational purposes. It appears that this concern has not come principally from safety issues, but from a perceived nuisance factor related to increasing numbers of displays, and their effect on the rights to peace and enjoyment of neighbours and the public in general, as well their effect on animals. This concern is not limited to Guernsey, but has also extended to the United Kingdom and to the Isle of Man, where there have been parliamentary debates on the question of the control of fireworks and, in particular, the UK has introduced enabling legislation, as well as Fireworks Regulations to provide some specific measures of control.

1.3 In general terms, concern arises in three main areas:

- (a) The increase in length of the period of informal “firework parties” around the end of October/beginning of November each year, with it now being seen as socially acceptable to hold fireworks parties on evenings other than the 5<sup>th</sup> November itself. There is no evidence to suggest that there is any real incidence of such parties being held outside the October/November period.
- (b) Professionally organised displays which take place at other times of the year, either for a public event such as the Harbour Carnival or Liberation Day, or for Private parties, for example to celebrate a wedding or a conference. Popular venues for such displays include La Grande Mare or St Pierre Park.

- (c) The general misuse of fireworks, often perceived as the casual letting off in public places of a firework as an isolated incident.

1.4 In more detail, the specific premises of the Requête were that:

- (a) Considerable annoyance and distress is caused to many members of the community by the number of nights in October and November when fireworks are ignited.
- (b) Misuse of fireworks regularly damages private and public property, and presents a serious risk of injury.
- (c) New safety requirements or recommendations, that sales of fireworks are not made to under 20 year old, have not succeeded in curbing their misuse.
- (d) Voluntary arrangements to reduce the number of days on which private or organised fireworks displays are held have not been effective.
- (e) Insufficient control exists over the sales of fireworks to the public, and in particular to young persons.

## **2.0 OBJECTIVE**

2.1 The purpose of this paper is to:

- (a) Review the current situation with regard to the use of fireworks within Guernsey.
- (b) Examine how control is currently exercised, by legislation or other methods (voluntary agreement, etc).
- (c) Recommend for consideration possible amendments to the current legislation/procedures, possibly to be implemented as part of a review of the Explosives Law, 1904.

2.2 However, a basic premise of his paper is to recognise that while there may need to be some control on their anti-social use, when used sensibly and with consideration for others, fireworks are a very popular form of family entertainment.

## **3.0 VIEWS OF THE THEN BOARD OF INDUSTRY/COMMITTEE FOR HOME AFFAIRS**

3.1 In terms of the political response to the Requête, the Home Affairs Committee provided a comprehensive response based on the comments received from the

Fireworks Consultative Group<sup>2</sup>, to the effect that it “fully supports the use of education and persuasion to reduce the misuse of fireworks and does not believe that any benefit would be achieved through further legislating to control the use of fireworks”.

- 3.2 However, the Board of Industry’s view was that it is “unanimously of the opinion that there is a limit to the improvements that could be made through education and appeals for co-operation. Furthermore, the current Explosives Law is deficient in a number of ways and needs updating. It is against this background that the Board supports the Requête and welcomes the opportunity to work with the Committee for Home Affairs and others to review the issues set out in the Requête and report to the States with recommendations”. **As successor to the Board of Industry, the Department of Employment and Commerce has agreed to take the lead in investigating the issue.**

#### **4.0 CURRENT POSITION AND LEGAL FRAMEWORK**

- 4.1 The prayer and premises of the Requête do not give a detailed appreciation of the controls that are currently in place, although it may be assumed that the signatories considered them to be insufficient.
- 4.2 Indeed, the statements made as the premises for the Requête are to an extent a matter of personal judgment. For example:

**(a) Annoyance and Distress**

The level of distress and annoyance caused to members of the public during October/November can be open to interpretation, and, to be equitable, should be balanced against the enjoyment derived by many others.

**(b) Personal Injury and Damage to Private Property**

It is certainly true that the misuse of fireworks can present a serious risk of injury, and control and educative measures have been put in place to minimise such a risk. Evidence from the Fire and Ambulance Services would suggest that incidents of injury are however rare, and mostly caused by deliberate misuse, or by “sparklers”, which strictly speaking are not classified as fireworks. There is also little immediate evidence of fireworks themselves causing widespread damage to private or public property. While the Fire Brigade was busier on November 5<sup>th</sup> in 2004 than in earlier years, the level of incidents was still not sufficient to cause particular concern. Almost all, if not all, call-outs were caused by

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<sup>2</sup> Membership comprises representatives of the Fire Brigade, Police, Ambulance and Rescue Service, Health and Safety Executive, GSPCA, Health Promotion Unit, Age Concern, Customs and Excise, and a Professional “Pyrotechnician”.

bonfires which had gone out of control, rather than by fireworks themselves.

(c) **Control of Misuse/Reduction in numbers of days when firework displays are held/Control of Sales to Public, in particular young persons**

The Department would dispute the contents of the statements made in the Requête on the above subjects, although, again, it accepts that to some extent the situation can be open to interpretation. However, the comments made by the Fireworks Consultative Group and referred to in paragraph 3.1 indicate that in its view considerable progress has been made through education and persuasion, supported by the legislation that is already in place.

4.3 In this regard, while there is no specific fireworks legislation as such, control is effected through three different legislative strands:

- The Loi relative aux Explosifs (Explosives Law), 1905, as amended;
- The Health and Safety at Work (General) (Guernsey) Ordinance 1987, made under The Health and Safety at Work Law (1979);
- The Summary Offences (Bailiwick of Guernsey) Law, 1982.

4.3.1 **The Explosives Law** makes provision for the control of the importation, storage, conveyance and sale of explosives, the definition of which includes fireworks, with a requirement that a licence has to be obtained from the Royal Court for both importation and storage. This legislation has been backed up by a voluntarily agreed “code of practice” under which importers and retailers have agreed not to make fireworks available to the general public outside agreed dates between the last week of October and early November (the dates are agreed depending on practical issues related to the requirements of the legislation, for example in 2004 the period extended from the 23<sup>rd</sup> October to the 5<sup>th</sup> November). This agreement has the effect of restricting private fireworks parties to this period, and is the approach that has been taken by the UK in the regulations that have just been put in place. **One option for consideration would be to enshrine this agreement in legislation that would, in effect, make it illegal to supply fireworks to the general public outside this period.**

Also under this legislation, the Inspector of Explosives (in effect the Chief Health and Safety Officer) has the power to make specific orders in regard to fireworks, and this power has been used, for example, to prohibit their sale to persons under the age of 20 years. This is more restrictive than in the UK, where the minimum age has been set at 18 years.

Under the provisions of the Explosives Law, a licence (which can be refused) is required to import fireworks, and, in particular, it is illegal to import any that are not currently permitted in “Great Britain”. It is therefore illegal to import certain types of firework that are considered to be especially subject to misuse, or to be dangerous.

These include, for example, bangers, “mini-rockets”, squibs, and jumping crackers. In this regard there was recently a successful prosecution relating to the letting off of “bangers” in public. It transpired that they had been imported illegally from France.

4.3.2 **The Health and Safety Regulations** provide powers to control professionally organised firework displays, and the remit of the Regulations extends not only to the safety of the operatives, but also to the public attending such displays. The “Category 4”<sup>3</sup> fireworks, which can only be used in professional displays, and are not available to the general public, have to be imported through a licence, subject to conditions, issued under the provisions of the Explosives Law. At present, the control of displays is not exercised through a formal permit system, but such a system could be introduced by legislation, if it were felt to be necessary to do so. Permits could be made subject to conditions, and could be refused or revoked if those conditions were not complied with.

4.3.3 Under the provisions of Section 2 (d) of **The Summary Offences (Bailiwick of Guernsey) Law, 1982**, it is already an offence to let off a firework in a public place, without the prior permission, in the Island of Guernsey, of the Constables of the Parish in which that place is situated. Indeed, recently there was a successful prosecution of a member of the public for letting off fireworks on Grandes Rocques headland.

Under this legislation, **The Parish Constables** would appear to have powers to control firework displays in a public place, but not displays held on private property. Nevertheless, they do receive complaints about the noise caused by such “private” displays. On an advisory basis, the St Peter Port Constables attempt to ensure that all private displays are finished by 11.00 pm. This is also the curfew on fireworks that has recently been introduced in UK legislation, with exceptions for the 5<sup>th</sup> November, New Year’s Eve, the Chinese New Year, and the Hindu festival, Diwali, when the curfew is set at 1.00 am. The Constables also try to ensure that those living near to where the display takes place are sufficiently forewarned, and it is understood that display organisers and venues also take steps to ensure that this is the case, by way of mail shots and advertisement in the Press.

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<sup>3</sup> Categories of Fireworks are: Category 1, fireworks suitable for indoor use; Category 2, garden fireworks; Category 3, display fireworks; Category 4, for specialist use only. Only the first three categories are, subject to conditions, made available to the general public.

- 4.4 In addition to the legislation, the Fireworks Consultative Group monitors the position from year to year, and takes a lead in giving advice and publicising good practice, especially during the period leading up to the 5<sup>th</sup> November.

## **5.0 THE SPECIFIC PRAYER OF THE REQUÊTE**

- 5.1 In terms of the specific items in the prayer of the Requête, there are a number of comments that can be made:

### **5.1.1 Misuse of Fireworks**

- (a) Misuse can either be intentional, most often the casual or indiscriminate letting-off of fireworks by young persons, usually in a public place, or unintentional, for example, through ignorance failing to light the firework properly, or using it in an inappropriate way.
- (b) In terms of intentional misuse, and as already noted, types of firework which are most likely to cause a nuisance can no longer be legally imported, there is a provision under the Explosives Law that fireworks cannot be supplied to persons under the age of 20, and under separate legislation it is already an offence to let off a firework in a public place without the prior permission of the Parish Constables.
- (c) **However, a further weapon in the armoury would be to make not just the purchase, but also the possession of a firework in a public place by a person under 20, an offence.** A similar provision is included under the recent UK legislation.
- (d) In terms of unintentional misuse, detailed safety campaigns are routinely run prior to the 5<sup>th</sup> November period, and it does not seem to be an area where legislation would be effective. Indeed, the appropriate method would seem to be education, and this supports the campaigns that are already publicised.
- (e) There are, in fact, very few incidents of injury being caused by fireworks (if any, usually by sparklers which are not officially classified as fireworks), and there is no evidence of any significant increase in misuse in recent years.

### **5.1.2 The number of nights on which fireworks displays whether private or organised are or may be held**

- (a) Technically, there are currently no legal restrictions on the number of nights on which either private or professionally organised firework displays can be organised. However, as under the voluntary agreement fireworks are only on sale to the public from the last week of October to

the beginning of November, private firework parties are effectively restricted to that period.

- (b) There has been a tendency in recent years for private fireworks parties to be held on nights other than the 5<sup>th</sup> November itself, although no firm statistics are available. This would appear to be a particular problem in years when the 5<sup>th</sup> November falls midweek, or when the weather on the date itself has been inclement, with a variety of alternative dates being chosen. There is no evidence that private displays are held to any appreciable extent outside this period.
- (c) A number of professionally organised displays are organised both during the 5<sup>th</sup> November period, as well as at other times of the year. These are either for a public event such as Liberation Day, the Harbour Carnival, or the North Show, or for a private occasion, such as a wedding or a conference. A total of some 35 professional displays have been held in 2004, thirteen of them on or near the 5<sup>th</sup> November. Of the 22 held during the rest of the year, all but three were for a private function. Such professionally organised, but private displays are often of fairly small scale compared to large public displays, and it is felt that 2004 has been a comparatively busy year for such displays.
- (d) Nevertheless, they can cause annoyance, particularly if they are unexpected, and it is understood that organisers do take steps to warn neighbours of their occurrence, so that, for example, arrangements can be made for animals to be protected, for example by being kept inside. **A further option for consideration would be to make it a legal requirement for sufficient notice to be given, in a suitable manner, of professionally organised displays. There could also be a legal curfew on the letting off of fireworks of say, 11 pm.**

### 5.1.3 **The desirability and practicability of providing by legislation for control of the misuse of fireworks and the holding of firework displays**

- (a) Overall, the present legislation does provide a degree of control, although an element of this control is exercised through voluntary codes of practice. In terms of reviewing legislation, there are opportunities to:
  - (i) Simplify and consolidate the current legislative practices;
  - (ii) Support current practices more effectively through legislation.
  - (iii) Introduce additional legislative controls, if it is so wished to do.
- (b) This could be achieved as part of a review of the Explosives Law, together with other, fairly minor, amendments, if they were felt to be necessary.

- (c) A major aspect is the current lack of specific legislation for the control of the number of firework displays, and of the dates on which they may take place. However, is there a problem of sufficient magnitude that further control measures are necessary? If so, there are a number of options available, depending on the level of control desired, therefore:
- (i) Is the present situation satisfactory, and therefore no action is necessary?
  - (ii) Is the present situation about right, but the opportunity should be taken to rationalise/simplify the current legislation and introduce one or two additional controls to make the objectives of the legislation more effective?
  - (iii) Is the present situation unsatisfactory, and significantly more repressive measures need to be put into place?
- (d) The following are some of the options that could be considered:

**Private fireworks parties**

- (i) Restrict private fireworks parties to the 5<sup>th</sup> November only.
- (ii) Restrict private fireworks parties to the 5<sup>th</sup> November and a 2/3-day period either side.
- (iii) Restrict private fireworks parties to a period from the last week of October to early November. This equates to present practice. One option would, however, be to enshrine the current practice more effectively in law, either by prohibiting the supply of fireworks to the general public outside the October/November period, or by making it illegal to let off a firework outside the same period, except, perhaps, as part of a professional display.

**Professionally organised displays for both public and private events**

(In reality the distinction between “public” and “private” displays is open to interpretation, as in a sense all displays are “public”. For the purpose of the following, “public” displays are only those that are agreed by the Department of Commerce and Employment to form an integral part of a public event or celebration, such as Liberation Day, the Harbour Carnival, the North Show, and the 5<sup>th</sup> November. All others are considered to be “private”, even though the public may be invited to attend.)

- (i) Only permit for public celebrations, such as the 5<sup>th</sup> November,

Liberation Day, etc., with a total prohibition on all private displays.

- (ii) Permit for designated public celebrations, such as the 5<sup>th</sup> November, Liberation Day, etc., but restrict private displays to the 5<sup>th</sup> November.
- (iii) Permit for designated public celebrations, such as the 5<sup>th</sup> November, Liberation Day etc., but restrict private displays to the 5<sup>th</sup> November and 2/3 days either side.
- (iv) Permit for public celebrations, such as the 5<sup>th</sup> November, Liberation Day, etc., but restrict private displays to an agreed period from the middle of October to early November
- (v) Permit for public celebrations, such as the 5<sup>th</sup> November, Liberation Day, etc., and generally permit private displays, but restrict them to specific venues outside the period from the middle of October to early November.
- (vi) Generally permit professionally organised displays, both public and private, throughout the year, but subject, as at present, to Health and Safety requirements. This option equates to present practice with regard to professionally organised displays.

5.1.4 In addition to any legislation that may be necessary to give effect to whichever of these options are preferred, the following possible amendments to legislation have been identified and could also be pursued:

- (a) Introduce legislation to support the current code of practice, whereby the sale of Category 1-3 fireworks is restricted to a specific period each year, rather than relying purely on the code of practice itself.
- (b) Make it an offence, for example under the Summary Offences Law, for a person under a specific age (18 or 20) to be in possession of a firework in a public place;
- (c) Introduce a legal requirement that professional organisers of “Category 4” displays must notify the Constables of the Parish concerned, and give official notice of the display in La Gazette Officielle (or by whatever agreed method), as is already done in practice. A further possibility might be to make professional displays subject to a permit sued by the Parishes, who would have the responsibility of ensuring at all legislative requirements had been complied with.
- (d) Install a curfew on all firework displays of 11 pm, with exceptions for specific dates such as the 5<sup>th</sup> November and New Year, when a later curfew of 1 am could be imposed.

**5.1.5 The desirability and practicability of providing by legislation for the States Board of Industry to licence retail sales of fireworks**

5.1.6 There is already in place a licensing system for the retail sale of fireworks which, under the provisions of the Explosives Law, enables specific requirements to be made on the storage, display, and sale of fireworks. There are also considerations that need to be taken into account under Health and Safety requirements. This legislation does not, of itself, prohibit the sale of fireworks outside the agreed October/November period, although a code of practice has been agreed with licence holders that in effect prevents their sale outside this period. **As stated above, it would be possible to control the period of sale of fireworks through legislation.**

**5.1.7 In the case of firework displays and retail sales of fireworks on the involvement of the Constables and Douzaines of the relevant parishes**

5.1.8 Under the Summary Offences Law, the permission of the Parish Constables is necessary before a firework can be let off in a public place. In addition, the Parishes can and do receive complaints from parishioners, and can be an effective feedback route for information about the use or misuse of fireworks in their own parishes. With a requirement that they are notified of pending firework displays, they can play an important role in helping to ensure that the residents of the parish are suitably informed. Given that retail sales of fireworks are fully regulated under the Explosives Law, there seems little need officially to involve the Parishes, except possibly in an advisory capacity.

5.1.9 The Parishes might also provide an administrative and supervisory resource, if it was agreed that a system of permits for professional firework displays needed to be put in place.

**6.0 CONCLUSIONS AND RECOMMENDATIONS**

6.1 The Board of Industry's comments on the Requête indicated two reasons for giving it their support:

- (a) That voluntary agreements can only go so far and need to be backed up by legislation.
- (b) That, in any event there is a need to review the Explosives Law, which dates from 1875.

6.2 In the Department's view, an assessment of the current situation regarding the control of the distribution and sale of fireworks in Guernsey, and of firework displays, does not indicate that there is a significant problem that warrants immediate and urgent action. Nevertheless, fireworks do represent a potential danger to persons, animals, and to property, and clearly there have been changes

in social perspectives that have resulted in a greater demand for firework displays in recent years, both around the November 5<sup>th</sup> period, as well as at other times of the year.

6.3 It is therefore appropriate that the situation is reviewed and, if necessary further action is taken. Therefore, in pursuance of the prayer of the Requête, the Department of Commerce and Employment will in the near future be laying before the States a Report detailing its recommendations for the future. Before doing so, the Department would welcome any comments you may wish to make, in particular as regards:

- (a) The current situation with regard to the control of fireworks in Guernsey.
- (b) The contents of this Report, including any areas of specific interest.
- (c) The options for future controls, as laid out in paragraphs 5.1.3 and 5.1.4.
- (d) Any other matters that you feel may be of relevance to the control of fireworks in Guernsey.

**(NB The Policy Council supports the proposal)**

**(NB The Treasury and Resources Department has no comment on the proposal)**

The States are asked to decide:-

XIV.- Whether, after consideration of the Report dated 21<sup>st</sup> July, 2005, of the Commerce and Employment Department, they are of the opinion:-

To note that Report but to take no action at the present time to introduce further legislation to control the sale and use of fireworks in Guernsey.

**HEALTH AND SOCIAL SERVICES DEPARTMENT****MIGNOT MEMORIAL HOSPITAL RE-FURBISHMENT AND  
RE-DEVELOPMENT PROJECT (ADDITIONAL FUNDING)**

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

26<sup>th</sup> July 2005

Dear Sir,

**Executive Summary**

The Mignot Memorial Hospital has grown in a piecemeal fashion and the health services provided in Alderney have changed over the years since it was first built. Consequently, many of the rooms are now being used for purposes other than those for which they were designed and built. In particular, the Aurigny Wing is cramped, unsuitable in layout and expensive to run. It was a temporary structure and has now been in use for over 25 years.

The States agreed in 2003 that the Aurigny Wing should be replaced and the other parts of the Mignot Memorial Hospital redeveloped within a building cost of £3 million and a total project cost of £3,820,000. Unfortunately, it proved impossible to achieve this within the sum voted and, after consideration of all the options, the States are being requested to approve a project, the building cost of which will be, at most, £4,839,675.

It is also planned to undertake some fairly major essential maintenance work as part of the redevelopment project. This will cost £721,000.

Taking both these elements together, an additional £2,366,000 is required to ensure that the replacement of the Aurigny Wing and redevelopment of the main hospital building can be completed to an appropriate standard. This includes all fees, furnishings and contingency sums.

**1. Why is redevelopment required**

Older people who need continuing nursing care are currently accommodated in the Aurigny Wing of the Mignot Memorial Hospital. This was originally intended as a temporary structure but has now been in use for over 25 years. It is cramped, unsuitable in layout, expensive to run, because of high-energy costs

and needs to be demolished. Refurbishment is not an acceptable option. In addition, the Health and Social Services Department is keen to ensure that facilities for older people in Alderney do not fall short of what is being provided in the new continuing care wards in Guernsey.

There is also an issue regarding the scope of acute in-patient and general out-patient facilities that it is reasonable to expect for the size of the population in Alderney. The very least that has to be provided is some form of 'first aid' facility. However, such a limited facility would result in high transport costs for transfer of patients to Guernsey and gross inconvenience for Alderney residents, many of whom are older people. It must also be borne in mind that this would result in little or no reduction in staff, as they cover both continuing care and acute services. A delivery room and associated facilities for Alderney births is also needed.

Having decided that there should continue to be a hospital in Alderney, in-patient accommodation needs to be as flexible as possible in use, in order to cater for both sexes and a wide variety of medical conditions. The best way to achieve this is through a high proportion of single rooms, as multi occupancy rooms lead to over provision in order to ensure the necessary separation of the different types of patient.

Despite these dire conditions, the standard of care is as good as it can be, thanks to the dedicated and skilful staff who work at the hospital, but, however, much they try to overcome the conditions, those conditions are bound to handicap the proper delivery of care. A cross section of staff views on the current facilities at the hospital is attached as appendix A to this report.

## **2. Background**

Proposals to redevelop the Mignot Memorial Hospital have been advised to the States on four separate occasions in the last six years.

In July 1999 (Billet d'Etat XV), the States approved in principle the then Board of Health's revised site development plan, which included outline proposals for the redevelopment of the Mignot Memorial Hospital.

The Board was later advised, by the then Advisory and Finance Committee that nothing over £3,000,000 in construction costs would be supported.

In 2003, the Board of Health, as part of its Site Development Plan update, (Billet d'Etat XXI), requested the States to approve its plan to replace the Aurigny Wing of the Mignot Memorial Hospital at a cost of £3,820,000 including equipment, Information Technology costs and professional fees.

The Board of Health agreed to produce a project that was within this budget, as there appeared to be no alternative, but it soon became apparent that a scheme to

address the current buildings' problems could not be delivered for below £3,820,000.

Prior to September 2003, the Health Design and Development Group (HDDG), an out posted arm of Guernsey Technical Services, was responsible for developing the concept design strategy for both the Princess Elizabeth Hospital and the Mignot Memorial Hospital schemes.

Following the appointment of Gleeds Management Services as project managers and Nightingale Associates as scheme architects in September 2003, a full and detailed review of the original design intent, proposed by the Health Design and Development Group, was undertaken. The findings of the validation exercise concluded that the requirements of the brief in respect of clinical functional content could not be achieved within the approved budget of £3,820,000 agreed by the States and that a substantial budget increase would be required to complete the project.

As a consequence, the design team was requested to revisit the original brief to establish a workable scheme capable of demonstrating value for money. The findings of this Design Feasibility Report were presented to the Board of Health on 23 February 2004.

In May 2004, I advised the States, in response to a question, that the Health and Social Services Department was still committed to the scheme, even though completion would be later and more expensive than originally planned.

In November 2004 in its report to the States on the development of John Henry Court, (Billet d'Etat XX 2004), the Health and Social Services Department advised the States that the Alderney scheme could not be undertaken within the £3,820,000 approved and that rather than simply go ahead with the scheme and knowingly overspend, the Department would come back to the States during 2005 with a further report, seeking approval to the additional funding required.

### **3. Capital Scheme Prioritisation**

The Health and Social Services Department is aware of the prioritisation process being undertaken in respect of capital schemes and has deferred bringing other projects to the States until the prioritisation exercise is completed.

However, with the support of the Treasury and Resources Department, the Health and Social Services Department is bringing this scheme back to the States, not as a new scheme but as an existing scheme requiring additional funding.

### **4. What is being proposed**

This is a development based on current acceptable standards, which will meet

the basic requirements for healthcare provision in Alderney. The project consists of three main elements:

- a) The internal refurbishment of the existing main hospital building will provide the entire outpatients' function, as well as providing an element of the acute inpatient facility. The refurbishment proposals are based on minimising the level of re-planning and minor internal structural alteration to the existing 1950's hospital layout to reduce cost, programme and associated disruption.
- b) The new single storey building extension will provide modern healthcare facilities for the remaining element of the acute inpatient and the whole of the continuing care accommodation, together with the modernisation of the existing mechanical and electrical services and some minor external hard landscaping works.
- c) Additional ancillary works consist of the full removal of all asbestos containing materials, existing roof covering replacement and full external window and door replacement.

Options considered were: -

- Option 1. Complete new build on a new site;
- Option 2. Complete new build on the existing site;
- Option 3. Existing building extensively re-planned and refurbished with 100% single bedroom new build for both acute and continuing care;
- Option 4. Combined new build for continuing care with refurbishment of existing building for acute inpatient and outpatient facilities.

#### Option 1 --- Complete new build on a new site

As there was no other suitable available area of land in States ownership, this would have entailed extra costs. In 2004 the States of Alderney agreed to transfer a section of land lying to the west of the existing hospital to the control of the Health and Social Services Department to enable the development of the new facility. At the same time the Mignot Memorial Hospital Trustees agreed to transfer land under their trusteeship, and on which the existing hospital is built, to the States of Alderney, on the condition that the land continued to be used for health related activities. This in effect meant that even if an alternative site could have been found, at no cost, the land on which the existing hospital was built would have been unusable for any other purpose. The option of new build on a new site was, therefore, discounted.

Option 2 --- Complete new build on the existing site

This option was initially favoured, as it meant that there would be no decanting or phasing issues, it maximised use of the site, provided a useful undercroft and would provide 100% single bed accommodation. However, a budget construction cost only of £7.8M (at 2005 prices) made it too expensive for serious consideration.

Option 3 --- Existing building extensively re-planned and refurbished with 100% single bed new build for both acute and continuing care

Although providing 100% single bed accommodation in a new building, the design did not provide an efficient functional relationship between the respective sections of the hospital. The overall footprint was too long and narrow and would have resulted in excessive travel distances for nursing staff, visitors and ambulant patients. A budget construction cost only for this option is £6.5M.

Option 4 --- Combined new build for continuing care with refurbishment of existing building for acute and outpatient facilities

This option, although not providing 100% single beds, re-used the existing layout of the hospital more effectively, thereby minimising structural changes. Under utilised spaces were better used. Existing offices, stores, staff areas and the kitchen were retained. Some of the acute accommodation was included within the existing footprint, thus reducing the amount of new building required. Most importantly, it retained the desired clinical relationships between the different areas.

The Health and Social Services Department agreed to proceed with option 4.

The scheme will provide new inpatient and outpatient facilities, to replace the current ones which are outdated and do not meet modern day standards. The main factors that influenced the Health and Social Services Department's decision were:

- Continuing care inpatients are currently accommodated within the Aurigny Wing. This is a temporary wooden structure that has been used for over twenty five years. It is cramped, unsuitable in layout, expensive to run due to high-energy costs and is at the end of its usable life span. Patients have little or no privacy, the cramped conditions cause significant safety issues for nurses and patients, the building is too hot in summer and too cold in winter and is totally unsuitable.
- The acute in-patient area also needs improvement as the cardiac resuscitation room is inadequate in size for the safe operation of the equipment required and multi occupancy rooms are limited in their use without compromising patient privacy and dignity.

- It is essential to improve the clinical/outpatient facilities, which include radiology, physiotherapy and treatment/counselling rooms staffed by visiting consultants from the Health and Social Services Department and the Medical Specialist Group. Currently, the radiology equipment is in an open area that does not provide sufficient radiation protection and the room used for physiotherapy is inadequate in size for the treatments needed.

The scheme has now been fully designed and tendered and awaits formal approval to award the contract.

## **5. Design Status**

Value Engineering workshops led the design development process, identifying materials, equipment and finishes that balanced the need for minimum future maintenance with most competitive capital cost, but at same time providing a non-institutionalised environment commensurate with the delivery of effective healthcare.

The use of a fully or partially pre-fabricated building system was initially considered but found to be prohibitively expensive. The current proposals are, therefore, based on traditional forms of both construction and procurement.

The current design proposals include the areas and rooms required to provide the defined outpatient services. The refurbishment proposals are based on minimising the level of re-planning and demolition of the existing layout to reduce cost and disruption. The proposals also include the forming of a number of new openings, the construction of a small number of new partitions and a minor new build element to provide the new waiting/children's play area. An element of the acute in-patient accommodation is also included in the existing footprint.

The balance of the acute in-patient accommodation, along with the continuing care accommodation will be located in the new build extension. The form of the extension will respect the design of the existing hospital. The roof facing north will be slate with feature standing seam mono-pitch, set at an angle to match the existing. Roof lights will provide natural light at specific points along the internal corridor. The roof to the south will be flat or shallow pitch and will be a 'sedum' type roof system. This will help minimise the impact of the extension on the view from the residences to the south, along with providing a roof which is 'green' in terms of its energy efficiency and landscape appearance.

The external walls will be a traditional low cost textured or roughcast render finish on block work cavity wall construction, with partial cavity fill insulation. The walls below ground floor level will have a natural stone finish whilst the external windows and doors will be double glazed polyester powder coated

aluminium to provide the necessary long term protection in such an exposed environment.

External landscape works are minimal, being limited to grass and hard standing footpath around the perimeter of the building for escape purposes.

Internal finishes comprise of painted plaster walls, in laid grid ceilings, with plasterboard sections to patient areas and all vinyl flooring.

The Health and Social Services Department and the design team held some preliminary consultation meetings with the States of Alderney Engineer prior to submission of the formal planning application. All formal comments received by the Health and Social Services Department during this period were discussed and where acceptable to the Health and Social Services Department were incorporated within the design proposals.

A formal Planning Consultation and Building Regulation application was submitted to the States of Alderney on 20 October 2004. The Health and Social Services Department also held an "open day" at the States Office in Alderney on 21 October 2004 to formally present the scheme design proposals to Members of the States of Alderney and also to the general public, in order to assist the planning process.

The States of Alderney granted in principle planning approval on 01 December 2004.

## **6. Essential Maintenance Works**

In order to facilitate the most efficient and cost effective solution for the redevelopment and internal refurbishment of the Mignot Memorial Hospital, it has been necessary to develop a realistic and workable strategy for the rectification of the essential maintenance works within the existing building as part of the overall scheme.

It is, therefore, proposed to include the following packages of work, the costs for which have already been determined through the tender process and included within the overall scheme cost:

- full strip out and removal of all existing known asbestos containing materials, in accordance with the report of a survey which has been undertaken;
- full replacement of all existing roof covering, flashings, fascia, soffit and rainwater goods, to provide a new watertight envelope over the existing hospital and associated works;
- 100% replacement of all existing external doors and windows;
- upgrading of mechanical and electrical services to the existing building.

The total cost of these works is approximately £721,000.

The previous proposal, agreed by the States in September 2003, did not include these elements as they were deemed to be unaffordable within the £3,000,000 budget limit set by the Advisory and Finance Committee. However, they are essential in order to preserve the existing hospital in a fit state and it is more cost effective for the work to be done along with the redevelopment of the site.

## **7. Procurement Route**

The Alderney site has very specific challenges in respect of access, location, local labour market and materials availability that must be addressed by the procurement decision. Alternative procurement options have been evaluated by the Design Team, including Design and Build, Traditional Specification and Drawings, Off-Site Turnkey Construction and Management Contract routes.

The main benefits to the Health and Social Services Department from Design and Build, where a contractor could influence design and buildability to achieve cost efficiencies could not be realised on this project. By necessity, the design brief for the Mignot Memorial Hospital project is very specific in respect of room layouts and equipment and the proposed location and contractor experience are also critical factors. At the same time, the opportunity for any contractor design input, other than to reduce quality of materials or finishes, was considered minimal in this particular instance.

Previous market testing and discussions with key off-site construction suppliers have resulted in a modular off-site form of construction being discounted for the following reasons:

- a) no perceived cost benefits;
- b) modular suppliers have a vested interest in off site works only. The internal alteration and refurbishment contract is not desirable to off site construction suppliers. A separate contractor would be appointed by the modular building supplier to carry out the refurbishment contract. This produces risks at key interfaces between the existing and new structure with regard to co-ordination and compatibility;
- c) a fragmented approach is likely to inflate the cost unnecessarily, since the off-site manufacturer applies a percentage mark-up for management and co-ordination on the refurbishment element of the project;
- d) UK based off site modular construction suppliers are currently running at full capacity, and tender competition would be very limited;
- e) design solution is critical for the end user; therefore, a fully designed, integrated tender solution based on traditional construction methods is

preferred.

Management contracting provides benefits in the overall improvement to the project programme where time is of the essence but at the detriment of having to proceed with the contract works to a budget cost only, with actual costs being established as works progress.

Having fully designed the building to address the brief, the Traditional Specification and Drawings procurement route is recommended so that the client maintains control on quality issues whilst at the same time maximising contractor interest and hence competition. The works are, therefore, fully designed with Bills of Quantities produced to identify construction rates for accurate control of cost movement through-out the project.

## **8. Tender Process**

Following successful completion of the expression of interest process during which a short list of suitable tenderers was produced, tenders were formally invited from the three main contractors who had expressed an interest and were able to take on the contract:

- R. G. Falla Ltd
- Charles Le Quesne (Guernsey) Ltd
- J. W. Rihoy & Son Ltd

Tenders were sought for the above scheme based on a fully designed scope of works with some performance specified works on a traditional single stage selective tender process.

Tender documents were issued by the scheme Quantity Surveyors, Edmond Shipway, to all tenderers on 16 March 2005.

The original date stated for all tenders to be returned to the Health and Social Services Department was no later than 12:00 noon on Thursday 5 May 2005.

A formal one week extension to the tender programme was authorised on 27 April 2005, setting a revised tender return date of no later than 12:00 noon on Thursday 12 May 2005.

Competitive fixed price tenders were received from all three contractors prior to the expiry of the deadline on 12 May 2005.

Charles Le Quesne (Guernsey) Ltd submitted an alternative tender option. No alternative tender options were submitted by either J. W. Rihoy & Son Ltd or R. G. Falla Ltd.

The pre-tender estimate prepared by Edmond Shipway, had been previously reported to the Health and Social Services Department as £5,098,460.

A full cost analysis summary of all received tenders was undertaken by Edmond Shipway, the findings of which are summarised below.

A very small difference between the lowest two tenders received would generally seem to indicate a keen interest in the project within the market place.

The third lowest tender received was not considered competitive and was significantly above the pre-tender estimate.

Charles Le Quesne (Guernsey) Ltd submitted two compliant tenders in the form of a Tender A offer and an alternative Tender B option. Both options were the lowest tenders. Tender A is fully compliant with the tender documentation, whereas Tender B offers alternative programme and cost benefits, which are currently still being reviewed by the design team.

The lowest tenders submitted by Charles Le Quesne (Guernsey) Ltd were examined by Edmond Shipway, in accordance with the Code of Procedure for Selective Tendering and both were found to contain no arithmetical or copying errors.

Charles Le Quesne (Guernsey) Ltd submitted two programmes with the tender, based on the following:

Tender A	112 weeks
Tender B	88 weeks

The Project Manager and Design Team arranged a post tender interview on 25 May 2005 with Charles Le Quesne to evaluate the tender proposals in relation to addressing the following 'key factors':

- Tender Sum
- Post Tender Cost Savings Offered
- Contract Programme and Phasing – Alternative Options
- Understanding of Phasing, Sequencing and Methodology
- Guernsey Contract Amendments
- States Approval Process

An agenda was issued in advance of the interview requesting Charles Le Quesne (Guernsey) Ltd to identify the methodology proposed to achieve the above requirements together with details of their proposed key project personnel and sub-contractors.

Representatives from the following attended the interviews:

- Gleeds Management Services                      Project Manager
- Nightingale Associates                              Architect
- Edmond Shipway                                      Quantity Surveyors
- Capita    Consulting Engineers
- Health and Social Services Department      Client
- Charles Le Quesne (Guernsey) Ltd              Contractor

No post-tender interviews were held with the other tenderers.

The interview panel considered that Charles Le Quesne (Guernsey) Ltd demonstrated a clear understanding of the project and associated phasing, programme and logistics implications and proposed a suitable, resourced site management strategy to control the relevant risks effectively.

Charles Le Quesne (Guernsey) Ltd provided the proposed methodology and programme options for both alternatives, with particular emphasis being given to the alternative Tender B offer, based on an 88 week construction programme.

The alternative Tender B option was favoured in principle by the design team and the Health and Social Services Department, providing that a number of operational queries, particularly in relation to bed numbers during the period of the contract, could be agreed with the end users in Alderney.

As a result, a subsequent follow-up post tender meeting was held on site in Alderney on Wednesday 08 June 2005 with the design team and Charles Le Quesne (Guernsey) Ltd is now working to firm up on the final Tender B alternative offer in terms of programme, phasing and cost amendments, for approval by the Health and Social Services Department.

At present, a number of finer points in respect of the alternative final tender B option remain outstanding and require further discussion between the Health and Social Services Department and Charles Le Quesne (Guernsey) Ltd prior to acceptance. The design team is currently in the process of actioning all outstanding matters, with the aim of finalising all issues for Health and Social Services Department approval by early August 2005.

## **9. Programme**

The current programme envisages approval by the States in September 2005 and a start in date in October 2005, with completion by April 2007. The contractor has advised the design team that, because of the difficulty of organising materials and specialised sub contractors in Alderney, it will take between 2 and 3 months to fully mobilise and commence construction. To mitigate the impact on the programme, the contractor is prepared to mobilise early, provided that the States agree to underwrite any costs they may incur if the States reject the Health

and Social Services Department's proposals.

To achieve the programme will require the pre ordering of specific materials and mobilising key sub contractors at the beginning of August 2005.

The States have already voted the Health and Social Services Department £3,820,000 to construct the project and the pre order value will be in the order of £50,000. Obviously, there is a risk that, should the States refuse the additional funding, then the £50,000 expended will not be recoverable. However, if this order is not placed until after States approval is received, the formal commencement on site will be delayed until after the Christmas period and subsequent delays to the contract will attract a similar increase in cost due to additional preliminaries.

The Health and Social Services Department have been advised that a pre-order is appropriate in the circumstances and that the Treasury and Resources Department have approved a letter of intent to be issued to Charles Le Quesne (Guernsey) Ltd.

## 10. Capital Costs

The original scheme budget of £3,820,000 has already been voted. The current cost for the works covered by that original vote is now £5,465,000, an increase of £1,645,000. The Health and Social Services Department regrets the significant increase over the original estimate, which is approximately 40%, but it has been warning for some time that the original vote was based on advice regarding off-island construction, which has subsequently proved to be unreliable.

The current sum requested is based on a firm contract reached by competitive tender and includes a realistic contingency for the project. In addition to the rebuild and refurbishment project the scheme also now includes the essential maintenance work highlighted earlier in this report at a cost of £721,000, which brings the total capital requirement to £6,186,000. In summary, therefore, the development costs can be tabulated as follows:

	£
Original scheme budget	3,820,000
Essential maintenance costs	721,000
Increased cost of workable option	<u>1,644,995</u>
Total development costs	6,185,995

Therefore, an additional £2,366,000 is required to ensure that the redevelopment and refurbishment is completed to an appropriate standard.

The total cost is made up as follows:

	£	
Construction	4,839,675	(includes all decant costs)
Risk and contingency	500,000	
Furniture and Equipment	250,000	
Professional fees	586,320	(includes fees already paid)
Commissioning costs	<u>10,000</u>	
Total scheme cost	6,185,995	

Undertaking a large scheme in Alderney poses many challenges, so a risk and contingency sum of 10% has been included, whereas for a similar scheme in Guernsey a figure of between 5% and 7.5% would have been considered appropriate.

The Department plans to utilise some of its own capital budget to supplement the purchase of furniture and equipment for the new development, as some replacement would have been necessary regardless of whether the hospital was redeveloped. This has made it possible to reduce the additional funding for new furniture and equipment to only £250,000.

Professional fees include the costs not just of the design team but also costs in relation to project management and an on site clerk of works, which are considered essential to ensure a high standard of construction.

The commissioning budget of £10,000 is required to cover the costs of undertaking client commissioning at the end of the scheme. These costs will be kept to an absolute minimum by utilising the skills and expertise of staff already working at the Mignot Memorial Hospital as much as is possible.

The construction costs at £4,839,675 are at the time this report was written, still being negotiated downwards to take advantage of savings being offered by the proposed contractor in relation to alternative material specification and supply and a revised and shortened programme. It is anticipated that these negotiations will have been concluded in advance of the States debate and that it will be possible to advise the States of the level of savings achieved and hence a revised construction cost.

## **11. Revenue Costs**

Although there will be increased recurrent revenue costs of about £75,000 per annum associated with the development in relation to cleaning and utility services, these additional costs will be contained within the Departments overall revenue allocation.

## **12. Maintenance**

For a small isolated facility, the Mignot Memorial Hospital has been adequately

maintained although the Health and Social Services Department recognises that its investment in the larger elements of maintenance such as roofing, heating and electrical services etc has been somewhat lacking over the past few years. Partly, this has been due to the fact that this major re-development was anticipated and so the opportunity for major upgrading of services and building structure would be best taken at the same time as the replacement of the Aurigny Wing was undertaken.

The Health and Social Services Department will ensure that adequate budget provision is made for routine day to day maintenance of the re-developed hospital, with major items of maintenance being picked up either through the annual budget setting process or through the policy and resource planning process.

The design of the building seeks to minimise maintenance requirements by adopting layouts and finishes appropriate to the hospital's location. The building structure is designed for a 60+ year life whilst the building fabric and the electrical and mechanical installations have been designed to last for a minimum of 25 years without the need for major refurbishment.

### **13. Recommendations**

The Department recommends that the States:

- i) approve the replacement of the Aurigny Wing and refurbishment of the main hospital building at the Mignot Memorial Hospital, Alderney and approve the completion of essential maintenance works at a total cost of £6,186,000 (including construction, equipment and consultants' fees already approved of £3,820,000);
- ii) approve the appointment of Charles Le Quesne (Guernsey) Ltd as main contractor for the project;
- iii) vote the Health and Social Services Department a credit of £2,366,000 in respect of the construction and essential maintenance works, such sum to be charged to the capital allocation of the Department;
- iv) authorise the Treasury and Resources Department to transfer an appropriate sum from the Capital Reserve to the capital allocation of the Health and Social Services Department to cover the above requirements.

Yours faithfully

P J Roffey  
Minister

**APPENDIX A****MMH – ALDERNEY – STAFF VIEWS**

“It’s hot, it’s cold, it leaks, it’s cramped, please give us a building staff and patients deserve”

“Allowing our elderly patients to end their days in a safe, modern and dignified surroundings must be a priority”

“The hospital redevelopment will give us a modern building with up to date fixtures and fittings, a safe, clean environment, something difficult to achieve at present”

“Aurigny wing is no better than a large garden shed with 6 beds at each end”

“The existing facilities provide little in the way of patient privacy or dignity”

“We have only one room available for nursing patients in isolation, making infection control a nightmare”

“Mixed sex rooms for acute and confused elderly patients at the start of the 21<sup>st</sup> century, is just not acceptable”

“The x-ray room is not a room, it’s a corridor!”

“Parts of the existing hospital are like a furnace in the summer and a freezer in the winter”

“The new hospital will be a vast improvement in comfort and dignity for our patients, it will also provide improved and enlarged out patient facilities, and a safe working environment for staff”

“We all strive at the MMH to provide a high level of service, please give us the facilities we so desperately need”

“Last winter it was so cold in the Aurigny wing, that I honestly thought that some of our elderly patients would get hypothermia”

“I was told by good authority that if the MMH was a private nursing home in Guernsey it would be closed down in the morning”

“No matter how good the care may be, I would hate any of my relatives to end their days in the Aurigny wing”

“The existing treatment and admission rooms are cramped and far from adequate, we never know what may come through the front door”

**(NB The Policy Council supports the proposals)**

**(NB The comments of the Treasury and Resources Department are set out below)**

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

16<sup>th</sup> August 2005

Dear Sir

### **MIGNOT MEMORIAL HOSPITAL**

The Treasury and Resources Department supports the Health and Social Services Department's proposals to replace the Aurigny Wing and refurbishment of the main hospital buildings at the Mignot Memorial Hospital.

Although the Department is naturally disappointed at the increased costs, it recognises the position and agrees that it is far better to have a realistic approved budget rather than continue with a project knowing that it will significantly overspend.

In the July 2005 Interim Financial Report this project was identified as an exception to the general rule that projects requiring funding from the Capital Reserve should not be considered before the December Budget Debate.

As set out in the report, in addition to the original transfer (of £3.8m) a further transfer from the Capital Reserve of £2.4m is required. As at the 31 July 2005 the Capital Reserve had a balance of £42.9m.

The States has, subject to affordability and availability of funds, already approved a further transfer of £12.75m from the Capital Reserve in January 2006 to continue with the Education Development Plan (Les Nicolles phase).

The States has also given preliminary approval to various projects which will have a significant impact on the Capital Reserve including PEH Clinical Care Wards, and Les Cotils Community Development. Funding from the Capital Reserve will also be required to fund existing commitments in the Corporate Housing Programme. The amounts available to fund new projects from the Capital Reserve will also be reduced due to the overspend on the Beau Sejour Centre Refurbishment of £1.4m.

At this stage it is not possible to give precise figures on all of the above but it is the Department's view that other than these projects (which are still subject to affordability and availability), it is extremely unlikely that any other significant capital project will be able to be funded in the foreseeable future.

Yours faithfully

L S Trott  
Minister

The States are asked to decide:-

XV.- Whether, after consideration of the Report dated 26<sup>th</sup> July, 2005, of the Health and Social Services Department, they are of the opinion:-

1. To approve the replacement of the Aurigny Wing and refurbishment of the main hospital building at the Mignot Memorial Hospital, Alderney and approve the completion of essential maintenance works at a total cost of £6,186,000 (including construction, equipment and consultants' fees already approved of £3,820,000).
2. To approve the appointment of Charles Le Quesne (Guernsey) Ltd as main contractor for the project.
3. To vote the Health and Social Services Department a credit of £2,366,000 in respect of the construction and essential maintenance works, such sum to be charged to the capital allocation of the Department.
4. To authorise the Treasury and Resources Department to transfer an appropriate sum from the Capital Reserve to the capital allocation of the Health and Social Services Department to cover the above requirements.

## SOCIAL SECURITY DEPARTMENT

### BENEFIT AND CONTRIBUTION RATES FOR 2006

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

27<sup>th</sup> July 2005

Dear Sir

#### **Executive summary**

1. This report is in five parts:

Part I ***Social insurance***

recommends increases in the rates of social insurance benefits from 2 January 2006, recommends increases in the contribution lower and upper limits, sets out the effect of these changes on the finances of the social insurance scheme and recommends amendments to the Social Insurance Law to help combat contributions avoidance and to enable medical boards to be undertaken by a single doctor;

Part II ***Health Benefits***

reports on the pharmaceutical service and recommends an increase in the prescription charge;

Part III ***Long-term care insurance***

recommends increases in the standard co-payment and benefit rates to take effect from 2 January 2006;

Part IV ***Non-contributory services***

recommends increases in supplementary benefit requirement rates from 6 January 2006, apart from the rate for non-householders under 18, where a reduction in the benefit rate is recommended, recommends an increase in the benefit limitations and an increase in the earnings disregard and recommends a winter fuel allowance;

recommends an increase in family allowance from 3 January 2006;

recommends an increase in the rates of attendance and invalid care allowances from 2 January 2006;

recommends extension of the medical expenses assistance scheme (MEAS) to Alderney residents;

comments on the Community and Environmental Projects Scheme;

comments on the free TV licence scheme;

Part V *Recommendations*

sets out a summary of the Department's recommendations.

*Introduction*

2. The Department has undertaken its annual review of the social security and health benefits paid under the various schemes for which it is responsible and, with the exception of medical benefit grants, will recommend increases in all benefit rates.
3. Ten years ago, the Department's 1996 uprating report first referred to signs of an improving economy and falling levels of unemployment. From 1997 to 2004, this annual report has been able to report strong contribution income growth and effectively full employment. This year, the situation is less buoyant. While Guernsey's unemployment rate of 0.5% is believed to be lower than anywhere else in Europe, the 134 people registered at the Job Centre as wholly unemployed in July 2005 is nearly double the previous year.
4. In addition to the increase in the numbers registering as unemployed, the Department is seeing increased numbers of people claiming sickness, invalidity and supplementary benefit. While some of the increase may be due to increasing awareness of entitlements through the Corporate Anti-poverty Programme, it is likely that the increased numbers of people on benefit is a further symptom of a slowing of growth in the economy and a tightening of job opportunities.
5. In considering its uprating proposals for 2006, the Department has been aware of both the above background and the general obligation on all States Departments for expenditure constraint in preparation for the changes in public sector revenues from 2008. The Department has balanced these considerations against its mandate for providing adequate social protection schemes for the community. Apart from the single pension rate, for which a 5.4% increase is recommended, the Department is generally recommending an uprating of benefits by 4.25%.

**PART I**  
**SOCIAL INSURANCE**

*Benefit Rates*

6. Having regard to the income and expenditure for 2004 and the projections of income and expenditure for 2005 and 2006, the Department recommends increases in the rates of social insurance benefits, to take effect from 2 January 2006.
7. For each of the last three years, the Department has recommended an increase in the single rate of old age pension of around 7.5%, substantially ahead of RPI, and a near freeze in the addition of pension in respect of a dependant wife. This has been a strategy intended to alleviate the high incidence of single pensioner poverty that was identified in the report by the Townsend Centre for International Poverty Research.
8. In last year's report (Billet d'Etat XXI of 2004) the Department informed the States that that year's uprating would be the last of the sequence in which such a large step in the rate of single pension would be proposed. This was because of the significant impact on the finances of the Guernsey Insurance Fund. There are many more single pensions being paid than there are additions in respect of a dependant wife or married woman's pension based on a husband's record, which has also been subject to the near freeze over the last three years. Furthermore, the Department is experiencing an annual growth of around 3% per year in the number of pensioners, including overseas pensioners, as the gradient of the demographic shift to an ageing population steepens. These combined factors led to expenditure on old age pension in 2004, at £54.8m, being 9.5% up on the previous year.
9. For 2006, the Department recommends the moderated increase of 5.4% in the rate of single old age pension and 3.5% for the increase for an adult dependant or married woman's pension based on her husband's contribution record. This will add £7.50 per week to the full rate single pension, will add £2.50 per week to the married woman's pension and will mean a £10 per week increase for a pensioner couple on full rate pension. For a pensioner couple the combined increase of both pensions would be 4.8%, which is ahead of the latest RPI figure of 4.6% for the year to June. The Department recommends that the other social insurance benefits be increased by around 4.25%, which is less than the latest RPI figure.
10. In making these differential recommendations, the Department is continuing to recognise pensioners as a special case. The Department does not aspire to tie pension increases to the increase in average earnings, but unless RPI can be exceeded over the medium and long-term, it is inevitable that pensioners will lose out on the general prosperity of the Island

11. In accordance with the foregoing, the Department recommends increases in the contributory benefits, from 2 January 2006, as set out below:

<b>Long-term benefits</b>	<b>2006 rates</b>	<b>(2005)</b>
Old age Pension -		
Insured person	£146.50	(£139.00)
Increase for dependant wife or pension for wife over 65 (marriages pre 01-01-04)	£73.50 £220.00	(£71.00) (£210.00)
Widow's/Survivor's Benefits -		
Widowed Parent's Allowance*	£154.25	(£148.00)
Widow's Pension/Bereavement Allowance	£132.50	(£127.00)
Industrial Disablement Benefit - 100% disabled	£118.00	(£113.00)

<b>Short-term benefits</b>		
Unemployment, Sickness, Maternity and Industrial Injury Benefit	£107.94	(£103.74)
Invalidity Benefit	£131.46	(£126.00)

<b>One-off grants</b>		
Maternity Grant	£271.00	(£260.00)
Death Grant	£420.00	(£403.00)
Bereavement Payment	£1,330.00	(£1,280.00)

These rates of weekly benefit and grants apply to persons who have fully satisfied the contribution conditions. Proportionately reduced rates of benefit will be payable on incomplete contribution records, down to threshold levels.

#### ***Social insurance contributions***

12. The Department is able to recommend the above increases in social insurance benefits without increasing the percentage rates of contributions payable by employed, self-employed and non-employed persons for those benefits. The Department will, however, recommend increases in the upper and lower earnings or income limits, within which contributions are paid. The contribution limits will be increased in line with the increase in benefits in order to maintain the insurance principle which is fundamental to the financial structure of the contributory scheme.
13. The percentage contribution rates for 2006, which are unchanged, are shown below for reference:

<b>Contribution rates for employed persons</b>	
Employer	5.5%
Employee	<u>6.0%</u>
Total	<u>11.5%</u>

<b>Contribution rates for self-employed persons</b>	10.5%
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<b>Contribution rates for non-employed persons under 65</b>	9.9%
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<b>Contribution rates for non-employed persons over 65</b>	2.6%
--	------

*Upper earnings limit for employed persons*

14. The Department recommends that the upper earnings limit be increased from 1 January 2006 from £660 per week to £693 per week in the case of the weekly paid (or £3,003 per month in the case of employed persons paid less frequently than once a week).
15. The effect of the proposed new upper earnings limit on persons who pay a contribution at the upper earnings limit is as follows:

**2006 contributions (2005 in brackets)**

<b>Weekly Earnings</b>	<b>Contributions</b>		
	Employer	Employee	Total
	5.5%	6.0%	11.5%
<b>Upper Earnings Limit</b>			
£693 or more	£38.11	£41.58	£79.69
(£660)	(£36.30)	(£39.60)	(£75.90)

*Lower earnings limit for employed persons*

16. The Department proposes to increase the lower earnings limit from £93 per week to £97 per week. The corresponding monthly limit would be £420.33.
17. The effect of the above changes on a contribution at the lower earnings limit is as follows:

**2006 contributions (2005 in brackets)**

<b>Weekly Earnings</b>	<b>Contributions per week</b>		
	Employer	Employee	Total
	5.5%	6.0%	11.5%
<b>Lower Earnings Limit</b>			
£97	£5.33	£5.82	£11.15
(£93)	(£5.11)	(£5.58)	(£10.69)

*Upper earnings limit for self-employed persons*

18. The proposed increase in the upper weekly earnings limit from £660 to £693 would mean that the upper annual earnings limit for self-employed persons in 2006 would be increased from £34,320 to £36,036 (£693 x 52).
19. The effect of the proposed new upper earnings limit on self-employed persons who pay a contribution at the upper earnings limit is as follows:-

<b>Annual earnings from self-employment</b>	<b>Contributions per week</b>
	10.5%
£36,036 or more	£72.76
(£34,320 or more)	(£69.30)

20. Self-employed persons who have applied to pay earnings related contributions, and whose earned income from self-employment was less than £36,036 per year, will pay less than the maximum contribution.
21. The proposed increase in the lower earnings limit from £93 to £97 per week would mean that the lower annual earnings limit for self-employed persons in 2006 would be increased from £4,836 to £5,044 (£97 x 52). The minimum self-employed (Class 2) contribution in 2006 would be £10.18 per week (£9.76 in 2005).

*Upper income limit for non-employed persons*

22. As with the self-employed, non-employed contributors are liable to pay non-employed, Class 3 contributions, at the maximum rate unless application is made to the Department and authorisation given for the release of the relevant information by the Income Tax Department. This allows an income-related contribution to be calculated
23. There are three main categories of non-employed contributions:
- (i) Full percentage rate contributions to cover social insurance, health service and long-term care insurance liabilities. This is the rate of contribution that all non-employed adults under the age of 60 are liable to pay, based on their personal income;
  - (ii) Health service and long-term care insurance contributions. These contributions go towards funding the pharmaceutical service, the medical consultation grants, the specialist health insurance scheme and the long-term care insurance scheme. This is the rate of contribution that a non-employed person between the age of 60 and 65 can opt to pay, based on

their income. This option is usually taken by non-employed persons approaching 65 who have already maximised their contribution records for old age pension;

- (iii) Specialist health insurance and long-term care insurance contributions. These contributions, which are payable by persons aged 65 or over, go towards funding the specialist health insurance scheme and the long-term care insurance scheme.
24. The proposed increase in the upper earnings limit will mean that the upper income limit for non-employed contributions will also increase to £36,036 per year.
25. The Department recommends that the lower income figure at which non-employed contributions become payable be increased from £11,989 per year to £12,610 per year from 1 January 2006.
26. The table shows the minimum and maximum weekly contributions payable in 2006 by non-employed persons. People with income at some point between the upper and lower limits will pay pro-rata.

**2006 contributions (2005 in brackets)**

<b>Contributions for non-employed persons</b>			
<b>Annual Income</b>	<b>Full rate (under 65)</b>	<b>Health service and long-term care only(60 to 65 optional)</b>	<b>Specialist health and long-term care only (over 65)</b>
	9.9%	4.2%	2.6%
<b>Weekly contribution</b>			
Less than £12,610 (less than £11,989)	zero (zero)	zero (zero)	zero (zero)
£12,610 (£11,989)	£24.01 (£22.82)	£10.18 (£9.68)	£6.30 (£5.99)
£36,036 (£34,320)	£68.61 (£65.34)	£29.11 (£27.72)	£18.02 (£17.16)

***Voluntary contributions***

27. As shown above, where a non-employed person's annual income is below £12,610 that person will be exempted from the payment of contributions. However, this could affect old age pension entitlement. A voluntary contribution which counts towards old age pension can be paid by or on behalf of non-employed people, resident in Guernsey and under pension age, with personal income below the lower income limit.

28. The voluntary contribution in 2005 is £13.14 per week. The rate is calculated by applying the social insurance contribution rate of 5.7% (not including health and long-term care) to the lower income limit. With a proposed lower income limit of £12,610 per annum in 2006, the voluntary contribution will increase to £13.82 per week.

***Special (minimum) rate Class 3 contributions***

29. A special rate non-employed contribution is payable by insured persons who would normally rely upon employed contributor's employment for their livelihood, but have a small gap in their record where they were neither employed nor receiving an unemployment credit. From 1 January 2005 the rate of this contribution was aligned with the rate of the voluntary contribution. The special rate Class 3 contribution will, therefore, be £13.82 per week in 2006.

***Income and expenditure on Guernsey Insurance Fund***

30. In the following paragraphs, contribution income and States Grant from general revenue refer only to the Guernsey Insurance Fund. Revenues for the Guernsey Health Service Fund and the Long-term Care Insurance Fund are reported later in this report.
31. The Guernsey Insurance Fund accounts for 2004 show income from contributions of £50.68m and from the States' Grant of £25.32m, giving a total income of £76.00m, before taking investment income into account. Total benefit expenditure and administration amounted to £70.01m, producing an operating surplus of £5.99m for the year. This operating surplus was down on the figure of £9.43m in the previous year. The main reasons for the reduced surplus were:
- a reduction in the States Grant to Fund from 57% of contribution income to 50% following actuarial review;
  - increased benefit expenditure, in particular on old-age pension; and
  - a moderation in the growth of earnings and, consequently, contribution receipts and States grant.
32. The estimated results for 2005 and 2006 will, as always, be influenced by the benefit expenditure, the amounts by which contribution income increases and the level of the States' Grant to the Fund.
33. It is estimated that contribution income in 2005 will be £53.9m, resulting in a 50% States grant amounting to £26.95m.
34. On the basis of assumptions of wage and salary increases and the increases in benefits proposed in this report it is estimated that:

- (1) there will be a surplus in 2005 in the order of £5.55m; and
- (2) there will be a surplus in 2006 in the order of £5.54m.

***Powers to regulate definition of "income" and anti-avoidance provisions***

35. The Department has noted a steadily increasing incidence of cases where some contributors are contributing at rates which are disproportionately low when compared with rates at which other contributors, in apparently similar or sometimes less favourable financial circumstances, are contributing. There is also evidence to suggest that some contributors are arranging their affairs in such a manner that the effect of those arrangements is to avoid or reduce contribution liability. In the circumstances, the Department recommends that the Social Insurance Law be amended so that the Department may use statutory powers to ensure that contribution liability is not unfairly avoided or reduced. In particular, the Department recommends amendments which would-
  - create powers for it to make regulations for the purpose of defining the income of a contributor and, where it thinks fit, for defining income by reference to the notional value of assets, rights and benefits available to or forgone by the contributor, or on any other basis that appears appropriate to the Department and
  - insert into the Law a general provision against avoidance of contribution liability.
36. The precise wording of any regulation-making powers and provision concerning avoidance will be agreed in consultation with the Law Officers, but the Department recommends that the powers and provisions are as broad and all-embracing as is reasonable and fair with regard to all contributors.

***Single doctor medical boards***

37. The Social Insurance Law includes provisions for the constitution of Medical Boards to make assessments of the degree of disablement arising from industrial accidents. The Department has a requirement to arrange numerous boards during the year, some for entirely new claims, but most for periodic review of findings which have been for a specified term before reassessment.
38. At present, although allowing for a single doctor Board with the consent of the person being examined, the Law requires that a Medical Board should comprise two doctors. This presents logistical difficulties for the Department and for the local medical practitioners, who undertake the Boards for an agreed hourly fee rate. There are practical difficulties, particularly at holiday times of the year, in finding two doctors who are available, are prepared to undertake the examination and assessment and who do not know the patient. These problems would be

minimised if the Law were to be amended to allow single doctor boards, which is what the Department recommends.

39. It is relevant to note that the Department of Work and Pensions in the UK undertake these assessments using a single doctor. It is also worth noting that whereas, until December 2003 there was no right of appeal against a finding of the Medical Board, this was addressed along with the major reforms of the Guernsey social insurance system and there is now a right of appeal to the Tribunal.

***Repeal of redundant provision***

40. When amending the Law for the above purposes, the Department recommends that the opportunity should be taken to delete Section 7 of the Law which concerns contributions paid on earnings below the lower earnings limit. There was formerly a provision to pay so called 'non-reckonable' contributions on earnings between a threshold earnings figure and the lower earnings limit. The threshold and lower earnings limit were aligned some years ago and there is no longer any concept of non-reckonable contributions. Section 7 is therefore redundant and may be repealed.

**PART II  
HEALTH SERVICE BENEFITS**

41. The health service benefits, costing £27.43m in 2004, were financed by £20.87m from contributions allocated to the Health Service Fund and £8.34m from the States' Grant from general revenue. There was an operating surplus of £1.78m for 2004. This was lower than the surplus of £2.64m in 2003, mainly because of the increase in the medical consultation grants, as explained below.

***Medical Benefit Grants***

42. The total benefit expenditure on consultation grants in 2004 was £3.04m. This was a £0.9m increase on 2003, almost wholly on account of the increase in the rate of both the doctor and nurse consultation grants from 1 March 2004. The grant for a consultation with a doctor was increased from £8 to £12 and the grant for a consultation with a practice nurse increased from £4 to £6.
43. The grants were increased as part of an agreement with the Doctors' Primary Care Committee to have their headline consultation fees set by independent review for the three years 2004, 2005 and 2006.
44. The independent review resulted in a consultation fee of £35.50 being fixed for 2004, to be increased for both 2005 and 2006 by the year to the previous September RPI figure. In accordance with this formula, the standard consultation fee in 2005 is £37.35. This will be increased by the RPI to September 2005 in order to fix the consultation fee for 2006, which will be the

last year covered by the review.

45. The Department will not be recommending any change in the level of the consultation grants for 2006.

***Pharmaceutical Service***

46. Prescription drugs cost a total of £14.28m in 2004, before netting off the prescription charges paid by patients. This was an increase of 6.8% over the previous year.
47. The total cost of drugs to the Health Service Fund in 2004 was reduced by approximately £1,161,000 collected in prescription charges.
48. While still above the RPI for the year to December, which was 4.9%, there were the first indications that the substantial and sustained growth in pharmaceutical expenditure was beginning to slow. The Department is pleased to report that expenditure in this area has stabilised for 2005 to date. In part, this has been through a pricing agreement between pharmaceutical companies and the UK government, which Guernsey has benefited from. In addition, however, the Department believes that activities of the Prescribing Support Unit and the States Prescribing Adviser and the operation of the prescription white-list are having an increasing effect on this very significant area of public sector expenditure.
49. The Department will maintain a very active effort to apply a downward pressure on pharmaceutical costs, including continuing the campaign against the wastage of drugs which the recent drugs dump exercise proved to be huge.
50. The number of items prescribed under the pharmaceutical service increased by 4.3% in 2004 to 1.1 million items.

***Prescription charge***

51. The prescription charge for 2005 is £2.40 per item. For a number of years the States have approved annual increases of 10p in the charge. The Department recommends the same increase this year, with a charge of £2.50 per item effective from 1 January 2006.

***Specialist Health Insurance Scheme***

52. 2005 was the second year of the new, 15 year contracts with the Medical Specialist Group and the Guernsey Physiotherapy Group. The cost of the specialist health insurance scheme was £10.12m in 2004. After netting off a recovery of £87,000 from the Health and Social Services Department in respect of reciprocal health expenditure for visitors, the cost to the Health Service Fund was £10.04m.

**PART III**  
**LONG-TERM CARE INSURANCE**

53. Contribution income to the Long-term Care Insurance Fund was £11.06m in 2004. This was supplemented by a States grant equal to 12% of contribution receipts, in the amount of £1.32m. Benefit and administration expenditure for 2004 amounted to £8.34m, producing an operating surplus of £4.04m
54. The relatively large operating surplus reflects the strategy for this particular fund, approved by the States prior to commencement of the scheme. The strategy is to have a front-loaded contribution rate of 1.4%, which should hold good for a minimum of 15 years, assuming no fundamental change in the range of benefits. This strategy involves the accumulation of reserves to provide an investment income to supplement future contribution rates.
55. The long-term care insurance scheme is now well into its third year and is generally proceeding very well. At the end of 2004, the Fund was assisting 303 people in residential homes and 127 people in nursing homes. Furthermore, the residents and patients of the States-run long-term care homes are having the benefit of a much simplified and reduced charging system. The standard charge in the States-run homes is the same as the co-payment in the private sector homes.

*Co-payment by person in care*

56. It is a condition of entitlement to benefit under the long-term care insurance scheme that the person in care should make a co-payment. The 2005 co-payment is £133 per week. The Department recommends a co-payment of £140 per week in 2006.
57. As referred to above, it should be noted that the co-payment to the long-term care insurance scheme also sets the level of fee to be charged for accommodation in the States-run homes including the Castel and King Edward VII hospitals, the Maison Maritaine and the Longue Rue House as well as the long-stay beds in the Mignot Memorial Hospital, Alderney.

*Nursing care benefit*

58. Nursing care benefit is currently up to £560 per week. The Department recommends that it should be increased to up to £581 per week from 2 January 2006.

*Residential care benefit*

59. Residential care benefit is currently up to £301 per week. The Department recommends that it should be increased to up to £312.50 per week from 2 January 2006.

*Respite care benefits*

60. Persons needing respite care in private sector residential or nursing homes are not required to pay a co-payment. The long-term care fund pays instead. This is to acknowledge the value of occasional investment in respite care in order to allow the person concerned to remain in their own home as long as practicable. It also acknowledges that persons having respite care also continue to bear the majority of their own household expenditure. The respite care benefits, therefore, are the sum of the co-payment and the residential care benefit or nursing care benefit, as appropriate. The Department, therefore, recommends a nursing care respite benefit of up to £721 per week and a residential care respite benefit of up to £452.50 per week from 2 January 2006.

**PART IV****NON-CONTRIBUTORY SERVICES FUNDED FROM GENERAL REVENUE**

61. Following the Resolution of the States on 28 April 2005 (Billet d'Etat IV of 2005) and the approval of legislation on 29 June 2005 (Billet d'Etat IX of 2005), persons whose need for mean-tested financial assistance was previously met by public assistance are now included in the scope of supplementary benefit. With the repeal, also on 29 June 2005, of the Central Outdoor Assistance Board Regulations, all of the weekly requirement rates are contained in the supplementary benefit legislation and there is no need, in this report to make any recommendations in respect of public assistance.
62. For the non-contributory benefits contained in this Part of the report, which are funded entirely from general revenue, the Department recommends general increases of around 4.25%, with some small variations for roundings.
63. As an exception to the general uprating of benefits, the Department is recommending a reduction in the supplementary benefit rates that apply to persons under 18 as shown below:

	2006	(2005)
Short term (under 6 months)	£68.10	(£76.90)
Long term	£85.10	(£96.35)

64. These rates of benefit will apply to persons under 18 who are what is termed 'non-householders'. That is to say that they are still living with their parents or with someone else but they are not the owner or tenant of the accommodation.
65. The Department considers that the non-householder benefit rate has been higher than necessary for teenage claimants of supplementary benefit (and formerly public assistance) and that, in some instances, the benefit rate may have reduced incentives for claimants to find work or improve their circumstances.

66. The reduced rate of benefit, which the Department recommends, will keep the non-householder rate for under 18s at the same rate as would be applied as an increase to a parent's supplementary benefit claim in respect of a dependant of age 16 or above.
67. Non-householders under the age of 18, who are receiving the 2005 rate shown above at the end of December 2005, will not have their benefit reduced to the lower 2006 rate. This will apply only to new claims made from 6 January 2006.

***Supplementary benefit requirement rates***

68. The Department recommends increases in long-term supplementary benefit and short-term supplementary benefit from 6 January 2006, as shown below.

(a)

<b>Long-term supplementary benefit (after payment of short-term rates for 6 months)</b>	<b>2006</b>	<b>(2005)</b>
Married couple	£187.55	(£179.90)
Single householder	£129.55	(£124.15)
Non-householder 18 or over	£100.45	(£96.35)
Non-householder under 18	£85.10	(£96.35)
Member of a household -		
16 or over	£85.10	(£81.65)
12 - 15	£52.65	(£50.50)
5 - 11	£38.15	(£36.60)
Under 5	£28.20	(£27.05)

(b)

<b>Short-term supplementary benefit rates (less than 6 months)</b>		
Married couple	£151.60	(£145.40)
Single householder	£104.60	(£100.35)
Non-householder 18 or over	£80.40	(£76.90)
Non-householder under 18	£68.10	(£76.90)
Member of a household -		
16 or over	£68.10	(£65.30)
12 - 15	£42.10	(£40.40)
5 - 11	£30.55	(£29.30)
Under 5	£22.55	(£21.65)

A rent allowance, on top of the above short-term or long-term rates, will apply to people living in rented accommodation.

***Benefit limitation- community***

69. The benefit limitation, currently £275 per week, is the maximum level allowed for the combination of supplementary benefit and income from other sources, excluding family allowances. The Department recommends an increase in line with the general increase in benefits, taking the benefit limitation to £287 per week from 6 January 2006.

***Benefit limitation- residential homes***

70. Notwithstanding the existence of the long-term care insurance scheme, there needs to remain a benefit limitation applicable to a person residing in a residential home who does not satisfy the residence requirements for long-term care insurance and who needs, therefore, to rely on supplementary benefit assistance. The benefit limitation is currently £380 per week. The Department recommends an increase to £396 per week from 6 January 2006.

***Benefit limitation- nursing homes and Guernsey Cheshire Home***

71. Being necessary for the reason explained above, the Department recommends that the benefit limitation applicable to a person residing in a nursing home or the Guernsey Cheshire Home be increased from £547 per week to £570 per week from 6 January 2005.

***Personal Allowance for residents of residential or nursing homes***

72. The amount of the personal allowance for supplementary beneficiaries in residential or nursing homes is currently £21.00 per week. It is intended to allow modest purchases of, say, newspapers, confectionery, toiletries, small family presents and so on. The Department recommends that the personal allowance be increased to £22.00 per week from 6 January 2006.

***Supplementary Fuel Allowance and Winter Fuel Allowance***

73. A supplementary fuel allowance is paid from general revenue for 27 weeks from the last week in October until the last week in April of the year following. The fuel allowance was £14.50 per week for the 2004 to 2005 period.
74. The Department is very aware of the extraordinary increases in some of the fuel costs over the last year. For the year to March 2005, the price of fuel, light and power increased by 17%. There was variation in the price movements of different fuels, with oil and gas having risen very sharply, coal having also risen substantially and electricity having remained stable.
75. The Department has considered the winter fuel allowance carefully in the context of the increase in fuel prices and also the context of substantial increases in formula-led general supplementary benefit expenditure at a time of fiscal

restraint. A recent survey of the material well-being of supplementary beneficiaries, undertaken by the Department's own staff, has shown heating costs to be an area of particular concern. In view of this evidence, the Department recommends a fuel allowance of £17 per week for the winter of 2005 and 2006, the increase of £2.50 per week being 17%.

76. It is estimated that the fuel supplement will cost £515,000 over the 27 week payment period.

*Amount of earnings disregarded in supplementary benefit assessment*

77. The first £20 of weekly earnings is disregarded as income in the assessment of a claim for supplementary benefit. For example, if a person receiving supplementary benefit had earnings of £100 per week, only £80 per week would be included in the calculation of resources available to the person in assessing the amount of supplementary benefit payable.
78. The Department recommends that the earnings disregard figure be increased to £30 per week in order to encourage work opportunities being taken up. Furthermore, in order that all claimants be able to have the full benefit of the earnings disregard, the Department recommends that the earnings disregard should be allowed to apply in full over and above the benefit limitation.

*Non-householder rent allowances*

79. Under current supplementary benefit legislation, the amount of benefit paid to claimants aged 18 and above who are classed as non-householders includes an allowance of between £2.50 and £15.00 per week, as determined by the Administrator. This is termed a non-householder rent allowance and it was originally intended to reflect the fact that non-householders are expected to contribute towards the rent paid by the tenant - usually the claimant's mother or father. Today, the Department is of the opinion that the need to pay board is reflected in the standard benefit rates. Indeed, the non-householder rent allowance was last increased in 1989 and so has lost real and significance in the benefit computation. The majority of non-householders receive the minimum payment of £2.50 per week.
80. However, under the Housing Department's new rent rebate scheme, a £15 surcharge is added in respect of any adult non-householders. This is explicitly linked to the maximum rate of the non-householder rent allowance. For this reason, the Department is not of a mind to remove the allowance from the legislation altogether. Instead, it proposes to reduce the minimum non-householder rent allowance to zero, but to retain the capacity for the Administrator to award the full £15 allowance in appropriate circumstances such as when the claimant is a single parent, is of pensionable age or is living within the household of a States tenant.

***Cost of Supplementary Benefit***

81. Benefit expenditure on the supplementary benefit scheme was £9.76m in 2004. Public assistance expenditure was £0.53m. The budget for 2005 for supplementary benefit, which now includes public assistance, is £10.45m.
82. It is estimated that the supplementary benefit expenditure in 2006 will increase by £1.05m to £11.50m.

***Family Allowances***

83. Family allowances expenditure amounted to £7.41m in 2004. The allowance is paid at the rate of £12.25 per week per child. The budget for 2005 is £7.72m. The Department recommends that the allowance be increased to £12.75 per week for 2006. It is estimated that this will increase the expenditure on family allowances in 2006 by £330,000 to £8.05m.

**Income related family allowance**

84. Action Area A of the Corporate Anti-poverty Plan requires the Department to investigate the feasibility of changing the family allowance system from its current, universal, flat-rate scheme into a scheme where the amount of the family allowance is related to family income.
85. The Department is giving thought to designing a scheme which would meet the following criteria:
- having a total budget for benefit expenditure and administration that costs no more, in real terms, than the current levels;
  - paying family allowances that are higher than at present for below average income families, but lower and perhaps removed altogether for middle and high income families;
  - having a source of data on family income that is as up-to-date as possible and indicative of the family's current income position;
  - having as low an administrative overhead as reasonably possible, while accepting that it will inevitably be substantially more demanding, in staff numbers and in costs, than the current flat-rate scheme.
86. The Department is aware that it is a considerable challenge to find a solution which satisfies all of the above, but expects to have concluded its deliberations during 2005. Those deliberations will include revisiting the feasibility of family allowances being clawed back, by up to 100%, through the income tax system.
87. Any move towards implementing an income-related scheme would require

substantial changes to the legislation, therefore first requiring a States report.

***Attendance and Invalid Care Allowances***

88. The Department recommends that attendance allowance and invalid care allowance be increased with effect from 2 January 2006 as shown below:-

**2006 rates (2005 in brackets)**

Attendance Allowance - weekly rate	£75.25	(£72.25)
Invalid Care Allowance - weekly rate	£60.75	(£58.25)
Annual income limit for both allowances	£69,000	(£66,000)

89. The annual income limit is the upper limit of income that a family may have, while still being entitled to receive either attendance allowance or invalid care allowance.
90. Benefit expenditure on attendance and invalid care allowances in 2004 was £1.88m. The budget for 2005 is £1.96m. It is estimated that the Department's proposals will increase expenditure in 2006 by £130,000 to £2.09m.

***Extension of Medical Expenses Assistance Scheme to Alderney***

91. The medical expenses assistance scheme (MEAS) is the only social security benefit that does not apply to Alderney, which is clearly anomalous since Alderney residents pay the same rates of social security and tax as Guernsey residents.
92. MEAS, which is a non-statutory benefit funded from general revenue, was introduced in Guernsey in 1986, at a time when separate accounts were being kept for Alderney's finances and when Alderney was struggling to avoid being in deficit. Alderney did not wish to add to its expenditure by participating in the MEAS scheme.
93. MEAS was originally introduced as a scheme to assist with medical costs, in particular the cost of specialist medical treatment. Since the introduction of the specialist health insurance scheme in 1996, the scope of MEAS has been refocused to assist with general practice medical accounts for individuals and families who have a frequent need for medial services. Increasingly, the scheme has been used to assist with dental treatment and expenditure has risen markedly since the scheme has offered financial help with clinically necessary orthodontic treatment for children, following the reallocation of that area of dentistry from the School Dental Clinic to the private sector.
94. With the accounting of Guernsey and Alderney's finances now combined, it appears only right that the MEAS scheme should be extended to give means-tested assistance with medial and dental accounts to residents of Alderney. The

Department recommends this extension of coverage from 1 January 2006.

95. Expenditure on MEAS was £120,500 in 2004. The budget for 2005 is £132,000. It is estimated that expenditure on MEAS in 2006, including the extended cover to Alderney will be £150,000.

***Community and Environmental Projects Scheme***

96. The Department administers the Community and Environmental Projects Scheme (CEPS), which offers short-term employment opportunities for unemployed people. The Department contracts with the States Works for the necessary supervision of the work teams and also for the provision of transport, equipment and tools. The Scheme usually operates to its maximum capacity of 18 participants across three work teams. The work projects are of positive value to the community as well as being of benefit to the participants, who receive training and improve their prospects for employment.
97. The hourly wage rates for the CEPS scheme are set by the Department and do not require a resolution of the States. For the information of States members, the 2005 and 2006 hourly and standard weekly rates are shown below:

	2006	(2005)
Under 18	£4.17 per hour	(£4.00 per hour)
For 36 hours	£150.12	(£144.00)
18 and over	£5.68 per hour	(£5.45 per hour)
For 36 hours	£204.48	(£196.20)

***Free TV licences***

98. In accordance with the resolutions of the States on the 2001 budget (Billet d'Etat XXIV of 2000), the Department administers a scheme to provide free TV licences for Guernsey and Alderney residents aged 75 or over and residents aged 65 or over and in receipt of supplementary benefit. Benefit expenditure under this scheme was £426,000 in 2004. The scheme is expected to cost £450,000 in 2005. The costs in 2006 will depend on the standard charge per TV licence made by the UK Department of Culture, Media and Sport.

**PART V  
RECOMMENDATIONS**

99. The Department recommends:
- (i) that the standard rates of social insurance benefits shall be increased to the rates set out in paragraph 11 of this report;
  - (ii) that for employed and self-employed persons the upper weekly earnings

limit, the upper monthly earnings limit and the annual upper earnings limit shall be £693, £3,003 and £36,036 respectively;

(paragraphs 14 to 21)

(iii) that for non-employed persons the upper and lower annual income limits shall be £36,036 and £12,610 respectively;

(paragraphs 24 and 25)

(iv) that the Social Insurance (Guernsey) Law 1978, as amended, shall be further amended as described in paragraphs 35 to 40 of this report;

(v) that the prescription charge per item of pharmaceutical benefit shall be £2.50;

(paragraph 51)

(vi) that the contribution (co-payment) required to be made by the claimant of care benefit, under the long-term care insurance scheme, shall be £140 per week;

(paragraph 56)

(vii) that care benefit shall be a maximum of £581 per week for persons resident in a nursing home or the Guernsey Cheshire Home and a maximum of £312.50 per week for persons resident in a residential home;

(paragraphs 58 and 59)

(viii) that respite care benefit shall be a maximum of £721 per week for persons receiving respite care in a nursing home or the Guernsey Cheshire Home and a maximum of £452.50 per week for persons receiving respite care in a residential home;

(paragraph 60)

(ix) that the supplementary benefit requirement rates shall be as set out in paragraph 68 of this report;

(x) that the weekly benefit limitations for supplementary benefit shall be:

(a) £287 for a person living in the community;

(b) £396 for a person who is residing in a residential home; and

(c) £570 for a person who is residing as a patient in a hospital, nursing home or the Guernsey Cheshire Home;

(paragraphs 69 to 71)

(xi) that the amount of the personal allowance payable to persons in

residential or nursing homes who are in receipt of supplementary benefit shall be £22 per week;

(paragraph 72)

- (xii) that a supplementary fuel allowance of £17.00 per week be paid to supplementary beneficiaries who are householders from 28 October 2005 to 28 April 2006;

(paragraph 75)

- (xiii) that the earnings disregard for supplementary benefit be increased to £30 per week;

(paragraph 78)

- (xiv) that the minimum rate of non-householder rent allowance be reduced to zero;

(paragraph 80)

- (xv) that family allowance shall be £12.75 per week;

(paragraph 83)

- (xvi) that the rates of attendance allowance and invalid care allowance and the annual income limits shall be as set out in paragraph 88;

- (xvii) that the non-statutory medical expenses assistance scheme (MEAS) be extended to cover residents of Alderney;

(paragraph 94)

- (xviii) that the recommendations listed below shall have effect from the following dates:

Recommendations (i),(vi) to (viii) and (xvi)	-	2 January 2006
Recommendations (ii), (iii), (v) and (xvii)	-	1 January 2006
Recommendation (ix) to (xi), (xiii) and (xiv)	-	6 January 2006
Recommendation (xv)		3 January 2006

Yours faithfully

Mary Lowe  
Minister

**(NB The Policy Council supports the proposals)**

**(NB The comments of the Treasury and Resources Department are set out below)**

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

2<sup>nd</sup> August 2005

Dear Sir

**SOCIAL SECURITY DEPARTMENT: BENEFIT AND CONTRIBUTION RATES FOR 2006**

The Treasury and Resources Department acknowledges that the Social Security Department's recommendations are a measured response to the aims of the Corporate Anti-Poverty Programme and the present States financial position.

**The Treasury and Resources Department supports the recommendations put forward in the Report.**

In paragraph 12 of the Report mention is made of the need to "maintain the insurance principle which is fundamental to the financial structure of the contributory scheme." Although there is no intention to change this arrangement as part of this Report, it has to be acknowledged that the Consultation Document on the Future Taxation Strategy included the following:

"The States of Guernsey has a long established and well administered Social Security Benefits system, which due to consistent and prudent management over a long period, is well funded.

The long-standing principle for the collection of contributions (from employees, employers and the self-employed) is that contributions are not a tax, they are a contribution for potential social security benefits (unemployment, old age pension, sickness benefits), i.e. a type of insurance payment.

Another long standing principle of the funding is that those individuals who are on incomes less than the upper earning limits (2005: £34,320 per year) have the difference paid by the States by means of an annual grant from general revenue (i.e. direct and indirect tax sources). The grant from general revenue sources is set following periodic review by the UK Government Actuary's Department.

With effect from 1 January 2004 the grant was reduced to 50% (from 57%) of contribution receipts, as a result of this change, the grant paid by general revenue was reduced by £3.6m per year.

The present social security arrangements mean that if an individual has income in excess of the upper earnings limit (2005: £34,320 per year) then the amount paid by the employer and the employee is the same whether that individual earns £35,000, £75,000 or even more than £100,000.

Compared to Jersey and the Isle of Man (which has replicated the UK social security legislation) the amounts raised annually by social security in Guernsey are much less. Although the rates of contribution and earnings limits are designed to finance different ranges and levels of benefit, if Guernsey adopted the Jersey scheme, an extra £11.5m would be raised or £59.6m for the Isle of Man.

**Although it is acknowledged that it would be a fundamental change to a long standing set of principles, the Group believes that consideration must be given to revising the present system with a view to reducing the grant payable from general revenue.”**

Yours faithfully

L S Trott  
Minister

The States are asked to decide:-

XVI.- Whether, after consideration of the Report dated 27<sup>th</sup> July, 2005, of the Social Security Department, they are of the opinion:-

1. That, with effect from 2<sup>nd</sup> January, 2006, the standard rates of social insurance benefits shall be increased to the rates set out in paragraph 11 of that Report.
2. That, with effect from 1<sup>st</sup> January, 2006, for employed and self-employed persons the upper weekly earnings limit, the upper monthly earnings limit and the annual upper earnings limit shall be £693, £3,003 and £36,036 respectively.
3. That, with effect from 1<sup>st</sup> January, 2006, for non-employed persons the upper and lower annual income limits shall be £36,036 and £12,610 respectively.
4. That the Social Insurance (Guernsey) Law 1978, as amended, shall be further

amended as described in paragraphs 35 to 40 of that Report.

5. That, with effect from 1<sup>st</sup> January, 2006, the prescription charge per item of pharmaceutical benefit shall be £2.50.
6. That, with effect from 2<sup>nd</sup> January, 2006, the contribution (co-payment) required to be made by the claimant of care benefit, under the long-term care insurance scheme, shall be £140 per week.
7. That, with effect from 2<sup>nd</sup> January, 2006, care benefit shall be a maximum of £581 per week for persons resident in a nursing home or the Guernsey Cheshire Home and a maximum of £312.50 per week for persons resident in a residential home.
8. That, with effect from 2<sup>nd</sup> January, 2006, respite care benefit shall be a maximum of £721 per week for persons receiving respite care in a nursing home or the Guernsey Cheshire Home and a maximum of £452.50 per week for persons receiving respite care in a residential home.
9. That, with effect from 6<sup>th</sup> January, 2006, the supplementary benefit requirement rates shall be as set out in paragraph 68 of that Report.
10. That, with effect from 6<sup>th</sup> January, 2006, the weekly benefit limitations for supplementary benefit shall be:
  - (a) £287 for a person living in the community;
  - (b) £396 for a person who is residing in a residential home; and
  - (c) £570 for a person who is residing as a patient in a hospital, nursing home or the Guernsey Cheshire Home;
11. That, with effect from 6<sup>th</sup> January, 2006, the amount of the personal allowance payable to persons in residential or nursing homes who are in receipt of supplementary benefit shall be £22 per week.
12. That a supplementary fuel allowance of £17.00 per week be paid to supplementary beneficiaries who are householders from 28 October 2005 to 28 April 2006.
13. That, with effect from 6<sup>th</sup> January, 2006, the earnings disregard for supplementary benefit be increased to £30 per week.
14. That, with effect from 6<sup>th</sup> January, 2006, the minimum rate of non-householder rent allowance be reduced to zero.
15. That, with effect from 3<sup>rd</sup> January, 2006, family allowance shall be £12.75 per

week.

16. That, with effect from 2<sup>nd</sup> January, 2006, the rates of attendance allowance and invalid care allowance and the annual income limits shall be as set out in paragraph 88 of that Report.
17. That, with effect from 1<sup>st</sup> January, 2006, the non-statutory medical expenses assistance scheme (MEAS) be extended to cover residents of Alderney.
18. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

**PUBLIC SERVICES DEPARTMENT****ST SAMPSON'S HARBOUR PUMPING STATION AND NORTH SIDE FIRE MAIN**

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

28<sup>th</sup> July 2005

Dear Sir

The Public Services Department (PSD) presents this States Report as the successor, under the changes in 2004 in the Machinery of Government, to the former Public Thoroughfares Committee (PTC), which Committee was previously responsible for the management of this project from inception to final contractual payment in April 2004.

**Executive Summary**

In April 2000, the States approved proposals from the PTC for the construction of a replacement foul water pumping station on the South Side of St Sampson's Harbour near Mont Crevelt together with connections to the South Side and North Side sewers. The link to the North Side sewer was installed across the mouth of St Sampson's Harbour and the existing foul water pumping main was modified to serve the new pumping station. The contract also provided for the existing South Side firemain to be extended across to the North Side in a common conduit with the North Side sewer link. This firemain extension encircled Griffiths Yard to provide protection to the North Quay and the fuel tanks located in the area. The common conduit also carried electricity cable ducts for and at the request of the former States Electricity Board, which contributed £30,000 towards the overall cost of the works.

The States approved a capital vote of £2,176,663.81 to cover the cost of the whole scheme.

A copy of drawing No. 6978/534 which shows the extent of the work is attached as Appendix 1 to this Report.

The project included both marine civil engineering and land-based works. Many of the key elements of the marine works could only be carried out around low water on large spring tides.

Considerable problems were experienced in executing the works, some attributable to ground conditions, others to the Contractor's own choice of construction method, programming and supervision of the project. A technical audit of the project observed that "*while individual mistakes could theoretically be attributed to those involved, the overall problems have resulted from a combination of mistakes and not therefore attributable to a single party*". These problems led to an over-run on the contract by some 34 weeks and the Contractor made a substantial claim for additional payments. The PTC resisted most elements of the claim with advice from an independent specialist claims consultant. Following consultation with Guernsey Technical Services (GTS), whose staff managed the project on behalf of the PTC, and the Advisory and Finance Committee (AFC), through its Estates Sub-Committee (ESC), an assessment of the actual costs incurred by the Contractor and a technical audit of the methodology, processes and procedures adopted by all parties to the Contract were undertaken to inform the process of concluding a settlement of the claim.

After a lengthy period of correspondence and negotiation, which avoided the need to pursue a long, time-consuming and potentially expensive arbitration process, a full and final settlement was achieved at a staff level meeting between representatives of the AFC and the Contractor on 31 March 2004. The settlement terms were approved by the AFC and the PTC, resulting in total payments under the contract of £2,862,676.30, i.e. additional expenditure of £863,774.30. Further net expenditure totalling £86,386.07 in addition to the contractual payments was also incurred in relation to site investigations, consultants' fees and reconstructing and resurfacing the road on completion of the work leading to total expenditure of £3,126,824.18 against the capital vote of £2,176,663.81.

The Public Services Department (PSD), as the responsible Department following the changes in 2004 to the Machinery of Government, is seeking the sanction of the States for the total net additional expenditure of £950,160.37 to be charged to its capital allocation.

## **Introduction**

At their meeting on 6 April 2000, after consideration of a Report dated 29 February 2000 from the PTC, the States resolved:

1. To approve the scheme for the construction of a new pumping station at St Sampson's Harbour, the construction of gravity sewers from North Side and South Side, the replacement of 80 metre length of rising main at Mont Crevelt and the construction of a firemain on North Side as shown on Drawing No 6978/53 at a total cost, inclusive of the sum of £77,761.81 for site investigation work and £100,000.00 to cover the cost of reconstructing and resurfacing the road on completion of the work, not exceeding £2,176,663.81.
2. To authorise the States Public Thoroughfares Committee to accept the tender in the sum of £1,998,902.00 submitted by T J Brent (Guernsey) Ltd. for the above scheme.

3. To vote the States Public Thoroughfares Committee a total credit of £2,176,663.81 to cover the cost of the above scheme, of which £600,000 shall be contributed from the capital allocation of the States Committee for Home Affairs, £30,000 from the States Electricity Board and the balance of £1,546,663.81 shall be taken from the States Public Thoroughfares Committee's allocation for capital expenditure.

### **The Project**

The project comprised a number of interlinked elements located generally adjacent to the St Sampson's Harbour entrance as follows:

- The construction of an underground replacement foul water pumping station, with associated mechanical and electrical plant, on the South Side of St Sampson's Harbour near Mont Crevelt in the natural rock adjacent to the breakwater, together with connections to the South Side and North Side sewers.
- A sewage pumping main linking the pumping station into the existing pumping main, replacing a section of existing main which had deteriorated.
- A pressure main, in a common concrete conduit with the North Side sewer link, taking water from the existing fire-fighting system on the South Side of the Harbour to a new installation on North Side.
- The conduit also included space for ducts for electricity cables at the request of the former States Electricity Board.
- Pipelines forming the fire-fighting installation on the North Side of the Harbour and encircling Griffith's Yard to provide protection to the North Quay and the fuel tanks located in the area.

### **Nature of the Work, Design of the Project and Appointment of Contractor**

The project included both marine civil engineering and land-based works. Many of the key elements of the marine works could only be carried out around low water on large spring tides. The PTC recognised at an early stage the complexities of working in varying ground conditions, at significant depths and in a marine environment. As a result Barhale Ltd, a civil engineering contractor experienced in this type of work, including tunnelling technology, was consulted by GTS throughout the design process, in particular, with regard to the Harbour crossing, and was satisfied with the design. Frederick Sherrell Ltd, a firm of experienced geological and geotechnical engineers, was engaged to provide specialist advice on ground conditions.

Prior to the invitation to tender, the PTC considered whether the design of the project should be subject to scrutiny by independent consulting engineers but, in view of the fact that GTS had already sought advice from Barhale Ltd, declined this option.

The PTC then invited tenders from a select list of specialist Contractors and, following an assessment in accordance with States procedures at the time, recommended acceptance of the lowest tender, in the sum of £1,998,902, received from T J Brent (Guernsey) Ltd, a subsidiary of a UK firm, T J Brent Limited. The PSD presumes that in so doing, the PTC was satisfied with recommendations from GTS with regard to the competency and capacity of the potential contractor to fulfil the contract. Later, in May 2003, the ESC noted that Barhale Ltd, as an experienced company with specific knowledge of the complexities involved in this particular contract, had itself tendered on the basis of a 52 week contract at a substantially higher cost of some £2,848,010.

Some of the problems experienced by the Contractor during the works could be attributed to ground conditions. However, the PTC considered that other problems had been as a result of the Contractor's own choice of construction method, programming and supervision of the project. A subsequent technical audit of the project (see below) observed that *“while individual mistakes could theoretically be attributed to those involved, the overall problems have resulted from a combination of mistakes and not therefore attributable to a single party”*.

### **Submission, Consideration and Resolution of Claims**

Work commenced on 3 May 2000 and, at an early stage, within just a few weeks, the Contractor had notified the Engineer appointed in accordance with the Contract (a senior member of staff of GTS) that problems had been encountered that may lead to a claim. The prospect of any contractor making a claim for extra costs is typical with all construction projects. The Contractor was aware that no claim would be entertained unless there was clear evidence to substantiate it. In December 2000, the Contractor submitted a detailed claim for extension of time and notice of his intention to claim additional costs.

In April 2001, the PTC appointed a specialist claims consultant, Mr Hugh Corrigan of W S Atkins, a leading international engineering consultancy, to advise on the validity of the Contractor's claims and to express an opinion on a way forward. The Contractor lodged further claims during the course of the works, which were not completed until 23 September 2001, some 35 weeks late, culminating in a summary review document submitted in February 2002 claiming a total of £2,057,744 in addition to the contract sum of £1,998,902. The W S Atkins report on the final claim in that sum was produced in May 2003. A copy is enclosed as Appendix 2. The report noted that a full arbitration case, as provided for in the Contract terms, was likely to be a lengthy and complex affair and that costs to each party could be in the order of £250,000. It supported instead seeking a negotiated settlement. The report also noted that, although the Contractor had offered an 'open book' to his project accounts in order to demonstrate the true cost of the project to him, such a review would indicate only the level of expenditure and not contractual entitlement.

With regard to disputes, claims and arbitration, the Contract was carried out under the terms of the Institution of Civil Engineers (ICE) Conditions of Contract (5<sup>th</sup> Edition), as amended for use in Guernsey. This provides for disputes to be resolved, if agreement

cannot otherwise be reached between the Contractor and the Engineer, by arbitration by an independent qualified Arbitrator. For example, a Contractor might claim legitimately for an extension of time and extra costs if the ground conditions are found to be worse than could reasonably have been predicted. In this project, one of the clear contributions to the eventual overspend was that, from the information available, the Contractor planned to tunnel through the rock across the mouth of the Harbour. Unfortunately, as tunnelling progressed, patches of fissured rock were discovered which were unable to sustain a tunnel. This necessitated a change in methodology and a more expensive system of seabed trenching had to be adopted. The Contractor claimed for additional expenditure and extensions of time for this and other changes it proposed to the methodology for carrying out certain aspects of the work.

In April 2003, the Wheeler Group LLP was appointed by the PTC to carry out an assessment of the actual costs incurred by the Contractor. The review was carried out by Mr Joseph Greevy, a Chartered Quantity Surveyor, and Mr Michael Mason, a Chartered Certified Accountant. Their report, dated 16 May 2003, is enclosed as Appendix 3. It concluded that:

- “1. Brent provided the Review Team with open unhindered access to all financial information required to check the actual cost calculation for the project.*
- 2. The Review Team were impressed with Brent’s accounting systems which were clear, orderly and current.*
- 3. The Review Team ... can confirm that they are satisfied that all costs included in the Total Cost Summary amounting to £3,400,609 as at 31 March 2003 are valid costs expended in the carrying out of ... (the project).*
- 4. The Review Team cannot advise whether Brent’s claim for an extension of time to the contract period is valid.*
- 5. Should a commercial settlement be considered based on the actual time the works were on site then a figure of £3,400,609 is reasonably consistent with a tendered sum of £1,998,902 for a 38 week programme and the actual time on site of 72½ weeks.”*

On 23 May 2003, the ESC received a presentation from the President and Members of the PTC and their advisors and considered the reports by W S Atkins and Wheelers. At the meeting, the President, PTC, confirmed that his principal purpose was to seek the support of the ESC to enter into negotiations with the Contractor with a view to achieving a commercial settlement.

The PTC advised the ESC that the Contractor had reduced his claim for total payment and said it was *“willing to negotiate a settlement of not less than £3.3m”* in an attempt to achieve a commercial settlement and recoup his costs for the works. The PTC acknowledged that problems had plagued the project from the very beginning (when a fault was identified in the rock surface through which the pumping station shaft was to

be constructed) and throughout the construction process. However, the Contractor had proposed a number of changes to the tendered scheme in order to suit his own preferred methodology such as for the construction of the pumping station shaft and the construction of the cross-harbour culvert. The ESC noted that the Contractor had provided written assurances at the time confirming that there would be no resultant increase in the final cost of the project.

The PTC confirmed that protracted discussions between the Engineer and the Contractor had failed to achieve an acceptable solution between both parties. The W S Atkins report considered that the PTC was in a relatively strong position in respect of the majority of claims submitted but that some additional costs were likely to be awarded to the Contractor if the matter was pursued through the arbitration process and that there was a potential cost to the States in excess of £500,000 in costs additional to any award.

The ESC agreed to recommend the AFC to support the request to seek a commercial settlement, subject to a time limit being set on the length of any negotiation and an independent claims consultant being appointed to assist the Public Thoroughfares Committee. It also agreed that a detailed technical audit of the entire project should be instigated as a matter of some urgency once a settlement had been reached.

On 4 June 2003, the AFC decided that the PTC should enter negotiations with the Contractor at a sum not to exceed £2.66m, based on the Engineer's valuation of the works and a provisional estimate of likely arbitration awards and costs. It should be noted that this sum was subsequently increased to £2.8m to reflect payment made to the Contractor in late July 2003, in accordance with the Engineer's final certificate, in respect of authorised works for which payment had previously been withheld. The AFC also noted that there was a dispute as to whether the firemain was actually operating completely as designed but it was understood that remedial works had been carried out and that testing was taking place. The PSD understands that GTS reported in January 2001 that the firemain was not operating to specification. Subsequent checks carried out by the Contractor and independent advisors failed to find the cause of the leakage.

On 25 July 2003, the Engineer issued his Final Certificate for a gross value of work of £2,687,676.30, although £25,000.00 was withheld in relation to particular problems with the firemain together with £29,983.53 retention and £27,784.90 liquidated damages. The Final Certificate took account of the Engineer's agreement to award the Contractor an extension of time of 17 weeks for the cross-Harbour works and a further 4 weeks for works between June and September 2001. The issue of the Final Certificate also imposed a contractual obligation on the States of Guernsey to pay to the Contractor the net sums so certified.

In September 2003, following competitive tendering and having received approval from the AFC, the ESC commissioned the Beckett Rankine Partnership, Marine Consulting Engineers (BRP) to undertake a technical audit to:

*“Examine and assess the methodology, processes and procedures adopted by all parties, including the client committee and its advisers, technical or otherwise, both from within the States and from all other sources, in commissioning, carrying out and supervising the construction of a new firemain and pumping station at St Sampson’s Harbour, Guernsey.*

*To ensure good practice, value for money and consider any alternative methods of working and improvements in working practices that could be proposed.”*

The BRP Report was finalised in early March 2004 and is enclosed as Appendix 4. Its findings are considered later in this States Report.

On 26 September 2003, the President, PTC, wrote to the AFC advising that negotiation with the Contractor on a without prejudice basis had failed to reach agreement within the £2.8m level approved by the AFC. Nevertheless, he had suggested to the Contractor that, if the company would agree to full and final settlement for an additional payment of £250,000 above the Engineer’s final award, he would be prepared to submit the proposal, without any guarantee of acceptance, to AFC for approval. He understood that the Contractor had agreed subject to payment being made by 14 October 2003 but he was awaiting written confirmation from the company.

At its meeting on 1 October 2003, the AFC noted a letter dated 25 September 2003 from the Contractor offering to accept full and final settlement in the total sum of £2,912,676.30, subject to the Contractor having no further liability whatsoever, including for latent defects, in connection with the works and full payment of all outstanding monies including release of retention and liquidated damages by 14 October 2003. The AFC decided to refuse the offer and to let the matter go to arbitration.

On 8 October 2003, the President, PTC, attended the meeting of AFC to explain the situation in person. He stated that the firemain was only a minor part of the project, accounting for about £500,000 of the total cost and that the drainage element, the major part, had brought significant benefits to St Sampson’s Harbour and was working well. He requested authority to continue negotiation with the Contractor, believing that, having acted in good faith, he had reached an acceptable settlement. The AFC considered the possibility of accepting a settlement in the proposed sum if the Contractor retained full defects liability but decided instead to authorise further negotiation within the previous limit of £2.8m.

On 21 October 2003, the contractor increased his settlement figure by £15,000 for accepting defects liability other than on the firemain works. A further letter dated 30 October 2003, set out options for further action as seen by the Contractor, one of which was for payment by the States of a further £150,000 but with full acceptance by the Contractor for defects liability on all the works.

At its meeting on 3 December 2003, the AFC again met the President, PTC, to consider the position and decided that the PTC should advise the Contractor that it would not release it from liability for latent defects under any circumstances and that the States

were only prepared to offer £100,000 above the Engineer's certified sum. The PTC wrote to the Contractor on 19 December 2003 explaining in detail, without prejudice, the States' position and inviting the Contractor's acceptance. The Contractor had coincidentally written direct to the President, AFC on the same date expressing disappointment at AFC's refusal to accept its previous offer and again proposing possible options to move the contract to a conclusion.

On 16 January 2004, the Contractor wrote to the PTC summarising the recent exchange of correspondence and confirming its proposal to settle at £2,912,676.30 and the detailed terms on which it would accept liability for defects. The President, PTC replied on 19 January 2004 reiterating the States' position and expressing its willingness to meet with representatives of the company to discuss the reasons for the offer.

In early March 2004, solicitors acting for the Contractor notified the PTC that a formal request for an Engineer's decision under the contract terms had initiated the timetable for arbitration proceedings and indicated that, should the matter proceed to arbitration the Contractor's claim would revert to the £4,085,311 as set out in its letter of 1 March 2004 rather than any lesser sum that the Contractor had previously believed to have been agreed. Nevertheless, the wish was expressed to reach an agreed settlement in preference. Following agreement from the AFC, a meeting was agreed for 31 March 2004 at which representatives from the Contractor would meet with representatives from the AFC on behalf of the States of Guernsey. The PTC had declined an invitation to attend as this could have prejudiced the possibility of a settlement below the £250,000 previously suggested by the President, PTC.

At that meeting, agreement was reached in principle that the Contractor would accept settlement of £175,000 above the certified valuation with latent defects liability to remain with the Contractor and liquidated damages to be released. The offer terms were approved by the AFC and PTC and, in consultation with the Law Officers of the Crown, the terms were formally offered, without prejudice, in a letter dated 8 April 2004 from the President, PTC, to the Contractor. The agreement was in full and final settlement and required the contractor:-

- (a) Retain liability and responsibility, for a period of six years commencing 23 September 2001, for rectifying any significant deterioration in the section of the firemain installed under this Contract. "Significant deterioration" shall mean any one or more occasions upon which the jockey pump increases its daily operating time to two hours or greater. The foregoing is premised upon the fact that:
  - (i) The firemain is not performing to contractual specification, which is accepted as a patent defect, and that accordingly it is necessary for the jockey pump to operate for an hour each day to maintain the pressure in the firemain in the range 7.0 to 8.5 bar as per the Contractual Specification; and

- (ii) The investigatory works undertaken by Brent failed to establish the cause of the leak.
- (b) Without prejudice to Brent's obligations under paragraph (a) above, retain liability for any latent defect in respect of the whole scheme, including the firemain.

The Contractor accepted the terms in full and final settlement on 13 April 2004 and payment was made shortly thereafter.

### **The Outcome**

The eventual outcome was that the new St Sampson's Pumping Station, together with the new connections, cross-harbour links, connection to the existing pumping main and firemain were completed, albeit behind schedule and over-budget.

When it became clear that the project would be overspent the PTC decided to effect cutbacks in other areas of its activities and was thereby able to carry out the road resurfacing in the Mont Crevelt area from its existing general revenue budget for roads resurfacing.

The original contract period increased from the initial 38 weeks to 72½ weeks and the total cost of the project increased from £2,176,663.81, as voted by the States in April 2000, to £3,126,824.18, an over-expenditure of £950,160.37. The final settlement figure agreed by the PTC for the contract accounted for £863,774.30 of this.

### **The Beckett Rankine Partnership Technical Audit Report**

The Report is enclosed at Appendix 4. Section 4 of the BRP Report comments on the design of the project and, in particular, Section 4.4 identified the five main elements as:

- The pumping station (including internal plant).
- Connection to existing sewers on North and South Sides.
- The firemain on the North Side.
- Connection into the existing pumping main on the South Side.
- The cross-harbour tunnel containing sewer and fire main.

In Section 4.4.2 the BRP Report states that the design of the first four elements appeared to be adequate and the difficulties experienced no more than might be expected. It also expresses the opinion that the difficulties which led to the delay in completion and the overrun of the budgeted expenditure was because of unforeseen ground conditions causing an earlier than expected transition from tunnelling to open cut. Also the change of installation procedure for the cross-harbour section constituted a design change with associated additional costs.

At Section 3.3.2 the report notes that although *“the firemain has not been formally accepted, we understand that the Chief Fire Officer does not now see the leakage as a bar to acceptance and so we conclude that the project is adequate.”*

At Section 4.2.9 the report refers to specialist geological advice received from Frederick Sherrell Ltd during the design and construction of the project. It notes that *“the site investigation and reporting appears to us to be quite comprehensive.”* Nevertheless, there remains a risk of unforeseen changes in ground conditions once the contract has been signed and works are in progress.

The BRP report clearly explains the nature of the scheme and the difficulties experienced. However, the PTC also dealt with specific complaints about the works during both the construction phase and thereafter. In particular, in response to concerns raised by Deputy D Jones and Deputy R Bisson, arrangements were made for them to make representations to BRP in the course of its audit.

### **Public Services Department Observations on the BRP Report**

Whilst the PSD has a relatively neutral view of the BRP report it considers that a number of the conclusions reached are not appropriate.

- Section 4.1.2 - Experience in Marine Civil Engineering within GTS:  
PSD believes that GTS has considerable experience as it has played a leading role in all States major Marine and Harbour projects including North Beach Marina and Alderney Breakwater.
- Section 5.1.3 & 7.4.1- Failure to Specify the Marine Element of the Work:  
PSD considers that the contract documents show that the marine elements of the work were fully appreciated by GTS.
- Section 5.2 - T J Brent (Guernsey) Ltd – Qualification as Contractor for the Project:  
PSD understands that this matter was carefully researched and T J Brent (Guernsey) Ltd was regarded by the PTC to be well-qualified for the project, otherwise they would not have been included on the select list of tenderers. A list of the Company's previous marine engineering experience (1994-2000) is included as Appendix 5. Furthermore, PSD considers that the problems appear to relate to the way the contract was managed by the firm's staff on site rather than the credentials of the firm itself.

Criticism has been received concerning the integrity of the cross-harbour firemain and its ability to maintain at all times the pressure required. The PSD has no doubt that when required for action the firemain is fully capable of operating to its required capacity. The former Home Affairs Committee had expressed serious concerns about the level of leakage from the fire main. This was noticeable due to the frequency with which the integral booster pump was triggered each day. The frequency has reduced over the recent months and, at

the date of this States Report, it is understood that there are now no difficulties in the main providing the full level of high pressure water the Fire and Rescue Service requires. Nevertheless, the Chief Fire Officer has not formally accepted the firemain and remains concerned that the continuing leakage, evidenced by the frequent need to top up the Bulwer Avenue storage tanks, might worsen in future.

(It is also relevant to point out that the provision of booster pumps on such fire mains is understood to be standard practice and the one now installed is a replacement for the existing one which was already serving the main on South Side).

With regard to leakage, the prime concern was that the volumes involved were outside normal parameters. The Board of the PSD therefore sought advice from W S Atkins, one of the largest consulting engineering practices in the world. They have confirmed that, as constructed, the firemain is perfectly adequate for its operational purposes, but the level of leakage is outside the normal parameters. Notwithstanding, they do not consider it to be sufficiently defective to merit further work or modifications. A copy of the Consultant's letter, dated 15 July 2005 is attached as Appendix 6. Pressure-testing of individual pipe lengths during construction, as has been suggested, was not a practical option because of the constraints of tidal working. That, however, did not relieve the Contractor of its responsibility for the integrity of the completed works.

- Further Expenditure by the States: It has been alleged that the States will be required to spend further sums of money on this project in the future. The eventual agreement between the PTC and the Contractor was for full and final settlement of the contract. No further payments are due under the Contract and there is nothing at this stage to indicate that there will be need for any further remedial expenditure on this project. However, as with all projects only time will tell.

### **Lessons Learned for the Future**

The BRP Report referred to earlier and attached as Appendix 4 identifies lessons learned and recommends improved procedures. The Public Services Department fully embraces these views and will follow them in the future. They are as follows:

#### Technical Services

- More careful review of a project and assessment of requirements to carry it out in relation to available in-house skills and resources.
- Review of the need for outside resources and the beneficial use of external specialist skills.

- Establishment of a clear history for the development of a project concept, with review and concept confirmation as project proceeds.
- Preparation of formal feasibility reports with technical assessment of alternatives including cost and risk, where appropriate.
- More careful consideration of tender lists and prequalification of potential contractors.
- More rigorous evaluation of tenders with regard to value and risk.
- Check and approve all contractors' senior staff and call for reinforcements if necessary.
- More active management of construction contracts and willingness to intervene if things do not go well.

#### Departments

- Proper consideration of Officers' recommendations and, if they are not accepted, to set out clear reasons.
- A clear understanding that the lowest tender is not to be automatically accepted.
- Independent review, of all projects (probably in-house for all but largest contracts).  
The timing would depend on the project, but typically would be before the tender process; for complex projects, an earlier concept review might also be appropriate.
- More active monitoring of contracts' progress.
- Exertion of closer control over Engineer's powers to vary works.

#### Generally

- Review of contract procedures and forms of contract; willingness to use other than ICE 5<sup>th</sup>.
- Development of central contractual expertise.
- Establishment of better audit trails (not as a 'post mortem' facility, but to give clarity as to what is being done, and to encourage ongoing review).

- Consideration should be given to adoption of the main procedures required for UK's CDM regulations as this would go a long way to address several of the points listed above, particularly in relation to risk, safety and competence.

**Recommendation**

The Public Services Department, therefore, recommends the States:

To sanction the overspend of £950,160.37 on the capital vote for the construction of a new pumping station and ancillary works at St Sampson's Harbour and to extend the firemain to North Side, which overspend shall be charged to the capital allocation of the Public Services Department.

Yours faithfully

William M Bell  
Minister

NOTES

- 1. ALL DIMENSIONS ARE IN METRES UNLESS NOTATED OTHERWISE.
- 2. ALL LEVELS ARE IN METRES RELATIVE TO CHART DATUM.
- 3. DO NOT SCALE OFF THIS DRAWING.
- 4. MARKING CO-ORDINATES RELATE TO GUERNSEY GRID.

LEGEND

- CH CHAMBER
- OM OSCILLATING MONITOR
- 4H 4 WAY HYDRANT

REV.	DESCRIPTION	DATE
A	ROUTE OF CROSS HARBER CABLE DUCTS ALTERED. MHT 4403 POSITION ALTERED. MOUNT MONITOR POSTIONS CHANGED.	06/12/00 J.P.M.

CLIENT  
PUBLIC THOROUGHFARES  
COMMITTEE

PROJECT  
H.S.S. PUMPING  
STATION - PHASE 3  
AND NORTH SIDE  
FIREMAIN EXTENSION

DRAWING TITLE  
LOCATION PLAN

STATES OF GUERNSEY  
DEPARTMENT OF ENGINEERING

PROJECT ENGINEER  
J.P. WARDEN

SURVEYED DRAWN CHECKED APPROVED  
J.P.W. J.P.W. J.P.W.

DATE DEC. 13/03 DRAWING NO. 697B/53A  
SCALE 1:1000



**ATKINS**

HARBOUR ST SAMPSON'S  
PUMPING STATION - PHASE 3  
AND NORTH SIDE FIREMAIN  
EXTENSION PROJECT

**REPORT BY WS ATKINS ON  
THE CONTRACTOR'S CLAIM  
FOR EXTENSION OF TIME  
AND ADDITIONAL COSTS**

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HARBOUR ST SAMPSON'S PUMPING STATION.  
PHASE 3 AND NORTH SIDE FIREMAIN EXTENSION PROJECT  
REPORT BY WS ATKINS ON THE CONTRACTOR'S CLAIM  
FOR EXTENSION OF TIME AND ADDITIONAL COSTS

## INTRODUCTION TO SCHEME

### **Brief description of scheme (Refer to Appendix A – Location Plan)**

The scheme entails a replacement of existing foul sewers and terminal sewage pumping station located within St Sampson's Harbour. It includes the construction of a new terminal pumping station on the south side of the harbour and redirection of existing South Side and North Side foul sewers for onward pumping through the existing St Sampson's rising main. An extension to the existing firemain supply to the north side of the harbour is also included alongside the redirected foul sewer from North Side.

The key components of the scheme are:

- A 15m deep, 4m diameter, wet well pumping station housing 3 submersible pumps. The station has been constructed using precast concrete bolted segmental rings by excavating predominantly through Gabbro rock. A new section of 300mm diameter main connects the station to the existing St Sampson's rising main which discharges at Bellegreve Treatment Works;
- A 75m extension to the existing 500mm diameter South Side sewer from existing manhole 4202 to the new station. This line has also been laid partially in rock;
- A 230m diversion of the existing 500mm North Side sewer from existing manhole 4403 across the harbour to the new station on the south side of the harbour. The last 40m of this sewer was to be built within a tunnel heading; the central cross harbour crossing (approx. 140m) was to be installed within a new 1200 culvert. This culvert was to be constructed from a launch ("transition") chamber on the south side towards a "reception" chamber on the north side. The initial 50m section was to be laid similarly to the central section;
- Firemain extension from south to north side of the harbour. Approximately 50m of 400mm diameter main was to be laid from the existing main on the Southside to the new pumping station; thereafter 260m of 450mm diameter firemain laid alongside the foul sewer crossing across the harbour; and a final 600m of 300mm diameter ring main on the north side of the harbour

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Tenders were sought and returned from 5 contractors in late 1999 under an ICE 5<sup>th</sup> Edition Conditions of Contract as follows: -

<b>Contractor</b>	<b>Tender Sum £</b>	<b>Contract period in weeks</b>
T J Brent (Guernsey Ltd.)	1,998,902.00	38
Geomarine Ltd.	2,069,600.00	40
Miller and Baird (CI) Ltd	2,209,944.19	52
P Trant (Guernsey) Ltd – alternative design	2,343,135.00	46
P Trant (Guernsey) Ltd	2,789,643.00	52
Barhale Ltd.	2,848,010.86	52

TJ Brent was awarded the contract, on a least cost basis.

A comprehensive set of site investigation data was made available to the tenderers.

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## **SUMMARY OF TJ BRENT'S PROPOSAL**

### **Price and Programme**

T J Brent's tender was accepted in the sum of £1,998,902.

The programme for the work was 38 weeks with an agreed start date of 3<sup>rd</sup> May 2000 and completion due on 24<sup>th</sup> Jan 2001. Achievement of the programme relied heavily on the contractor resourcing and completing a number of critical activities concurrently.

### **Methodology**

The contractor initially proposed a number of changes in the tendered scheme to suit his proposed methodology, namely:

- He proposed to construct the pumping station shaft using bolted segmental rings rather than precast rings. This allowed him to build from the top down rather than from the bottom up. Whilst a cost saving was offered, it is arguable that the level of risk to the project increased significantly;
- He proposed to construct the cross harbour 1200mm diameter culvert using open cut techniques during the available tidal windows;
- He proposed to construct the initial section of firemain and foul sewer cross harbour crossing from manhole 4403 to the "reception" chamber in open cut within a concrete surround rather than by post installation in a 1200mm diameter culvert

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## **DETAILS OF CLAIM**

### **Financial details of the claim (February 2002)**

The contractor's claim (as of February 2002) is for £2.057M. The Engineer considers the contractor's entitlement to be £0.652M. A breakdown of the contractor's claim and our corresponding evaluation is included as Appendix B.

### **Elements of the claim:**

A summary of the various significant elements of the claim together with our opinion is given below.

#### **The shaft**

The contractor contends that he encountered an unforeseen fault in excavating the shaft and that the associated fractured rock was difficult to progress by blasting as intended.

He also contends that the amount of rock overbreak and subsequent back grouting increased significantly beyond his tendered allowance as a result of the weakness of the rock in this fault zone.

The contractor also contends that his resources had to be diverted from other critical activities, namely the construction of the main cross harbour crossing, as a result of the difficulties imposed by this fault.

The contractor is also seeking to recover costs for providing both caulking and a stainless steel liner in the shaft, required to stem the ingress of water through leaking joints in the shaft segmental rings.

#### **Our View**

We accept that there was an unforeseen fault that was not identified pre-tender despite the extensive ground investigation. However, the accompanying zone of fractured rock did taper with depth and by mid-depth in the shaft had virtually disappeared.

We also accept that there was some unexpected overbreak as a result and we have used our records to assess any additional entitlement.

We believe that the leakage problems related to the contractor's workmanship and that there was no unexpected water ingress/regime. The contractor offered to provide the liner at no extra cost to the contract and has no contractual entitlement to extra payment.

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We are also of the view that that there were no knock on impacts on other activities such as the cross harbour works as we feel that the contractor had not mobilised on other activities due to lack of resources and materials.

### **The Cross Harbour Heading**

The contractor contends that he had to abandon the cross harbour heading after only 9.5m as opposed to the anticipated 40m due to unstable ground. This resulted in construction of the remainder of the heading by deep open cut which was more time consuming and expensive. The contractor also contends that the progress on the heading was poor as a result of poor ground conditions.

#### **Our View**

We are of the opinion that ground conditions were generally as expected from the pre-tender investigation and that the contractor has no entitlement to any claim on this basis. Nevertheless we appreciate that completion of the full 40m in heading would have been increasingly difficult due to a combination of fractured ground and decreasing rock cover to the tunnel crown. We accept that a change in excavation from heading to open cut was likely to be required but believe that the contractor could have progressed significantly further by implementing protective temporary works as originally planned. Should an agreed abandonment have been reached at a later stage then the case for additional costs would have been undoubtedly agreed. However, as it was the contractor, in retrospect very unwisely, offered to proceed by choice in open cut at no extra cost it could be argued that by doing so he did forego what might have become a contractual entitlement. We believe that some contribution to the contractor's costs is appropriate.

### **The Cross Harbour Launch or Transition Chamber**

The contractor contends that ground conditions were poor at this location and that excavation by blasting proved unproductive due to poor ground conditions and that reversion to excavation by mechanical methods delayed the works and downstream pipe construction by several tidal windows.

#### **Our View**

We believe that the work was completed within the programmed tidal window and as a result no delays were imposed on the contractor's downstream pipe laying works. In addition we reject the contractor's argument that commencement of pipelaying works were dependant on completion of this chamber. We believe that some additional contribution to excavation costs are appropriate as the contractor did arrange for additional plant to complete the excavation on programme.

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### **The Reception Chamber**

The contractor contends that changes to the design of the reception chamber coupled with poor foundation conditions lead to additional cost and delays.

#### **Our View**

We believe that design changes made the work much simpler than originally anticipated and have records that confirm good ground conditions at this location. There is no basis for a claim.

### **Trench Excavation within the Harbour Crossing**

The contractor contends that he was delayed in progressing the section of harbour works from the Reception chamber to the north side revetment due to ordnance discoveries.

#### **Our View**

We accept that there were some delays due to ordnance and have assessed an appropriate allowance for time and additional costs.

### **South Side Sewer**

The contractor contends that he was delayed and suffered additional costs in constructing works in heading due to the same unforeseen fault encountered in the shaft. He contests the original length of heading works and contends that he had allowed 36m of heading rather than 14m as indicated by the tender documents. He claims that the consequent increase in open cut excavation exposed him to additional tidal working and delay.

#### **Our View**

We agree that the heading was affected by an unforeseen fault and that as a result extra costs were incurred and the heading was abandoned earlier than anticipated. We also accept that more tidal exposure occurred on the resulting additional length of open cut excavation and have assessed additional costs for both elements.

### **Enforced abandonment of Intended Construction Methodology for the Main Cross Harbour Works**

The contractor maintains that it proved infeasible to construct the crossing as a 1200mm diameter sewer with foul sewer and firemain and cable ducts inserted/winched through at a later stage. He argues that he was forced to undertake the work in a more piecemeal fashion increasing the resources required and delaying his programme.

HARBOUR ST SAMPSON'S PUMPING STATION.  
PHASE 3 AND NORTH SIDE FIREMAIN EXTENSION PROJECT  
**REPORT BY WS ATKINS ON THE CONTRACTOR'S CLAIM  
FOR EXTENSION OF TIME AND ADDITIONAL COSTS**

#### Our View

We accept that an enforced method change was required, mainly as a result of dealing with unanticipated dimensional tolerances, and that it was not practical to construct a single run of culverts through which the proposed services could be inserted subsequently outside tidal influences. It is debateable whether this change constitutes a contractual "variation" in the true sense but we believe it appropriate to pay costs for the additional resources and plant over and above original allowances needed to expedite the work within the original programme allowance. However, we are also of the view that this element of the work was delayed by several months due to factors within the contractor's control, mainly late mobilisation of resources and materials.

#### **Additional Modification Work to Manholes 4202 & 4403**

The contractor contends that there were design changes that increased the cost of undertaking these works.

#### Our View

We believe that the works as agreed on site were simpler than tendered and that no additional costs are justified.

#### **Enforced Changes in Construction of Cross Harbour Ducts**

The contractor contends that he could not install the electric ducts through the main cross harbour ducts as the change in construction method for the crossing culvert meant that there was inadequate time within each tidal window to undertake this activity and that this element had to be reprogrammed at a later time resulting in delays and additional costs.

#### Our View

We accept that the method change on the cross harbour works resulted in some of this element of work being carried out of sequence and have assessed delays and costs accordingly.

#### **Extended North Side Revetment Works**

The contractor maintains that he had to remove significantly more width of stone revetment than allowed for due in part to separation of the firemain and foul sewer into separate trenches but also due to the need to bring larger plant into the beach to cope with more difficult cross harbour works.

#### Our View

Our view is that the contractor underestimated the cost of dealing with the revetment masonry and that the increase in width removed was at his

HARBOUR ST SAMPSON'S PUMPING STATION.  
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choosing. Additional costs paid on a remeasurement basis as allowed for in the contract fall well short of the amounts claimed.

### **Damages to Plant and Material**

The contractor is seeking to recover insurance excess amount related to incidents on site which he says occurred during delay periods.

#### **Our View**

It is the contractor's responsibility to insure the works and his decision to set excess levels. There is no contractual entitlement to additional payment.

### **Firemain Testing/Investigation**

The contractor contends that he spent an excessive amount of time both testing and investigating the cause of persistent leakage. He maintains that leaks developed as a result of the enforced method change to the cross harbour construction and that testing and investigation became much more difficult as a result.

#### **Our View**

We are unconvinced that the method of construction led to additional testing requirements and are of the view that the contractor was very inefficient in his testing resulting in prolonged inputs. The need for additional investigation and remedial works is a matter related to the contractor's workmanship.

### **Firemain Variations/Disruptions**

The contractor maintains that there were numerous events that disrupted his progress on the firemain construction and that he incurred additional costs as a result (although no delay to the overall programme).

#### **Our View**

We accept that there were delays to the firemain works but to a far lesser extent than claimed by the contractor and we have assessed his entitlement accordingly.

### **Prolongation Costs**

Substantial completion was awarded on 23<sup>rd</sup> September 2001, 34.5 weeks after the due completion date. The contractor maintains that he is entitled to the full 34.5 weeks as an extension to the contract and that he is entitled to recover his direct and indirect costs associated with this period. These include:

- Ongoing site establishment and supervision costs

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- Additional supervision due to the extended scope of work
- Inflation increases
- Financing charges associated with costs of funding currently unpaid additional work
- Ongoing head office support both during and after actual completion date
- Unfairly held liquidated damages

**Our View**

We would accept that 16 weeks delay are justified prior to partial completion and a further 4 weeks thereafter. This is significantly less than the amount claimed.

We see little basis for additional supervision costs, however.

Inflation, financing and office overhead contributions have been assessed on the basis of the estimated overall additional entitlement to extension of time and costs - not on the contractor's inflated figures. Appropriate levels of liquidated damages for the assessed extension of time period are to be returned.

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## **OPINION ON WAY FORWARD**

### **Formal dispute resolution**

The ICE 5<sup>TH</sup> form of contract allows for Arbitration as the final means of dispute resolution. The contractor has indicated that he would wish to pursue this option in lieu of any other agreed dispute resolution route.

A full arbitration case, even based in Guernsey as allowed for by the contract, is likely to be a lengthy and complex affair. The contractor has brought up many issues in his claim that would have to be dealt with individually. Even though it is evident that a significant number of these issues are clearly without foundation, he has failed to agree to dismiss any of these elements to date over the course of long and protracted claim resolution.

An estimated cost for these hearings, including costs for preparing support documentation, disruption to staff normal activities etc. is around £250,000. Although the States may be prepared to pay for fair additional costs claimed and have a reasonably robust case against the rest, there is a large shortfall in the amount sought by the contractor i.e. circa £1.4 M - £1.5M. It is highly likely that at least some additional costs would be awarded to the contractor and even a small fraction of the outstanding amount would be a significant figure. The States ultimate liability could, without undue exaggeration, be of in excess of £0.5m despite its strong standing.

### **Negotiation**

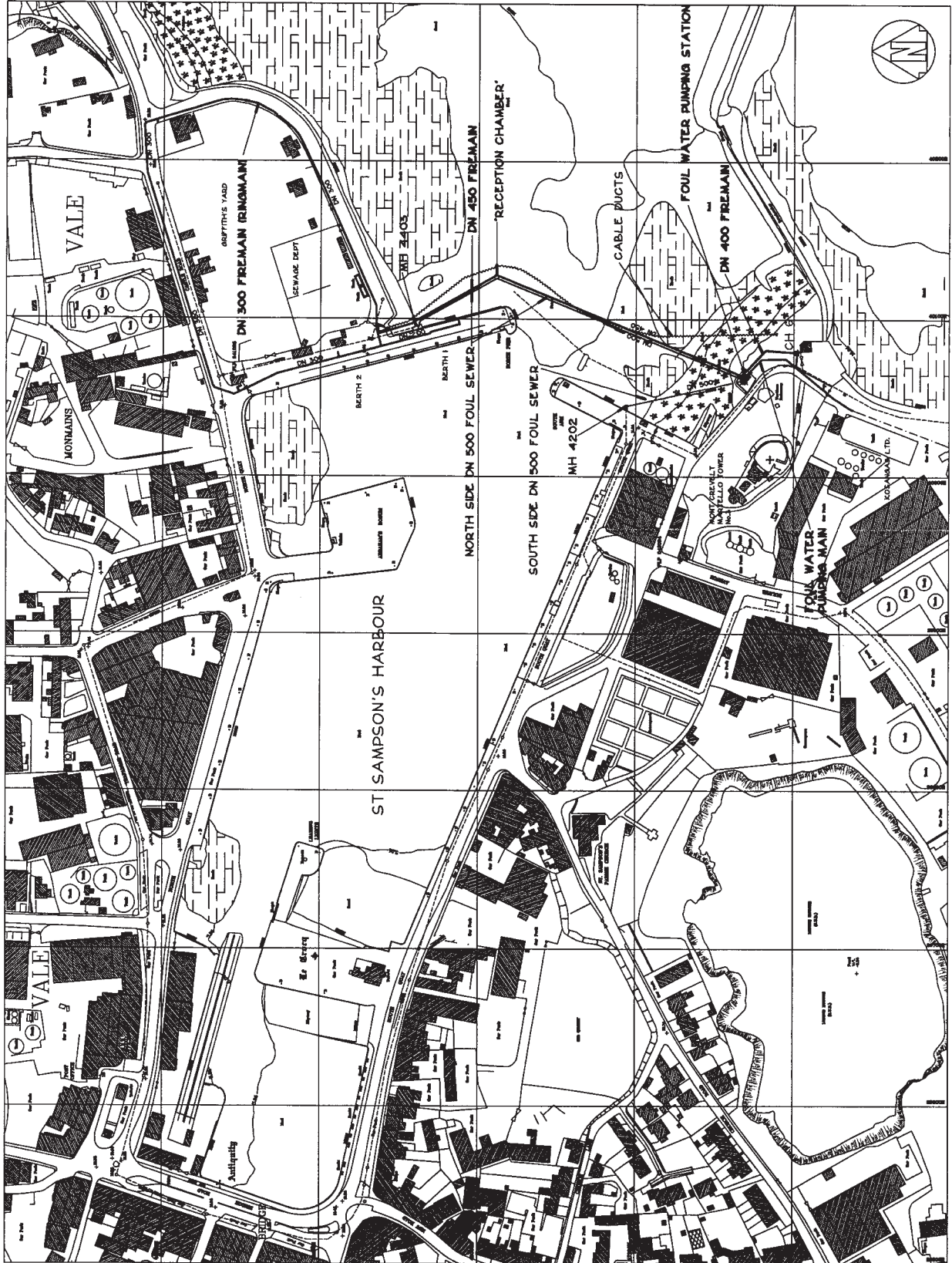
There would appear to be a number of factors to support a negotiated settlement not least of which is the exposure to the formal dispute resolution costs indicated above, namely:

- The contractor's true costs are likely to be much less than the £4M claimed and hence the starting point for negotiation will be much lower - our unsubstantiated understanding is that this figure is around £3.3M
- Whilst our evaluation is thorough, we recognise that there are one or two "grey" areas that could equally be attributed in the contractor's favour by an external party. Such areas relate to the extent of heading to be paid for as deep open cut and the initial two month period when little work was progressed on the cross harbour works and for which we have made no allowance. It is worth noting that direct and indirect costs associate with the loss of a single tidal window are well in excess of £100,000 per window.
- The contractor has offered an "open book" to his project accounts in order to demonstrate the true cost of the project to him. This may prove his level of expenditure to be considerably higher than the amount on offer, although not of course contractual entitlement.

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- The time horizon for a final arbitration decision, including the various contractual notification periods before any proceedings can actually commence, is likely to be at least 12 months. The contractor's ongoing claim for financing charges and overdue interest would obviously escalate further in that period, resulting in additional potential liabilities for the States.

Negotiation is likely to lead to a more realistic valuation of the true cost of the works. This true cost may in fact be supported by the upper range of tendered prices returned initially i.e. £2.8M - £2.9M.



REV.	DESCRIPTION	DATE

CLIENT  
PUBLIC THOROUGHFARES COMMITTEE

PROJECT  
H.S.S. PUMPING STATION - PHASE 3 AND NORTH SIDE FIREMAIN EXTENSION

DRAWING TITLE  
LOCATION PLAN

STATES OF GUERNSEY  
DEPARTMENT OF ENGINEERING

PROJECT ENGINEER  
J.C.W. WARREN

SURVEYED  
J.C.W.

DRAWN  
J.C.W.

CHECKED

APPROVED

DATE  
DEC. 1993

SCALE  
1:2500

DRAWING No.  
6378/53B

<b>HSS PUMPING STATION – PHASE 3 AND NORTH SIDE FIREMAIN EXTENSION</b>			
<b>COMPARISON OF CONTRACTOR'S CLAIM AND PROVISIONAL AWARD</b>			
		<b>Claim £</b>	<b>Award £</b>
<b>EXTENSION OF TIME</b>		<b>43,645.00</b>	
<b>Liquidated Damages</b>		43,645.00	3,200.00
<b>DIRECT WORKS CLAIMS</b>		<b>1,076,813.00</b>	
<b>Shaft</b>	Excavation etc. (down to 0.000m CD)	123,413.00	31,200.00
	Paint/Liner	45,752.00	0.00
	Additional grout behind lining	24,212.00	13,776.00
<b>Cross Harbour Works</b>			
	Pump Stn to HWC (heading)	44,840.00	0.00
	Pump Stn to HWC (open cut)	208,204.00	76,500.00
	Headwall Chamber	54,955.00	11,000.00
	Headwall Chamber – Reception Pit	329,021.00	103,200.00
	ReceptionPit	18,807.00	1,278.00
	ReceptionPit to MH 4403	93,541.00	0.00
	MH 4403 to Chamber 1	18,028.00	0.00
	Sea Wall and Revetment	81,512.00	10,080.00
	Ordnance	incl	20,200.00
	MH 4202 & MH 4403	75,845.00	0.00
	Cross Harbour Ducts	93,671.00	0.00
<b>Deduct :</b>		-400,082.00	0.00
<b>Other Cross Harbour related Claims</b>			
	Special Measures	10,976.00	10,976.00
	Damage to Plant & Equipment	17,852.00	0.00
	Firemain testing (prov)	50,000.00	0.00
<b>North Side Firemain</b>		91,228.00	24,669.00
<b>South Side Sewer</b>			
	In Heading	33,999.00	5,100.00
	In Open Cut	61,039.00	390.00
	Additional tidal working	0.00	9,360.00
<b>FURTHER CLAIMS DUE TO DELAYS</b>		<b>937,286.00</b>	
<b>Site Establishment</b>			
	Thickening to Jan 2001	134,014.00	18,000.00
	Prolongation Jan to June 2001	245,445.00	211,200.00
	June to Sept 2001	132,282.00	10,000.00
	Sept 2001 to Jan 2002	59,479.00	0.00
	Feb 2002 to date (prov)	40,000.00	0.00
<b>Other Time Related Claims</b>			
	Inflation	5,512.00	4,000.00
	Head Office Overheads	109,757.00	50,896.00
	Financing	132,446.00	30,000.00
	Consequential Disruption	42,000.00	0.00
	Materials	11,900.00	0.00
	M & E	14,451.00	6,600.00
	Insurance excess	10,000.00	0.00
<b>TOTAL</b>		<b>2,057,744.00</b>	<b>651,625.00</b>

HARBOUR ST SAMPSON'S PUMPING STATION.  
PHASE 3 AND NORTH SIDE FIREMAIN EXTENSION PROJECT

Atkins is one of the world's leading providers of professional, technology based consultancy and support services. In recent years, it has expanded from its historical base in traditional engineering, management consultancy and property services into related technological consultancy and the management of outsourced facilities. With over 14,000 staff worldwide, Atkins has enormous expertise, providing both breadth and depth of knowledge in an extremely diverse range of disciplines.

Our clients are varied and include governments, local and regional authorities, funding agencies and commercial and industrial enterprises. We help our clients to realise their objectives by developing and delivering practical solutions, adding value to their businesses through the application of our experience, innovative thinking and state-of-the-art technology.

**Hugh Corrigan**

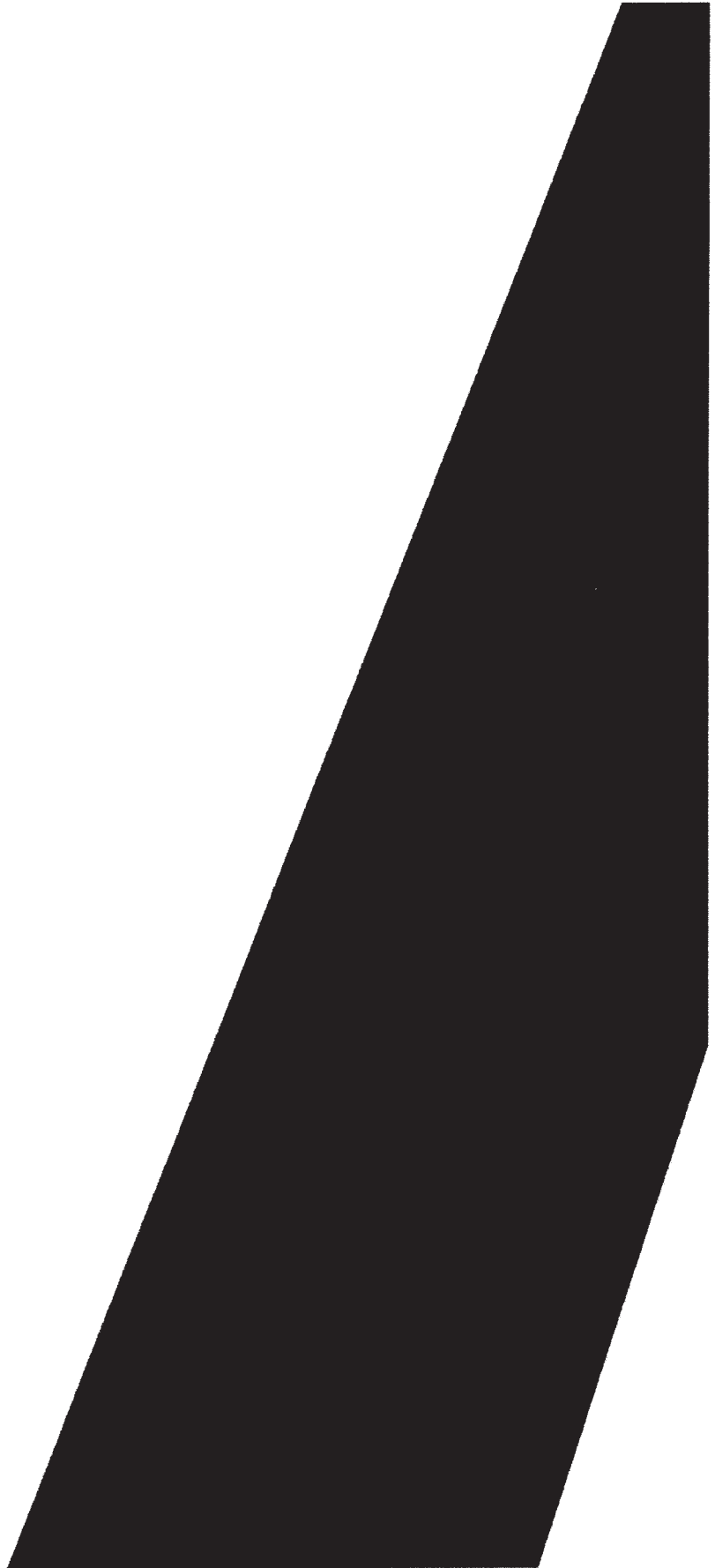
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**WHEELERS**



Doc Ref: 1390/01

**DRAFT**

**ASSESSMENT OF THE ACTUAL COST**

- for -

**ST SAMPSON'S HARBOUR PUMPING STATION  
AND NORTH SIDE FIREMAIN EXTENSION**

- for -

**GUERNSEY TECHNICAL SERVICES,  
STATES OF GUERNSEY**

**16 May 2003**

**Prepared by:**

**Wheeler's  
Norfolk House  
57/61 London Road  
Southampton  
SO15 2AB**

**WHEELERS**



Doc Ref: 1390/01

**ASSESSMENT OF THE ACTUAL COST**  
**- for -**  
**ST SAMPSON'S HARBOUR PUMPING STATION**  
**AND NORTH SIDE FIREMAIN EXTENSION**  
**- for -**  
**GUERNSEY TECHNICAL SERVICES,**  
**STATES OF GUERNSEY**

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- E WORKING CAPITAL FINANCE CALCULATION**

**WHEELERS**



Doc Ref: 1390/01

**SECTION 1.0**  
**INTRODUCTION**



## 1.0 INTRODUCTION

### 1.1 Brief

- .1 Wheelers were appointed by Guernsey Technical Services, States of Guernsey to carry out an assessment of the actual costs incurred by the Contractor (TJ Brent (Guernsey) Ltd) in the execution of the St Sampson's Harbour Pumping Station and North Side Firemain Extension.
- .2 The assessment of actual cost incurred by the Contractor was to be carried out in accordance with Wheelers service proposal dated 9 April 2003 which lists the following tasks:
  - Review documents received in preparation for a visit to Brent's office in Cornwall.
  - Liaise with Brent to establish format and extent of cost information to be reviewed.
  - Visit Brent's office in Cornwall to review, on an open book basis, the costs actually incurred by the contractor in the execution of the contract.
  - Prepare a report on findings along with conclusions and recommendations with regard to a possible way forward in settlement of the claim.

### 1.2 Approach

- .1 Guernsey Technical Services provided Wheelers with the documents listed in Appendix A to allow them to be reviewed prior to the Review Team visiting Brent's offices in Bodmin, Cornwall where the historical cost information on the project is stored.
- .2 The Review Team visited Brent's offices in Bodmin, Cornwall on 6 and 7 May 2003 and were given complete and open access to all historical cost information on the project.
- .3 In accordance with procedures agreed with Brent prior to the visit Joseph Greevy signed a Confidentiality Agreement on behalf of the Review Team, a copy of which can be found in Appendix B.

### 1.3 Review Team

- |             |  |
|-------------|--|
| Team Leader | - Joseph S Greevy BSc FRICS<br>Wheeler Group LLP<br>Chartered Quantity Surveyors   |
| Team Member | - Michael J Mason BA(Hons) FCCA MAE<br>Numerica Group plc<br>Chartered Accountants |

**WHEELERS**



Doc Ref: 1390/01

**SECTION 2.0**

**FINDINGS**



## 2.0 FINDINGS

### 2.1 Generally

.1 Prior to the visit to Brent's offices in Bodmin, Cornwall Michael Mason had spoken with Brent's Finance Director, Jim Steen, to establish the format of the information available for inspection. Jim Steen confirmed that he had prepared a detailed calculation of the costs on the project using figures that should be traceable throughout Brent's financial systems.

.2 Upon arrival at Brent's office the Review Team were provided with the following documents:

- Total cost summary for Contract 6643 – Guernsey Cross Harbour updated March 2003. The foregoing document was discussed in detail with Brent's Finance Director who confirmed that only the front sheet of the 18 pages which comprised the Total Cost Summary had been specifically prepared for the Review Team. All other sheets from which the figures on the front sheet were taken were from the March Management Accounts for each of the four years included in the Total Cost Summary.

The Total Cost Summary calculated the Actual Cost for the Project as £3,400,609 as follows:

Prime Cost	2,967,176
Management	77,941
Civils Director	19,923
Central Overheads	111,928
Working Capital Finance	223,641

---

Total Actual Cost    £ 3,400,609

---

A more detailed breakdown of the Total Cost Summary is given in paragraph 2.3.2.1.

- Computer printout dated 29 April 2003 comprising 115 pages showing the complete transaction list for the Project. The total of the items on the computer printout was £2,967,176 and this figure had been transferred onto the Total Cost Summary as the "Prime Cost".
- .3 It was decided by the Review Team that Joe Greevy would concentrate on checking the Prime Cost and Working Capital Finance elements of the Total Cost Summary and Mike Mason would check the allocation of Overheads (Management, Civils Director and Central Overheads) attributed to the project.



## 2.2 Assessments Carried out by Joseph S Greevy BSc FRICS

### 2.2.1 Transaction List Computer Printout

- .1 The Transaction List Computer Printout provided by Brent comprised 115 pages and showed the following details for approximately 5,750 payments which totalled the Prime Cost for the Project of £2,967,176:
  - Accounting period
  - Date
  - Batch Number
  - Type
  - Ref 1
  - Ref 2
  - Value
  - Quantity
  - Detail
- .2 The Transaction List was subdivided into various categories a summary of which can be found in Appendix C.
- .3 The Transaction List was reviewed and 38 transactions were chosen to be checked in detail. A list of the transactions checked can be found in Appendix D. The transactions to be checked were not chosen at random but because it was not clear from the Transaction List that they were specifically related to the project.
- .4 Of the 38 transactions checked all bar 2 invoices were readily found in Brent's storage system. The 2 invoices not in the invoice archive system were transactions which had been expended via the site petty cash and these were quickly found attached to the relevant petty cash returns.
- .5 All of the invoices checked were analysed for the following information.
  - Delivery address
  - Date
  - Amount paid
  - VAT
  - Discounts
  - Validity of expenditure to project
  - Project reference number

### Conclusion

All invoiced checked confirmed the information on the Transaction List and were considered valid expenditure against the project.



## 2.2 Assessments Carried out by Joseph S Greevy BSc FRICS (Contd.)

### 2.2.2 Working Capital Finance Costs

- .1 Within the Total Actual Cost for the Project Brent have included a sum of £223,641 for Working Capital Finance Cost.
- .2 Within the back up papers to the Total Cost Summary a calculation for the Working Capital Finance Costs was included and with Brent's permission this has been provided in Appendix E.
- .3 The calculation is based on 8% compound interest on the monthly balance for the duration of the project.
- .4 The calculation was checked and proved to be arithmetically correct.
- .5 The calculation identified 20 Nr payments totalling £2,206,281.80 whereas there appears to have been 23 Nr payments on the project totalling £2,194,342.32. (information taken from States of Guernsey Certificate Nr 23 dated 30 May 2002). When this was queried Brent's Finance Director explained that if two payments were made in one accounting period they would be included as one figure and that some small payments had been made outside the project certificate system.
- .6 From Brent's published accounts it could be identified that they historically have had a bank balance of over £1M however the Management Buyout required a bank loan of £4M which accrues an interest of 3½ % above the base rate of Barclays Bank subject to a minimum of 8%. In addition to the bank loan the Management Buyout required loan stock of £5M at a cost of 3% per annum and a 15% dividend after 5 years.
- .7 It was noted from the calculation that the date for expenditure was based on when invoices were received or logged on the accounting computer system rather than when the invoice was paid. This was confirmed by Brent's Finance Director who noted that this would only apply to subcontract material and plant invoices as staff payments were logged in the month they were expended. This anomaly has increased the interest calculation by approximately £3,000.

### Conclusion

The working Capital Finance Costs are a valid addition to the actual cost of the project. It is likely that they have been overstated by approximately £3,000 as the calculation has been based on when invoices are logged on the accounts computer rather than when they were actually paid. It is worth noting that interest is being incurred at approximately £8,000 per month.



### 2.3 Assessments Carried out by Michael J Mason BA(Hons) FCCA MAE

#### 2.3.1 Test 1

I checked the calculations and additions of the "Total Cost Summary".  
No errors were found.

#### 2.3.2 Test 2

I agreed all the figures on the "Total Cost Summary" to supporting documentation.

In the summary the figures were broken down by accounting year as follows:

Accounting year	2000 £	2001 £	2002 £	2003 £	Contract to date £
Prime costs	4,277	1,930,355	914,815	117,729	2,967,176
Management		44,842	26,865	6,234	77,941
Civils		14,599	4,838	486	19,923
Director					
Central overheads		65,889	41,065	4,974	111,928
Working capital finance					223,641
Other Civils West		4,458,935	5,460,491	5,184,392	
<b>Civil West total</b>		<b>6,389,290</b>	<b>6,375,306</b>	<b>5,302,121</b>	
Other civils		8,043,710	17,344,694	28,353,879	
<b>Civils totals</b>		<b>14,433,000</b>	<b>23,720,000</b>	<b>33,656,000</b>	
Other divisions		37,628,000	35,694,000	35,268,000	
<b>Company totals (total cost of sales)</b>		<b>52,061,000</b>	<b>59,414,000</b>	<b>68,924,000</b>	
<b>Total</b>					<b>3,400,609</b>



### 2.3 Assessments Carried out by Michael J Mason BA(Hons) FCCA MAE (Contd.)

All of the figures in the above table were agreed to supporting schedules, which were all extracts from the management accounts package produced for the board of directors.

I have confirmed that the management accounts have been accurate (see my comments at paragraph 0).

I then selected a sample of the allocated totals shown in the schedules and agreed them to the transaction listings produced by the company, which is an analysis of all items posted in to the accounting system. The following cost headings were selected for agreement to the listings:

Accounting year	Allocated Cost	Description	Amount £	Agreed to transaction list
2001	Management	Planning & proposals engineers	45,979	Yes
2001	Management	Civils West Office costs	36,330	Yes
2001	Management	Contract manager	19,414	Yes
2001	Civils Director	N/A	109,512	Yes
2002	Civils Director	N/A	125,443	Yes
2002	Central overheads	Information technology	221,509	Yes
2003	Central overheads	Bodmin office costs	593,000	Yes
2003	Central overheads	Insurance	1,066,572	Yes

Joseph S Greevy has carried out work on the interest calculation.

#### Conclusion

I can conclude that the *Total Cost Summary* schedule has been based on the accounting records of the company.



## 2.3 Assessments Carried out by Michael J Mason BA(Hons) FCCA MAE (Contd.)

### 2.3.3 Test 3 – agreeing the schedule into the audited financial statements

I agreed the cost of sales figures – which are the “Company totals” shown in the above table at paragraph 0 to the audited financial statements.

The company totals were agreed to the management accounts and then into the audited financial statements. The company totals noted above are the cost of sales of the company.

The financial statements for 2003 are not yet available, so I could only agree them to the management accounts. However, there were no audit adjustments put through the accounts for the years I looked at (2001 and 2002) which suggest that the management accounts are accurate.

#### Conclusion

I can conclude that the company total figures as shown in the schedule for 2001 and 2002 have been based on the audited accounts of the company. This I believe gives great support to the accuracy and reliability of the figures shown in the schedule.

The 2003 figures have been agreed to the management accounts, which in recent years have proved to be accurate.

### 2.3.4 Test 4 – apportionment of overheads

I considered the allocation of the overheads into the Guernsey contract, and whether the costs were allocated on a reasonable basis.

The total overheads allocated to the Guernsey contract were as follows:

Accounting year	2000 £	2001 £	2002 £	2003 £	Contract to date £
Management	0	44,842	26,865	6,234	77,941
Civils Director	0	14,599	4,838	486	19,923
Central overheads	0	65,889	41,065	4,974	111,928
<b>Totals</b>		<b>125,330</b>	<b>72,768</b>	<b>11,694</b>	<b>209,792</b>

Overheads have been allocated on the basis of the prime costs of the contract. Thus the apportionment of the overhead to the contract is based on the percentage the contract's prime cost represents of the total costs. This method is a well established and is often used.



### 2.3 Assessments Carried out by Michael J Mason BA(Hons) FCCA MAE (Contd.)

The calculation of the apportionment was as follows:

- **Management** – Prime cost/Civils West Total x Management costs, which, taking 2001 as an example would be:

$$£1,930,355/6,389,290 \times £148,424 = \mathbf{£44,843} \text{ (30.2\%)}$$

- **Civils Director** – Prime costs/Civils Total x Civils Director costs, which taking 2001 as an example would be:

$$£1,930,355/14,433,000 \times £109,152 = \mathbf{£14,599} \text{ (13.4\%)}$$

- **Central overheads** – Prime costs/Company Total x Central Overheads, which taking 2001 as an example would be:

$$£1,930,355/52,061,000 \times £1,777,000 = \mathbf{£65,889} \text{ (3.7\%)}$$

Joe Greevy has examined the prime cost figure for the Guernsey contract.

I believe that the apportionment method is reasonable and has been based on the actual cost figures.

However, the central overheads includes the following:

	2000 £'000	2001£'000	2002 £'000	2003 £'000
Goodwill	138	551	551	551
Profit/cost	143	-	-	-
<b>Total</b>	<b>281</b>	<b>551</b>	<b>551</b>	<b>551</b>

No overheads have been absorbed for 2000.

#### Goodwill

The company was subject to a management buyout; it was purchased from Pennon Group on 15 December 2000. The assets/liabilities were hived up into Michco Limited, which subsequently changed its name to T J Brent Limited on 18 December 2000, under company number 4039121.

The goodwill has been calculated as the difference between the purchase price of the company and the book value and fair value of the net assets acquired. It was calculated as:

	<b>£'000</b>
Net assets acquired	5,536
Consideration	11,044
<b>Goodwill on acquisition</b>	<b><u>£ 5,508</u></b>

The above information was disclosed at note 12 of the financial statements for the year ended 31 March 2001.



### 2.3 Assessments Carried out by Michael J Mason BA(Hons) FCCA MAE (Contd.)

The goodwill is being written off over 10 years. The write off of goodwill is in accordance with FRS 10 (Financial Reporting Standard 10) – whereby it is recommended that purchased goodwill is written off in a systematic way over the useful economic life of the asset. There is presumption in the standard that the useful economic life is less than 20 years.

I am not able to assess whether the 10-year period is a reasonable one but it is within the maximum period recommended in the FRS. Therefore in my view the accounts are reasonable in reflecting the write off over ten years. Thus the annual charge will be £551k. The charge for 2001 represents 3 month's charge.

The accounts have been audited and so this the issue of the goodwill write off has been addressed and confirmed as reasonable by the auditors.

The goodwill has been written off using a straight-line method of amortisation, which is a generally accepted method.

The goodwill figures have been absorbed into the Guernsey contract at a rate of 3.7% for 2001, which is the rate of the absorption of the central overheads. For the other years the rate of absorption has been as follows:

2000 – Nil  
 2002 – 1.5%  
 2003 – 0.17%

It could be argued that goodwill should not be charged to the contract as it is more of a restructuring cost of the whole company than an individual contract cost. This cost would not have existed had the company not been purchased.

However, the management buyout has extinguished a considerable amount of group cost. The "Profit/cost" shown in the table at 0 is the management charge from the Pennon Group plc. The £143,000 was only a portion of the charge from the group. Thus although the goodwill has been charged to the Guernsey contract, had there not been a management buyout a proportion of the Pennon Group plc charge would have instead been shown as a cost of the contract.

I briefly discuss the group charge at paragraph 0 below.

The value of the goodwill absorbed is as follows:

	2000	2001	2002	2003
Rate of absorption of central overheads	0	3.7	1.5%	0.17%
Goodwill absorbed in to the contract in £'000s	£ 0	£ 20.4	£ 8.2	£ 1

Total goodwill absorbed into the Guernsey contract is **£ 29,600**.



## 2.3 Assessments Carried out by Michael J Mason BA(Hons) FCCA MAE (Contd.)

### "Profit/cost" – 2000 only

This item is the management charge from the previous owners of the Company. It represents approximately 8½ months charge. None of this cost has been reflected into the Guernsey contract.

### Conclusion

Subject to the comments made concerning the goodwill, I believe that the apportionment method is reasonable and has been based on the actual cost figures.

### 2.3.5 Test 5 – agreeing a sample of overhead costs to supporting documentation

*To ensure that only costs of the contract were being charged I agreed a sample of items to invoices or other documentation.*

*I also examined the transaction reports in order to identify costs that should obviously not be costed to the Guernsey contract.*

I used the transaction schedules noted in the table at 0 to identify documents for inspection.

Accounting year	Allocated Cost	Description	Amount £	Agreed to documentation
2001	Management	Staff salaries	2,813	Yes
2001	Management	Site supervision own labour	3,692	Yes
2001	Management	Site supervision own labour	3,250	Yes
2001	Management	Training	900	Yes
2001	Civils Director	Heat and light	1,580	Yes
2001	Civils Director	Telephones	205	Yes
2002	Civils Director	PLI vehicle hire	1,192	Yes
2002	Civils Director	Travelling expenses	230	Yes
2002	Civils Director	Subsistence	334	Yes
2002	Civils Director	Staff salaries	4,703	Yes



### 2.3 Assessments Carried out by Michael J Mason BA(Hons) FCCA MAE (Contd.)

2002	Civils Director	SCE-SAF S/C External supply	2,500	Yes
2002	Central overheads	Information technology	1,495	Yes
2002	Central overheads	Information technology	1,048	Yes
2003	Central overheads	Information technology	1,232	Yes
2003	Central overheads	Bodmin office costs	20,064	Yes
2003	Central overheads	Bodmin office costs	23,000	Yes
2003	Central overheads	Bodmin office costs	2,600	Yes
2003	Central overheads	Insurance	192,500	Yes
2003	Central overheads	Insurance	220,329	Yes
2003	Central overheads	Insurance	122,500	Yes

I also agreed the insurance cost to a schedule prepared by Jim Steen, which showed the insurance cover and charges. The total agreed to the accounts figure. I checked the calculation of the charge into the accounts according to the date the insurance was taken out.

I examined the transaction reports and could not identify any cost categories that should obviously not be costed to the Guernsey contract.

#### Conclusion

I have agreed 20 items to supporting documentation. All were correctly charged into the accounts.

In my examination of the transaction reports I did not identify any costs that should obviously not have been posted to the particular cost category and hence not charged to the Guernsey contract.

Thus on the basis of those transactions examined I can confirm that the costs appear to be genuine costs that should be charged to the contract.

**WHEELERS**



Doc Ref: 1390/01

**SECTION 3.0**  
**CONCLUSIONS**

**WHEELERS**

Doc Ref: 1390/01

**3.0 CONCLUSIONS**

- .1 Brent provided the Review Team with open unhindered access to all financial information required to check the actual cost calculation for the project.
- .2 The Review Team were impressed with Brent's accounting systems which were clear, orderly and current.
- .3 The Review Team, apart from the minor anomaly on the interest rate calculation (see 2.2.2.7), can confirm that they are satisfied that all costs included in the Total Cost Summary amounting to £3,400,609 as at 31 March 2003 are valid costs expended in the carrying out of the St Sampson's Harbour Pumping Station and North Side Firemain Extension.
- .4 The Review Team cannot advise whether Brent's claim for an extension of time to the contract period is valid.
- .5 Should a commercial settlement be considered based on the actual time the works were on site then a figure of £3,400,609 is reasonably consistent with a tendered sum of £1,998,902 for a 38 week programme and the actual total time on site of 72½ weeks.

**WHEELERS**



Doc Ref: 1390/01

**APPENDICES**

**WHEELERS**



Doc Ref: 1390/01

**APPENDIX A**

**DOCUMENTS PROVIDED BY GUERNSEY TECHNICAL SERVICES**

Appendix A

## Documents received from Guernsey Technical Services:

1. TJ Brent Labour Returns from 21/5/00 to 5/8/01.
2. TJ Brent Plant Returns from 21/5/00 to 5/8/01.
3. Letter dated 29/2/00 from PN Bougour President of Public Thorough Fares Committee to the President, States of Guernsey recommending acceptance of TJ Brent (Guernsey) Ltd tender in the sum of £1,988,902.00.
4. Draft letter dated 31 March 2003 from Peter Ask of TJ Brent to Alan Child, Head of Engineering Services, States of Guernsey.
5. TJ Brent claim for Additional Payment and Extension of Time Interim Submission to 30 June 2001.
6. TJ Brent claim for Additional Payment and Extension of Time Further Details – October 2001.
7. TJ Brent Claim for Additional Payment and Extension of Time Summary Review – February 2002.
8. Guernsey Technical Services Draft Provisional Final Award dated January 2003 with regard to the Claim for Extension of Time and Additional Costs.
9. TJ Brent Reply dated March 2003 to the Engineer's Draft Provisional Final Award.
10. HSS Pumping Station – Phase 3 and North Side Firemain Extension Tender Documents Volume 1 dated December 1999.
11. Ditto Volume 2.

**WHEELERS**



Doc Ref: 1390/01

**APPENDIX B**  
**CONFIDENTIALITY AGREEMENT**

**WHEELERS**



Doc Ref: 1390/01

Appendix B

The Directors  
T J Brent Ltd  
Cooksland Industrial Estate  
Bodmin  
Cornwall  
PL31 2QB

6 May 2003

Dear Sirs

**St Sampson's Harbour Pumping Station and North Side Firemain Extension  
Confidentiality Agreement**

In consideration of your disclosing to us certain information in accordance with the Service Proposal to Alan Child dated 9 April 2003, we undertake:

- i) to treat such information, whether held in electronic, paper or other media, in the strictest confidence and shall take all reasonable precautions to maintain its status as such;
- ii) to use and apply the information solely for the purpose of evaluating cost information as outlined in paragraphs 2 and 3 of said Service Proposal, a copy of which is attached;
- iii) not at any time disclose or make available to any third party any information other than such general information as may be necessary to complete our report under said Service Proposal and that to our client only or to the extent required by law or any applicable regulatory body;
- iv) not to take copies of any document and to return any documents supplied by T J Brent Ltd to assist us in our investigations;
- v) not to discuss matters with any staff of T J Brent Ltd without the knowledge of a Director, such permission not to be unreasonably withheld.
- vi) at all times to protect T J Brent from the disclosure of any information which might prejudice subsequent arbitration or other legal remedy against our client in this matter.

Yours faithfully

.....  
J S Greevy  
on behalf of Wheeler Group LLP

6 May 2003

**WHEELERS**



Doc Ref: 1390/01

**APPENDIX C**

**SELECTION OF HEADINGS FOR PRIME COST**

**WHEELERS**

Doc Ref: 1390/01

## Appendix C

Selection of Heading From Prime Cost

## Description

Fabrication Costs  
 Intra Trading  
 Labour (including Employers NIC)  
 Pipes and Fittings  
 Issue From Main Stores  
 Bricks/Blocks/Paviours  
 Hardcore and Bedding  
 Reinforcement  
 Sundry Materials  
 Timber  
 Cement  
 Petrol/Derv/Lubricants (Mex-01)  
 Motor Expenses, Parts Etc  
 Motor Vehicle Hire  
 Office Costs (Guernsey)  
 Reflective Clothing  
 Petrol/Drev/Lubricants (PEX 01)  
 Plant Expenses, Parts Etc  
 Plant Hire External  
 Internal Plant  
 Postage and Plant Delivery  
 Temporary Services/Bottled Gas  
 Site Supervision  
 Preliminaries  
 Rent  
 Safety  
 Subsistence  
 External Labour  
 Subcontract Materials  
 Subcontract Plant Hire  
 External Supply and Fix  
 Sundry Tools and Consumables  
 Mobile Phones  
 Site Phones  
 Tipping Fees  
 Training  
 Travelling Expenses  
 Workshop Costs  
 Sundries

**WHEELERS**



Doc Ref: 1390/01

**APPENDIX D**  
**TRANSACTION LISTINGS CHECKED**

**WHEELERS**

Doc Ref: 1390/01

## Appendix D

Transaction Listings Checked

<u>Page</u>	<u>Inv. No.</u>	<u>Amount</u>
11	114799	208.80
11	120938	52.20
11	120940	182.70
13	38714	5,940.65
15	72863	2,105.00
15	72865	2,947.00
15	72867	2,947.00
15	71234	119.00
35	79335	99.24
35	124038	33.26
35	135580	233.04
38	114908	39.01
38	114909	34.08
38	114907	16.35
39	63742	45.63
39	112899	139.75
40	42023	695.54
40	66349	63.45
45	56895	3,110.00
45	57691	174.35
45	58629	856.30
49	80558	40.00
49	82863	1,167.60
49	83430	504.73
55	132520	525.32
55	133409	95.45
55	133059	946.00
59	210768	306.98
59	210969	476.00
59	212492	155.00
63	59638	360.00
63	68150	5,300.00
75	66005	2,789.00
76	65238	2,436.20
76	69266	2,327.30
76	68080	2,789.00
76	68080	-2,789.00
102	210764	40.80

**WHEELERS**



Doc Ref: 1390/01

**APPENDIX E**  
**WORKING CAPITAL FINANCE CALCULATION**

## Contract 6643 - Guernsey Cross Harbour

## Interest Costs

Period	Prime Costs	Overheads	Cum. Prime Costs	Cum. Costs inc. Interest	Period Cash	Cum. Cash	O/S Debtor	Working Capital Finance @ 8%
11.00	2,588.50		2,588.50	2,588.50	0.00	0.00	2,588.50	17.26
12.00	1,688.45		4,276.95	4,294.21	0.00	0.00	4,294.21	28.63
1.01	39,364.87	2,556.00	43,641.82	46,243.71	0.00	0.00	46,243.71	308.29
2.01	99,540.87	6,463.00	143,182.69	152,555.87	0.00	0.00	152,555.87	1,017.04
3.01	260,106.40	16,888.00	403,289.09	430,567.31	189,001.89	189,001.89	241,565.42	1,610.44
4.01	227,882.43	14,795.00	631,171.52	674,855.18	151,097.37	340,099.26	334,755.92	2,231.71
5.01	177,703.52	11,538.00	808,875.04	866,328.41	194,756.87	534,856.13	331,472.28	2,209.82
6.01	111,982.17	7,271.00	920,857.21	987,791.40	122,801.51	657,657.64	330,133.76	2,200.89
7.01	160,437.86	10,417.00	1,081,295.07	1,160,847.15	116,985.68	774,643.32	386,203.83	2,574.69
8.01	166,041.22	10,780.00	1,247,336.29	1,340,243.06	10,000.00	784,643.32	555,599.74	3,704.00
9.01	150,632.79	9,780.00	1,397,969.08	1,504,359.85	240,064.98	1,024,708.30	479,651.55	3,197.68
10.01	127,521.29	8,279.00	1,525,490.37	1,643,357.82	86,165.06	1,110,873.36	532,484.46	3,549.90
11.01	224,329.79	14,565.00	1,749,820.16	1,885,802.51	89,508.72	1,200,382.08	685,420.43	4,569.47
12.01	184,811.80	11,999.00	1,934,631.96	2,087,182.78	128,850.48	1,329,232.56	757,950.22	5,053.00
1.02	148,320.99	11,798.00	2,082,952.95	2,252,354.77	0.00	1,329,232.56	923,122.21	6,154.15
2.02	210,950.15	16,780.00	2,293,903.10	2,486,239.07	88,372.41	1,417,604.97	1,068,634.10	7,124.23
3.02	108,483.74	8,629.00	2,402,386.84	2,610,476.04	78,542.54	1,496,147.51	1,114,328.53	7,428.86
4.02	144,250.18	11,474.00	2,546,637.02	2,773,629.08	41,953.04	1,538,100.55	1,235,528.53	8,236.86
5.02	80,681.96	6,418.00	2,627,318.98	2,868,965.90	0.00	1,538,100.55	1,330,865.35	8,872.44
6.02	69,733.80	5,547.00	2,697,052.78	2,953,119.14	51,908.30	1,590,008.85	1,363,110.29	9,087.40
7.02	34,314.48	2,730.00	2,731,367.26	2,999,251.02	0.00	1,590,008.85	1,409,242.17	9,394.95
8.02	31,819.18	2,531.00	2,763,186.44	3,042,996.15	41,840.34	1,631,849.19	1,411,146.96	9,407.65
9.02	25,268.59	2,010.00	2,788,455.03	3,079,682.39	56,090.58	1,687,939.77	1,391,742.62	9,278.28
10.02	(224.74)	(18.00)	2,788,230.29	3,088,717.93	619.11	1,688,558.88	1,400,159.05	9,334.39
11.02	10,493.06	835.00	2,798,723.35	3,109,380.38	351,085.26	2,039,644.14	1,069,736.24	7,131.57
12.02	50,723.91	4,035.00	2,849,447.26	3,171,270.86	0.00	2,039,644.14	1,131,626.72	7,544.18
1.03	9,192.95	913.00	2,858,640.21	3,188,920.99	0.00	2,039,644.14	1,149,276.85	7,661.85
2.03	30,214.99	3,001.00	2,888,855.20	3,229,798.83	2,994.55	2,042,638.69	1,187,160.14	7,914.40
3.03	44,738.40	4,444.00	2,933,593.60	3,286,895.63	0.00	2,042,638.69	1,244,256.94	8,295.05
4.03	9,331.01	927.00	2,942,924.61	3,305,448.69	163,643.63	2,206,282.32	1,099,166.37	7,327.78
5.03	884.73	88.00	2,943,809.34	3,313,749.20	0.00	2,206,282.32	1,107,466.88	7,383.11
6.03	5,653.46	562.00	2,949,462.80	3,327,347.77	0.00	2,206,282.32	1,121,065.45	7,473.77
7.03	2,770.85	275.00	2,952,233.65	3,337,867.39	0.00	2,206,282.32	1,131,585.07	7,543.90
8.03	1,155.68	115.00	2,953,389.33	3,346,681.97	0.00	2,206,282.32	1,140,399.65	7,602.66
9.03	4,246.58	422.00	2,957,635.91	3,358,953.21	0.00	2,206,282.32	1,152,670.89	7,684.47
10.03	266.25	26.00	2,957,902.16	3,366,929.93	0.00	2,206,282.32	1,160,647.61	7,737.65
11.03	6,867.75	682.00	2,964,769.91	3,382,217.33	0.00	2,206,282.32	1,175,935.01	7,839.57
12.03	2,406.00	239.00	2,967,175.91	3,392,701.90	0.00	2,206,282.32	1,186,419.58	7,909.46
<b>Total</b>	<b>2,967,175.91</b>	<b>209,794.00</b>		<b>3,400,611.36</b>				<b>223,641.45</b>
		125,330.00						
		72,768.00						
		<u>11,694.00</u>						
		209,792.00						



# **STATES OF GUERNSEY**

## **ST SAMPSON'S**

### **PUMPING STATION AND**

### **FIRE-MAIN AUDIT REPORT**

### **FINAL VERSION**

**MARCH 2004**

**BECKETT RANKINE PARTNERSHIP**  
Marine Consulting Engineers

**CONTROLLED DOCUMENT STATUS**

<b>PROJECT TITLE:</b>		St Sampson's		
<b>DOCUMENT TITLE:</b>		Pumping Station and Fire-Main Audit Report		
<b>DOCUMENT REF:</b>		0327-01/Final/auditreport – V7.doc		
<b>REVISION RECORD</b>				
<b>STATUS</b>	<b>DATE</b>	<b>SUMMARY OF CHANGES</b>	<b>CHECKED BY</b>	<b>APPROVED BY</b>
Draft	05 Dec 2003	-	DJP	GAR
Final DraftV5	05 Jan 2004	Editorial changes only	DJP	GAR
Final DraftV6	11 Feb 2004	Editorial changes only	DJP	GAR
Final Report V7	05 Mar 2004	No changes	DJP	GAR

Project Director...



Gordon Rankine

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## APPENDICES

Appendix A	BRP's Terms of Reference
Appendix B	Location Plan
Appendix C	Cross sections of cross harbour mains
Appendix D	Simple costing of a 'round the harbour pipeline' alternative
Appendix E	Project Timeframe chart

## 1.0 EXECUTIVE SUMMARY

- 1.1 Beckett Rankine Partnership (BRP) has been commissioned by the Advisory and Finance Committee of the States of Guernsey to undertake a Technical Audit of the project for the construction of the St. Sampson's Pumping Station Phase 3 and Fire-main. The audit has been prompted by the large cost over-run (~50%) on the contract, the protracted construction period (some 35 weeks over-run) and certain technical deficiencies.
- 1.2 At the time of writing this report, the final cost of the project has not been determined and the technical problems have prevented the formal acceptance of the project (which in turn is a bar to financial closure).
- 1.3 BRP has made two visits to Guernsey and inspected documents and held discussions with those responsible for the project and other interested parties.
- 1.4 BRP conclude that:
- Although the feasibility of the project had not been rigorously tested through a formal process including consideration of the relative merits of alternative solutions, the overall concept of the project is a valid response to clearly established needs;
  - Notwithstanding technical problems, the project functions as intended;
  - Problems associated with this project can be traced to a number of unrelated shortcomings during the implementation of the project rather than a single event. These shortcomings have been identified and discussed in this report;
  - Recommendations are made for improvements to procedures to avoid recurrence of these problems.

## 2.0 INTRODUCTION

### 2.1 Terms of Reference

2.1.1 Beckett Rankine Partnership are reporting to the Estates Sub-Committee of the Advisory and Finance Committee.

2.1.2 The Terms of Reference are set out fully in Appendix A and provide for BRP to:

*“Examine and assess the methodology, processes and procedures adopted by all parties, including the client committee and its advisers technical or otherwise both from within the States and from all other sources, in commissioning, carrying out and supervising the construction of a new fire-main and pumping station at St. Sampson's Harbour, Guernsey.*

*To ensure good practice, value for money and consider any alternative methods of working and improvements in working practices that could be proposed.”*

2.1.3 To this end, BRP's audit team (Gordon Rankine, Director, and David Pritchard, Principal Engineer) has made two visits to the Island to collect data and discuss the project with those responsible and with other interested parties.

### 2.2 Project Description

2.2.1 The objectives of the project were twofold. To deal with the access and reliability problems of the existing pumping station on the foreshore and particularly to solve the problem of raw sewage leaking into the sea at St Sampson's. Also to provide for an extension of the pressurised fire-main already in place to the south of St Sampson's harbour to the northern side of harbour.

2.2.2 The two objectives were identified separately but came together into a single project as development progressed. The fire-main extension was sponsored by the Home Affairs Committee whilst the sewerage aspects were the responsibility of the Public Thoroughfares Committee (PTC). The common strand to these is that the engineering aspects were dealt with by the Guernsey Technical services (GTS) on behalf of the committees. At a later stage, the two proposals were combined into a single project under the auspices of the PTC. A more detailed review of the history of the project appears in the next section. The project may be considered to have started in 1996 when PTC resolved to construct a new

pumping station, whilst the Home Affairs Committee committed itself to the fire-main in 1997. PTC commissioned GTS to undertake the design in late 1997 (at that stage comprising the sewerage elements only). Design work appears to have been protracted, but by mid 1999 had been completed so that tenders were invited in December 1999 with construction starting in May 2000. A fuller explanation of the development of the project appears in the following sections and the timeline is shown in Appendix E.

2.2.3 In its final form the project comprises a number of interlinked elements located generally adjacent to the harbour entrance at St. Sampson's. The principal elements are:

- An underground sewage pumping station constructed in the natural rock adjacent to the root of the south breakwater;
- Mechanical and electrical plant within the pumping station (essentially three submersible pumps and associated control gear);
- A pumping main linking the pumping station into the existing pumping main leading to the Longue Hougue treatment plant. Part of this main replaced the existing deteriorated main;
- A link from the sewer system on the south side of the harbour;
- A pipeline running under the seabed outside the harbour entrance linking the pumping station to the north side sewer system;
- A pressure main taking water from the existing fire fighting system on the south side of the harbour to a new installation on the north side;
- An enclosure (designed as thrust-bored concrete tunnel) around the cross-harbour pipes to facilitate their installation and provide protection. The enclosure also included ducts for electrical cables;
- Pipelines forming the fire-fighting installation on the north side of the harbour on the North Pier and around Griffiths Yard.

2.2.4 A location plan showing the principal elements of the works is attached as Appendix B. Cross sections of the cross-harbour mains and enclosure are shown in Appendix C.

2.2.5 Project costs have risen from the tendered cost of some £2M (which included £300,000 for contingencies) to some £2.8M, this sum still being the subject of negotiation. The construction period increased from 38 weeks to 72 weeks and, although effective in use, some sections of the work have not yet been formally accepted.

2.2.6 The cost and time overruns have been a cause of concern. The purpose of this report is to consider whether there have been shortcomings within the procurement process and, if appropriate, identify procedures which will avoid such problems in the future.

2.2.7 Although the project contained a number of distinct elements, it is clear that most of the delays and resulting claims are attributable to the cross-harbour pipelines and, to a lesser extent, the excavation in rock for the pumping station. This report therefore concentrates on these elements.

### **2.3 Involved Parties**

2.3.1 The principal parties involved in the project are:

- (1) The Public Thoroughfares Committee (PTC) which is the main sponsor of the project under the overall direction of the States of Guernsey. As its name implies, the Committee is responsible for the maintenance of the road system and it is also responsible for the Island's drainage system. A major element of its present activity is the conversion of the present largely individual foul drainage arrangements to a centralised system focussed on a central outfall at Belle Greve and a future treatment plant. The Committee comprises seven members of whom five are States Deputies.
- (2) Guernsey Technical Services (GTS) is an arm of the Guernsey government, which undertook initial studies and carried out the detailed design and project management. For much of the period under consideration, GTS was known as the Department of Engineering. GTS employs technical staff and provides services for the States of Guernsey in Architecture and Structural Engineering, Surveying, Civil Engineering, Project Management and Transportation Engineering. In particular, it is largely responsible for the conversion programme to main drainage. In general, work would be carried out 'in house', but for specialised projects GTS may be supported by external consultants and advisers.
- (3) T.J.Brent (Guernsey) Ltd (TJB) is the Contractor responsible for the construction of the project. T.J. Brent (Guernsey) is a subsidiary, formed specifically for this project, of T.J. Brent, a medium sized civil engineering contractor based in Cornwall. At the time tenders were invited, TJB was working on the Island on drainage contract. The company is broadly based but appears to specialise in projects for the water industry; its brochure notes extensive experience of heavy civils work associated with or influenced by streams, rivers, lakes, reservoirs, the coast and tidal groundwater.

- (4) W.S. Atkins, Consulting Engineers, were appointed to assist GTS in the evaluation of the claim. W.S. Atkins is the largest firm of Consulting Engineers in the UK with some 4500 civil and structural engineering staff. It deals with all aspects of engineering and project management.
- (5) Barhale is a specialist contractor which advised GTS on the form of the cross-harbour pipelines. The company has specialised in tunnelling technology, but has now expanded into more general civil engineering, particularly in the water and telecommunications industries. It has partnering agreements with several major water companies and ranked ninth in a recent survey of the largest contractors in the water industry.

## 2.4 Access to Data

- 2.4.1 BRP has been given full access to all documentation and personnel involved in the project.

## 2.5 Interviews and Discussions

- 2.5.1 The audit team has held informal discussions with those members of Technical Services who were principally responsible for the project (Alan Powell and John Warren) and with members of the Strategic Property Unit (Rosy Bowyer and Andrew Shilling) as commissioning agents for the study. The team acknowledges the advice and assistance given during these discussions.

- 2.5.2 More formal discussions were held during the second visit with:

- Deputy Peter Bougourd, President of the Public Thoroughfares Committee;
- George Marsh and Richard Burton, Committee Secretariat;
- Deputy Roy Bisson, previous member of the PTC;
- Alan Powell, Project Engineer within GTS responsible for the project;
- Allan Child, Head of GTS (retired in June 2003);
- Hugh Corrigan, claims specialist with W. S. Atkins;
- Deputy Dave Jones, a resident of St. Sampson's;
- Ron Taylor, Chief Fire Officer (telephone discussion only).

- 2.5.3 In addition to the interviews noted above, we have had extensive discussions with John Warren who has been the design engineer throughout the project and was Engineer's Representative for the construction stage. We have also had access to the project files and

the formal records of the deliberations of the Public Thoroughfares Committee. Given the considerable extent of the project records, we have had to make judgements as to what we believe is relevant, and not all records have been examined in detail. We have correlated the findings from the reviews and records with our own experience on other projects. We have visited the site and have some general experience of marine civil engineering work in Guernsey.

### 3.0 PROJECT CONCEPT

#### 3.1 Justification

- 3.1.1 In order to consider the justification of the project it is necessary to be aware that St. Sampson's is a considerable population centre on the Island and also a commercial port.
- 3.1.2 Increasing environmental awareness has led to a policy of more centralised sewage treatment to replace the previous reliance on septic tanks or inadequate sea outfalls. The degree of centralisation will be discussed later, but for the purpose of this discussion it is necessary only to be aware that there is, and has been for some time, an ongoing programme for the improvement of the sewerage system on the Island.
- 3.1.3 As part of this programme, a pumping station had been installed (we believe in 1976) on the sea-bed just outside the harbour entrance at St. Sampson's. This gathered sewage from existing mains on the north and south sides of the harbour and pumped it to the sea outfall at Belle Greve (some 2 km to the south). Because the pumping station was on the sea-bed, it was accessible only on the lowest tides (approximately every two weeks); breakdowns were not infrequent and resulted in the discharge of raw sewage onto the beach. In addition the existing sewers were old and allowed the ingress of seawater. This increased the pumping load, and more importantly would cause problems when implementing full sewage treatment (this has not yet happened).
- 3.1.4 The PTC considered the situation unacceptable and in 1996 resolved, subject to the States' approval to construct a new pumping station to alleviate the problems (PTC minutes 5<sup>th</sup> December 1996). A report by Binnie, Black and Veitch (BBV) in August 1997 considered options (discussed below) for the new pumping station. Although the report does not consider the cross-harbour sewer, it seems to have been understood that the new pumping station would include a new connection to the north side (i.e. a cross harbour sewer pipeline) to eliminate the existing leaking pipes.
- 3.1.5 St. Sampson's Harbour is the principal commercial port for the island and in particular handles all the oil and liquid gas imported into Guernsey. Handling these hazardous cargoes requires stringent safety precautions including reliable supplies of water at high pressure for fire fighting, the quantities being considerable because tankers are trapped within the harbour at low tide levels. A fire-main system had been installed on the south side of the harbour and this took a supply from an adjacent quarry with a pumping station

to the south of the harbour; a feature of the system is that the pipeline is under pressure at all times.

- 3.1.6 There was a growing awareness that the fire-fighting system needed to be extended to cover the North Pier area, and by 1997 the Home Affairs Committee had committed itself to installing a fire-main extension under the entrance to the harbour (Memo from Chief Fire Officer to States Engineer 5<sup>th</sup> August 1997). It should be noted that the HAC had considered an alternative option of an independent fire main fed from the power station and had concluded that the cross harbour option was preferable.
- 3.1.7 Thus by early 1998, the two major elements for scheme development were in place, the pumping station and a cross-harbour fire-main pipeline. Although these elements were being sponsored by different committees, they were both being developed in-house by GTS and in fact both were carried out by the same section. The knowledge that the fire-main was to be constructed would have supported the decision to install a new sewer across the harbour entrance.
- 3.1.8 There are clear benefits in constructing the two pipelines together, and we have no difficulty in endorsing this decision.

## 3.2 Alternatives

- 3.2.1 Notwithstanding the fairly clear logic leading to the project as finally developed, there were significant alternative options for consideration at the initial project conceptual development stage.
- 3.2.2 The first of these would have been to consider the elimination of the cross-harbour pipelines in favour of pipelines laid along the north, west and south sides of the harbour. Whilst this seems an obvious option to the auditors, it is apparent that, within GTS, it was just as obviously not an option worthy of formal examination for several reasons:
- The difficulty of working in a heavily trafficked main road with no easy diversion available;
  - The risk of working near the power station and its buried cables,
  - Possible increased depth of pumping station due to the long length of gravity main from the north side.

3.2.3 A simplistic extrapolation of the rates in Brent's tender suggests that this 'round the harbour' option would actually have been found to be significantly more expensive (see Appendix D). The risk profile would be also be different; for example there would be significant risks associated with the depth of the pipe which might require tunnelling in some locations.

3.2.4 A view was expressed by a political representative that the cross-harbour sewer could be eliminated in favour of a local treatment plant in or near Griffiths Yard. Although such an option appears technically feasible and possibly cheaper than the cross-harbour solution if considered in isolation, it is not an ideal solution for the following reasons:

- Attractive prices quoted appear to be for a plant which is too small;
- It would be necessary to provide a small pumping station to lift sewage from the existing mains to the treatment plant;
- It would not be acceptable to discharge effluent from the plant above low water mark so that a sea outfall would be needed;
- The need for sludge disposal;
- It does not eliminate the fire-main crossing.

3.2.5 A third option would have been to combine either of these options with the power station supply for the fire-main although this had been discounted by the Home Affairs Committee.

3.2.6 Further options were contained in the BBV report in 1997. These were:

- New pumping station adjacent to the South Arm.
- Raised access to the existing station.
- New pumping station at Mont Crevelt.

3.2.7 These options of course did not consider the need for the fire-main.

3.2.8 The first of these would have required substantial excavation below tidal levels and risk of damage to the South Arm. The second would have provided better access to the existing pumping station by building a shaft over it. This was discounted because the shaft would have interfered with navigation and been vulnerable to accident.

3.2.9 The third scheme was the one chosen. The pumping station seems only to have been located in general terms, but appears to satisfy the obvious criteria of:

- Availability of road access;

- Proximity to existing sewers;
- Proximity to south side fire-main;
- Availability of land.

3.2.10 When considering and developing the conceptual schemes it would have been necessary to pay due regard to the policy defined by the States. GTS would have been aware during the design stage that States' policy was being directed towards centralised treatment of the Island's sewage. Significantly, the States had decreed in June 1999 i.e. before tender documents were issued, that waste treatment should be centralised unless there were "overriding reasons" for local treatment. As there do not appear to be any overriding reasons to consider the treatment of a substantial portion of the effluent from the St Sampson's area as a special case, particularly at the early stage of this long-term policy, a sewer linking the two sides of the harbour became an essential feature of the project.

### 3.3 Adequacy

3.3.1 In this section we consider whether the concept of the project as designed and put together was adequate to meet the required objectives.

3.3.2 In fact the adequacy of the project does not seem to have been called into question, and with one exception, it appears to perform as intended. Although the fire-main has not been formally accepted, we understand that the Chief Fire Officer does not now see the leakage as a bar to acceptance and so we conclude that the project is adequate.

3.3.3 However, even though the project performs satisfactorily, it might still be considered inadequate in its concept if there were better or cheaper solutions available. Here it is more difficult to be convinced, for there does not appear to have been any formal feasibility study or review of the possible options with rigorous analysis to identify the optimum solution. Such a study would have reviewed the options discussed above and identified a preferred solution. We do not suggest that a review of this nature would actually have recommended a different scheme. However, in identifying the strengths and weaknesses of the various options, a formal report should also have considered the risks implicit in the various options. Subsequent events have demonstrated how beneficial this could have been.

3.3.4 The conceptual development appears to have stemmed from quite informal processes and there has been no setting out of the Client's brief, or indeed that of the HAC in respect of

the fire-main. There was no detailed feasibility study which would have looked at the options above, and would have set out clearly why the chosen scheme was to be preferred. The brief and feasibility study are needed to focus attention on the key issues and enable informed debate on the relative merits of alternative proposals.

- 3.3.5 Had a feasibility report been in existence, with a clear commitment to its recommendations, PTC's discussion in August 1999 may have been more focussed on considering the merits of approving a design review.
- 3.3.6 Overall, we do not question the broad concept of the project. The problem here is not that we consider that the project does not offer an appropriate solution, but that there is no audit trail to demonstrate the point.

## **4.0 PROJECT DESIGN**

### **4.1 Guernsey Technical Services**

4.1.1 Guernsey Technical Services undertakes most of the engineering design for public works in Guernsey. In particular it has an ongoing commitment to the extension of the main drainage system which is being extended to cover the whole island. As far as we are aware however, independent consultants have generally carried out the designs for marine works, and the officer who dealt with marine projects has now retired and not been replaced.

4.1.2 This latter point means that there is little experience in marine civil engineering within GTS, and this was certainly the case during the latter stages of the project. It is likely that this has led to a lack of appreciation of the risks which attend work in the marine environment.

4.1.3 However, although there is not a great depth of marine experience, it should be remembered that, as originally conceived, the project's marine exposure was much smaller. In practice the difficulty stemmed from the change in emphasis in the construction method. However we believe that it was unrealistic in the first place to consider that a project crossing the seabed at the entrance to one of the island's main harbours did not contain a substantial marine element.

### **4.2 External support to GTS**

4.2.1 Although GTS is expected to undertake all the States' engineering work, there must clearly be occasions when it does not have the appropriate expertise or its resources are fully committed. In these cases it will be necessary to use outside consultants and there are clear precedents for this particularly in projects undertaken for the Harbours and Airports Committee (e.g. the current rebuilding of the airport terminal).

4.2.2 We are not familiar with any formal procedure for the employment of consultants, but assume that GTS will be the automatic first (and probably preferred) option, and that consultants will not be employed unless there is a recommendation from GTS. The commissioning committee will also be aware that external consultancy fees will be a direct charge on its budget.

4.2.3 PTC minutes (October 1997) show that the PTC considered the options available for the engineering of the project. The options considered, discussed in an Aide Memoire prepared by GTS, were

- Complete execution by GTS (£96,000);
- Complete execution by consultant (£204,000 or £161,000 if tendered);
- Design by consultant, supervision by GTS (£153,000).

4.2.4 The figures appear to suggest that GTS saw the major input as the site supervision rather than the design.

4.2.5 There is also the suggestion that cost of the design was the most critical factor in selecting the procurement route for the design. Timescale and availability of staff were also mentioned but did not seem to be important issues. Quality, i.e. the right experience and expertise to undertake the work, does not appear to have been questioned. This can be related to whole job cost, as a small additional cost on developing the right design can save a considerable amount more during construction.

4.2.6 In our formal discussions, it was suggested that GTS had advised the PTC to use an external consultant, but the minutes do not support this statement. The Aide Memoire prepared by GTS sets out the options but does not specifically recommend use of consultants. GTS does not appear to have expressed any reservations (other than resourcing) as to its ability for this work, and PTC does not appear to have explored the point. Given that GTS appeared substantially cheaper and had made no recommendation for the use of consultants, it is not surprising that the PTC elected for execution by GTS.

4.2.7 Nonetheless, GTS did obtain external advice by consulting a specialist contractor (Barhale) in regard to the harbour crossing; it is not clear what Barhale's brief was, nor how detailed the advice that was received. It is not unusual to seek advice from a contractor, but this is more usually done in order to incorporate the contractor's product within the project. In this case it would seem that the contractor has actually provided the concept design. The difficulty with this approach is that the design is controlled by the contractor's specific skills and fails to take account of alternatives which may be available. Nor is there any consideration of alternative methods of construction or the risks implicit in the preferred option. Given Barhale's tunnelling antecedents, it is not surprising that they put forward a proposal based on a thrust-bored tunnel. A dispassionate risk assessment at this stage is difficult because Barhale would obviously be confident of their proposals; another

contractor might take a very different view. In fact only two of the six offers followed the exhibited tender design in its entirety. This indicates that the Barhale inspired design for installation of the pipes was a specialist method not favoured by general contractors.

4.2.8 While GTS could be commended for seeking additional expertise to assist in the development of their project designs, the mistake here was to rely on the advice of a single organisation that would not have been entirely commercially independent of the advice that they gave.

4.2.9 GTS also obtained advice from specialist geological consultants (Frederick Sherrell) who appear to have guided all aspects of the design and assisted during the construction period. The geological consultants were retained during the ground investigations for the project (carried out in March – May 1998). FS appears to have advised GTS in the planning of the site investigation, undertaken the supervision and analysis, and prepared the geological report. The report was in three volumes and included the results of blasting trial on the site of the pumping station. A supplementary report on additional trial pits was made in June 1999. The site investigation and reporting appears to us to be quite comprehensive.

4.2.10 In addition, Sherrell have advised GTS on geological matters during the assessment of the TJB claim.

### **4.3 Review process**

4.3.1 On 18<sup>th</sup> August 1999, GTS wrote to PTC to say, “some aspects of the design are unusual and it is recommended that in this case a review is carried out by a suitably experienced consultant.” The proposal was considered at the meeting on 1<sup>st</sup> September 1999 and it is apparent from the Committee’s minutes that discussion of this important point was deflected by personality clashes within the Committee. Whatever the reason, the Committee did not accept the recommendation and no review was authorised. This was unfortunate, for a review at this stage could have identified the risks and problems which were to come.

4.3.2 GTS might have carried out a review themselves but we have not seen any evidence that such a review was attempted. It is unlikely (we have not consulted GTS on this point) that the appropriate staff, sufficiently knowledgeable and yet detached from the project, would have been available.

#### 4.4 Comment on Design

4.4.1 The design comprised five main elements:

- The pumping station (including internal plant);
- Connection to existing sewers on north and south sides;
- The fire main on the north side;
- Connection into the existing pumping main on the south side;
- The cross-harbour tunnel containing sewer and fire-main.

4.4.2 The design of the first four of these appears to have been adequate and the difficulties experienced no more than might be expected. However we think that the design of the cross-harbour tunnel was less than ideal in that the concept revolved around a high-risk thrust-bored tunnel method and in detail the tunnel was rather small for the pipes to be placed inside. Given all the circumstances we doubt that the tunnel solution was the most appropriate.

4.4.3 With regard to the concept of the design of the tunnel, we consider that it is too prescriptive, coming far too close to design of the contractor's temporary works. Attention seems to have been focussed on the container (the concrete outer pipe) rather than the contents, which are actually required (the plastic sewer and fire-main pipes). The problem is that the use of a specialist contractor to give advice has resulted in a design based on the use of specialist techniques and equipment. These in their turn would have required a specialist contractor to construct the works.

4.4.4 We have not seen any evidence that alternative options were considered or evaluated and, unquestionably, it would have been preferable to define the alignment of the fire-main and sewer pipes, together with protective and other essential measures, and leave the installation method to the contractor's choice. To some extent, this has happened during the tender process, but in the end this has resulted in an inappropriate mix of options.

4.4.5 As presented, the actual size of the tunnel section is a weakness in the design. It is intended to contain 450mm diameter and 500mm diameter pipes and is designed around 1200mm nominal diameter concrete pipes. Theoretically this is adequate but it does not allow for tolerances and more importantly the size of the pipe joints. 1200mm diameter pipe can be as small as 1170mm internal diameter; although this can be controlled by the contractor, we have no indication that he did so. Had he appreciated the problem he could

have obtained pipes 1220mm diameter with 10mm tolerance (i.e. 1210mm – 1230mm) The inner plastic pipes are quoted as outside diameter and closely controlled, but the joints add another 110mm to the diameter of each pipe. Thus, if the joints are adjacent, the combined diameter of the internal pipes could be equal to the inner diameter of the concrete pipe. In practice, provided that the inner pipes are pulled together, the joints can be kept apart and there should be at least 110mm clearance or 150mm if the concrete pipe is held to the upper limits of tolerance.

- 4.4.6 This could have been avoided if design of the sub seabed section had confined itself to the size, location and specification of the pipes together with other critical features such as protection and weight coats. Construction method, temporary works and other non-essential aspects should not have been included. It is interesting to note that the tender drawing showing the longitudinal section of the tunnel shows only the tunnel and not the internal pipes which have to be inferred from other sections.
- 4.4.7 Although the tolerances were tight, the problem appears ultimately to have revolved round the difficulties of working within the pipe in tidal conditions and this was a function of TJB's chosen method of installation
- 4.4.8 TJB have argued in their claim that the design was 'unfeasible'. Given that Barhale and one other tenderer did tender on the design, we do not consider that the design is impossible (although it would have been a very difficult solution with high risk); rather the problems were in workmanship, difficulties stemming from the contractor's changes to the design and lack of timely appreciation of the problems involved.
- 4.4.9 We do not know what risk assessments were undertaken during the design process, particularly when Barhale's design was chosen. What is clear, however, is that no assessment was undertaken when the design and method of installation were fundamentally changed by the contractor.
- 4.4.10 The Variation Order covering Brent's revised design noted that there should be "no additional expense to the Employer" (in relation to the cross harbour pipes) and we understand that this was an important consideration in agreeing to that change. However, the claim evaluation appears to allow for the indirect costs of the difficulties experienced by accepting costs in respect of acceleration and Extension of Time.

## 5.0 TENDER AND CONTRACT

### 5.1 Contract Documentation

5.1.1 The tender/contract documents comprised:

- Standard conditions of contract;
- Special conditions;
- Guernsey standard specification;
- Particular specification;
- Bills of quantities (BQ);
- Drawings.

5.1.2 In addition we understand that a geological report was provided.

5.1.3 We feel that the documentation was not ideal in that there was no description of the work and much of the detailed specification had to be gleaned from the BQ. In particular the method of construction was implied by the BQ (a feature of using CESMM<sup>1</sup> without including further qualifications), but there was no disclaimer on method nor any flexibility in the demarcations between the various stages (e.g. transition from heading to tunnel).

5.1.4 It would not have been necessary to draft the contract on a 'design and construct' basis, since most of the work was (relatively) clearly defined. However, it would have been preferable, in the case of the cross-harbour pipelines, to allow the contractor to design the containment. This would allow it to be more closely related to the contractor's preferred installation method and eliminate any problems over the size and tolerance. There would be no difficulty in devising a suitable specification for the containment, nor would this be incompatible with the chosen form of contract.

5.1.5 Apart from reducing construction problems, this procedure removes significant risks from the Employer, the principal one being, as was experienced, feasibility of the design.

5.1.6 The form of contract used was the Institution of Civil Engineers Conditions of Contract 5<sup>th</sup> Edition. This was originally issued in 1973 and after revisions and amendments was superseded by the 6<sup>th</sup> Edition in 1991 and subsequently by a 7<sup>th</sup> Edition. There is little

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<sup>1</sup> CESMM or Civil Engineering Standard Method of Measurement is a standard document setting out how the works are to be described and measured.

difference between the 5<sup>th</sup> and 6<sup>th</sup> editions and the 7<sup>th</sup> edition can be recognised as development of its predecessors. The 5<sup>th</sup> edition has tended to be used as Guernsey 'standard' and there is something to be said for using a form which is familiar to all parties.

5.1.7 The modern trend in contracts is to move away from forms which are thought to be adversarial and to prefer forms which encourage the parties to work more closely, possibly in a form of partnering. Whatever the merits of this approach, it is one which is only now being considered in Guernsey and was not available when the contract was being drawn up.

## 5.2 Tender List

5.2.1 We are not aware of any formal prequalification procedure and the tender list does not seem to have been considered in detail. It comprised three local contractors, (Miller & Baird, Geomarine and Trant), Barhale who had provided the design and TJB who had expressed interest and were added to the list.

5.2.2 Brent's qualification seems only to have been that they were working on the island, undertaking a main drainage project. GTS reviewed TJB's financial capacity for a £2M contract but do not appear to have considered their technical capacity. Had they done so, they would have found little relevant experience and less marine experience. This would have made them a marginal candidate and before inclusion on the tender list there should have been a detailed investigation to establish their suitability. This would also have suggested that a much closer scrutiny of their tender proposals would have been necessary.

5.2.3 We recognise, of course, that the cross harbour pipeline was by no means the whole of the project. However, it, together with the pumping station, was obviously the area which would make greatest demands on the contractor.

5.2.4 It is of interest, too, that when we discussed the runner-up tenders with GTS, reservations were expressed and there appeared some reluctance to consider them as viable options. If there were these reservations, then the firms should not have been on the tender list. Conversely if the firms were suitable to tender, then their tenders should have been considered equally acceptable, unless circumstances changed significantly during the tender period.

### 5.3 Tender Evaluation and Award

5.3.1 Six offers were received from the five contractors on the tender list, with prices ranging from £1.998M (TJB's offer which was eventually accepted) to £2.8M. Of the other tenders, one proposed a larger tunnel (M&B), two (Trant, Barhale) appeared happy to install as designed and the fourth (Geomarine) put up an alternative design avoiding the problem. Trant also put in an alternative offer similar to TJB.

5.3.2 It was in the tender evaluation that one of the more crucial mistakes was made. There were five tenders (plus an alternative offer) and the three lowest of these were within a 10% spread. The lowest was the offer, eventually chosen, by Brent at £1,998,902, second lowest was Geomarine at £2,045,000 (increased to £2,069,600 after arithmetical adjustments) and third Miller & Baird at £2,209,944. M&B is a well established local company with a good track record in marine works; Geomarine is a younger company, having splintered off from Miller & Baird, but appears to be well thought of locally.

5.3.3 Although meetings were held with the three lowest tenderers, these seem to have concentrated on financial matters; there does not seem to be any technical review or comparison of the technical merits of the offers. Brent's tender was accepted as there appeared no reason why it should not be accepted. However, if there had been more evaluation, the following points could have emerged:

- Brent's weak track record in marine works;
- Brent's reliance on the low water windows;
- Inference from other tenders that tunnel was a bit small, and the design was "complicated";
- Geomarine's proposal for a, possibly, preferable alternative;
- Geomarine's more robust approach (jack-up and divers) which would have underlined weakness in Brent proposals (manuscript note in GTS file says Geomarine is "low risk to Client").

5.3.4 We have been told that one of GTS' senior staff favoured the Geomarine offer, although presumably more favoured Brent. What we have not seen however is any comprehensive evaluation and comparison of the offers, perhaps accompanied by some sort of scoring system, so that lower risk could be balanced against increased cost.

## **6.0 CONSTRUCTION PHASE**

### **6.1 Contractor's Proposals**

- 6.1.1 Certainly with hindsight, and probably even at the time, the contractor's proposals were weak and not fully thought through, and the reliance on the very restrictive tidal windows was to invite programme difficulties. This was compounded by the site management which appears not to have given greatest attention to the areas of greatest risk.
- 6.1.2 It is clear that TJB had not fully considered the method of pipe installation and they had clearly failed to identify the tight tolerances involved. They had also failed to appreciate that to change the method of installing the outer concrete pipe would exacerbate the tolerance problems, through greater flexibility at the joints. The tolerance problems and the safety risks in pipe installation should have been apparent from the beginning.
- 6.1.3 The principal shortcoming in their proposals lay in the decision to carry out the pipe laying "in the dry" at periods of low tide. The first problem is in the programming of the operation in the very restricted time available. The second is that the work is not dry, and it is very difficult to keep water out of the work area since the excavation is below the low tide level and the adjacent strata far from impermeable.
- 6.1.4 In addition, the poor working conditions and time pressures militate against good working practices and quality control became weak or non-existent. Critically, the pipes were not pressure tested before being encased in concrete (in contravention of the specification). The problem with pipe leakage is no doubt traceable, at least in part, to this situation.

### **6.2 GTS' Review/control of contractor's proposals**

- 6.2.1 In our view, a fundamental weakness in Brent's organisation lay in their choice of Agent. He was well qualified in mining and shaft sinking, but had little experience in either contracting or marine works. Whilst the shaft is a significant part of the work, it is not the major part (in value terms) nor, probably, does it carry the highest risks. Thus the appointment of a mining engineer has failed to recognise the major risks and critical nature of the marine operations. The problem was not that he was not competent, but that he did not (as far as we can tell) have the right experience to manage critical parts of the project effectively.

- 6.2.2 Because the Agent is central to the successful performance of any contract, the contract provides for the appointment to be approved by the Engineer. In fact, the Contractor does not seem to have made any formal application and the appointment was never approved by GTS. GTS will no doubt respond that they had met the Agent and felt no worries; the point here is that GTS had not seen the Agent's CV and had made no enquiries as to his suitability. When the CV was made available, the lack of relevant experience should have been apparent; relevant in this context of course refers to experience as an agent and not that he was well qualified as mining engineer.
- 6.2.3 We acknowledge that, whilst it is theoretically possible to object to or remove the Agent, it is not usually politic. In fact, we would not suggest that that should have been done as the Agent was well suited to the shaft sinking operation. However, it would have been possible for GTS to call for support and assistance and insist that the contractor appoint additional staff with better marine and management experience.
- 6.2.4 Similarly, there seems to have been little critical review of the construction method statement. Whilst it followed the method set out in the tender, we would expect the Contractor to have developed the method statement from the outline into a workable scheme before embarking on construction; this does not seem to have happened.
- 6.2.5 The critical decision seems to have been the abandonment of the concrete tunnel with pipes pulled through. This decision was made because the contractor doubted that he could pull the pipes through the completed tunnel. The top was therefore cut off the concrete pipes and the plastic pipes were laid individually within the cropped concrete pipe.
- 6.2.6 Whilst the change in method removed the need to pull pipe strings through the tunnel, there were negative effects which do not seem to have been considered:
- Increased amount of work to be done within the tidal windows as all operations now had to be done at this stage;
  - Inability to test the integrity of plastic pipes due to time pressures of tidal working.
- 6.2.7 This latter is somewhat surprising, as GTS appears to have assented to the installation of the pipes (one of which is under constant pressure) under far from ideal conditions without testing and then to have allowed the concrete surround to be placed so that any remedial work is impossible, unless an inner lining is installed.

**6.3 Contractor's Resources**

- 6.3.1 We have discussed above whether the contractor's choice of Agent was appropriate, but a further aspect of this is to ask whether the contractor had allocated sufficient management resources to the job. Reportedly, the Contractor's Agent spent much of his time on the site rather than in the office. Whilst understandable, given the Agent's specialist mining skills, this is not the proper function of the Agent who should be planning and undertaking the overall management of the construction work,
- 6.3.2 We have not reviewed the construction records in any detail, but it would appear that the difficulties experienced were organisational rather than equipment related.

**6.4 GTS monitoring and reporting**

- 6.4.1 Although the Contractor presumably reported monthly, it seems to have taken some time before the difficulties were properly appreciated. In particular the contractor was allowed to completely miss the first two tidal windows for the pipe installation.
- 6.4.2 GTS reported monthly to the PTC, the first report covering June 2000. The timing of these reports, in the latter half of the month following that reported on, meant that the Committee, in its meeting at the beginning of the month, was generally a month behind events. Nevertheless, Progress Report No 3, dated 21<sup>st</sup> September reported potential delays and the following report (16<sup>th</sup> October) mentioned 4 – 6 weeks delay.
- 6.4.3 Despite this reporting, the delay does not seem to have been appreciated by the PTC until its meeting in December 2000, when it was minuted that completion was now "most likely March/April", (i.e. 8 to 12 weeks late). It was agreed that the Committee's concern should be brought to the contractor's attention.
- 6.4.4 Previous reports were noted in the Committee's minutes:
- |                                   |  |
|-----------------------------------|--|
| Meeting 2 <sup>nd</sup> August    | Work on schedule;  |
| Meeting 6 <sup>th</sup> September | Slightly behind schedule;  |
| Meeting 4 <sup>th</sup> October   | Progress good;   |
| Meeting 27 <sup>th</sup> October  | Site visit, members shown progress. In the absence of comment we would infer that progress was thought satisfactory. |

## 6.5 Contractual Matters

- 6.5.1 We are surprised that GTS issued a Variation Order (No 2) to cover a change in design to suit the contractor's revised method of construction. This of course stems from the original decision to include the concrete containment within the design, but seems to us to weaken the position with regard to the claim (because the design becomes the Engineer's rather than the Contractor's), notwithstanding the contractor's written assertion of 'no additional cost'.
- 6.5.2 However, no Variation Order was issued to cover the later change of design when the contractor elected to cut the tops off the concrete pipes and install the plastic pipes in individual lengths.
- 6.5.3 There has seemed to be a lack of understanding of the contractual relationship, and the PTC should not have been allowed to withhold payments that appear to have been properly certified (PTC minutes June 2002).
- 6.5.4 With regard to the evaluation of the claim, GTS seem to have done well in difficult circumstances. The claim is, as is typical, poorly presented and generally fails to link cause and effect. Also Brent were slow to respond to requests for information. Thus GTS were unable to make any meaningful evaluation or certify. The fact that the claim rose to ~£4M against admitted costs of £3.3M would suggest that the claim was not based on factual information.
- 6.5.5 We have not attempted to make any review of the evaluation of the claim, bearing in mind that GTS has already had the benefit of independent external advice. We are also aware that evaluation and certification have been carried out by GTS acting as Engineer under the Contract and we are reluctant to interfere with this independent role.

## 6.6 Public Thoroughfares Committee

- 6.6.1 The Public Thoroughfares Committee does not seem to have appreciated the position on site, for although the minutes of the meetings record progress, it seems that these notes did not convey the whole story.

- 6.6.2 We note that for other projects (the Surface Water Drainage for example) the PTC minutes record a regular consideration of a progress report, presumably a written document as a specific date is recorded. There is not a record of such a report in respect of the St. Sampson's project although a report was being submitted regularly by GTS. This may only be a nuance in the minuting, but may suggest that this report, for some reason was not fully considered. It is surprising too that the Committee requested monthly financial reporting on the contract in March 2002, suggesting the absence of any report prior to that date. It would seem that the PTC has not taken an active role in the running of the contract.
- 6.6.3 We are not familiar with internal payment procedures, but have seen no record of the contractor's payment certificates being approved for payment. Notwithstanding that the Engineer's certificate creates a binding obligation on the Employer, it is normal for the Employer's representative to approve a certificate before it is passed for payment. This forms another reporting channel to the Committee.
- 6.6.4 We have been told that the Committee examined GTS with regard to its confidence in its ability to carry out the project. However the Committee does not seem generally to have questioned GTS in any great depth, either in respect of its proposals or its management of the project.

## **7.0 OVERVIEW OF PROJECT SHORTCOMINGS**

### **7.1 Fundamental Causes of Difficulties**

7.1.1 There have been a number of shortcomings in the development and execution of this project. The fundamental cause of these difficulties would seem to be a failure to fully appreciate the complexity of the work, resulting in a failure to identify the correct risk profile for the various elements of work and eventually the failure to devote adequate attention to the high risk activities.

7.1.2 A number of mistakes have been made throughout the project. Some of these should have been obvious at the time, others can now be seen more clearly with the benefit of hindsight. While individual mistakes could theoretically be attributed to those involved, the overall problems have resulted from a combination of mistakes and not therefore attributable to a single party.

7.1.3 Perhaps the most serious issues can be traced back to an unfortunate choice of a contractor who does not seem to have been able to apply the right experience to critical parts of the construction work.

7.1.4 The most significant contributory causes were:

- Failure to obtain appropriate advice during the design stage;
- Failure to guide/manage/control the contractor's construction proposals.

7.1.5 Looking at the project in its phases of development there were then further contributory causes as set out below.

### **7.2 Project Concept**

7.2.1 There was no rigorous feasibility study to formally identify and assess options. Although this had no direct bearing on the outcome of the project, as we believe that the overall concept of the project was correct, a formally presented feasibility document may have helped to focus attention on the area of potential risk.

### **7.3 Project Design**

- 7.3.1 While recognising the need for an independent check, GTS did not fully appreciate difficulties of marine aspects of the project and should have been more active in getting outside support.
- 7.3.2 It appears that personality clashes in PTC prevented proper consideration of recommendations put before it, specifically on the issue of commissioning an independent check of the design.
- 7.3.3 In accepting advice from one specialist contractor in isolation, GTS allowed themselves to be pushed into too specific a design.

### **7.4 Tender and Contract**

- 7.4.1 In drawing up the tender documents, GTS did not take enough account of the particular circumstances of the project and included aspects in the prescribed design that should have been left to contractor choice or design.
- 7.4.2 GTS was not rigorous enough in assembling the tender list – they only made financial checks and there was no proper evaluation of TJB's technical suitability.
- 7.4.3 GTS was not rigorous enough in questioning the suitability of tenderers' proposals albeit with a general background of reluctance, at that time, to accept other than the tender with the lowest price.

### **7.5 Construction Phase**

- 7.5.1 GTS did not exercise adequate control over contractor, the most striking example being failure to recognise and act on the unsuitability of the contractor's site agent.
- 7.5.2 PTC appears to have been unquestioning of the advice it received and not monitored the project closely enough.

## **8.0 RECOMMENDATIONS FOR IMPROVED PROCEDURES**

### **8.1 Overview**

8.1.1 Clearly there are a number of lessons that can be learned from the events that have developed during the execution of this project. This information is valuable and should be used in a review of current project procedures to improve efficiency in the development and administration of future projects. The main points are summarised below.

### **8.2 Technical Services**

- More careful review of a project and assessment of requirements to carry it out in relation to available in-house skills and resources.
- Review of the need for outside resources and the beneficial use of external specialist skills.
- Establishment of a clear history for the development of a project concept, with review and concept confirmation as project proceeds.
- Preparation of formal feasibility reports with technical assessment of alternatives including cost and risk, where appropriate.
- More careful consideration of tender lists and prequalification of potential contractors.
- More rigorous evaluation of tenders with regard to value and risk.
- Check and approve all contractors' senior staff and call for reinforcements if necessary.
- More active management of construction contracts and willingness to intervene if things do not go well.

### **8.3 Committees**

- Proper consideration of Officers' recommendations and, if they are not accepted, to set out clear reasons.
- A clear understanding that the lowest tender is not to be automatically accepted.
- Independent review, of all projects (probably in-house for all but largest contracts). The timing would depend on the project, but typically would be before the tender process; for complex projects, an earlier concept review might also be appropriate.
- More active monitoring of contracts' progress.
- Exertion of closer control over Engineer's powers to vary works.

**8.4 Generally**

- Review of contract procedures and forms of contract; willingness to use other than ICE 5<sup>th</sup>.
- Development of central contractual expertise.
- Establishment of better audit trails (not as a 'post mortem' facility, but to give clarity as to what is being done, and to encourage ongoing review).
- Consideration should be given to adoption of the main procedures required for UK's CDM regulations as this would go a long way to address several of the points listed above, particularly in relation to risk, safety and competence.

**APPENDIX A**  
**BRP's Terms of Reference**

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**DRAFT BRIEF - TECHNICAL AUDIT****ST SAMPSON'S HARBOUR FIREMAIN AND PUMPING STATION****1.0 OBJECTIVE**

- 1.1 To examine and assess the methodology, processes and procedures adopted by all parties, including the client committee and its advisors technical or otherwise both from within the States and from all other sources, in commissioning, carrying out and supervising the construction of a new firemain and pumping station at St Sampson's Harbour, Guernsey.
- 1.2 To ensure good practice, value for money and consider any alternative methods of working and improvements in working practices that could be proposed.
- 1.3 The exercise is divided into three phases. Phases 1,2 and 3 as defined are stand alone elements of the commission. Prior to entering into the next stage the permission, in writing, of the Strategic Property Unit must be obtained. In the event of the commission being terminated at the end of any stage the consultant shall only be entitled to fees for services executed prior to the termination. No other loss or expense will be entertained by the client in accordance with this brief.
- 1.4 As a minimum the scope of your audit should include items as set out below. However if you feel that there are other issues that should be included please state (and cost) these items.

**2.0 PHASE 1**

- Visit and review all information available on the project
- Revisit the brief to ensure salient points are being examined.

**3.0 PHASE 2**

- Carry out technical audit on the information available (including interviews with relevant personnel).
- Draft report.
- 

- 3.1 For clarification the items to be examined in Phase 2 are: -

- Did the original brief address the scope of the project?
- Were client instructions followed and objectives achieved?

**4.0 PHASE 3**

- Final report;
- Presentation of findings and recommendations.

5.0 Examination of the information should include the following stages:

**5.1 Pre-tender****5.2 Tender**

5.3 **Choice of Tenderer** – Was the correct information provided, particularly the technical information that the tenderer relied upon for works and/or time scales?

5.4 **Design Risks** – Were these described fully explored and apportioned appropriately?

5.5 **Commercial and Contractual Evaluation** – Was the form of contract suitable for the size, complexity and duration of the project?

**5.6 Construction Phase****5.7 Post Construction Phase**

- Duration,
- Special circumstances,
- Value for money.

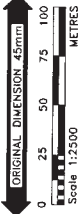
**APPENDIX B**  
**Location Plan**

**NOTES:**

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**LEGEND:**  
 CH CHAMBER  
 OM OSCILLATING MONITOR  
 AH 4 WAY HYDRANT

Reference drawings



THIS DRAWING IS TAKEN FROM DRG No 6878/53 PROVIDED BY GUERNSEY TECHNICAL SERVICES.

REV	DATE	DETAILS

# STATES OF GUERNSEY

**Project:** H.S.S. PUMPING STATION - PHASE 3 AND NORTH SIDE FIREMAIN EXTENSION

## LOCATION PLAN

**STATUS:**  
 PRELIMINARY  
 DRAWN BY: [Name]  
 CHECKED: [Name]  
 DATE: 2/12/03  
 SCALE: 1:2500  
 DRAWING No: 0127-01



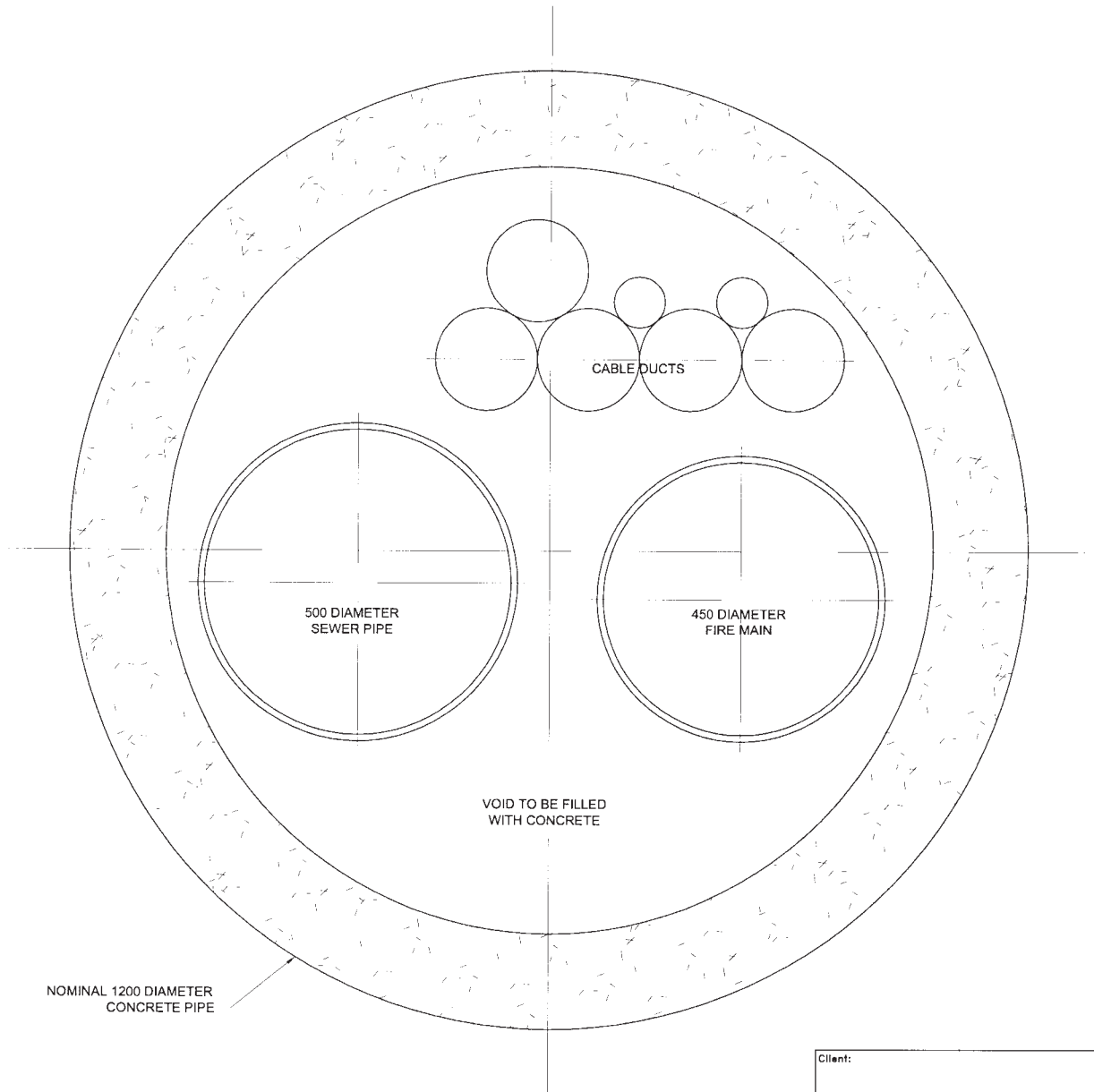
**APPENDIX C**

**Cross Sections of Cross Harbour Mains**

## **CROSS-SECTIONS OF CROSS-HARBOUR MAIN**

### **1.0 COMMENTARY ON CROSS SECTIONS**

- 1.1 Section 1 shows the designed section as shown on the Tender Drawings; there seems to be enough room for all the pipes.
- 1.2 Section 2 shows the same section, but now also shows the minimum possible size of the outer concrete pipe (1170mm) and the enlargement of the internal plastic pipes at their joints. (The ducts used welded pipes which are assumed not to have oversize joints).
- 1.3 It can be seen that the plastic pipe joints encroach on the 1170mm diameter, and that in fact the 500mm diameter pipe joint also encroaches on the nominal pipe. If the pipes are to be pulled through the pipe, there obviously needs to be some clearance between the inside of the concrete pipe and the plastic pipe joints. This is shown in the next section.
- 1.4 Section 3 shows the minimum internal diameter of the concrete pipe with the plastic pipes re-arranged to provide clearance; it is assumed that the joints can be staggered, which requires then that the pipes are pulled together.
- 1.5 It is still a tight fit and there is probably not now room for the cable ducts (certainly not as a single group)
- 1.6 Section 4 shows the main as constructed; the cable ducts are now in a separate trench.



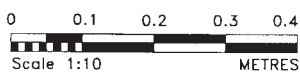
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CONCRETE PIPE

500 DIAMETER  
SEWER PIPE

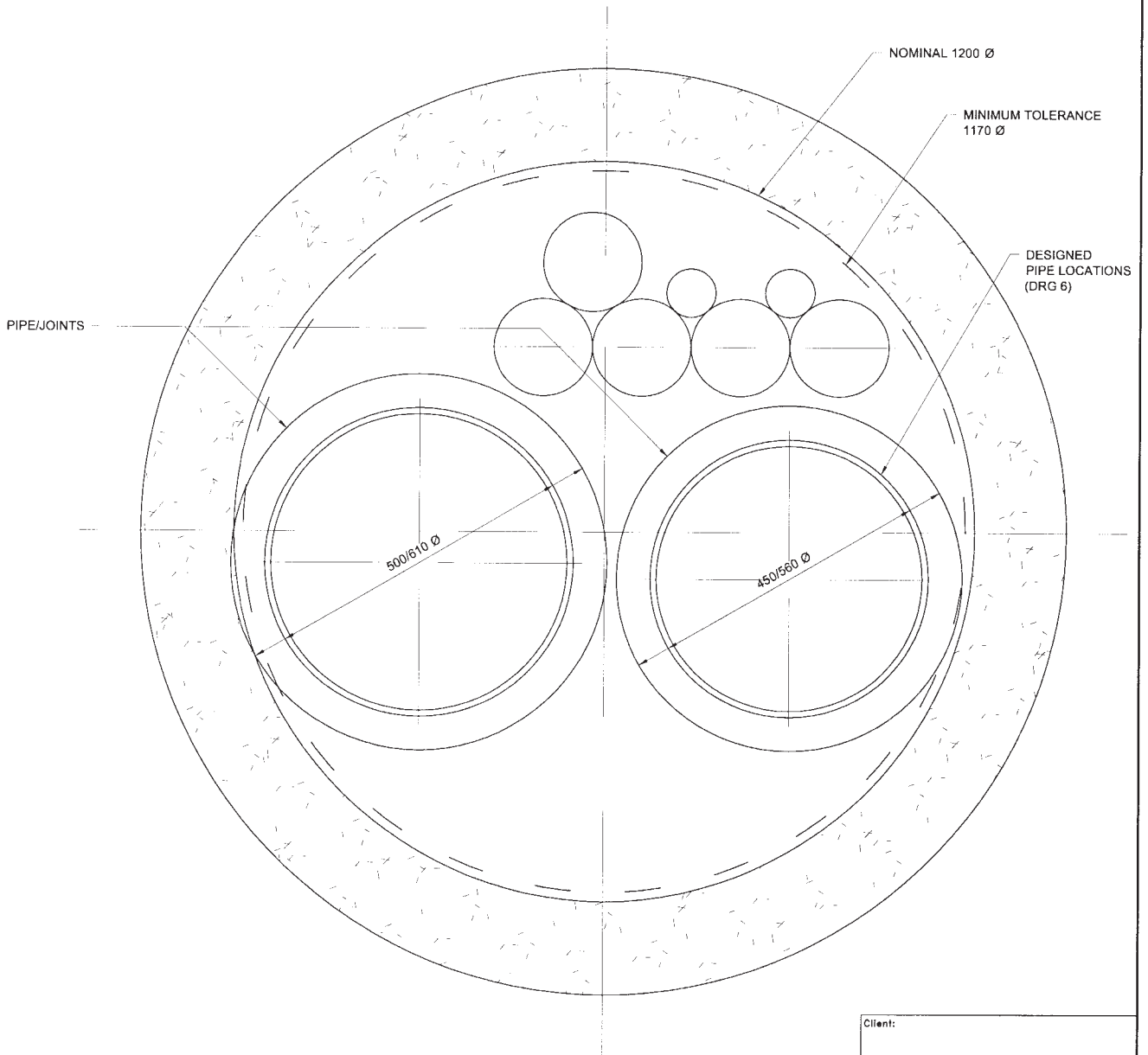
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FIRE MAIN

CABLE DUCTS

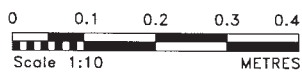
VOID TO BE FILLED  
WITH CONCRETE

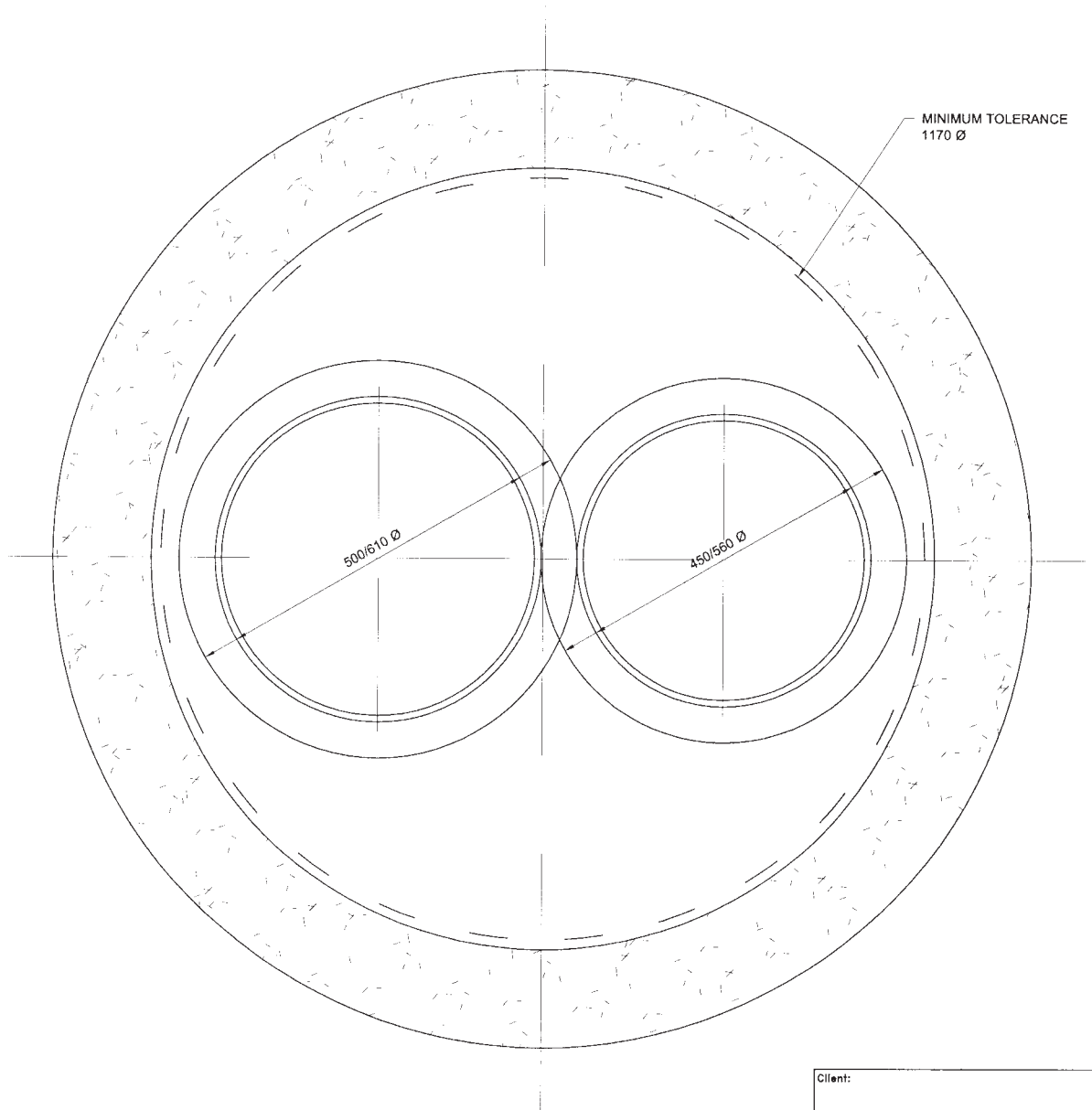


Client:		<b>STATES OF GUERNSEY</b>	
Project:		H.S.S. PUMPING STATION - PHASE 3 AND NORTH SIDE FIREMAIN EXTENSION	
Title:		AS SHOWN ON TENDER DRAWINGS. NOMINAL DIMENSIONS, NO PIPE COLLARS	
<small>Marine Consulting Engineers</small> 270 Vauxhall Bridge Road London SW1V 1BB Tel: +44(0)20-7834 7267 Fax: +44(0)20-7834 7265 www.marinece.co.uk			
STATUS	SCALE		
PRELIMINARY	1:10		
DRAWN BY	CHECKED	DATE	
DWB		2/12/03	
DRAWING No: 0327-02			REV.



Client:	
<b>STATES OF GUERNSEY</b>	
Project: H. S. S. PUMPING STATION - PHASE 3 AND NORTH SIDE FIREMAIN EXTENSION	
Title: AS DESIGNED SHOWING MINIMUM CONCRETE PIPE DIAMETER AND INTERNAL PIPE COLLARS	
<small>Mentire Consulting Engineers</small>	
<small>270 Vauxhall Bridge Road London SW1V 1BB Tel: +44(0)20-7834 7267 Fax: +44(0)20-7834 7265 www.mentire.co.uk</small>	
STATUS PRELIMINARY	SCALE 1:10
DRAWN BY DWB	CHECKED DATE 2/12/03
DRAWING No: 0327-03	
REV.	





Client:

## STATES OF GUERNSEY

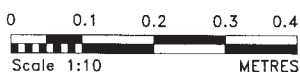
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PHASE 3 AND NORTH SIDE  
FIREMAIN EXTENSION

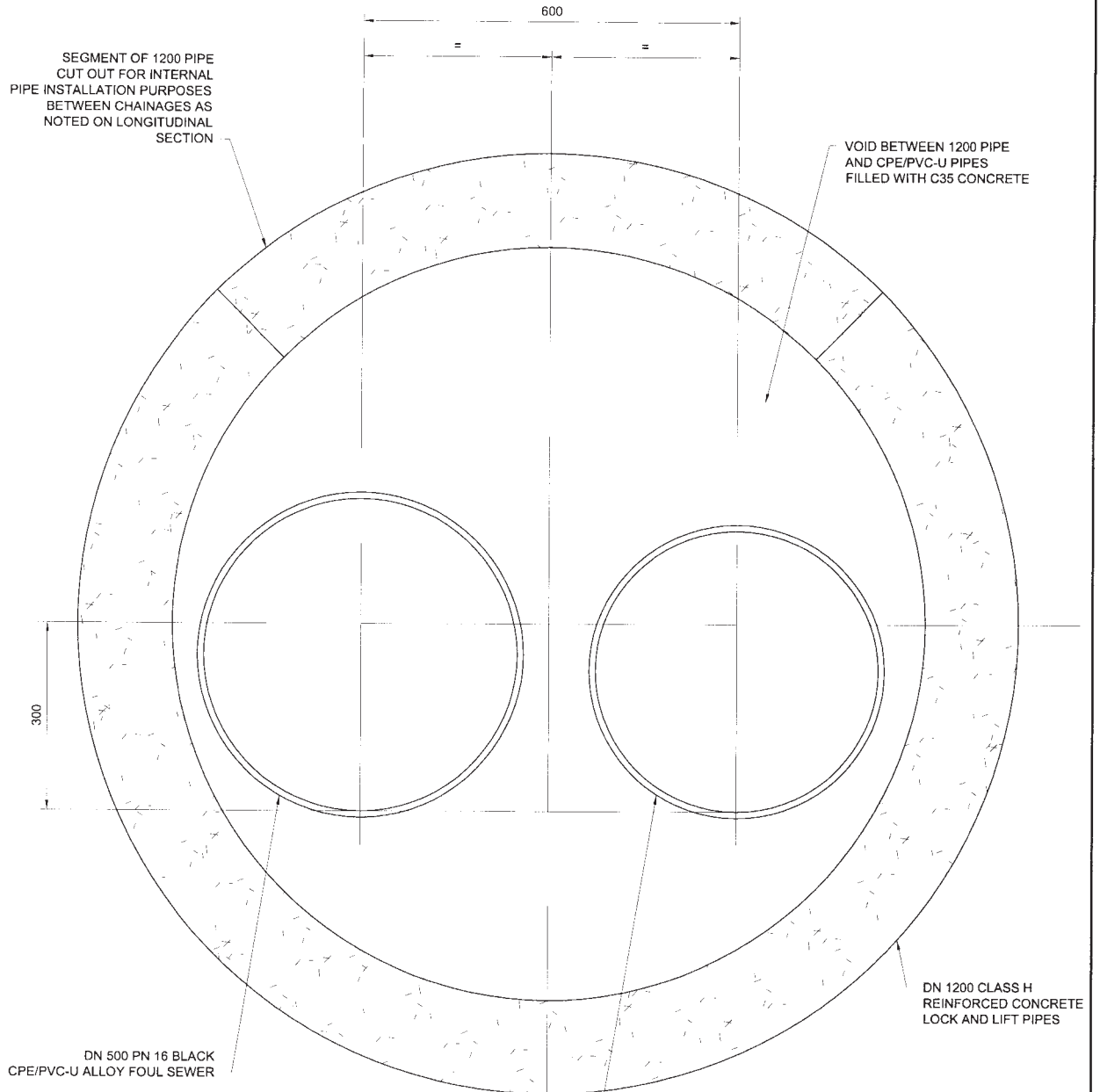
Title:  
INTERNAL PIPES REARRANGED  
TO PROVIDE CLEARANCE FOR  
COLLARS AGAINST 1170  
INTERNAL DIAMETER

Matrix Consulting Engineers

270 Vauxhall Bridge Road  
London SW1V 1BB  
Tel: +44(0)20-7634 7267  
Fax: +44(0)20-7634 7285  
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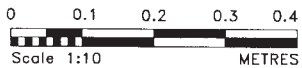
Client:  
**STATES OF GUERNSEY**

Project:  
H.S.S. PUMPING STATION - PHASE 3 AND NORTH SIDE FIREMAIN EXTENSION

Title:  
AS CONSTRUCTED

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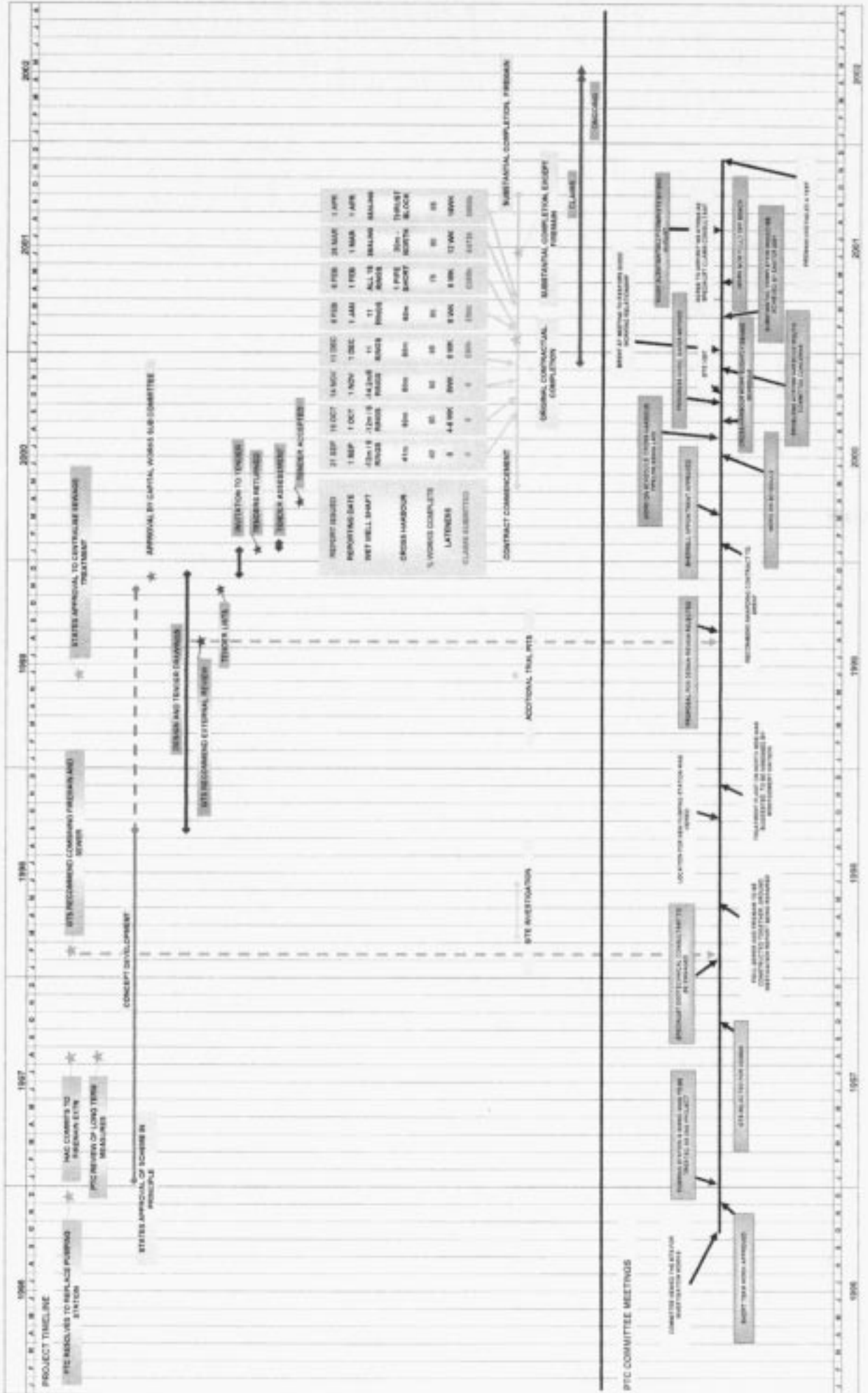
**APPENDIX D**  
**Simple Costing of a 'Round The Harbour Pipeline' Alternative**

**SIMPLE COSTING OF THE 'ROUND THE HARBOUR' OPTION**

1. Based on rates and costs extracted from Brent tender.
2. Part 5 of the BQ sets provides the cost of the pumping main from the new pumping station to connect to the existing pumping main.
3. It is for a single 315 mm diameter pipe laid in trench up to 3m deep.
4. The total cost is £21,524 for a length of 78m or £276/m.
5. The new main would require two larger pipes at significantly greater depths (possibly beyond the range of trenching), so allow £500/m.
6. Distance from MH 4501 (at the root of the north pier) to the pumping station is approximately 1250m.
7. Estimated cost  $1250 \times £500 = £625,000$
8. Note that even at the basic rate £276 without enhancement, the cost is still ~£345,000
9. The comparable item in the tendered scheme would be BQ Part 4 cross harbour fire-main and foul sewer with a billed total of £348,677.
10. This is a very simplistic analysis, but it does suggest that any financial saving in this alternative is likely to be illusory.

**APPENDIX E**  
**Project Timeframe Chart**

ST SAMPSONS GUERNSEY  
MAJOR PROJECT EVENTS



RELEVANT MARINE EXPERIENCE 1994 - 2000				
PROJECT	VALUE	CLIENT	DESCRIPTION	
Isles of Scilly Coastal Protection: Bryher	£0.6m	The Council of the Isles of Scilly	The contract included working at low water, constructing 3 areas of rock revetment from the beaches at Little Poplestone, Great Poplestone and Great Porth.	
Isles of Scilly Coastal Protection: Porthcressa	£1.6m	The Council of the Isles of Scilly	Tidal beach work involving the construction of a 260m long reinforced concrete, stone faced sea wall founded on and the construction of a 3.5 tonne boulder rock revetment.	
Isles of Scilly Coastal Protection: St Agnes	£0.4m	The Council of the Isles of Scilly	Construction of block revetments and masonry faced mass concrete seawalls.	
Isles of Scilly Coastal Protection: Tresco	£0.3m	The Council of the Isles of Scilly	Construction of rc sea wall and rock armour flanks, and toe.	
Cattedown Reclamation Scheme	£3m	Cattedown Regeneration Ltd	Construction of a 6 acre low water tidal reclaim area in the Cattewater at Plymouth.	
Kingsand/Cawsand Waste Water Transfer Scheme	£1.8m	South West Water	The decommissioning of four existing low water crude sewage outfalls and construction of 4 Pumping Stations in tidal conditions.	
Plymouth Pump Stations Phase 3	£1.6m	South West Water	Construction of pump stations, re sewerage and outfalls, some in tidal conditions.	
Budleigh Salterton	£2.6m	South West Water	The works included the construction of two sea front storm attenuation tanks and associated pumping stations and outfall repairs. The largest tank, a 25m diameter one-pass pre-cast segmental shaft, was to be constructed to below low water level in running sand.	
Kingsbridge Estuary Crossing	£200k	South West Water	Construction of a MDP pipeline across the tidal Salcombe Estuary. The pipeline was weighted with precast concrete weight collars, and strapped to driven concrete piles. Specialist and ancillary piling equipment was designed and fabricated in-house to facilitate economic construction. All works having to be carried out during tidal windows.	
Paignton CSO Attenuation Tanks	£1.8m	South West Water	The scheme included the construction of 3,000 m3 of attenuation tanks, interception sewers, screens, pumping station and associated pipework in sensitive locations behind the sea wall. Whilst the sea wall provided protection from inundation from the sea, the excavations were effected by tidally influenced ground water.	
Swanage Wastewater Treatment Works	£7.5m	Wessex Water	The contract was for the Civil Engineering and Construction of a micro-filtration wastewater treatment works, the largest plant of its type in the world. The work included a sea front excavation 100m x 30m x 10m deep for the construction of the process building and tidal working on the outfall.	
Perrancombe Flood Alleviation	£1.4m	Environment Agency	This contract comprised various works to alleviate flooding of Perrancombe Stream, including the outfall structure on the beach.	

PROJECT	VALUE	CLIENT	DESCRIPTION
Brixham Sewerage Improvements	£1.5m	South West Water	New and on-line replacement sewers to various locations in Brixham and outfall works to below low water in Brixham Harbour.
Plymouth City Saline Infiltration	£2.3m	South West Water	Saline infiltration in Plymouth affected 20 catchment areas, with over 12 kilometres of pipelines subject to tidal infiltration, directly through the existing outfall pipes, and indirectly through ground water infiltration into pipelines below the tide levels.
North Devon Outfalls	£0.4m	Seacore	Design and Construction of an extension of the existing sewage outfalls and installation of diffusers at Coombe Martin, Lynton and Lynmouth. All works were either tidal or below low water.
Mullion Harbour	£0.2m	National Trust	The harbour walls at Mullion suffered considerable storm damage in the winter of 1994/95. The Southern Breakwater, the most exposed part, required extensive repairs at and just below low water springs.
Padstow Lifeboat Station Slipway Repairs	£0.5m	RNLI	Situated on Trevoze Head, the slipway was repaired where it had been exposed to the elements since it was built in 1967 and parts of the steel and concrete structure had become seriously eroded in the tidal zone.
Barbican Tanks Renovation, Plymouth	£0.1m	South West Water	Cleaning and reinverting existing storage tanks at low water.
Island Hotel, Tresco	£0.3m	Isles of Scilly Council	Coastal protection works
Berryhead Sea Outfall Remedials, Torbay	£0.1m	South West Water	Repair works to tidal outfall
Lostwithiel Gunniting	£0.1m	South West Water	Extensive river bank repair work undertaken in tidal conditions
St Ives Storage Tanks Refurbishment and Rising Main	£1.7m	South West Water	Structural repairs to tidal storage tanks and construction of new 1m dia rising main under tidal conditions.
Seaton Downderry	£1.8m	South West Water	Inter-tidal beach pipeline and pumping stations
Mousehole Harbour	£0.2m	Penwith	Outfall and harbour wall repairs and rock armouring
Mevagissey	£0.4m	South West Water	Inter-tidal outfall and pumping station refurbishment

**Atkins Water**  
Woodcote Grove  
Ashley Road  
Epsom  
Surrey KT18 5BW  
England

Your Ref:  
Our Ref:

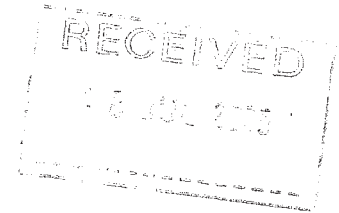
**Telephone +44 (0)1372 726140**  
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15 July 2005

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Chief Officer  
Public Services Department  
Sir Charles Frossard House  
La Charroterie  
St. Peter Port  
Guernsey  
GY1 1FH

Ext No: 4468



**By fax on 01481 725887 and post**

Dear Sir

The apparent leakage rate on the firemain is beyond the normal range expected for newly constructed pressure pipelines as specified in BS 8010 (Pressure Pipelines) and included within the workmanship specifications for the St Sampson's contract. Various investigations and surveys have been undertaken in an attempt to identify the source/s of leakage and despite considerable efforts, no significant leaks have been identified. The conclusion to date has been that leakage is attributed to a large number of small leaks in the vicinity of the harbour crossing which have arisen due to the very difficult pipe construction environment in that area.

The magnitude of leakage monitored to date (less than 0.1 litres per second) is small. (Putting this into context, in the UK water utility companies are required to provide a service level at household stopcock of 0.15l/s at 1.0bar; alternatively the design discharge from a standard household sink is 0.3l/s.) This level of leakage supports the findings of the various investigations mentioned above.

High levels of leakage are a concern in the case of potable water or sewerage mains as there are potential issues of contamination, underground damage, running costs and indeed the long term risk of further deterioration.

Notwithstanding the above, the majority of mains in the UK are running at levels of leakage many times in excess of the values observed for the St Sampson's firemain.

Observations to date demonstrate that the firemain can be maintained in a charged state, with little effort or expense via a small jockey pump. The estimated cost of running this pump is of the order of £1.50 per week which is obviously a tiny fraction of the cost of any further investigation or remedial works that could be envisaged to restore the leakage level to the contract specification.

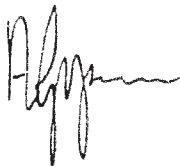
The running time of this priming pump appears to have reduced over the past few years, indicating stabilisation and indeed reduction of the level of leakage which in turns does not suggest that deterioration is a concern.

The level of leakage is small and unlikely to have knock-on effects to adjacent structures and services. The main concerned is predominantly buried below the harbour and therefore unlikely to result in adverse impacts.

In conclusion, given the time lapse since construction and the stable state of leakage that we have observed and in addition the moderate efforts needed to maintain the firemain charged, I see no reason why the main cannot be handed over to the fire service provider with a high degree of confidence that it will continue to serve its purpose in the long term.

Yours faithfully

For an on behalf of Atkins Water



Hugh Corrigan  
Principal Engineer

PP

**(NB The Policy Council supports the proposals and endorses the views of the Treasury and Resources Department in its letter dated 22 August 2005 in particular:**

- **Welcoming the openness and clarity demonstrated by the Public Services Department in disclosing a substantial amount of detailed information which clearly illustrates the complexities associated with a capital engineering project of this type.**
- **The need for States Departments to have in place robust procedures for monitoring and controlling expenditure. It is not satisfactory for a Department to delegate that responsibility wholly to its external advisers.**
- **The need for a root and branch review of the management and rationalisation of the States property portfolio to ensure that it is managed professionally and in line with modern best practice.)**

**(NB The comments of the Treasury and Resources Department are set out below)**

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

22<sup>nd</sup> August 2005

Dear Sir

#### **ST SAMPSON'S HARBOUR PUMPING STATION AND NORTH SIDE FIRE MAIN**

In its Interim Financial Report in July 2005, the Treasury and Resources Department gave notice of the overspending on this project along with others where significant funding issues had been identified. This is the first of those projects to be submitted to the States seeking sanction for funding to meet the additional spending.

As successor to the former Public Thoroughfares Committee, under the changes to the Machinery of Government, the Public Services Department has assumed responsibility for the current and future operation of the pumping station and firemain, in particular, for monitoring the conditions with regard to defects liability accepted by the Contractor in the final settlement terms. The Treasury and Resources Department acknowledges that, although the Public Services Department has presented this Report to the States, at no time did it have political responsibility for the management of this project, final settlement having been reached with the contractor before the end of April 2004.

The Treasury and Resources Department welcomes the openness and clarity demonstrated by the Public Services Department in disclosing a substantial amount of detailed information which clearly illustrates the complexities associated with a capital engineering project of this type. The Department recognises that such information on current projects cannot always be brought into the public arena whilst, for example, contractual matters remain outstanding and subject to possible arbitration or other legal processes.

The Treasury and Resources Department has noted the observations of the technical audit undertaken by the Beckett Rankine Partnership (BRP), in particular, that *“There have been a number of shortcomings in the development and execution of this project. The fundamental cause of these difficulties would seem to be a failure to fully appreciate the complexity of the work, resulting in a failure to identify the correct risk profile for the various elements of work and eventually the failure to devote adequate attention to the high risk activities. A number of mistakes have been made throughout the project. Some of these should have been obvious at the time, others can now be seen more clearly with the benefit of hindsight. While individual mistakes could theoretically be attributed to those involved, the overall problems have resulted from a combination of mistakes and (are) not therefore attributable to a single party”*. The BRP report identifies contributory causes for the difficulties experienced in this project and makes recommendations for improved procedures.

The Department welcomes the endorsement by the Public Services Department of those recommendations and, for its part, believes that those recommendations must be considered when formulating future guidance to States Departments on the procurement and management of major projects.

It is important to acknowledge the independent professional role of advisers, whether employed in-house or as external appointees, when they act, for example, as Contract Administrator or Engineer, within the terms of any given contract. It is essential that persons in that role act and are seen to act impartially. Nevertheless, this does not prohibit them seeking timely advice or guidance from the client nor from giving due consideration to all aspects of the consequences of their actions. Neither does it reduce in any way their responsibility to inform and advise the client in a pro-active manner on the progress of the project and its financial management. **When the client is a States Department it is incumbent upon that Department to have in place robust procedures for monitoring and controlling expenditure. It is not satisfactory for a Department to delegate that responsibility wholly to its external advisers.**

There can be no doubt that, over recent years, construction and engineering projects have become ever more complex. Technology, design and building techniques, procurement options, financing arrangements, regulation, contracts, to name but some aspects of the industry, have changed significantly and will inevitably continue to do so. The States must manage those complexities and associated risks, whether using in-house or external resources with appropriate expertise, experience and skills. Not to do so will leave the States vulnerable to further risk of overspending. The Treasury and Resources Department does not find that acceptable, neither does it believe that States Members or the general public will find it acceptable.

The States has to demonstrate value for money in terms of efficient and effective construction processes, the quality of the buildings and infrastructure required, their impact on the delivery of services and the short-, medium- and long-term effect on the public purse. The property portfolio and the wider physical infrastructure of the States must be developed and managed in this light.

The Department will shortly be bringing to the States a Report which will put forward its proposals for a root and branch review of the management and rationalisation of the States property portfolio. It is envisaged that these proposals, which are presently subject to consultation with States Departments, will include outline principles for the operational and financial management of capital construction projects.

The Treasury and Resources Department is determined that as a result of this review future large-scale construction projects carried out by the States will be managed professionally to minimise the risk of overspending and in such a way as to support fully the local construction industry. Projects will be phased to encourage sustainability and continuity of employment as indicated by the Economic Model.

However, as set out in its Interim Financial Report, this project *“has now been completed and the final account settled. The original budget for this project was £2.1m. The resultant overspend of £1.0m will, subject to States approval, be funded from the existing capital allocation of the Public Services Department”*.

**The Treasury and Resources Department therefore recommends the States to support the proposals from the Public Services Department but in doing so note the Treasury and Resources Department’s root and branch review of the management and rationalisation of the States property portfolio to ensure that it is managed professionally and in line with modern best practice.**

Yours faithfully

L S Trott  
Minister

The States are asked to decide:-

XVII.- Whether, after consideration of the Report dated 28<sup>th</sup> July, 2005, of the Public Services Department, they are of the opinion:-

To sanction the overspend of £950,160.37 on the capital vote for the construction of a new pumping station and ancillary works at St Sampson's Harbour and to extend the firemain to North Side, which overspend shall be charged to the capital allocation of the Public Services Department.

***STATUTORY INSTRUMENTS LAID BEFORE THE STATES***

**THE HEALTH SERVICE (BENEFIT) (LIMITED LIST) (PHARMACEUTICAL BENEFIT) (AMENDMENT NO. 2) REGULATIONS, 2005**

In pursuance of Section 35 of the Health Service (Benefit) (Guernsey) Law, 1990, the Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment No. 2) Regulations, 2005, made by the Social Security Department on 18<sup>th</sup> August, 2005, are laid before the States.

EXPLANATORY NOTE

These Regulations add to and remove from a limited list of drugs and medicines available as pharmaceutical benefit which may be ordered to be supplied by medical prescriptions issued by medical practitioners or dentists, as the case may be.

**THE HEALTH SERVICE (PHYSIOTHERAPY BENEFIT) (AMENDMENT) REGULATIONS, 2005**

In pursuance of Section 35 of the Health Service (Benefit) (Guernsey) Law, 1990, the Health Service (Physiotherapy Benefit) (Amendment) Regulations, 2005, made by the Social Security Department on 18<sup>th</sup> August, 2005, are laid before the States.

EXPLANATORY NOTE

These Regulations amend the exclusions contained in the Health Service (Physiotherapy Benefit) Regulations, 2002 to allow domiciliary visits to be provided as Physiotherapy Benefit by the physiotherapists employed under the contract with the Guernsey Physiotherapy Group to patients receiving treatment for Multiple Sclerosis.

**THE HEALTH SERVICE (PHARMACEUTICAL BENEFIT) (AMENDMENT) REGULATIONS, 2005**

In pursuance of Section 35 of The Health Service (Benefit) (Guernsey) Law, 1990, The Health Service (Pharmaceutical Benefit) (Amendment) Regulations, 2005, made by the Social Security Department on 19<sup>th</sup> August, 2005, are laid before the States.

EXPLANATORY NOTE

These Regulations modify the maximum quantity of an order for drugs and medicines on a prescription for pharmaceutical benefit from that required to treat a patient for 30 days to that required for 28 days.

**THE HEALTH SERVICE (MEDICAL APPLIANCES)  
(AMENDMENT NO 2) REGULATIONS, 2005**

In pursuance of Section 35 of The Health Service (Benefit) (Guernsey) Law, 1990, The Health Service (Medical Appliances) (Amendment No 2) Regulations, 2005, made by the Social Security Department on 19<sup>th</sup> August, 2005, are laid before the States.

EXPLANATORY NOTE

These Regulations modify the maximum quantity of an order for part I, II or III medical appliances from that required for 30 days treatment to that required for 28 days

**TREASURY AND RESOURCES DEPARTMENT**

**GUERNSEY ELECTRICITY LIMITED - SUBMISSION OF ANNUAL ACCOUNTS**

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

5<sup>th</sup> July 2005

Dear Sir

Under Section 8 of the States Trading Companies (Bailiwick of Guernsey) Ordinance 2001, the year end accounts of Guernsey Electricity Limited are required to be published as an appendix to a Billet d'Etat.

I therefore submit the Report and Financial Statements of that company for the year ended 31 March 2005.

As explained in the Director's Report the retained profit for the financial year was £1,026,000 (2004: £942,000). This performance is considerably better than budgeted and has enabled the company to pay a dividend to the States of £306,000 (2004: £281,000).

The company also continues to perform extremely well in terms of reliability of electricity supply.

The company is currently involved in carrying out a review of its contract for electricity supply through the cable link. Although, this review is yet to be completed, given the global background of high energy prices, an increase in supply costs is probable.

I should be grateful if you would include this matter as an Appendix to the September 2005 Billet d'Etat.

Yours faithfully

L S Trott  
Minister

**Guernsey Electricity Limited**

**Report and financial statements**

**31 March 2005**

# Guernsey Electricity Limited

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# Guernsey Electricity Limited

## Directors, officers and professional advisors

**Directors:**

KA Gregson	(non-executive Chairman)
I Watson	(managing)
IJ Limond	(finance)
SJ Morris	(engineering)
KJ Guille	(non-executive)
JR Shaw	(non-executive)
RJ Tee	(non-executive)
Advocate IH Beattie	(non-executive)

**Secretary:** SB Pattimore

**Bankers:**

Barclays Bank Plc  
PO Box 41  
Le Marchant House  
St Peter Port  
Guernsey  
GY1 3BE

**Legal advisers:**

Ozannes  
1 Le Marchant Street  
St Peter Port  
Guernsey  
GY1 4HP

**Auditors:**

KPMG Channel Islands Limited  
Chartered Accountants  
2 Grange Place  
The Grange  
St. Peter Port  
Guernsey  
GY1 4LD

**Registered office:**

PO Box 4  
Electricity House  
North Side  
Vale  
Guernsey  
GY1 3AD

**Company number 38692**

# Guernsey Electricity Limited

## Directors' report

The directors present their report and the audited financial statements for the year ended 31 March 2005. These comprise the profit and loss account, balance sheet, cash flow statement and notes to the financial statements set out on pages 11 to 25.

### **Incorporation**

Guernsey Electricity Limited was incorporated on 24 August 2001.

### **Principal activities**

The principal activities of the company are the generation, importation and distribution of electricity and the sale of associated goods and services.

### **Financial performance**

During the year ended 31 March 2005, turnover from electricity sales amounted to £25,284,000 (2004: £24,461,000) which represents an increase of 3.36% (2004: 2.76%). There were no tariff increases to our customers. In addition to our unit growth our financial performance reflects excellent control of costs, the revision of the useful lives of certain categories of tangible fixed assets, and generally higher contribution from all parts of the business. The impact of the useful lives changes was to reduce depreciation in the year by £583,000. Interest earned amounted to £922,000 (2004: £639,000) for the year, and deferred tax of £84,000 (2004: £115,000) has been provided for.

The profit for the year before the proposed dividend amounted to £1,332,000 (2004: £1,223,000). The retained profit after dividend of £1,026,000 (2004: £942,000) has been transferred to the profit and loss account.

### **Dividend**

The directors propose the payment of a dividend of £306,000 (2004: £281,000), being £0.0028 per share (2004: £0.0026).

### **Future prospects**

Whilst tariff levels continue unchanged, this year's growth in units sold reflects continuing increased demand from our customers. The directors remain confident that unit growth will continue. However, operating costs for the business will be increasing and some tariff change will be necessary.

### **Customers**

The number of customers as at 31 March 2005 is 28,255 (2004: 28,201).

# Guernsey Electricity Limited

## Directors' report - continued

### Units

Importation through the cable link between Guernsey, Jersey and the European grid provided 84% (2004: 81%) of the island needs in the year ended 31 March 2005 and 16% (2004: 19%) was generated on the island, as shown by the units analysis below:

	2005	2004
Units imported MWh	286,488	266,163
Units generated MWh	<u>53,098</u>	<u>63,288</u>
<b>Total units imported/generated MWh</b>	<b><u>339,586</u></b>	<b><u>329,451</u></b>

### Average price

The average price per kWh sold in the year ended 31 March 2005 was 7.97 pence (2004: 7.98 pence).

### Reliability

The reliability of Guernsey Electricity's supply is measured by minutes lost per customer. Power failures can be caused by a failure of generation plant, a failure of the distribution network or a failure of the cable link. Customers lost no minutes due to generation activity (2004: Nil). However, 14.92 minutes were lost per customer in respect of distribution and the cable link (2004: 52.73 minutes).

### Directors and their interests

The directors of the company who served during the year and to date are as detailed on page 1. The directors have no beneficial interests in the shares of the company.

### Auditors

A resolution for the reappointment of KPMG Channel Islands Limited will be proposed at the forthcoming Annual General Meeting.

For and on behalf of the Board of Directors

**KA Gregson**

**I Watson**  
*Directors*

# Guernsey Electricity Limited

## Corporate governance

### Government change

At the start of the financial year ended 31 March 2005 our shareholder relationship was with the States of Guernsey Advisory & Finance Committee. However from May 2004 the States of Guernsey was restructured and our shareholder relationship is now with the new Department of Treasury & Resources.

### Directors

In accordance with The States Trading Companies (Bailiwick of Guernsey) Ordinance, 2001 as amended the non-executive directors are appointed by the States of Guernsey on the nomination of the States of Guernsey Advisory & Finance Committee, now the Department of Treasury & Resources. The first executive directors were appointed by the Advisory & Finance Committee after consultation with the non-executive directors. Further appointments of executive directors are made by the company's Board of Directors.

The company is controlled through the Board of Directors, which currently comprises five non-executive and three executive directors. As the Chairman is mainly responsible for the running of the Board, he has to ensure that all directors receive sufficient relevant information on financial, business and corporate issues prior to meetings. The Managing Director's responsibilities focus on running the business and implementing strategy. All directors are able to take independent professional advice in furtherance of their duties if necessary.

The Board monitors the exposure to key business risks and reviews the strategic direction. It also considers environmental and employee issues. The Board has established a number of standing sub-committees and each operates within defined terms of reference. The principal sub-committees are:

- Audit and Risk
- Land and Property
- Remuneration and Nominations

In addition senior management team meetings are held each fortnight.

### Directors' remuneration

In accordance with The States Trading Companies (Bailiwick of Guernsey) Ordinance, 2001 as amended the remuneration of the non-executive directors is determined by the Department of Treasury & Resources. The remuneration of the executive directors is determined by the company's Remuneration and Nominations Committee, which comprises three non-executive directors.

# Guernsey Electricity Limited

## Corporate governance - continued

### **Relations with the shareholder**

The company's issued share capital is wholly owned by the States of Guernsey. The States Trading Companies (Bailiwick of Guernsey) Ordinance, 2001 as amended provided for the States of Guernsey Advisory & Finance Committee (now Department of Treasury & Resources) to undertake on behalf of the States the role of shareholder. In accordance therewith the share certificates for the whole issued share capital are held equally in the names of the current Minister and Deputy Minister of the Department of Treasury & Resources as nominees on behalf of the States of Guernsey. Provision is also in place for the States to give guidance to the Department of Treasury & Resources on the policies it wishes to be pursued in fulfilling this role. Each year the company submits its rolling 5 year plan to the Department of Treasury & Resources.

### **Financial reporting**

The company has a comprehensive system for reporting the financial performance of the company and each of its business units. Management and the Board of Directors review these monthly. The financial statements for the accounting period ending on the accounting reference date of 31 March are reviewed and signed on behalf of the Board of Directors, and will be presented to the shareholder at the forthcoming annual general meeting.

### **Internal control**

An ongoing process for identifying, evaluating and managing the significant risks faced by the company is in place. The monitoring of this process is one responsibility of the Audit & Risk Sub-Committee and a system of developing the way in which the company captures and assesses its risks has been initiated.

### **Compliance**

All business units have well established compliance procedures.

### **IT systems**

The company has established controls and procedures over the security of data held on IT systems and has in place comprehensive disaster recovery arrangements. These arrangements are tested regularly and reviewed by an independent consultant.

### **Internal audit**

Internal audit has a continuing role in monitoring and reporting on business risks. The internal auditor reports directly to the Audit & Risk Sub-Committee on all such matters.

### **Risk management**

The Board of Directors has overall responsibility for identifying, evaluating and managing major business risks facing the company. The Audit & Risk Sub-Committee provides assistance to the Board in these matters.

# Guernsey Electricity Limited

## Statement of directors' responsibilities

The directors are responsible for preparing financial statements for each financial year which give a true and fair view of the state of affairs of the company and of the profit or loss of the company for that period and are in accordance with applicable laws. In preparing those financial statements the directors are required to:

- select suitable accounting policies and then apply them consistently;
- make judgements and estimates that are reasonable and prudent;
- state whether applicable accounting standards have been followed subject to any material departures disclosed and explained in the financial statements; and
- prepare the financial statements on the going concern basis unless it is inappropriate to presume that the company will continue in business.

The directors are responsible for keeping proper accounting records which disclose with reasonable accuracy at any time the financial position of the company and to enable them to ensure that the financial statements comply with The Companies (Guernsey) Law, 1994. They are also responsible for safeguarding the assets of the company and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.



KPMG Channel Islands Limited  
 2 Grange Place  
 The Grange  
 Guernsey, Channel Islands  
 GY1 4LD

## Independent auditors' report to the members of Guernsey Electricity Limited

We have audited the financial statements on pages 8 to 25.

This report is made solely to the company's members, as a body, in accordance with section 64 of The Companies (Guernsey) Law, 1994. Our audit work has been undertaken so that we might state to the company's members those matters we are required to state to them in an auditor's report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the company and the company's members as a body, for our audit work, for this report, or for the opinions we have formed.

### **Respective responsibilities of directors and auditors**

The directors are responsible for preparing the directors' report and, as described on page 6, the financial statements in accordance with applicable Guernsey law and UK accounting standards. Our responsibilities, as independent auditors, are established in Guernsey by law, the UK Auditing Practices Board and by our profession's ethical guidance.

We report to you our opinion as to whether the financial statements give a true and fair view and are properly prepared in accordance with The Companies (Guernsey) Law, 1994. We also report to you if, in our opinion, the directors' report is not consistent with the financial statements, if the company has not kept proper accounting records, or if we have not received all the information and explanations we require for our audit.

We read the other information accompanying the financial statements and consider whether it is consistent with those statements. We consider the implications for our report if we become aware of any apparent misstatements or material inconsistencies with the financial statements.

### **Basis of audit opinion**

We conducted our audit in accordance with UK Auditing Standards issued by the Auditing Practices Board. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgements made by the directors in the preparation of the financial statements, and of whether the accounting policies are appropriate to the company's circumstances, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements.

### **Opinion**

In our opinion the financial statements give a true and fair view of the state of the company's affairs as at 31 March 2005 and of its profit for the year then ended and have been properly prepared in accordance with The Companies (Guernsey) Law, 1994.

*Chartered Accountants*

# Guernsey Electricity Limited

## Profit and loss account for the year ended 31 March 2005

	<i>Note</i>	<b>Year ended 31 March 2005 £'000</b>	Year ended 31 March 2004 £'000
<b>Turnover</b>	2	27,813	26,862
<b>Cost of sales</b>		<u>18,330</u>	<u>16,481</u>
<b>Gross profit</b>		9,483	10,381
<b>Net operating expenses</b>		<u>8,966</u>	<u>10,396</u>
<b>Operating profit/(loss)</b>	4	517	(15)
Loss on disposal of assets		<u>9</u>	<u>40</u>
<b>Profit/(loss) on ordinary activities before interest and exceptional item</b>		508	(55)
Interest receivable	5	922	639
Interest payable	5	(14)	(10)
Exceptional item	6	<u>-</u>	<u>764</u>
<b>Profit on ordinary activities before taxation</b>		1,416	1,338
Taxation	7	<u>84</u>	<u>115</u>
<b>Profit for the financial year after taxation</b>		1,332	1,223
Dividend	8	<u>306</u>	<u>281</u>
<b>Retained profit for the year</b>		1,026	942
Retained profit brought forward		<u>1,974</u>	<u>1,032</u>
<b>Retained profit carried forward</b>		<u>3,000</u>	<u>1,974</u>

All activities derive from continuing operations.

There were no recognised gains or losses for the current and prior financial year other than as stated in the profit and loss account.

The notes on pages 11 to 25 form part of these financial statements.

# Guernsey Electricity Limited

## Balance sheet at 31 March 2005

	<i>Note</i>	2005 £'000	2004 £'000
<b>Tangible fixed assets</b>	9	<u>93,693</u>	<u>95,893</u>
<b>Investment</b>	10	<u>150</u>	<u>200</u>
<b>Current assets</b>			
Stocks and work in progress	11	3,034	2,724
Debtors and prepayments	12	5,728	4,646
Balances with States Treasury	13	18,062	15,535
Cash at bank and in hand		<u>117</u>	<u>60</u>
		<u>26,941</u>	<u>22,965</u>
<b>Creditors: amounts falling due within one year</b>	14	<u>(5,777)</u>	<u>(5,281)</u>
<b>Net current assets</b>		<u>21,164</u>	<u>17,684</u>
<b>Total assets less current liabilities</b>		115,007	113,777
<b>Creditors: amounts falling due after more than one year</b>	15	(2,283)	(2,163)
<b>Provision for liabilities and charges</b>	16	<u>(515)</u>	<u>(431)</u>
<b>Net assets</b>		<u>112,209</u>	<u>111,183</u>
<b>Share capital</b>	17	109,209	109,209
<b>Profit and loss account</b>		<u>3,000</u>	<u>1,974</u>
<b>Shareholders' funds</b>	21	<u>112,209</u>	<u>111,183</u>

The financial statements on pages 8 to 25 were approved by the Board of Directors on

2005.

Signed on behalf of the Board of Directors

**KA Gregson**

**I Watson**  
*Directors*

The notes on pages 11 to 25 form part of these financial statements.

# Guernsey Electricity Limited

## Cash flow statement for the year ended 31 March 2005

	<i>Note</i>	Year ended 31 March 2005 £'000	Year ended 31 March 2004 £'000
<b>Net cash inflow from operating activities</b>	<i>18</i>	<b><u>4,710</u></b>	<b><u>6,125</u></b>
<b>Returns on investments and servicing of finance</b>			
Interest received		922	639
Interest paid		<u>(14)</u>	<u>(10)</u>
<b>Net cash inflow from returns on investments and servicing of finance</b>		<b><u>908</u></b>	<b><u>629</u></b>
<b>Capital expenditure and financial investment</b>			
Payments to acquire tangible fixed assets		(2,953)	(4,774)
Proceeds of disposal of tangible fixed assets		11	23
Customers' contributions towards capital expenditure		146	874
Purchase of investment		<u>-</u>	<u>(250)</u>
<b>Net cash outflow from capital expenditure and financial investment</b>		<b><u>(2,796)</u></b>	<b><u>(4,127)</u></b>
Dividends paid		<u>(281)</u>	<u>(230)</u>
<b>Net cash inflow before use of liquid resources and financing</b>		<b><u>2,541</u></b>	<b><u>2,397</u></b>
<b>Management of liquid resources</b>			
Net cash movements with States Treasury		(2,527)	(2,908)
Exceptional item	<i>6</i>	<u>-</u>	<u>764</u>
<b>Net cash outflow from management of liquid resources</b>		<b><u>(2,527)</u></b>	<b><u>(2,144)</u></b>
<b>Increase in cash</b>	<i>19 &amp; 20</i>	<b><u>14</u></b>	<b><u>253</u></b>

Movements in balances with States Treasury and the exceptional item are deemed liquid resources in accordance with Financial Reporting Standard 1 (as revised).

The notes on pages 11 to 25 form part of these financial statements.

# Guernsey Electricity Limited

## Notes to the financial statements

*Year ended 31 March 2005*

### 1. Principal accounting policies

The following accounting policies have been applied consistently in dealing with items which are considered material in relation to the company's financial statements:

#### *Basis of preparation*

The financial statements have been prepared under the historical cost convention and in accordance with UK applicable accounting standards.

#### *Transfer of undertaking*

The company was established in accordance with the provisions of the States Trading Companies (Bailiwick of Guernsey) Law 2001 (Commencement) Ordinance and the States Trading Company (Bailiwick of Guernsey) Ordinance 2001 to take over the generation, importation and distribution of electricity previously carried out by the States of Guernsey Electricity Board with effect from 1 February 2002. The transfer value of the assets and liabilities introduced, together with the business undertaken in accordance with the enabling legislation, represents cost to Guernsey Electricity Limited. The directors have reviewed the amounts attributed and are satisfied that fair values have been applied and therefore no adjustment arises on any aspect of the transferred undertaking.

#### *Sales of electricity*

Sales of electricity include the estimated value of unbilled units at the year end. The unbilled units are valued at current tariff rates.

#### *Hire purchase*

The company provides hire purchase facilities on the provision of goods and services ancillary to the principal activities of the company. The sales value is included in turnover at the inception of the hire purchase transaction and interest is included in interest receivable over the finance period of the transaction.

#### *Interest*

Interest receivable and payable are accounted for on an accruals basis.

#### *Deferred income*

Premium income receivable in respect of lease arrangements entered into is recognised over the initial period of the lease. Customers' contributions towards capital expenditure are credited in equal annual amounts to the profit and loss account over the estimated life of the assets to which they relate.

#### *Tangible fixed assets and depreciation*

Tangible fixed assets are stated at cost less depreciation. Assets transferred from the States of Guernsey Electricity Board as at 1 February 2002 are being depreciated over their residual estimated useful lives from that date applying the periods noted below.

# Guernsey Electricity Limited

## Notes to the financial statements - continued

Year ended 31 March 2005

### 1. Principal accounting policies - continued

#### *Tangible fixed assets and depreciation – continued*

Depreciation is calculated so as to write off the cost of tangible fixed assets over the period of their estimated useful lives using the straight line method. The estimated life of each class of fixed asset is set out below. Depreciation commences in the year of acquisition or on completion of construction. Any shortfall of depreciation arising on the disposal or write-off of fixed assets is charged to the disposals account and any proceeds arising from the disposal are credited to that account. Land is not depreciated. During the year a review of tangible fixed asset estimated useful lives was undertaken. The revised estimated lives are as shown below:

	Current estimated life in years	Previous estimated life in years
Buildings	10 – 40	20 – 30
Cable Link	25	25
Plant and machinery - Generation	25 – 30	10 – 25
- Distribution	20 – 35	25
Distribution network comprising:		
Distributors	35	25
Meters	5 – 10	15
Cyclocontrol receivers	5	5
Motor vehicles	5	5
Furniture and equipment	3 – 10	3 – 10
Minor plant	5 – 10	5 – 10

#### *Investments*

Investments held as fixed assets are stated at cost less provision for any impairment.

#### *Stocks and work in progress*

Stocks and work in progress are valued at the lower of cost and net realisable value. In respect of goods held for resale a provision is made based on the time elapsed since the goods were purchased. Provision is made for other stocks relating to strategic plant based upon the remaining useful economic life of the assets to which they relate.

#### *Leases*

Operating lease rentals are charged to profit and loss in equal annual amounts over the lease term.

#### *Deferred taxation*

Provision for deferred tax is made in full on timing differences which result in an obligation at the balance sheet date to pay tax at a future date, at rates expected to apply when they crystallise based on current tax rates and laws. Deferred tax assets are only recognised to the extent that it is regarded as more likely than not that they will be recovered. Deferred tax assets and liabilities are not discounted.

# Guernsey Electricity Limited

## Notes to the financial statements - continued

Year ended 31 March 2005

### 1. Principal accounting policies - continued

#### *Foreign exchange*

Transactions denominated in foreign currencies are translated into functional currency at the rates ruling at the dates of the transactions. Monetary assets and liabilities denominated in foreign currencies at the balance sheet date are translated at the rates ruling at that date. Foreign currency profits and losses are dealt with in the profit and loss account.

#### *Financial instruments*

The company enters into forward exchange contracts to mitigate a large percentage of the risk of fluctuations in the currency rate between the Euro and the Pound Sterling in meeting its financial obligations for the import of electricity units from the European grid. Gains and losses on these contracts are deferred and recognised in the profit and loss account only when the delayed transaction has itself been reflected in the company's account.

The company does not hold or issue financial instruments for speculative purposes.

#### *Pension costs*

The company continues to apply Statement of Standard Accounting Practice 24 ("SSAP 24"). The costs of the defined benefit scheme are charged to the profit and loss account over the period during which the company benefits from the employees' services. Surpluses or deficiencies are spread over the expected average remaining working lifetime of employees in proportion to their expected payroll costs. The new pension disclosures under Financial Reporting Standard 17 ("FRS 17") are provided under a separate note to these financial statements.

#### *Joint arrangements*

The Channel Islands Electricity Grid Limited is a joint arrangement between the Jersey Electricity Company Limited and Guernsey Electricity Limited. The company was formed to manage the project and the ongoing operation of the cable link between Guernsey, Jersey and France.

In accordance with Financial Reporting Standard 9, "Associates and Joint Ventures", these financial statements include the company's entitlement to the assets, liabilities, cash flows and the shared items of this joint arrangement where the company's entitlements are fully determined by contracts with the other party to the joint arrangement.

### 2. Turnover

	Year ended 31 March 2005 £'000	Year ended 31 March 2004 £'000
Sales of electricity	25,284	24,461
Other sales	<u>2,529</u>	<u>2,401</u>
	<u>27,813</u>	<u>26,862</u>

All sales of electricity arise from customers in the Island of Guernsey. Other sales are made to customers throughout the Bailiwick of Guernsey.

# Guernsey Electricity Limited

## Notes to the financial statements - continued

Year ended 31 March 2005

### 3. Cable link

The company has an ongoing obligation to its supplier, Electricité de France, to meet the cost of a minimum amount of electricity. This is a revenue commitment which amounts to approximately £1,681,000 per annum based on the tariff applicable at March 2005 (2004: £1,557,000). The company is also committed to contribute towards the reinforcement of the French network. This liability is being satisfied by a revenue payment of approximately £110,000 per annum over the period of the contract.

The company is party to arrangements entered into on 29 November 1999 with the Jersey Electricity Company Limited, entering into a 35 year lease and lease back arrangements in the amount of £70.13 million in respect of the installation and operation of the Interconnector system between France, Jersey and Guernsey. The counterparties in the arrangement are Natwest Offshore Limited and the Royal Bank of Scotland International Limited.

On entering into the arrangements an initial premium of £1.45 million was received which is being amortised over 15 years (the initial period of the lease). At commencement annual receipts and payments under the lease and lease back arrangements both total £1.21m. This figure is set to escalate at 6% per annum over the duration of the lease. The company has an unconditional right of set-off of all committed lease payments against lease receipts such that there is no risk that net lease payments will be required.

### 4. Operating profit

*Operating profit is after charging/(crediting):*

	Year ended 31 March 2005 £'000	Year ended 31 March 2004 £'000
Depreciation (note 9)	5,058	5,886
Investment impairment (note 10)	50	50
Rentals under operating leases	101	98
Auditors' remuneration - statutory audit	17	15
- non-audit services	7	8
Bad debts	29	20
Emoluments		
- non-executive directors	46	44
- executive directors (including pension)	359	390
Regulatory costs		
- external (including audit)	364	188
- internal	152	130
Other operating income	<u>(858)</u>	<u>(388)</u>

# Guernsey Electricity Limited

## Notes to the financial statements - continued

Year ended 31 March 2005

### 5. Interest

	Year ended 31 March 2005 £'000	Year ended 31 March 2004 £'000
Interest receivable:		
Deposits with banks and States Treasury	829	558
Hire purchase	<u>93</u>	<u>81</u>
	<u>922</u>	<u>639</u>
Interest payable:		
Bank overdraft	8	4
Security deposits	<u>6</u>	<u>6</u>
	<u>14</u>	<u>10</u>

### 6. Exceptional item

Of the £5,350,000 that the States of Guernsey Electricity Board had on deposit with the Bank of Credit and Commerce International when it ceased trading on 5 July 1991, £4,881,008 has been recovered. No distribution was received in the current year (2004: £764,375).

### 7. Taxation

The basis of assessment of trading income to Guernsey tax is changing from a prior year basis to a current year basis from 2006. The trading profits shown in these accounts are subject to transitional provisions under the Taxes & Duties (Provisional Effect)(Guernsey) Law 1992.

The profits or losses assessed for Guernsey Income Tax for the Year of Charge 2005 will be the average of the adjusted profits or losses for the accounting years ended 31 March 2004 and 31 March 2005.

Previously the Company accounted for tax based on the taxable profit or loss for that accounting period notwithstanding that tax was chargeable to the Company on a prior year basis. The accounting impact of the transition to an actual basis from 2006 is that only half of the year's profits or losses for 2004 and 2005 year ends will be assessed for tax at 20%.

To normalise the impact of the transition, the Company is no longer accounting for tax on a prior year basis and accounting for tax at an effective rate of 10% on the tax losses arising in years ended 31 March 2004 and 31 March 2005.

With effect from the 2006 year end the Company will make full provision for tax, based on the tax rate applicable to the Company, on its current year taxable profits or losses.

#### *Current taxation*

No charge for Guernsey income tax at 20p in the £ arises due to the adjusted loss for tax purposes for the year.

# Guernsey Electricity Limited

## Notes to the financial statements - continued

Year ended 31 March 2005

### 7. Taxation - continued

#### *Deferred taxation*

The transitional provisions were not in effect for the company's financial year ended 31 March 2004. The reconciliation for the current year is:

	<b>Year ended 31 March 2005 £,000</b>
Profit before tax	<u>1,416</u>
Effective tax charge at 20%	<u>283</u>
Effect of transitional provisions	<u>(199)</u>
Deferred tax charge	<u>84</u>

Provision of £84,000 (2004: £115,000) for Guernsey income tax at 20p in the £ has been made in the profit and loss account due to timing differences arising from capital allowances exceeding depreciation for the period and unrelieved trading loss for tax purposes.

The deferred tax charge in the profit and loss account for the year is:

	<b>Year ended 31 March 2005 £'000</b>	Year ended 31 March 2004 £'000
Timing differences on capital allowances and depreciation	<u>2,354</u>	593
Unrelieved trading losses	<u>(2,270)</u>	<u>(478)</u>
	<u>84</u>	<u>115</u>

### 8. Dividend

	<b>Year ended 31 March 2005 £'000</b>	Year ended 31 March 2004 £'000
Proposed dividend of £0.0028 per share (2004: £0.0026)	<u>306</u>	<u>281</u>

# Guernsey Electricity Limited

## Notes to the financial statements - continued

Year ended 31 March 2005

### 9. Tangible fixed assets

	1 April 2004 £'000	Additions £'000	Written off/ disposals £'000	31 March 2005 £'000
<i>Cost</i>				
Land and buildings	26,262	279	6	26,535
Cable link	28,918	10	-	28,928
Plant and machinery:				
Generation	29,387	501	12	29,876
Distribution	6,113	713	5	6,821
Distribution network	15,845	975	16	16,804
Motor vehicles, furniture and equipment, minor plant	<u>1,817</u>	<u>400</u>	<u>47</u>	<u>2,170</u>
	<u>108,342</u>	<u>2,878</u>	<u>86</u>	<u>111,134</u>
	1 April 2004 £'000	Charge for the year £'000	Written off/ disposals £'000	31 March 2005 £'000
<i>Depreciation</i>				
Land and buildings	2,013	885	4	2,894
Cable link	2,704	1,249	-	3,953
Plant and machinery:				
Generation	4,693	1,378	12	6,059
Distribution	533	166	2	697
Distribution network	1,805	998	7	2,796
Motor vehicles, furniture and equipment, minor plant	<u>701</u>	<u>382</u>	<u>41</u>	<u>1,042</u>
	<u>12,449</u>	<u>5,058</u>	<u>66</u>	<u>17,441</u>
<b>Net book value</b>	<u>95,893</u>			<u>93,693</u>

Included above are assets in the course of construction of £3,417,000 (2004: £2,314,000), which are not depreciated.

# Guernsey Electricity Limited

## Notes to the financial statements - continued

Year ended 31 March 2005

### 10. Investment

The company invested £250,000 in Marine Current Turbines Limited as part of its initiatives to keep abreast of the research and development of alternative energy sources. This investment is a minority interest and the holding is less than 5%. The benefits of this investment are spread over more than one year, and £50,000 has been charged to the profit and loss account for impairment (2004: £50,000).

### 11. Stocks and work in progress

	2005		2004	
	£'000	£'000	£'000	£'000
Fuel stocks		1,030		763
Purchased goods for resale	252		280	
Provision	<u>5</u>	247	<u>13</u>	267
Other stocks	2,641		2,538	
Provision	<u>974</u>	1,667	<u>927</u>	1,611
Work in progress		<u>90</u>		<u>83</u>
		<u>3,034</u>		<u>2,724</u>

### 12. Debtors and prepayments

	2005	2004
	£'000	£'000
Estimated value of unbilled units	2,611	2,631
Customer accounts outstanding	2,202	1,404
Other debtors	342	51
Prepayments	<u>573</u>	<u>560</u>
	<u>5,728</u>	<u>4,646</u>

### 13. Balances with States Treasury

The treasury department of the States of Guernsey is engaged to invest the company's liquid funds in excess of its daily requirements.

# Guernsey Electricity Limited

## Notes to the financial statements - continued

Year ended 31 March 2005

### 14. Creditors: amounts falling due within one year

	2005 £'000	2004 £'000
Bank overdraft	48	-
Trade creditors	1,454	1,414
Customer payments received in advance	2,719	2,495
Employee taxes and Social Security	244	233
Deferred income	142	151
Accruals and other creditors	864	707
Dividend payable	<u>306</u>	<u>281</u>
	<b><u>5,777</u></b>	<b><u>5,281</u></b>

The company has a £2 million overdraft facility, and interest is payable quarterly at 1% over UK base rate. This facility is reviewed and approved by the Board annually.

### 15. Creditors: amounts falling due after more than one year

	2005 £'000	2004 £'000
Deferred income	<u>2,283</u>	<u>2,163</u>

### 16. Provision for liabilities and charges

	2005 £'000	2004 £'000
Deferred taxation:		
Balance at 1 April	431	316
Profit and loss account charge	<u>84</u>	<u>115</u>
<b>Balance at 31 March</b>	<b><u>515</u></b>	<b><u>431</u></b>
Which comprises:		
Capital allowances in excess of depreciation	5,374	3,020
Unrelieved trading loss for tax purposes	<u>(4,859)</u>	<u>(2,589)</u>
	<u>515</u>	<u>431</u>

### 17. Share capital

	2005 £'000	2004 £'000
<i>Authorised:</i>		
125,000,000 ordinary shares of £1 each	<u>125,000</u>	<u>125,000</u>
<i>Issued and fully paid:</i>		
109,208,844 ordinary shares of £1 each	<u>109,209</u>	<u>109,209</u>

Two shares were issued on formation of the company and the remaining 109,208,842 shares were issued to equate to the consideration of £109,208,844 for the net assets acquired by the company from the States of Guernsey with effect from 1 February 2002.

# Guernsey Electricity Limited

## Notes to the financial statements - continued

Year ended 31 March 2005

### 18. Reconciliation of operating profit/(loss) to net cash inflow from operating activities

	Year ended 31 March 2005 £'000	Year ended 31 March 2004 £'000
Operating profit/(loss)	517	(15)
Depreciation charge	5,058	5,886
Investment impairment	50	50
Deferred income	(142)	(151)
(Increase)/decrease in stocks and work in progress	(310)	83
(Increase)/decrease in debtors and prepayments	(1,082)	154
Increase in creditors	<u>619</u>	<u>118</u>
	<u>4,710</u>	<u>6,125</u>

### 19. Reconciliation of net cash flow to movement in net funds

	Year ended 31 March 2005 £'000	Year ended 31 March 2004 £'000
Increase in cash in the year	14	253
Cash used to increase liquid resources	<u>2,527</u>	<u>2,908</u>
Change in net funds	2,541	3,161
Net funds at 1 April	<u>15,590</u>	<u>12,429</u>
<b>Net funds at 31 March</b>	<u><b>18,131</b></u>	<u><b>15,590</b></u>

### 20. Analysis of changes in net funds

	At 1 April 2004 £'000	Cash flows £'000	At 31 March 2005 £'000
<i>Cash</i>			
Cash at bank and in hand	55	62	117
Bank overdraft	<u>-</u>	<u>(48)</u>	<u>(48)</u>
	55	14	69
Balances with States Treasury	<u>15,535</u>	<u>2,527</u>	<u>18,062</u>
	<u>15,590</u>	<u>2,541</u>	<u>18,131</u>

# Guernsey Electricity Limited

## Notes to the financial statements - continued Year ended 31 March 2005

### 21. Reconciliation of movements in shareholders' funds

	Year ended 31 March 2005 £'000	Year ended 31 March 2004 £'000
Shareholders' funds at 1 April brought forward	111,183	110,241
Retained profit for the year	<u>1,026</u>	<u>942</u>
<b>Shareholders' funds at 31 March</b>	<b><u>112,209</u></b>	<b><u>111,183</u></b>

### 22. Commitments

Capital commitments for which no provision has been made in these financial statements amounted to £3,524,000 as at 31 March 2005 (2004: £2,245,000).

#### *Operating lease commitments*

Commitments to make payments during the next year in respect of an operating lease are as follows:

	2005 £'000	2004 £'000
<i>Land and Buildings</i>		
Lease which expires within two to five years	52	42
<i>Furniture and equipment</i>		
Lease which expires within two to five years	<u>56</u>	<u>56</u>

### 23. Financial instruments

The company's commitment to forward contracts at the balance sheet date was as follows:

	2005 Euros €'000	2004 Euros €'000
Forward contracts	<u>9,700</u>	<u>11,700</u>
	£'000	£'000
Contracted prices	<u>6,874</u>	<u>8,349</u>
<b>Closing value at 31 March</b>	<b><u>6,655</u></b>	<b><u>7,807</u></b>
Unrecognised losses	<u>(219)</u>	<u>(542)</u>

All forward contracts mature within eighteen months of the balance sheet date.

The sterling/euro rate at 31 March 2005 was 1.4576 (2004: 1.4987).

# Guernsey Electricity Limited

## Notes to the financial statements - continued

Year ended 31 March 2005

### 24. Pension Scheme

The employees of the company are members of the States of Guernsey Public Servants Pension Scheme (PSPS). This is a defined benefits pension scheme funded by contributions from both employer and employee to the PSPS at rates which are determined on the basis of independent actuarial advice, and which are calculated to spread the expected cost of benefits payable to employees over the period of those employees' expected service lives.

The last triennial actuarial valuation of the PSPS was carried out as at 31 December 2001.

As the PSPS is a multi entity arrangement the States of Guernsey contracted the Scheme's qualified independent actuaries to identify the actuarial account for each entity and therefore the value of the pension fund assets and liabilities attributable to this company. As at 1 February 2002 the actuarial account was valued at £20,711,523, being 115.7% of the actuarial value of the accrued liabilities. The report further recommended the increase of employer's contribution from 8.25% to 8.35% from 1 April 2003 and this has been adopted. However, since 1 February 2002 the actuarial account for the employees has gone into deficit and the latest estimate is in excess of £3 million based on current accounting policy. In recognising that further contribution was required to reduce the pension deficit, it was resolved by the Board of Directors to reduce the deficit. An additional sum of £491,000 has been provided for this year (2004: £Nil).

The total amount of pension contributions for the year ended 31 March 2005 was £993,000 (2004: £479,000). £251,000 was accrued but not yet paid as at 31 March 2005 (2004: £Nil).

The company recognises the requirements of Financial Reporting Standard 17 ("FRS 17") on Retirement Benefits, and sets out below the disclosures required under the transitional rules:

<b>Financial Assumptions</b>	<b>31 March 2005</b>	31 March 2004	31 March 2003
	<b>% p.a.</b>	% p.a.	% p.a.
Discount rate	<b>5.3</b>	5.4	5.5
Inflation	<b>2.9</b>	2.9	2.6
Increases to deferred benefits during deferment	<b>3.0</b>	3.0	2.6
Increases to pensions in payment	<b>3.0</b>	3.0	2.7
Increases to salaries	<b>4.4</b>	4.4	4.1

# Guernsey Electricity Limited

Notes to the financial statements - continued  
Year ended 31 March 2005

## 24. Pension Scheme - continued

### Market value of scheme assets

	Market value at 31 March 2005		Expected return on assets % p.a.	Market value at 31 March 2004		Expected return on assets % p.a.	Market value at 31 March 2003		Expected return on assets % p.a.
	£'000	%		£'000	%		£'000	%	
Equities	19,379	76.8	7.8	16,901	76.1	7.8	12,671	72.6	7.5
Bonds	5,279	20.9	4.9	4,892	22.0	4.8	4,269	24.4	5.1
Cash and net current assets	<u>568</u>	<u>2.3</u>	4.8	<u>426</u>	<u>1.9</u>	4.0	<u>526</u>	<u>3.0</u>	3.5
<b>Market value of the scheme assets</b>	<b>25,226</b>	<b>100.0</b>	<b>7.1</b>	<b>22,219</b>	<b>100.0</b>	<b>6.8</b>	<b>17,466</b>	<b>100.0</b>	<b>6.7</b>
<b>Present value of the Scheme liabilities</b>	<b><u>30,166</u></b>			<b><u>29,210</u></b>			<b><u>24,255</u></b>		
<b>Deficit in the scheme</b>	<b>(4,940)</b>			<b>(6,991)</b>			<b>(6,789)</b>		
<b>Related deferred tax asset (assuming Guernsey income tax at 20%)</b>	<b><u>988</u></b>			<b><u>1,398</u></b>			<b><u>1,358</u></b>		
	<b><u>(3,952)</u></b>			<b><u>(5,593)</u></b>			<b><u>(5,431)</u></b>		

The asset and liability values on the FRS 17 basis reflect market conditions at the company's year-end date and can be expected to vary greatly from year to year, without prejudicing the scheme's long-term ability to provide the required benefits.

### Balance sheet presentation

	31 March 2005 £'000	31 March 2004 £'000	31 March 2003 £'000
Net assets excluding pension liability	112,209	111,183	110,241
Net pension liability	<u>(3,952)</u>	<u>(5,593)</u>	<u>(5,431)</u>
<b>Net assets including pension liability</b>	<b><u>108,257</u></b>	<b><u>105,590</u></b>	<b><u>104,810</u></b>

### Reserves note

	31 March 2005 £'000	31 March 2004 £'000	31 March 2003 £'000
Profit and loss reserve excluding pension liability	3,000	1,974	1,032
Pension reserve	<u>(3,952)</u>	<u>(5,593)</u>	<u>(5,431)</u>
<b>Profit and loss reserve including pension liability</b>	<b><u>(952)</u></b>	<b><u>(3,619)</u></b>	<b><u>(4,399)</u></b>

# Guernsey Electricity Limited

## Notes to the financial statements - continued

Year ended 31 March 2005

### 24. Pension Scheme - continued

*Analysis of the amount chargeable to operating profit*

	2005 £'000	2004 £'000
Current service cost	1,175	1,045
Past service cost	<u>-</u>	<u>-</u>
<b>Total operating charge</b>	<b><u>1,175</u></b>	<b><u>1,045</u></b>

*Analysis of the amount chargeable to other finance costs*

	2005 £'000	2004 £'000
Expected return on pension scheme assets	1,576	1,211
Interest on pension scheme liabilities	<u>(1,573)</u>	<u>(1,332)</u>
<b>Net return/(charge)</b>	<b><u>3</u></b>	<b><u>(121)</u></b>

*Analysis of amount that would be recognised in a statement of total recognised gains and losses (STRGL)*

	2005 £'000	2004 £'000
Actual return less expected return on pension scheme assets	675	3,313
Experience gains and losses arising on scheme liabilities	2,039	(576)
Changes in assumptions underlying the present value of scheme liabilities	<u>(193)</u>	<u>(2,252)</u>
<b>Actuarial gain that would be recognised in STRGL</b>	<b><u>2,521</u></b>	<b><u>485</u></b>

*Movement in deficit during the year*

	2005 £'000	2004 £'000
Deficit in scheme at beginning of the year	(6,991)	(6,789)
Movement in year:		
Current service costs	(1,175)	(1,045)
Contributions	702	479
Past service costs	-	-
Other finance income/(charge)	3	(121)
Actuarial gain	<u>2,521</u>	<u>485</u>
<b>Deficit in scheme at end of the year</b>	<b><u>(4,940)</u></b>	<b><u>(6,991)</u></b>

# Guernsey Electricity Limited

Notes to the financial statements - continued  
Year ended 31 March 2005

## 24. Pension Scheme - continued

*History of experience gains and losses*

	<b>2005</b>	2004
	<b>£'000</b>	£'000
<b>Difference between the actual and expected return on scheme assets:</b>		
Amount (£)	<b>675</b>	3,313
Percentage of scheme assets	<b>3%</b>	15%
<b>Experience gains and losses on scheme liabilities:</b>		
Amount (£)	<b>2,039</b>	(576)
Percentage of the present value of the scheme liabilities	<b>7%</b>	(2%)
<b>Total amount recognised in statement of total recognised gains and losses:</b>		
Amount (£)	<b>2,521</b>	485
Percentage of the present value of the scheme liabilities	<b>8%</b>	2%

## 25. Statement of control

The company is wholly owned and ultimately controlled by the States of Guernsey.

## 26. Related party transactions

There are no disclosable related party transactions in this financial year.

Of the company's annual income and expenditure, less than 20% of their respective value is due to transactions with other States entities.

**PUBLIC SECTOR REMUNERATION COMMITTEE**

**ESTABLISHED STAFF OF THE STATES OF GUERNSEY –  
THE SALARY MINIMA & MAXIMA OF THE GENERAL GRADES**

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

21<sup>st</sup> July 2005

Dear Sir

In accordance with States Resolution XXXVI of 28 October 1987, as amended, I have the honour to enclose, for publication as an Appendix to a Billet d'Etat, details of the salary minima and maxima of the Established Staff general grades applying from 1 May 2005, with a further change for grades below Senior Officer from 1 August 2005. The number of staff in each grade is also detailed.

Yours faithfully

J P Le Tocq  
Chairman

**ESTABLISHED STAFF OF THE STATES OF GUERNSEY**  
**The Salary Minima & Maxima of the General Grades**

	At 1.05.05 £	At 1.08.05 £	} Note 6
Senior Officer 12	100350/113145		
Senior Officer 11	91709/103402		
Senior Officer 10	83816/94501		
Senior Officer 9	76604/86367		
Senior Officer 8	70008/78937		
Senior Officer 7	63987/72142		
Senior Officer 6	58478/65938		
Senior Officer 5	53444/60262		
Senior Officer 4	48843/55072		
Senior Officer 3	44639/50331		
Senior Officer 2	40798/45998		
Senior Officer 1	37283/42041		
			} Note 1
Executive Grade V	35010/37001	35270/37261	
Executive Grade IV	32225/34057	32485/34317	
Executive Grade III	29322/31258	29582/31518	
Executive Grade II	26446/28329	26706/28589	
Executive Grade I	23510/25427	23770/25687	} Note 2
Administrative Assistant 2	19406/22152	19666/22412	
Administrative Assistant 1	14834/18947	15094/19207	
Clerical Assistant	11587/14834	11847/15094	} Note 3
Personal Assistant 2	25946/28769	26206/29029	
Personal Assistant 1	22659/25071	22919/25331	
Typist C	20093/21940	20353/22200	
Typist B	13875/20093	14135/20353	
Typist A	11649/17077	11909/17337	} Note 4
Other Grades	9565/35954	9825/36214	} Note 5

**NOTES:**

There are 1872 Established Staff in total on the general grades. (All establishment figures are as at 31 January 2005.)

1. There are 319 staff (17% of total) on the Senior Officer grades.
2. There are 827 staff (44% of total) on the Executive Grades.
3. There are 445 staff (24% of total) on the Administrative Assistant, Clerical Assistant and equivalent grades.
4. There are 119 staff (6% of total) on the Personal Assistant and Typist grades.
5. There are 162 staff (9% of total) on other grades i.e. Non-Standard, Miscellaneous, Home Staff, School Administration Assistant whose salaries broadly span Clerical Assistant to Executive Grade V.
6. All staff below Senior Officer grades receive a £260 salary increase with effect from 1.08.2005.

## GUERNSEY RETAIL PRICES INDEX

### 4.6% annual change as at 30 June 2005

At the end of June, Guernsey's annual rate of inflation, as measured by changes in the Retail Prices Index, was 4.6%, the same figure as at the end of the previous quarter.

RPI X, the rate of inflation that excludes mortgage interest payments stands at 3.3%

**Table 1**

Period	%	Period	%
3 Months	0.9	2 Years	9.3
6 Months	2.8	3 Years	14.1
9 Months	3.5	4 Years	17.8
12 Months	4.6	5 Years	20.6

The Index Figures at the end of June 2005 were:

123.9 (Dec 99=100)  
 147.1 (Mar 1994 =100)  
 198.7 (Dec 1988 =100)  
 265.5 (Dec 1983 =100)  
 421.6 (Dec 1978 =100)

Wednesday  
 20 July 2005

Issued by:  
 Policy and Research Unit  
 Sir Charles Frossard House  
 P O Box 43  
 La Charroterie  
 St Peter Port  
 Guernsey  
 GY1 1FH

#### Matters affecting the RPI during the last 12 months

The major contributors to the June 2005 figure over the past year were **Housing (2.3%), Fuel, Light and Power (0.8%), Fares (0.5%) and Alcohol (0.3%)**.

The Housing group was again the largest contributor at 2.3% out of 4.6%. The cost of servicing the average mortgage debt has increased over the last year, mainly due to an increase in interest rates in the fourth quarter of 2004. Elsewhere within the Housing Group, there were increases in occupiers rates and water rates.

The Fuel, Light and Power group contributed 0.8% to the overall figure. This was mainly due to global increases in the price of oil. This has had the knock on effect of increasing the price of heating oil and gas in Guernsey.

Other increases were observed in Fares (0.5%) with some increases in air and sea travel, hire cars and taxi fares. Leisure Services, such as the cost of a holiday, TV licences, mooring fees and accommodation in the UK increased by 0.4%.

There was a decrease (0.3%) in Leisure Goods (TV's, games consoles etc).

#### Matters affecting the RPI during the last three months

The main contributors to inflation over the last three months were occupiers rates, oil prices, travel and some food items.

### Annual % Changes for each quarter

**Table 2**

	March	June	September	December
1992	4.6	4.1	3.6	3.2
1993	2.3	1.5	1.8	1.4
1994	2.9	2.3	2.0	2.4
1995	3.0	3.5	4.0	3.6
1996	2.5	2.1	2.0	2.8
1997	3.1	4.0	4.4	4.7
1998	4.1	4.0	4.0	3.2
1999	2.1	2.2	1.8	2.4
2000	3.8	4.4	4.5	3.9
2001	3.3	2.3	2.6	1.9
2002	2.9	3.3	3.9	4.4
2003	4.7	4.3	3.3	3.9
2004	4.2	4.5	5.2	4.9
2005	4.6	4.6		

RPI enquiries -  
 Tel: 01481 717012  
 Fax: 01481 717157  
 Internet: [www.gov.gg](http://www.gov.gg)  
[policy.research@gov.gg](mailto:policy.research@gov.gg)

## GUERNSEY RETAIL PRICES INDEX - JUNE 2005

### PERCENTAGE CHANGES IN GROUP INFLATION AND THEIR CONTRIBUTION TO OVERALL INFLATION

**Table 3** **GUERNSEY INFLATION RATE (+4.6%)**

	Weight	Quarterly %Change	Annual %Change	% Contribution
Food	127	1.1	0.3	0.1
Alcoholic Drink	52	0.1	5.0	0.3
Tobacco	19	1.0	6.8	0.1
Housing	216	1.4	9.4	2.3
Fuel, Light and Power	41	1.3	16.8	0.8
Household Goods	79	-0.3	0.4	0.0
Household Services	33	0.5	2.7	0.1
Clothing & Footwear	56	-2.0	-0.3	0.0
Personal Goods	49	1.5	2.3	0.1
Motoring Expenditure	85	1.6	1.2	0.1
Fares/Other Travel	33	5.1	12.1	0.5
Leisure Goods	63	-0.6	-3.9	-0.3
Leisure Services	92	0.2	3.9	0.4
Food Away from Home	55	0.0	1.6	0.1
Overall	1000			
All Items				<b>4.6</b>

**Weight** is the proportion of the total index represented by each group. **Contribution** shows the effect of price changes in relation to the relative weight of the groups.

### **Retail Prices Index (RPI)**

The RPI is a measure of inflation in Guernsey. It can be defined as "an average measure of change in the prices of goods and services bought for the purpose of consumption by the vast majority of households" (RPI Technical Manual, Office for National Statistics, 1998).

Goods and services that consumers purchase have a price, and these will vary over time. The RPI is designed to measure such changes. Imagine a very large shopping basket (over 2100 items) comprising all the different kinds of goods and services bought by a typical household. As the prices of individual items in this basket vary, the total cost of the basket will vary - the RPI is a measure of the change from quarter to quarter in this total cost.

No two households spend their money in exactly the same way and this basket of goods is compiled using spending pattern data from the Household Expenditure Survey. This is carried out every five years, hence the RPI index base is reset to 100 e.g. Dec 1999 = 100, Mar 1994 = 100 etc. The RPI while not applying precisely to any one household or person, will be close to the experience of inflation for the great majority of households.

# GUERNSEY RETAIL PRICES INDEX - JUNE 2005

Figure 1

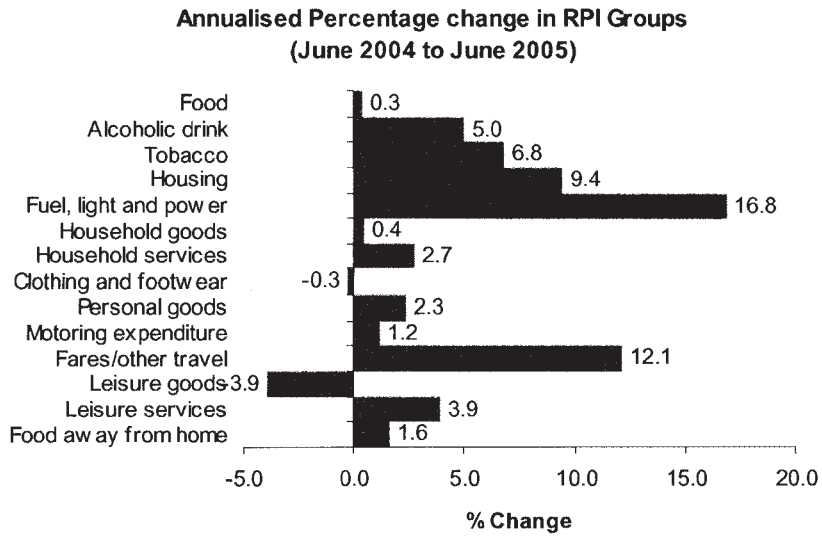


Figure 2

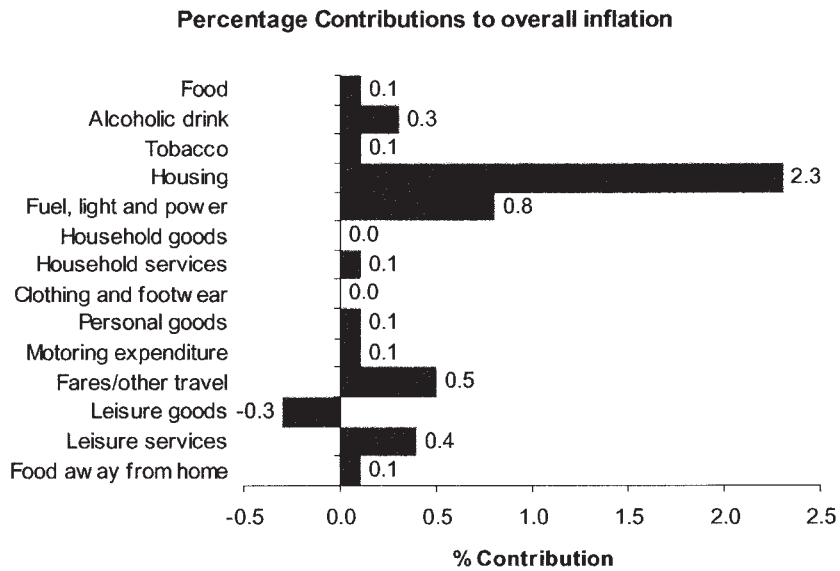
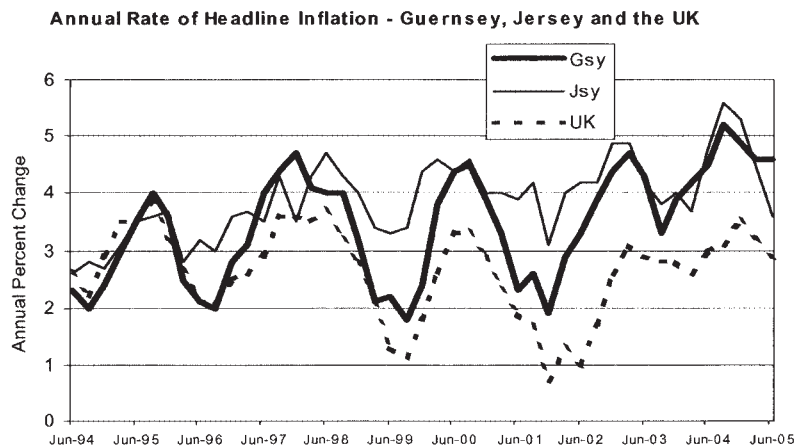


Figure 3



## GUERNSEY RETAIL PRICES INDEX - JUNE 2005

### RPI comparison with Jersey and the UK

Guernsey and Jersey tend to run at a higher rate than the UK. The chart on page 3 (Figure 3) shows that inflation in Guernsey followed the general trends of the UK inflation rate, albeit at a higher level. Guernsey and Jersey's inflation rates have been at similar levels over this period.

**Table 4**

		Annual Movements						Quarterly Movements		
		Guernsey		UK		Jersey		Guernsey	UK	Jersey
		Headline	RPI X	Headline	RPI X	Headline	RPI X	Headline	RPI	
1998	Mar	4.1	2.3	3.5	2.6	4.3	3.8	0.9	0.5	1.7
	June	4.0	2.3	3.7	2.8	4.7	4.1	0.9	1.6	1.2
	Sept	4.0	2.6	3.2	2.5	4.3	3.9	1.0	1.0	0.9
	Dec	3.2	2.2	2.8	2.6	4.0	3.9	0.4	0.0	0.2
1999	Mar	2.1	2.6	2.1	2.7	3.4	3.6	-0.2	-0.2	1.1
	June	2.2	3.1	1.3	2.2	3.3	3.6	1.0	0.9	1.1
	Sept	1.8	3.0	1.1	2.1	3.4	3.6	0.4	0.5	0.9
	Dec	2.4	2.8	1.8	2.2	4.4	4.3	1.1	0.7	1.1
2000	Mar	3.8	3.1	2.6	2.0	4.6	4.3	1.2	0.3	1.3
	June	4.4	3.6	3.3	2.2	4.4	4.0	1.6	1.6	1.0
	Sept	4.5	3.5	3.3	2.2	4.6	4.2	0.7	0.4	1.1
	Dec	3.9	3.8	2.9	2.0	4.0	3.4	0.5	0.3	0.5
2001	Mar	3.3	2.9	2.3	1.9	4.0	3.6	0.6	0.0	1.4
	June	2.3	2.7	1.9	2.4	3.9	3.8	0.8	1.3	0.9
	Sept	2.6	3.1	1.7	2.3	4.2	4.2	0.8	0.1	1.3
	Dec	1.9	2.9	0.7	1.9	3.1	3.6	-0.1	-0.7	-0.6
2002	Mar	2.9	3.8	1.3	2.3	4.0	4.4	1.6	0.6	2.3
	June	3.3	3.6	1.0	1.5	4.2	4.4	1.0	1.0	1.1
	Sept	3.9	3.8	1.7	2.1	4.2	4.2	1.4	0.8	1.3
	Dec	4.4	3.8	2.9	2.7	4.9	4.5	0.4	0.5	0.1
2003	Mar	4.7	4.3	3.1	3.0	4.9	4.8	1.9	0.8	2.4
	June	4.3	3.8	2.9	2.8	4.2	4.6	0.6	0.8	0.4
	Sept	3.3	3.1	2.8	2.8	3.8	4.4	0.4	0.7	0.9
	Dec	3.9	3.4	2.8	2.6	4.0	4.0	1.0	0.5	0.3
2004	Mar	4.2	3.2	2.6	2.1	3.7	3.5	2.2	0.6	2.1
	June	4.5	3.1	3.0	2.3	4.8	3.4	0.9	1.2	1.5
	Sept	5.2	2.9	3.1	1.9	5.6	3.3	1.1	0.8	1.7
	Dec	4.9	2.9	3.5	2.5	5.3	3.4	0.7	1.0	0.0
2005	Mar	4.6	3.2	3.2	2.4	4.5	2.7	1.9	0.2	1.3
	June	4.6	3.3	2.9	2.2	3.6	2.5	0.9	0.9	0.6

### RPI X

A single measure of inflation may not meet all user's needs. Following the Office for National Statistics' Review of the Island's RPI, one recommendation was for the Policy and Research Unit to publish the RPI X. RPI X literally means **RPI excluding mortgage interest payments**; the RPI is calculated again after this item has been removed.

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**HOME DEPARTMENT****CRIMINAL JUSTICE REVIEW  
REPORT OF THE CRIMINAL JUSTICE POLICY WORKING GROUP**

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

22<sup>nd</sup> July 2005

Dear Sir

**1. Executive Summary**

The Criminal Justice Policy Working Group was established in November 2003 following discussions between H.M. Procureur and the former Advisory and Finance Committee, a States Resolution of 28<sup>th</sup> February 2003<sup>1</sup> and the 2003 Policy and Resource Plan (PRP)<sup>2</sup>.

The February 2003 States Resolutions included one directing *'the [then] States Committee for Home Affairs to report back to the States with a comprehensive report outlining possible future alternatives to conventional custodial sentencing including such options as wet house facilities, restorative justice, compulsory detoxification and rehabilitation orders, electronic tagging, weekend prison confinement, Community Service orders and programmes, home confinement programmes and other relevant options, having regard to possible future consequences for staffing, funding and other resources.'*<sup>1</sup>

The 2003 PRP reported that the perception of a possible need to review aspects of Guernsey's criminal justice policy had arisen from:

- *The Committee for Home Affairs' policy proposals to extend the prison, which were approved by the States in February 2003.*

---

<sup>1</sup> Resolution 4 on Article IV of *Billet d'État, III, 2003*

<sup>2</sup> *Billet d'État XIV, 2003, p 1398*

- *The Anti-Poverty Policies Report produced in November 2002 by the Townsend Centre for International Poverty Research.*
- *The Social Policy Working Group.*
- *Chief Officer consultations which took place in regard to the development of proposals in relation to the Review of the Machinery of Government.'*

The PRP added that:

*'The [Advisory and Finance] Committee understands that there is widespread support for this initiative, although it fully appreciates that this is a very sensitive matter and that any review must fully involve all authorities concerned in the criminal justice system in Guernsey.'*

The Department received the report of the Criminal Justice Policy Working Group in September 2004 and it is attached as an Appendix to this paper for the information of States Members.

## **2. The Criminal Justice Policy Working Group**

Given the potential enormity of a review of criminal justice and the absence of any formally recorded existing local policy, it was decided to begin by concentrating on current and alternative sentencing options, and to give only initial consideration to the implications of developing, and the possible ambit of, a criminal justice policy. The latter is an important component of the attached Report of the Group but it is felt that a second more comprehensive phase of review is required to address this.

The Group membership (see Appendix 1), chaired by HM Comptroller, consisted of personnel from the judiciary, Law Officers of the Crown, Guernsey Bar, Home Department including Police, Prison, Customs and Immigration and Probation, Policy Council and the Parole Review Committee.

## **3. Actions by the Home Department**

Since receiving the Report, the Home Department has been giving it much consideration and has decided, at this stage, given the Island's current financial situation, to take forward only those recommendations deemed to be a high priority and concerned with alternatives to prison. For instance, it is not at this time planning to recommend the appointment of a Criminal Justice Policy Co-ordinator, rather it will continue to review the Report internally and seek to implement elements of the Report as and when possible. Hence the Report is included as an Appendix to this Billet so that Members are aware of the work undertaken by the Working Group.

## **4. The Report**

Following the **introduction** to the Report and the chapter about **statistics (Chapter 2)**,

the remainder of the Report is organised into seven further chapters.

The first of those (**Chapter 3**) considers some of the conceptual differences between the often blurred areas of the criminal justice system, policy issues arising in the criminal justice field, and the notion of a **criminal justice policy** as such. It includes a very brief overview of the criminal justice system and accepts that it needs to be continually fine-tuned so as to safeguard and enhance its independence, speed and efficiency, balance and overall fairness. Chapter 3 also acknowledges the need to ensure that the ambit of criminal law continues to represent a proper reflection of generally accepted societal norms, having regard both to local considerations and civilised international standards. It concludes with recommendations on a broad general framework for future development of criminal justice policy.

The subsequent chapters of the Report focus on three pillars which the Group have formulated, as outlined below:

**Pillar 1 (Chapters 4 and 5): Improving the delivery of criminal justice for all**, by ensuring that victims and witnesses are recognised as central to a system which delivers swiftly, proportionately and effectively; that crime does not pay; and that restorative principles are taken into consideration.

**Pillar 2 (Chapter 6): Reducing the incidence of crime**, by tackling its causes, engendering social responsibility and maximising its detection.

**Pillar 3 (Chapters 7 and 8): Dealing with the perpetrators of crime** in ways which appropriately reflect society's disapproval and deter others, whilst aiming also to rehabilitate offenders into responsible citizens.

It is envisaged that these three pillars might underpin any criminal justice policy which may be developed in the future.

## 5. Next steps

The Department is firmly of the view that the development of a policy should be balanced, taking in all elements of criminal justice. Therefore whilst the initial phase will concentrate on alternative sentencing options, the Department considers that this must not be to the detriment of important law enforcement functions, the role of victims and witnesses, dealing effectively with those committing crime and reducing the incidences of crime.

There are some immediate steps that are being taken forward that do not require the formal approval of the States, such as the bringing together and the analysis of data collection so that any future proposals to the States can be properly evidence based. There are also some important issues that do require States approval which either have been or will be presented to Members. An example of the former is the States Report on Parole, on the basis of which new enabling legislation was recently approved by the States, which began life within the Group's Report, but was to some extent overtaken by

subsequent events. Community Service has also been identified as a matter which the Department wishes to progress early, and in this respect the Department intends to submit a States Report in the near future.

Finally, the Department is most grateful to Her Majesty's Comptroller and members of the Criminal Justice Policy Working Group for the hard work that clearly went into the preparation of the Report and for getting us to this stage. The Department is committed to further investigation of the development of a Criminal Justice Policy and will continue to work jointly with the Law Officers of the Crown and other stakeholders in taking this important matter forward and, ultimately, bring a Report to the States for full debate.

I should be grateful if you would arrange for the publication of the report of the Criminal Justice Policy Working Group as an appendix to the September Billet.

Yours faithfully

M W Torode  
Minister

## **Appendix 1 Criminal Justice Policy Working Group Group Membership**

H.M. Comptroller

Lieutenant Bailiff

Crown Advocate

Advocate and Guernsey Bar representative

Head of Policy and Research Unit, Policy Council

Chief Officer, Home Department

Chief Officer of Police

Governor of the Prison

Chief Officer, Customs and Immigration

Chief Probation Officer

Secretary to the Parole Review Committee

Junior Executive, Home Department

**Report of the  
Criminal Justice Policy  
Working Group**

Phase One

September 2004

## Foreword by H.M. Comptroller

To have had the opportunity of chairing the Criminal Justice Policy Working Group, and now to present our preliminary recommendations to the Home Department for their consideration, that of the Policy Council, and in due course, we would hope, laying before the States of Deliberation, is at once humbling, challenging and truly exciting.

As required by our terms of reference, we have concentrated initially on reviewing existing legislation and policy concerning custodial remands and sentences, and examining alternative remand and sentencing options. These, and most particularly the alternative sentencing options discussed in this Report, are the areas in which we feel able to make substantive recommendations at this stage. But I want to make one important point quite clear from the outset. Although we have found that, numerically, the majority of custodial sentences imposed over the past few years have been terms of 12 months or less, the majority of the Prison population at any time are serving longer sentences, and in many cases much longer sentences, for offences which Guernsey society regards as particularly serious. The additional sentencing options recommended in this Report are most unlikely to be regarded by the Courts as appropriate for these serious offences. For that reason, whilst our recommendations could, if adopted and successfully implemented, produce a worthwhile reduction in the numbers of people sentenced to shorter terms of imprisonment, they would not be likely to have a major impact on the total Prison population at any one time.

That said, we have reason for some confidence that Community Service and Enhanced Community Supervision, if given a fair chance and adequate additional resources, could be more effective in appropriate cases than relatively short terms of imprisonment in serving the real needs of society through reparation, rehabilitation, and consequently crime reduction. But the proof of the pudding is in the eating, and in my view one of the most crucial recommendations in this Report is that concerning the development of a comprehensive and accurate database to assist in future decision making, not only in broad policy formulation but also to inform case-specific decisions of prosecutors, sentencers and others who have to make them. It may be trite to say that policy should be evidence-based, and there is certain evidence from elsewhere about what works, for example to reduce re-offending, but we need to establish what works for Guernsey.

Alongside our initial primary focus on those areas, over the past ten months or so the Group as a whole, sub-groups and individual members have researched, reported on, considered and debated a huge range of issues in and around what we have found to be the broad and sometimes elusive concept of criminal justice policy generally. The ambit and components of criminal justice policy are more difficult to pin down than those of departmental or even inter-departmental States policies in most areas, because a number of independent Offices and agencies are rightly, and must remain, free from political influence in the proper discharge of their functions within the criminal justice system, for the protection and well-being of the whole community. We have arrived at some tentative views as to how, whilst fully respecting the necessary independence of the key Offices and agencies of the criminal justice system, such a policy might perhaps be developed and kept under review. The two keys seem to me to be:

- a coherent approach to strategic thinking, to some extent reflecting the principles of the recent machinery of government reforms, and extending that approach to close liaison and co-operation with and between the independent Offices and agencies; and
- inclusion, in the development, review, and importantly implementation of such policy, of the many socially concerned community organisations which already do so much excellent work, but whose experience, expertise and awareness have much more to contribute.

At the heart of all this is an appreciation that, in order to be truly effective, criminal justice policy needs to be owned by the community at large. It would, for example, be absurd to suggest that any Police Force or any judicial system can replace the day-to-day involvement of family members and community in the life of an offender. Judges and prosecutors deal with offenders on a snap-shot basis; they see offenders briefly, deal with particular moments in their lives, and then move on; by contrast, parents, siblings, extended family, friends, teachers, work colleagues, church and club leaders etc are there all the time; and experience elsewhere suggests that calling on their strengths can produce helpful results. Neither should we concentrate exclusively on offenders. This Report advocates, and I wholeheartedly commend, a sharper focus on the victims of crime – who may be individuals or communities – and on witnesses, providing improved support and opportunities for healing. Here also the community has a crucial role in rallying around these potentially vulnerable people, supporting them, and addressing underlying issues. An approach which fails to recognise that role risks exacerbating a cycle of isolation and weakened bonds, through which offenders are cut off from the community and victims can feel they have been ignored. In order to tackle crime and its underlying causes it is vital to enlist the aid of the community.

Members of the Group have put in an enormous amount of hard and dedicated work to date and I owe a great debt of gratitude to each and every one. We all acknowledge that a tremendous amount still remains to be done, and that criminal justice policy is a constantly evolving area. We have not found in Guernsey an ailing criminal justice system crying out for radical reform – the relatively low crime rate and commendable effectiveness of our law enforcement agencies attest to quite the contrary. But we have provisionally identified areas where a cautious and incremental embracing of subtly revised approaches might potentially produce worthwhile benefits for, and in partnership with, the community we serve.

On behalf of the Criminal Justice Policy Working Group, I enthusiastically commend this Report.

Howard Roberts  
H.M. Comptroller  
30<sup>th</sup> September 2004

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## Chapter 1 Executive summary and introduction

The Criminal Justice Policy Working Group was established in November 2003 following discussions between H.M. Procureur and the former Advisory and Finance Committee, a States Resolution of 28<sup>th</sup> February 2003<sup>1</sup> and the 2003 Policy and Resource Plan (PRP)<sup>2</sup>.

The February 2003 States Resolutions included one directing ‘the [then] States Committee for Home Affairs to report back to the States with a comprehensive report outlining possible future alternatives to conventional custodial sentencing including such options as wet house facilities, restorative justice, compulsory detoxification and rehabilitation orders, electronic tagging, weekend prison confinement, Community Service orders and programmes, home confinement programmes and other relevant options, having regard to possible future consequences for staffing, funding and other resources.’<sup>1</sup>

The 2003 PRP reported that the perception of a possible need to review aspects of Guernsey’s criminal justice policy had arisen from:

- *The Committee for Home Affairs policy proposals to extend the Prison, which were approved by the States in February 2003.*
- *The Anti-Poverty Policies Report produced in November 2002 by the Townsend Centre for International Poverty Research.*
- *The Social Policy Working Group.*
- *Chief Officer consultations which took place in regard to the development of proposals in relation to the Review of the Machinery of Government.*<sup>2</sup>

The PRP added that:

*‘The [Advisory and Finance] Committee understands that there is widespread support for this initiative, although it fully appreciates that this is a very sensitive matter and that any review must fully involve all authorities concerned in the criminal justice system in Guernsey’<sup>2</sup>.*

The Criminal Justice Policy Working Group (hereafter referred to as the Group) was established under the chairmanship of H.M. Comptroller. Its membership<sup>3</sup> included a Senior Judicial Representative, Chief Officers of Police, Probation and Customs, the Governor of the Prison, and senior representatives of what became the Home Department and the Policy and Research Unit at the Policy Council, the Guernsey Bar and the Parole Review Committee.

<sup>1</sup> Resolution 4 on Article IV of *Billet d’État, III*, 2003

<sup>2</sup> *Billet d’État XIV*, 2003, p 1398

<sup>3</sup> Appendix 1

The Group were mandated<sup>4</sup> to explore existing and alternative approaches to criminal justice in Guernsey. Given the potential enormity of this task and the absence of any formally recorded existing local criminal justice policy, it was decided to begin by concentrating on current and alternative sentencing options, and to give only initial consideration to the implications of developing, and the possible ambit of, a comprehensive criminal justice policy. The latter is an important component of this Report, but it is felt that a second more comprehensive phase of review is required, and the possibility of developing a comprehensive criminal justice policy should be further addressed during that phase.

Following this **introduction** and the chapter about **statistics (Chapter 2)**, the remainder of this Report is organised into seven further chapters.

The first of those (**Chapter 3**) considers some of the conceptual differences between the often blurred areas of the criminal justice system, policy issues arising in the criminal justice field, and the notion of a **criminal justice policy** as such. It includes a very brief overview of the criminal justice system and accepts that it needs to be continually fine-tuned so as to safeguard and enhance its independence, speed and efficiency, balance and overall fairness. Chapter 3 also acknowledges the need to ensure that the ambit of criminal law continues to represent a proper reflection of generally accepted societal norms, having regard both to local considerations and civilised international standards. It concludes with recommendations on a broad general framework for future development of criminal justice policy.

The subsequent chapters of the Report focus on three pillars which the Group have formulated, as outlined below:

**Pillar 1: Improving the delivery of criminal justice for all**, by ensuring that victims and witnesses are recognised as central to a system which delivers swiftly, proportionately and effectively; that crime does not pay; and that restorative principles are taken into consideration.

**Pillar 2: Reducing the incidence of crime**, by tackling its causes, engendering social responsibility and maximising its detection.

**Pillar 3: Dealing with the perpetrators of crime** in ways which appropriately reflect society's disapproval and deter others, whilst aiming also to rehabilitate offenders into responsible citizens.

It is envisaged that these three pillars might underpin any criminal justice policy which may be developed in the future. At the present time we make specific, concrete proposals in some areas, and put forward initial proposals for further work in others.

The **first pillar** examines how the law enforcement agencies and the Courts can deliver justice more speedily and effectively; discusses how the criminal justice system might

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<sup>4</sup> Appendix 2

be improved for victims and witnesses; and looks at some possibilities for restorative justice in Guernsey. **Chapter 4** considers ways of improving the efficiency and effectiveness of criminal justice delivery, concluding that further consideration should be given to the replacement of committal proceedings, and the introduction of committal for sentence; that further research into the design and implementation of a case management tool may be justified; and supporting the work of the recently established Serious and Organised Crime Committee and the development of a proceeds of crime strategy. **Chapter 5** suggests that victims and witnesses could beneficially be moved closer to the centre of the criminal justice system, exploring a wide range of issues, including the potential advantages of restorative approaches to criminal justice. We conclude, *inter alia*, that agencies need to work together to ensure that justice is delivered speedily, proportionately and efficiently; there is merit in establishing a Court users group to help victims and witnesses; States funding for Victim Support might usefully be extended to the provision of witness support; a needs assessment approach to the management of victims and witnesses should be adopted; and restorative approaches should be further considered, including the possibilities for deferment of sentencing at some future time.

The **second pillar (Chapter 6)** reviews existing crime prevention work, comments on possible future initiatives, and discusses the importance of community involvement in crime prevention measures. Further work is required on this area, recognising the essentiality of continuing co-operation between States-funded projects and non-governmental organisations.

The **third pillar** reviews viable ways of reducing re-offending; outlines proposals for the introduction of Community Service and Enhanced Community Supervision; gives consideration to other disposal options; and reviews some other current projects. **Chapter 7** contains what are probably the most significant of our concrete proposals at this stage. We examine the nature and scope of community sentencing, and specifically recommend the introduction of Community Service and Enhanced Community Supervision, primarily as alternatives to shorter custodial sentences in appropriate circumstances. **Chapter 8** considers electronic monitoring and curfews, fine defaulters, weekend Prison confinement, and post-custodial supervision, making recommendations for reform or further consideration in some of these areas; and summarises and expresses views about work currently being carried on in several important areas – sex offenders, youth justice, mental health patients, and non-violent recidivist drinkers.

Finally, **Chapter 9** looks briefly at resource considerations. Whilst accepting that many of the issues are beyond our expertise, and that the allocation of resources is rightly for others to decide, we acknowledge that our proposals are unlikely to achieve net short-term direct cost savings, but argue for a broader and longer-term view to best serve the public interest.

Ultimately the Group are of the opinion that a general criminal justice strategy should at least be considered in greater depth. We recognise that the maintenance of public confidence in the administration of justice absolutely requires that the judiciary and other holders of independent office remain free to develop policy without political pressure or constraint. But we feel that there may be some respects in which the

agencies involved, and consequently the community, might benefit from the formulation of a flexible and general strategy. The Group's preliminary view is that implementation of any such strategy might appropriately be led jointly by the Home Department and the Law Officers.

**Summary**

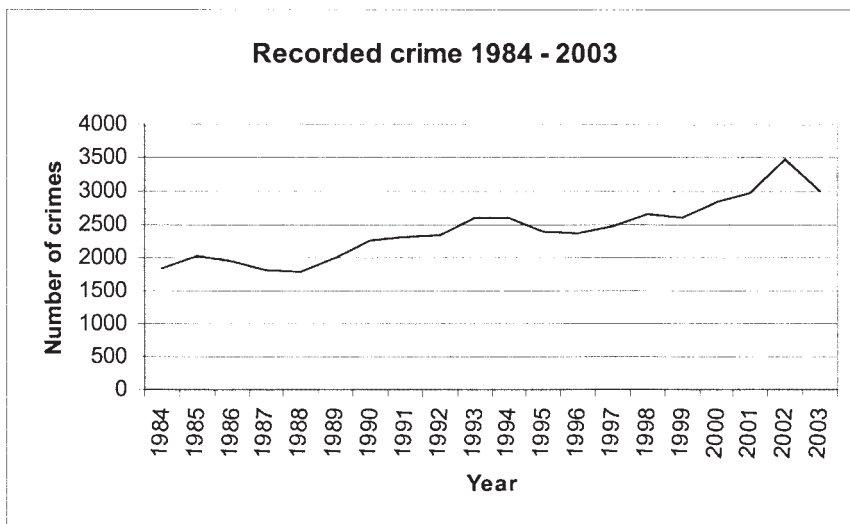
- The Criminal Justice Policy Working Group were mandated to review alternatives to custody and the implications and possible ambit of an overarching criminal justice policy
- The Working Group suggest that this review might appropriately lead into a more comprehensive second phase of review, and possibly the formulation of a criminal justice strategy, led jointly by the Home Department and Law Officers.

## Chapter 2 Criminal justice statistics

In addition to this Report, an ‘*Annual Statistical Digest 2004*’ has been produced. It is anticipated that this will be made available by the Home Department. The digest is a summary of all the available information on the criminal justice system, in most cases for the past five years<sup>5</sup>; it also contains comparisons with similar jurisdictions; it is as comprehensive as possible given the short timescale available for delivery. As part of this review all the criminal justice agencies have reviewed their data collection methods. Although many individual agencies have good systems in place there is no central agency collecting information on the performance of the criminal justice system; and if changes are to be monitored and evaluated this would be desirable in the future. The Home Department is currently reviewing the means by which data collection might be centralised, and is committed to ensuring that criminal justice statistics are collected centrally and presented annually.

This chapter presents some of the key figures produced from the Group’s statistical analysis; please see the ‘*Annual Statistical Digest 2004*’ for a more detailed analysis.

### 2.1 Crime



Graph 1: Recorded crime 1984 - 2003

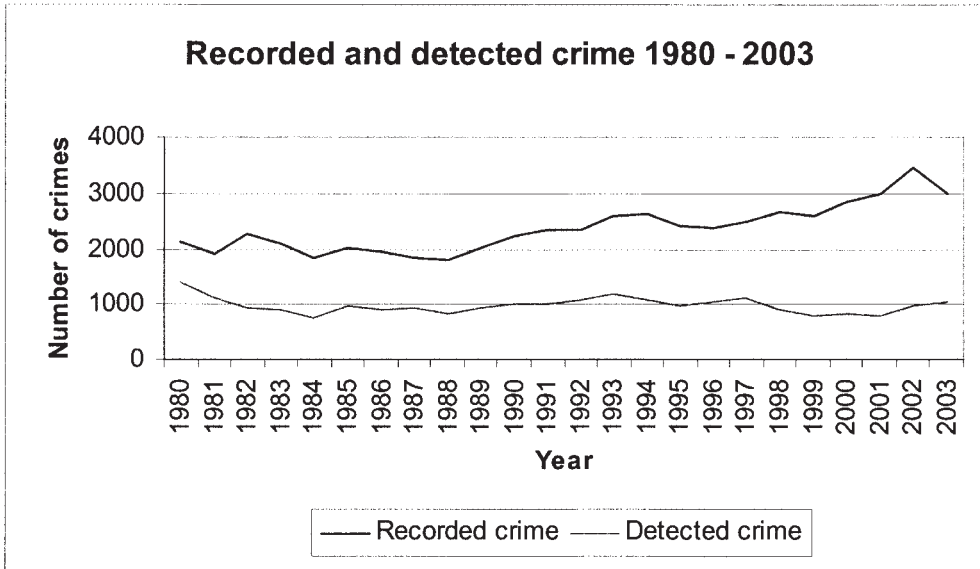
Graph 1 shows that recorded crime has been rising steadily over the last twenty years; however in 2003 2994 crimes were recorded by the Police, 13.6% fewer than 2002<sup>6</sup>.

<sup>5</sup> 1999 to 2003

<sup>6</sup> Guernsey Police

## 2.2 The justice gap

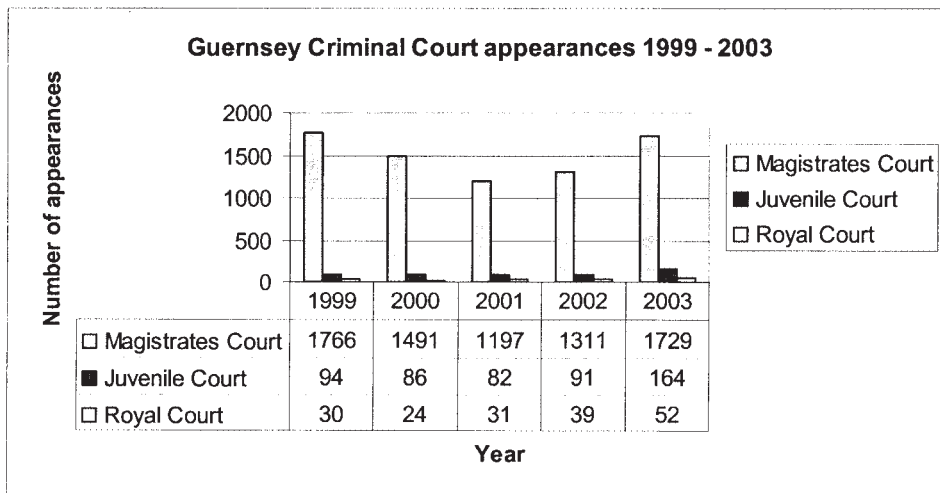
The justice gap is the difference between the number of crimes recorded and the number detected.



Graph 2: Recorded and detected crime 1984 - 2003

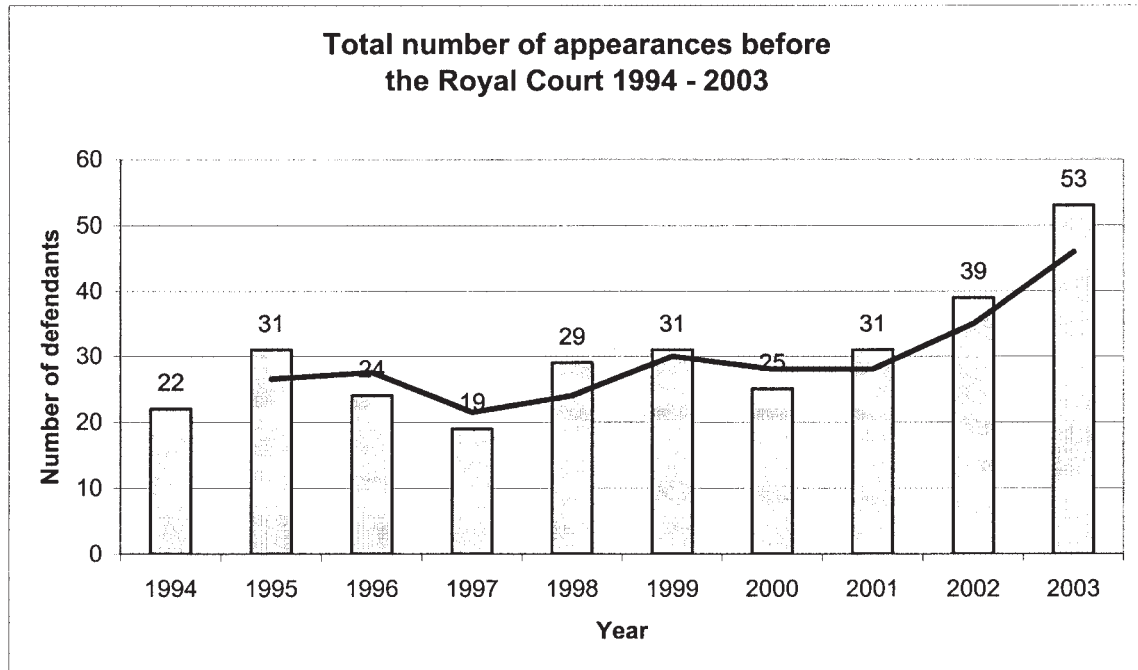
As Graph 2 illustrates there has been a widening of the justice gap, i.e. detection rate has not increased at the same level as recorded crime.

## 2.3 Court cases



Graph 3: Guernsey criminal Court appearances 1999 - 2003

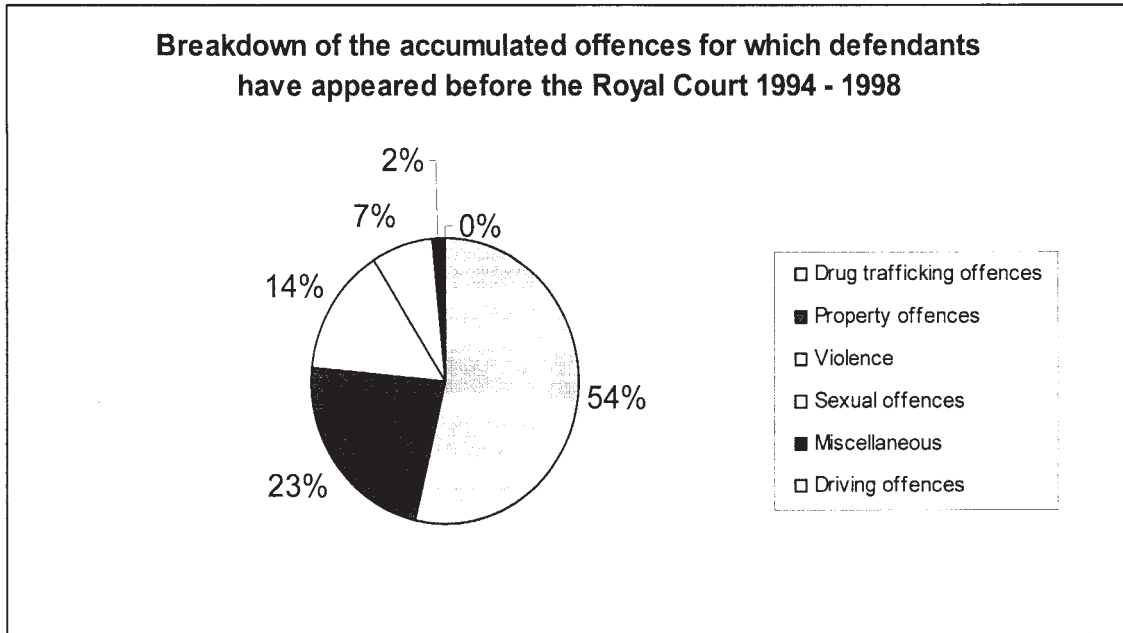
The annual number of cases (Graph 3) brought before the criminal Courts in any year has remained relatively stable over the past few years. Although the majority of cases are dealt with at the Magistrates' Court, an increasing number are being committed to the Royal Court, from 30 in 1999 to 52 in 2003; these are of course the most serious cases. It is understood that a current review of the Magistrates' Court's sentencing powers may result in some remaining in that Court, which has certain advantages; but wherever it is tried, serious crime is serious crime and its increase remains an inescapable and troubling fact.



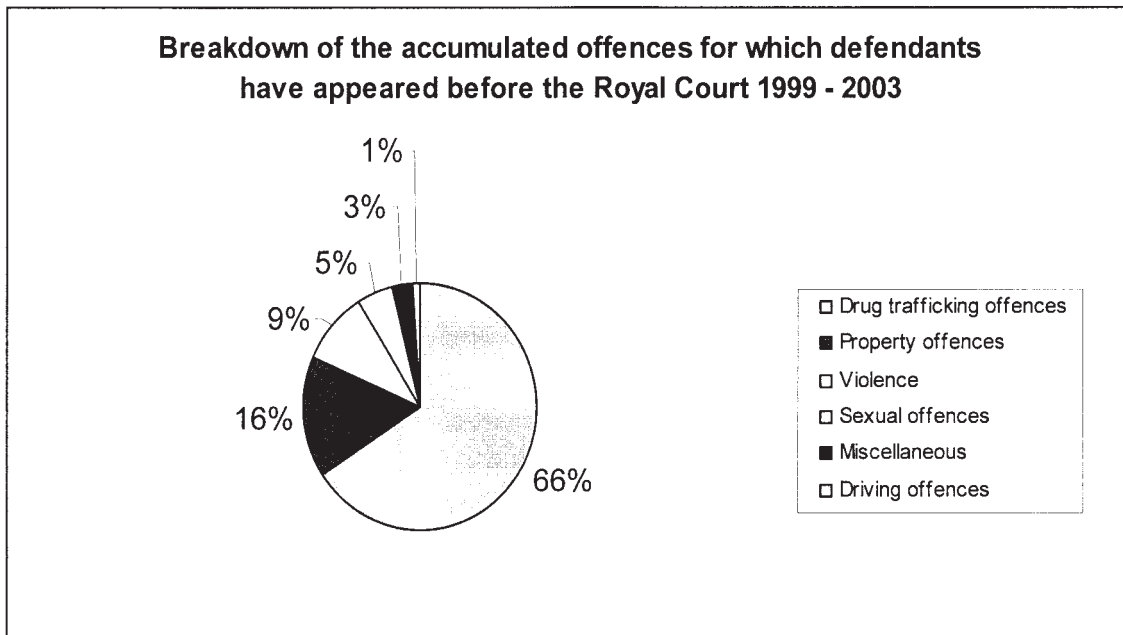
**Graph 4: Total number of appearances before the Royal Court 1994 - 2003**

Graph 4 above illustrates the total number of defendants that have appeared before the Royal Court between 1994 and 2003. It can be seen that the number of appearances in the past three years has more than doubled, from 25 in 2000 to 53 in 2003. Prior to 2001 the number of appearances before the Royal Court has remained relatively constant, ranging between 19 and 31 defendants each year.

Graph 5 and 6 below gives a breakdown of the crimes that defendants appeared before the Royal Court for between 1994 and 2003. The graphs have been split into five year periods so that a comparison can be made over the ten year period. The segregated categories for comparison are Driving Offences, which include death by dangerous driving; Property Offences; Sexual Offences, including rape and indecent assault; Violence Offences; Drug Trafficking Offences and a Miscellaneous category, which includes offences such as health and safety, perjury and firearms offences.



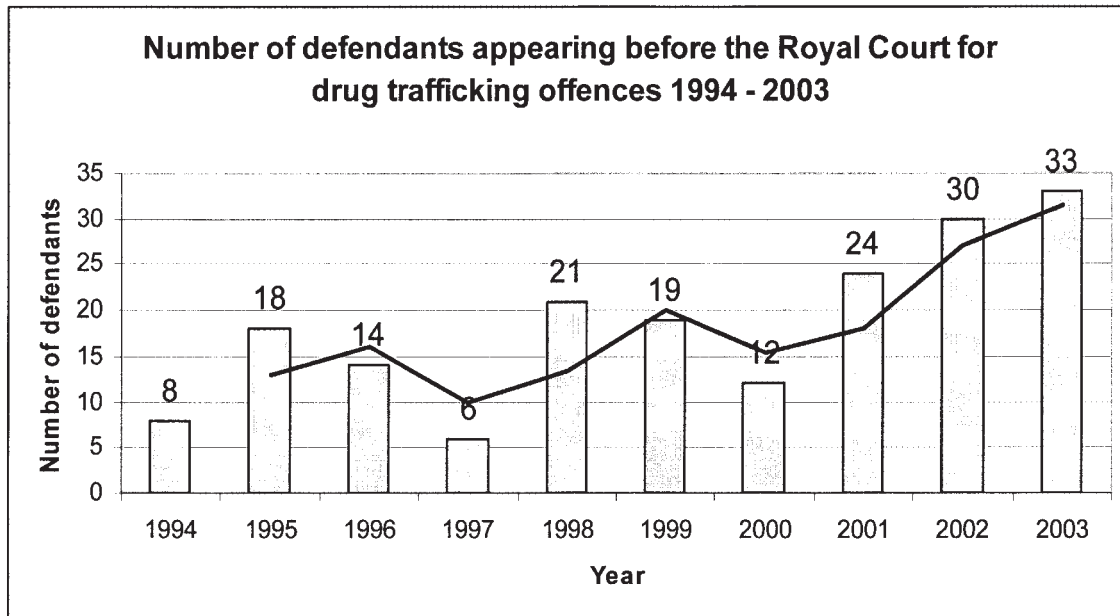
**Graph 5: Breakdown of the accumulated offences for which defendants have appeared before the Royal Court 1994 - 1998**



**Graph 6: Breakdown of the accumulated offences for which defendants have appeared before the Royal Court 1999 - 2003**

Graphs 5 and 6 clearly highlight that over the ten year period over half of all cases appearing before the Royal Court have been for drug trafficking offences. The second most frequent offence was for property offences, which include offences such as theft, burglary and criminal damage to the property. In contrast, the least frequent offences were Driving and Miscellaneous offences.

The most apparent differential to be noted between 1994-1998 and 1999-2003 is that the number of drug trafficking defendants to appear before the Royal Court has increased by 12% in the latter five years. This is quite a considerable increase and is worthy of consideration. In conjunction with this the percentage of defendants for property offences has declined from 23% to 16% of all Royal Court appearances.



**Graph 7: Number of defendants appearing before the Royal Court for drug trafficking offences 1994 - 2003**

Graph 7 above gives a breakdown of the number of drug trafficking defendants that have appeared before the Royal Court between 1994 and 2003. It reveals that in the latter four years there has been a significant increase in the number of defendants that have appeared before the Royal Court for drug trafficking offences, increasing from 12 in 2000 to 33 in 2003. Prior to 2000, the total number of drug trafficking defendants appearing before the Royal Court each year ranged from six to 21.

The graphs above demonstrate that the number of defendants appearing before the Royal Court has increased consistently since 2000. The majority of defendants appearing before the Royal Court are for drug trafficking offences. This majority has increased gradually over the past ten years, with a greater proportion of drug trafficking offences occurring since 1999, therefore greatly contributing to this increase in Royal Court cases. A peak was reached in 2001 when a significant majority of 77% of all defendants appearing before the Royal Court were for drug trafficking offences.

## 2.4 Victims

Currently no information is kept on victims of crime by statutory agencies, other than in case notes, and it would be a lengthy process to provide these statistics. In the absence of a victim satisfaction survey, the most recent information collected was by the

Townsend Centre for International Poverty Research, who, as set out in a ‘*Survey of Guernsey Living Standards*’<sup>7</sup>. Gordon reported that:

*‘When comparisons are made with England and Wales, Guernsey has a low crime rate. For example, there were only 46.9 crimes per 1000 population in Guernsey compared to 90.4 for England and Wales’<sup>8</sup> [Survey undertaken February 2001].*

*The vast majority of Guernsey people had suffered no crime in the previous year with just over a third experiencing some form of crime.<sup>9</sup> [When asked] What three main things could be done to improve... your quality of life? Traffic / parking, public transport and environment [preceded] crime<sup>10</sup>’.*

## 2.5 Who suffers most from crime?

### Experience of crime: Guernsey and Britain compared



**Graph 8: Experience of crime: Guernsey and Britain compared**

*‘People living in poverty bear the brunt of most crime: 39% of those living in poverty experienced crime in the previous year.’<sup>11</sup>*

<sup>7</sup> Gordon et al, (2001), University of Bristol, Townsend Centre for International Poverty Research, ‘*The Survey of Guernsey Living Standards, Report on Phase 1: The Necessities of Life*’

<sup>8</sup> *Anti-Poverty Policies – a Range of Possible Options for Guernsey*, Gordon et al, Townsend Centre for International Poverty Research, University of Bristol, November 2002, p 108

<sup>9</sup> *The Survey of Guernsey Living Standards, Report on Phase Two: Poverty and Standards of Living in Guernsey*, Gordon et al, Townsend Centre for International Poverty Research, University of Bristol, January 2002, p 63 and Graph 8, p 66

<sup>10</sup> *Anti-Poverty Policies – a Range of Possible Options for Guernsey*, Gordon et al, Townsend Centre for International Poverty Research, University of Bristol, November 2002, p 107

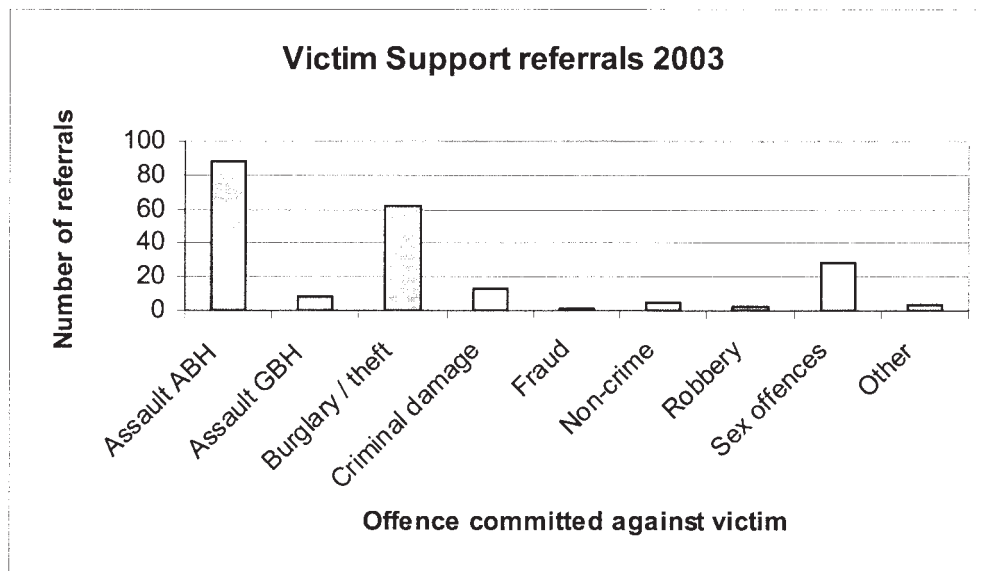
<sup>11</sup> *Anti-Poverty Policies – a Range of Possible Options for Guernsey*, Gordon et al, Townsend Centre for International Poverty Research, University of Bristol, November 2002, p 33

*Prevalence rates for total crime were significantly higher for 16-24 year olds (48%).<sup>12</sup>*

It can be concluded from the Townsend Reports that people in poverty experience the most crime, and are also least likely to be able to cope with the impact of crime.

Some information on victims is also available annually from Victim Support, on the number of contacts and referrals made to the Service. This shows that in 2003 victims of assault, theft and sexual offences were the most likely to make contact with or be referred to Victim Support, see Graph 9<sup>13</sup>.

The paucity of information on victims, and from victims about their satisfaction with the criminal justice system, is a hindrance to policy and practice development which should be addressed in future; one possibility would be a victim satisfaction survey, which could form part of a wider crime survey. Work with victims and witnesses of crime is discussed in Chapter 5, 5.2.



**Graph 9: Victim Support referrals 2003**

## 2.6 Offending and offenders

In common with other comparable jurisdictions, the average offender in Guernsey is male and aged between 16 and 25. This group are not only the main recipients of all types of sentencing, but also the most likely age group to be victims of crime.

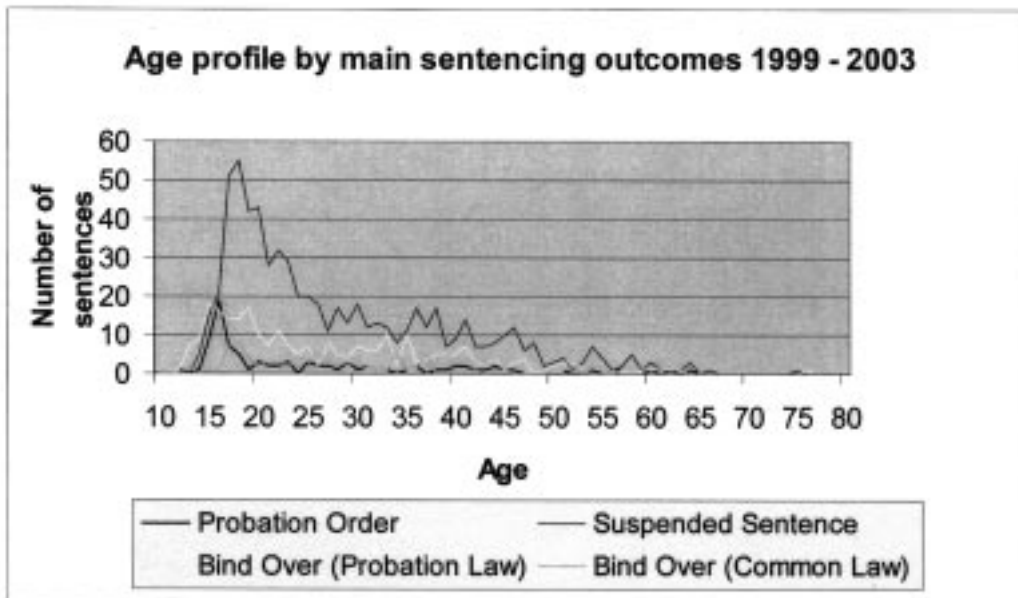
Between 1999 and 2003:

<sup>12</sup> *The Survey of Guernsey Living Standards, Report on Phase Two: Poverty and Standards of Living in Guernsey*, Gordon et al, Townsend Centre for International Poverty Research, University of Bristol, January 2002, p 68

<sup>13</sup> Victim Support Guernsey

- 22,141 offences<sup>14</sup> were committed.
- 62.8% of offences were committed by those aged under 25.
- 16 is the most likely age for the imposition of a Probation Order.
- 55% of all fines were imposed on people under 25.
- 62% of driving licence suspensions were for those under 25.
- 49% of all custodial sentences were imposed on people under 25.
- 57% of all cautions were given to those under 25.

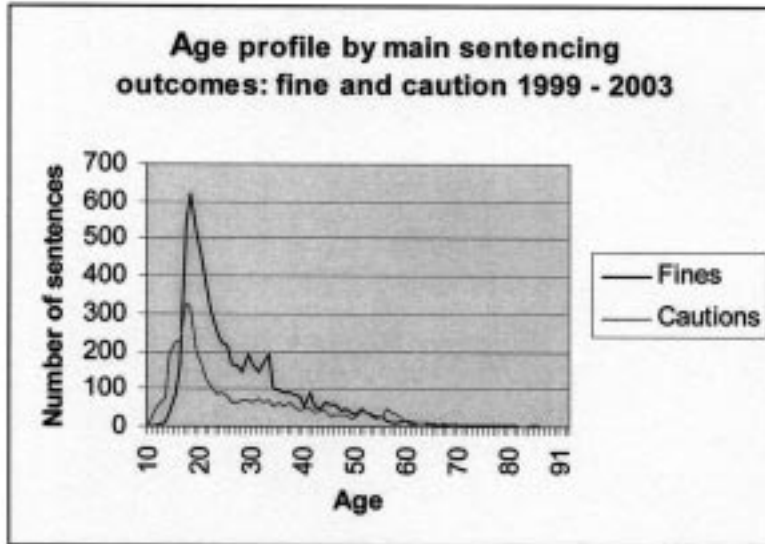
## 2.7 Age profile



Graph 10: Age profile of offenders by main sentencing outcomes 1999 - 2003

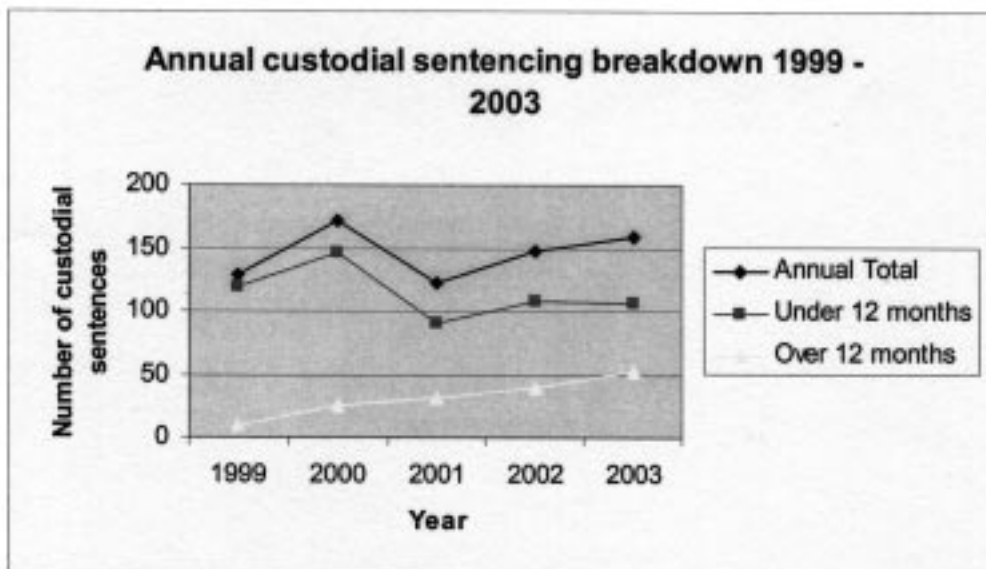
<sup>14</sup> Many offenders received more than one sentence, hence the reason why the number of sentences is high in comparison to the number of offenders through the system. In addition many of these offenders will have re-offended in the same period.

Between 1999 and 2003 of the 22,141 offences committed, 62.8% (13,906) were committed by those under 25. This is supported by Graph 10 and Graph 11 where a peak can be seen between 16 and 25. Traffic offences accounted for 60% of those offences committed by those under 25.



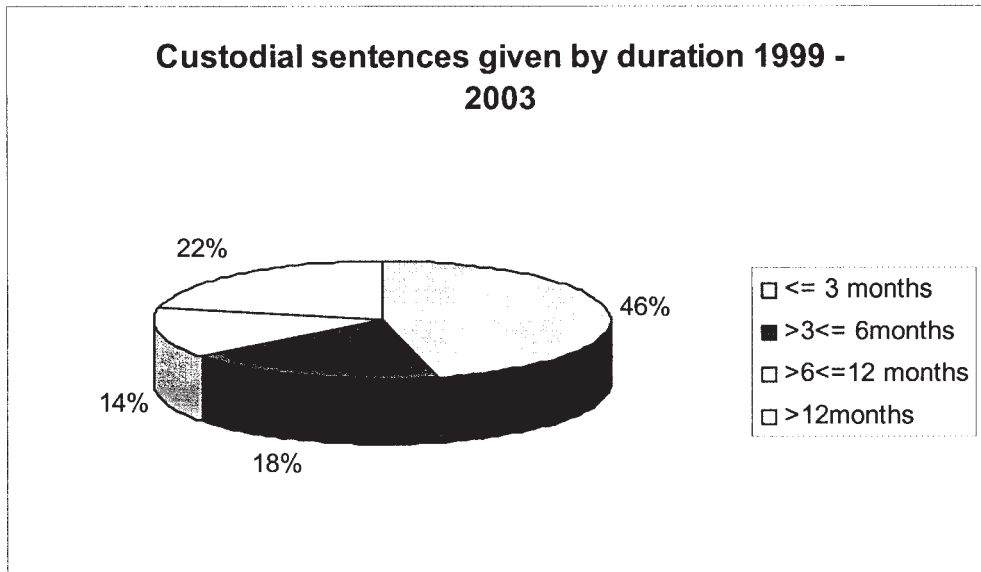
Graph 11: Age profile by main sentencing outcomes: fines and cautions 1999 - 2003

## 2.8 Sentencing

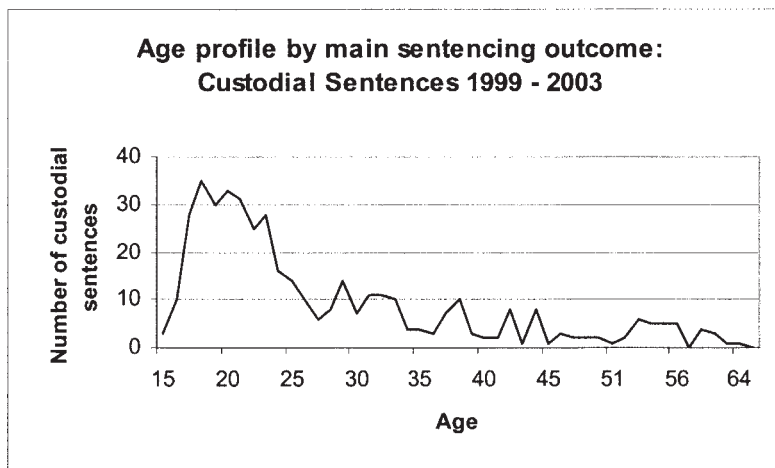


Graph 12: Annual custodial sentencing breakdown 1999 - 2003

As Graph 12 demonstrates, the majority of custodial sentences are of 12 months or less, although the number of custodial sentences in excess of 12 months has increased.



**Graph 13: Custodial sentences given by duration 1999 - 2003**



**Graph 14: Age profile by main sentencing outcome: Custodial Sentences 1999 - 2003**

Graph 13 records the average breakdown of custodial sentences imposed by the Courts over the past five years, 46%, being for three months or less, and 77% of custodial sentences being of 12 months or less. But at any one time the majority of the Prison population are serving longer sentences. In 2003, for example, at any one time only 38% of the Prison population were serving sentences of 12 months or less.

Those sentenced to custody are usually male. The average age of those sentenced to prison is 28, although the majority of those sentenced are under 25, see Graph 14.

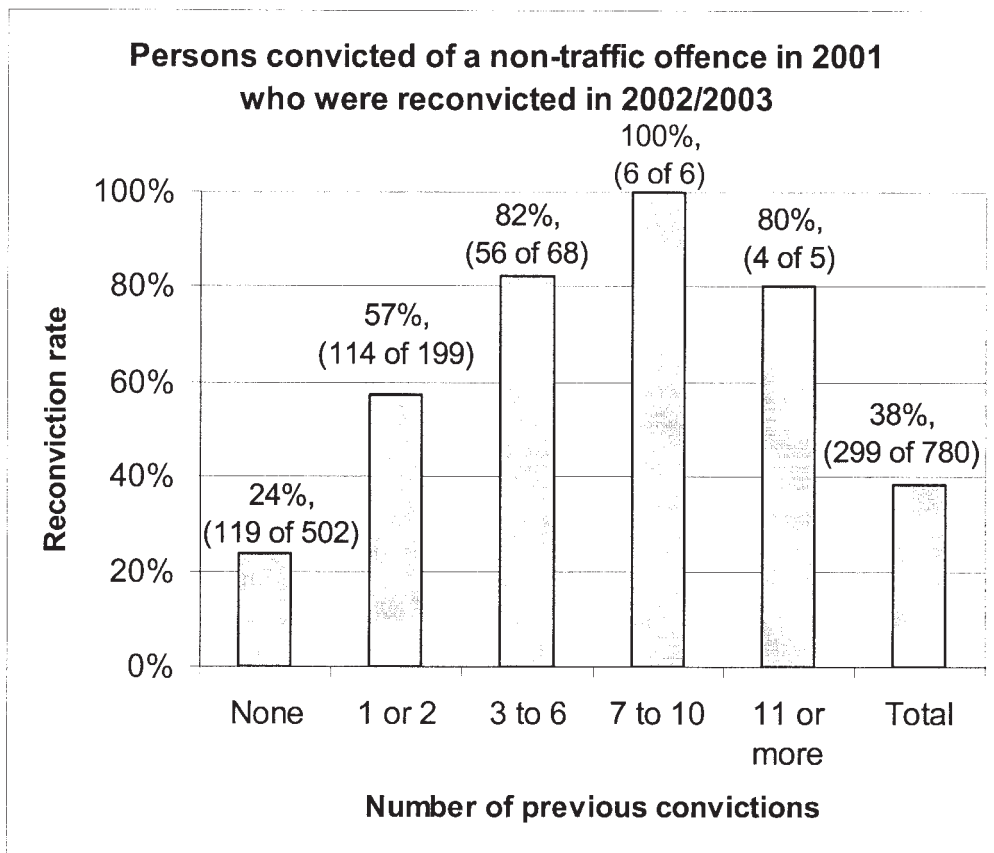
## 2.9 Reconviction

Reconviction rates can provide evidence on 'what works' in terms of:

- rehabilitation; and
- reducing re-offending.

This information can be used by policy makers to decide what measures may help to combat crime and criminal behaviour by breaking the cycle of re-offending.

Measuring reconviction is a complex task, hence the need to ensure that statistical information is maintained throughout the whole criminal justice system. This is particularly important when assessing any new or developing initiatives such as community sentencing. From the information presently available in Guernsey the Group have been unable to distil any meaningful statistical data on this crucial matter; we feel it is important to resolve that problem for the future

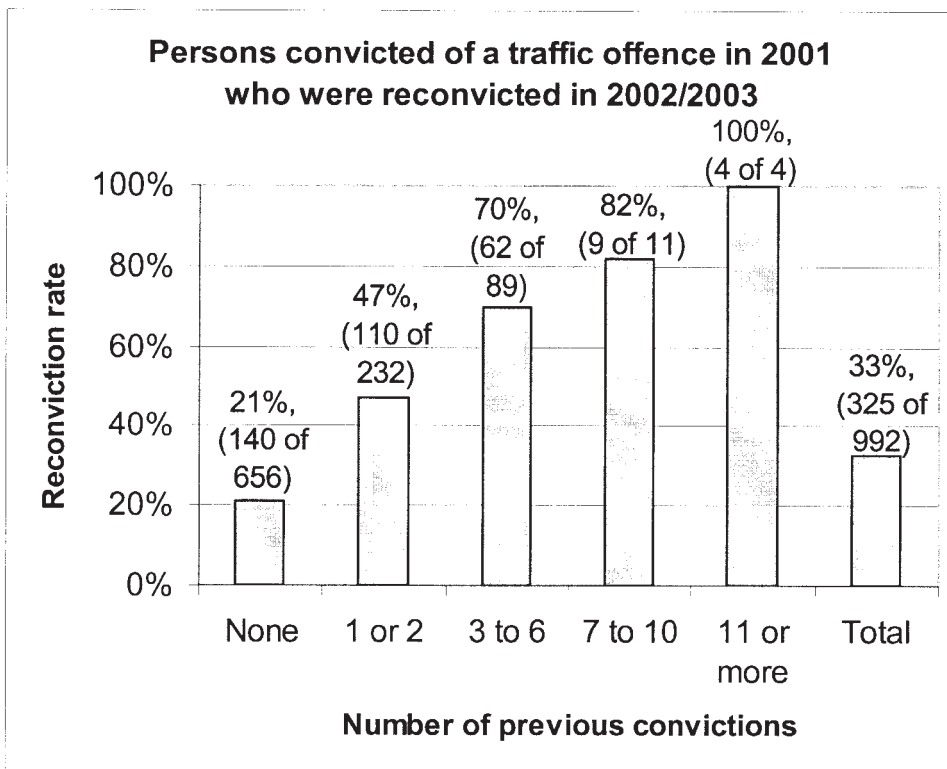


**Graph 15: Persons convicted of a non-traffic offence in 2001 who were reconvicted in 2002/2003**

Graphs 15 and 16 use 2001 as a base year as this provides a two year history (1999 and 2000) and a two year reconviction rate (2002 and 2003).

- 38% of all people convicted of a non-traffic offence in 2001 were reconvicted during the next two years (2002-2003).

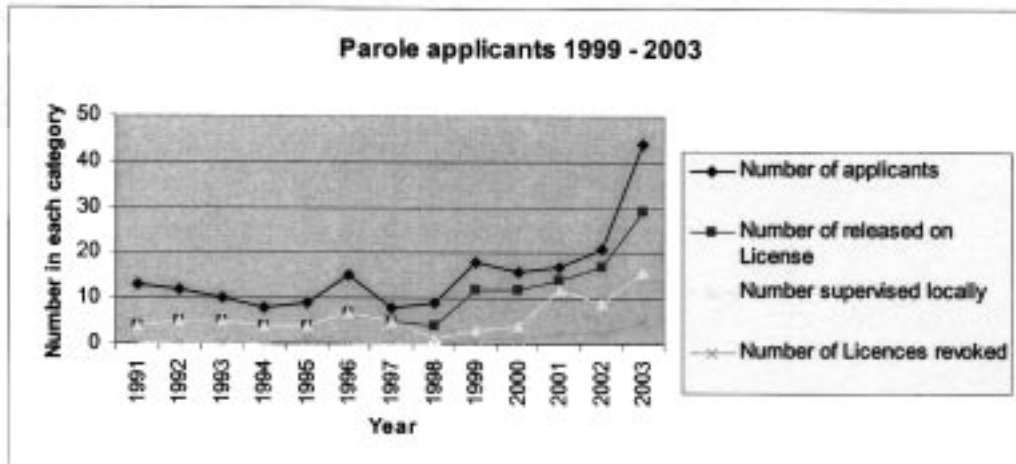
- Over three-quarters (82%) of those with three to six previous non-traffic convictions were reconvicted within two years.
- 24% of people with no previous non-traffic convictions were reconvicted of a on-traffic offence over the next two years.
- 33% of all people convicted of a traffic offence in 2001 were reconvicted during the next two years (2002-2003).
- Over three-quarters (82%) of those with seven to ten previous traffic convictions were reconvicted within two years.
- 21% of people with no previous traffic convictions were reconvicted of a traffic offence over the next two years.



Graph 16: Persons convicted of a traffic offence in 2001 who were reconvicted in 2002/2003

### 2.10 Parole

Currently offenders sentenced to more than 15 months are eligible to apply for Parole after a third of their sentence or after ten months whichever is longer.



Graph 17: Parole applicants 1999 - 2003

Graph 17<sup>15</sup> illustrates that the number of parole applicants has risen in line with the increase in sentences over 12 months, as is to be expected. It also demonstrates that there have been changes in the number supervised locally. Prior to 1997 almost all parolees were supervised locally. Since then the proportion of post sentence supervision transferred to the Probation Service in the UK reflects the increased number of UK residents imprisoned (generally for drug related offences) and returning to home areas in the UK on release.

### 2.11 Evidence driven policy

The Group consider that policy making ought to be evidence led, but to date little attention has been given to how data collected by various agencies can be used to develop such policies. Although this review has brought together the statistical collators of the criminal justice agencies the reconciliation of data has been very difficult. Thus it has been hard to provide an evidence base for a criminal justice policy, and it is recommended that the work undertaken for this review should be sustained in order to furnish Phase Two with the necessary information and to produce relevant benchmarks for the future.

#### Chapter 2 key recommendation

- That resources should be made available to enable satisfactory monitoring and evaluation of the criminal justice system, including sentencing outcomes and reconviction rates.

<sup>15</sup> Parole Review Committee

## Chapter 3 Criminal justice policy

*'Once the Courts are considered in the context of the criminal justice system as a whole, including the community at large and the various agencies and others involved in the process, it is obvious that their purpose and function are not confined to the forensic practicalities of convicting and sentencing the guilty and acquitting others. So, it is necessary to keep an eye on the over-all purposes of criminal justice.'*<sup>16</sup>

*Lord Justice Auld*

### 3.1 Introduction

The States of Guernsey have historically played a relatively un-coordinated role in developing criminal justice policy, with former committees taking fragmented aspects of policy through the States. The integration of these various committees under the Machinery of Government changes<sup>17</sup> provides a new context in which to consider the development of a comprehensive and over-arching criminal justice policy. Whether or not such a policy is developed, we feel that those responsible for decision making across the criminal justice system, people affected by their decisions and consequently the community as a whole, might well benefit from a network within which experience, problems and initiatives can, where appropriate, be shared and better understood. The framework<sup>18</sup>, which we suggest in this paper, would provide a general structure into which there is built the necessary flexibility to work with various agencies and organisations as circumstances require. It is a framework for working together to deliver justice fairly, efficiently, proportionately, and in ways which command public support and respect. With the changes in the Machinery of Government and the development of policies such as the Corporate Anti-Poverty Programme (CAPP) a philosophy of joint working is the mainstay of many new initiatives. In few if any areas could the development of such an approach be more challenging than in that of criminal justice, where it is so important to maintain the independence of various offices and agencies on which public confidence in the administration of justice is rightly based. And it is often essential to maintaining that independence that they do, and are seen to, stand apart from each other. But, especially in strategic terms, there are respects in which joint working can potentially contribute to the retention and enhancement of that very public confidence.

In this chapter we:

- Review what is meant by the criminal justice system and criminal justice policy.
- Recommend a framework for future work in this area.

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<sup>16</sup> Lord Justice Auld, Review of the Criminal Courts of England and Wales, 2001, p.8

<sup>17</sup> May 2004

<sup>18</sup> Figure , page 21

### **3.2 What is the criminal justice system?**

The criminal justice system is obviously in place. Although quite complex, it is reasonably easy to recognise and define; most of its elements have comparators elsewhere; and, however well it may work, there is always scope to identify possible refinements and improvements. It comprises a number of separate offices, institutions and agencies, as well as government departments, with responsibility for various aspects of the work of maintaining law and order and the administration of justice.

States departments with a special interest in criminal justice matters have important funding, development, and support functions, are rightly concerned with the setting of objectives and targets, and, to the extent that policy may need to be enshrined, have a major role in providing that policy framework. The offices, institutions and agencies at the heart of the criminal justice system are primarily, however, the law enforcement services; prosecuting authorities; the Courts; and the Prison and Probation Services. Many of these have a long history and tradition of autonomy and independence: For example the judiciary are and must remain independent of all political influence in the trial and disposal of matters brought to Court; the Law Officers' integrity and independence as respects prosecution decisions must be similarly respected; and the law enforcement agencies of Police and Customs must also have investigatory independence; but all are rightly required to operate within parameters (e.g. concerning the definition of criminal conduct and the maximum sentences imposable on conviction) set by the elected members of the Legislature.

### **3.3 Policy issues in the criminal justice field**

Policy issues arise either in their own right or in consequence of other policy initiatives. This area is considerably more difficult than the criminal justice system itself to recognise and define. It is apt to include criminal justice policy issues associated with enormously sensitive ethical areas (e.g. euthanasia); through constitutional and social areas (e.g. Legal Aid); to resource and operational issues (e.g. law enforcement and deployment). The scope for refinement and development of such policies is similarly variable, and the need to involve different States departments, other institutions, offices and agencies differs so much that it is essential to maintain flexibility.

### **3.4 A dedicated criminal justice policy?**

It may be thought that the notion of criminal justice policy might play a part in underpinning both the criminal justice system itself and appropriate approaches to the development and operation of policies and projects which directly or indirectly involve policy issues in the criminal justice field. Indeed, some may be surprised that, whilst many of the agencies etc which together constitute Guernsey's criminal justice system do have written aims, it is not possible at this time to identify any single document encompassing:

- the categorisation of behaviour as crime;

- strategic policy aspects of its prevention, detection, investigation and prosecution; and
- strategic thinking about penal, corrective and other post conviction regimes.

The Group are mandated to consider whether for the future there may be merit in bringing the threads together and forming a long-term strategy. Throughout this review the Group's suggestions reflect our perception of the aims of criminal justice policy in Guernsey, but at this stage no attempt has been made to draft any such strategy for the Island. It is the belief of the Group that such an approach, difficult though it undoubtedly is, may be worthy of consideration for the future.

### **3.5 How might a criminal justice policy for Guernsey be developed?**

The Group have considered how a criminal justice policy might be developed and implemented on a strategic level. It is our recommendation that a framework for joint working should be established on a trial basis<sup>19</sup>. It is vital that agencies involved in criminal justice retain full operational independence, including the freedom to develop policy without political pressure or constraint. However some matters of, or affecting, criminal justice policy will obviously continue as in the past to require the endorsement of the States of Deliberation. These include, for example, strategic policy initiatives, relevant Policy and Resource Plan statements, and (subject to Royal Sanction where required) legislation, in areas such as:

- the range of sentencing options available to the Courts;
- the maximum sentences (and, exceptionally, minimum sentences) applicable to specified offences;
- custodial regimes;
- non-custodial or limited custody regimes;
- statutory regimes governing criminal investigations;
- the creation, abrogation or modification of statutory offences and defences;
- the abrogation or modification of common law offences;
- the provision of statutory non-criminal responses appropriate to specified behaviour (e.g. regulatory regimes) or persons (e.g. children or the mentally impaired); and
- Guernsey's role in the international battle against organised crime (e.g. serious fraud and terrorism), including international co-operation in criminal justice matters.

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<sup>19</sup> Figure 1, page 21

The Group recognise that a considerable part of the Home Department's mandate is to advise the States on matters relating to criminal justice policy and that this advice is to be '*developed and reviewed in consultation with the Courts, Law Officers and other interested parties*'<sup>20</sup>. The proposed framework endeavours to take this into account, by providing a structure within which the various departments, offices and agencies are better enabled, and more clearly seen, to work together in the fulfilment of their respective strategic functions.

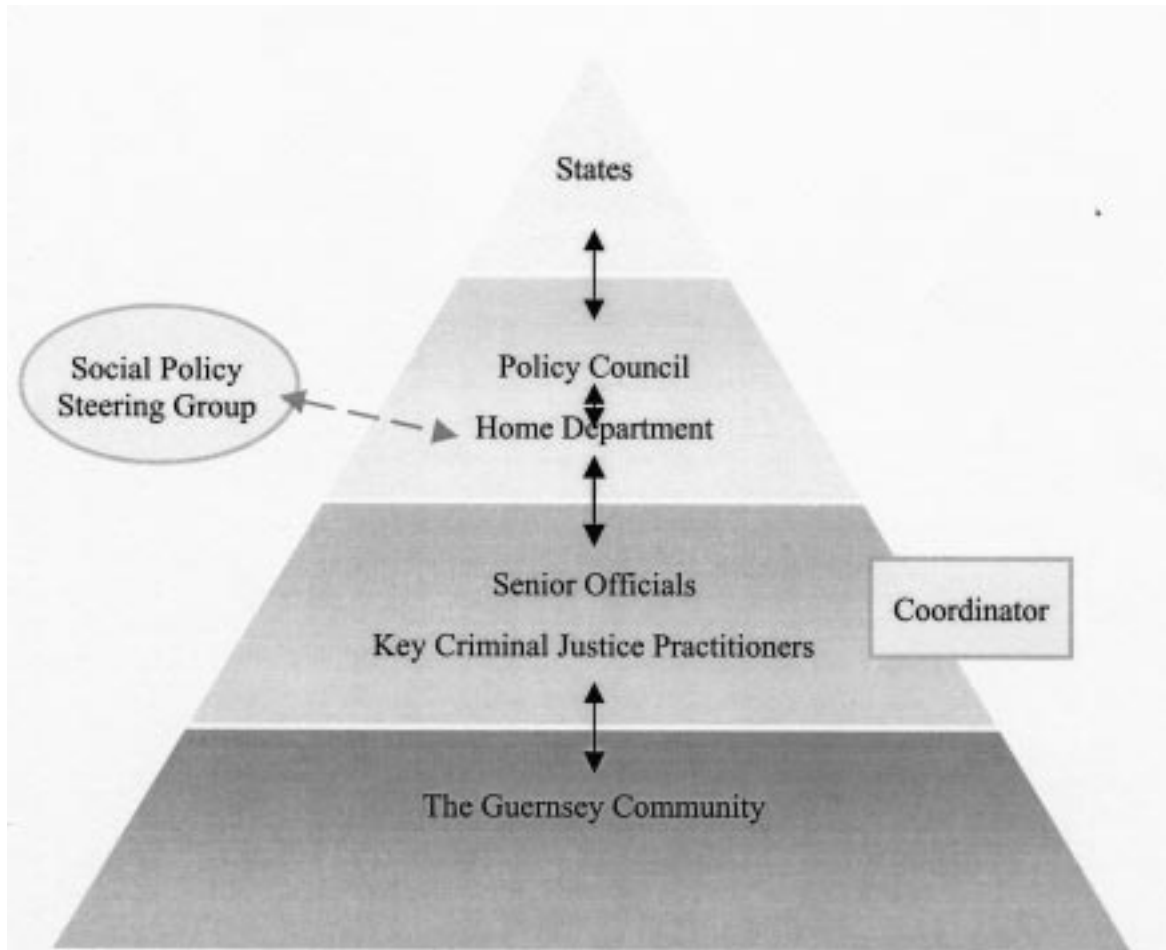


Figure 1: Criminal justice policy: Framework for joint working

### 3.5.1 The framework

The top three tiers of the pyramid are fairly self explanatory. Under normal circumstances the Home Department Minister would take matters through the Policy Council to the States of Deliberation. However for those issues where the Minister or **Senior Officials** sought ministerial endorsement from the other departments involved in criminal justice policy the mechanism exists to send items to the Social Policy Steering

<sup>20</sup> Article 12, Billet d'État XXIV, 2003, p. 2234

Group. This Ministerial Group consists of five ministers from the Home, Education, Health and Social Services, Social Security and Housing Departments.

Subject to political endorsement as appropriate, **Senior Officials** (led by the Home Department and Law Officers) would be responsible for the development, and subsequently implementation, of any strategic criminal justice policy. Those involved might vary according to the particular matters under review but would be likely to include many of those who have served on the existing Criminal Justice Policy Working Group<sup>21</sup>. Their responsibilities would include

- formulating and reviewing aspects of criminal justice policy;
- developing and reviewing strategies for delivering criminal justice policy; and
- enabling practitioners to deliver strategy.

It is envisaged that key practitioners in statutory and non-statutory agencies, would work closely with the **community** to deliver strategy, and would use their great and diverse expertise and practical experience to make recommendations to Senior Officials.

Given the large scope of criminal justice policy, we suggest that in order for the framework to be as efficient as possible it needs, at least during the early phases, a strategic **co-ordinator**, in much the same way as the Island Drug Strategy. We suggest that initially a three to five year contract should be offered to a suitably qualified person, perhaps on secondment, to co-ordinate a comprehensive review of criminal justice; and to assist in the formulation and initial implementation of any new or revised strategy, whether overarching or specific. The co-ordinator's role would include the following:

- to work with Senior Officials in the development of criminal justice policy or any aspect thereof;
- to facilitate, monitor and evaluate the implementation of criminal justice strategies;
- to develop a criminal justice statistical database in conjunction with all the relevant agencies, and to produce regular statistical reports;
- to carry out reconviction studies on existing and new sentencing options;
- to develop a local evidence-base of outcomes of the various available sentencing options;
- to co-ordinate, develop and support the work of Senior Officials and Key Practitioners;
- to develop and co-ordinate multi-agency partnerships; and

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<sup>21</sup> Appendix 1

- to draft annual reports on all aspects of the criminal justice system and policy, for endorsement by Senior Officials and subsequent laying before the States of Deliberation by the Home Department Minister.

The proposals outlined in Figure 1 (page 21) aim to reflect the need to respond to current social, political and economic circumstances. They endeavour to take account of all stakeholders in the criminal justice system, not least the general public, by enabling each to share information and ideas with others. This is not intended to be a rigid model but merely tries to represent how criminal justice matters might helpfully be progressed in future.

The framework continues the thinking of the Townsend Report which outlines *'the importance of the process of developing an anti-poverty strategy alongside a focus upon its outcomes in terms of long-term goals and appropriate policy measures'*<sup>22</sup>. In reference to criminal justice policy the Townsend Group reported specifically that the *'development of a central policy to tackle the twin problems of crime and a growing prison population [should, for] effective implementation include Police, Probation Service, Prison Services and the Children Board (in relation to juveniles)'*<sup>23</sup>. The Group consider that it is also vital to include representatives of other key offices and agencies, such as the Law Officers, Customs, and the judiciary where appropriate.

The framework also aims to reflect to some extent, within the broader field of an independent criminal justice system, the principal objectives of the new States structure, outlined in the 2003 PRP, namely that it should provide for:

- *'a more streamlined system of government;*
- *more effective communication between departments;*
- *a more comprehensive approach to the development and co-ordination of policy;*
- *an improved decision making process; and*
- *improved delivery of services for the community'*.<sup>24</sup>

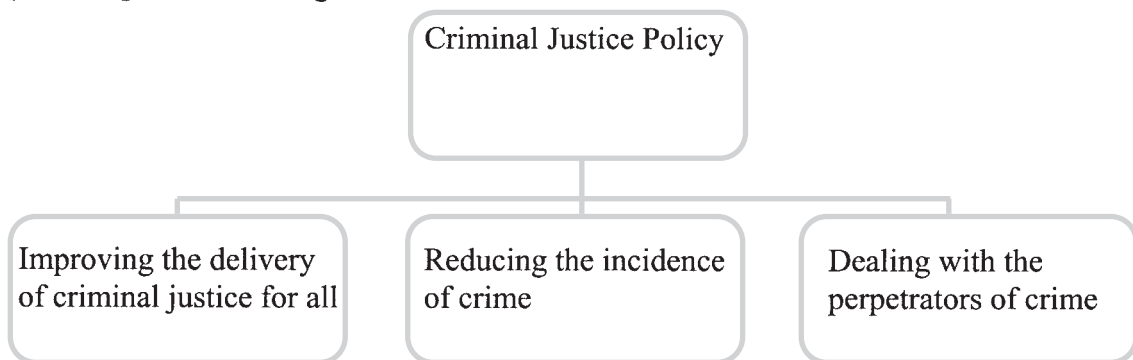
<sup>22</sup> *Anti-Poverty Policies – a Range of Possible Options for Guernsey*, Gordon et al, Townsend Centre for International Poverty Research, University of Bristol, November 2002, p iii

<sup>23</sup> *Anti-Poverty Policies – a Range of Possible Options for Guernsey*, Gordon et al, Townsend Centre for International Poverty Research, University of Bristol, November 2002, p viii

<sup>24</sup> States Advisory and Finance Committee, 2003 Policy and Resource Plan, p.1396

### 3.6 Phase Two and beyond

The Group have primarily focussed on particular aspects of the delivery of justice, and especially on additional sentencing options which might beneficially be made available to the Courts. The Group have identified certain areas where we feel sufficiently confident to make recommendations for implementation at this stage, but we are very conscious that these need to fit into a wider framework. The Group have touched upon many areas of what might make up an overarching criminal justice policy, but recognise that further research including consultancy and specialist advice will be needed, which will require additional funding (see Chapter 9). It is felt that a more comprehensive review is necessary, and this Report is seen as Phase One of the required work. We suggest that Phase Two continues within the framework described, using the three pillars represented in Figure 2.



**Figure 2: Pillars of criminal justice policy for Guernsey**

#### Chapter 3 key recommendations

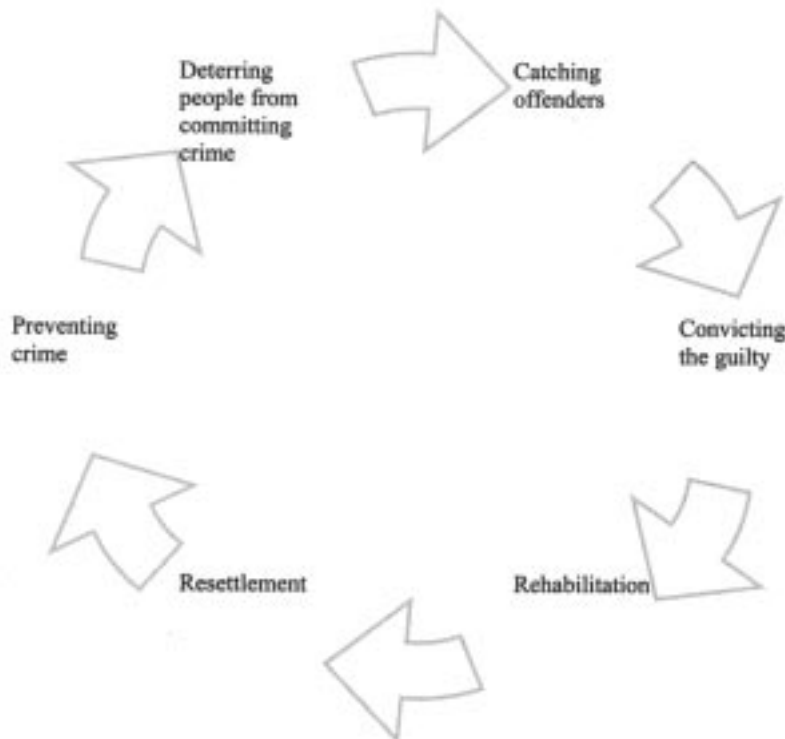
- That work on criminal justice policy review should continue to a second phase.
- That the framework for working on criminal justice policy and strategy, outlined in Figure 1, should be adopted.
- That the resources to finance a review should be made available, including the funding of a co-ordinator's post for a three to five year contract.

## Pillar 1: Improving the delivery of criminal justice for all

*'It is my view that criminal justice has been divorced from the community for far too long. Justice has come to be seen as a contest between the state and the defendant. The forgotten party, the victim, and the community to which they belong are largely ignored. Justice should be something we claim for ourselves, but at present the ordinary person feels little sense of ownership of justice.'*<sup>25</sup>

*Judge McElrea*

A robust criminal justice system will reduce crime through prevention and deterrence, catching and convicting the guilty, and delivering appropriate sentences which rehabilitate. Figure 3 outlines how this works in a cycle.



**Figure 3: Tackling crime and the causes of crime**

As Figure 3<sup>26</sup> seeks to show, all phases of criminal justice are bound together, and all agencies have their own responsibilities. Some of these responsibilities are examined in more detail in the other parts of this Report, such as the role of the Prison and Probation Services in the rehabilitation of offenders; others, such as the enhancement of law

<sup>25</sup> McElrea, F, (1999) 'Taking responsibility and being accountable,' in Bowen, H and Consedine, J (eds.) 'Restorative Justice, Contemporary Themes and Practice,' p.56-63

<sup>26</sup> Adapted from model in, 'Confident Communities in a Secure Britain: The Home Office Strategic Plan 2004-2008 published by the HM Government, Home Office, page 32

enforcement, are paid less attention. The Group are of the view that as part of Phase Two a review of how criminal justice is delivered should be undertaken. This review should go beyond sentencing and look at how law enforcement and the Courts can be made more effective to catch and convict more of the guilty, alongside the enhancement of the correctional agencies of Prison and Probation to rehabilitate offenders. All parts of the system must work well together to deliver justice so that victims are provided for and the community has confidence in the system. A fundamental part of the criminal justice system is taking care of victims and witnesses. The Group recognise that the needs of victims and witnesses cannot always be met by the system on its own and that other social providers, such as the Health and Social Services Department and community organisations, have key roles to play. However we are committed to a review of services for victims and witnesses so that they are moved closer to the centre of the local criminal justice system.

Most of the recommendations in Pillar 3 focus on dealing with low risk offenders who can safely be punished and rehabilitated in the community, whereas under this pillar we look at how, alongside these strands, conditions for victims and witnesses can be improved and the law enforcement agencies and the Courts can deliver justice more speedily and effectively. We look at work that is on-going as well as considering whether further work needs to be carried out to improve the delivery of criminal justice. Again our discussions bring us to the conclusion that an enhanced level of inter-agency working (and possibly an overarching criminal justice policy) may have benefits to offer.

**Pillar 1:**

- Examines how the law enforcement agencies and the Courts might deliver justice more speedily and effectively.
- Discusses how the criminal justice system can be further improved for victims and witnesses.
- Looks at some possibilities for restorative justice in Guernsey.

## **Chapter 4 Efficient and effective delivery of justice**

### **4.1 Introduction**

In the interests of justice the conviction and sentencing of the guilty should be delivered as swiftly as possible; serious and organised crime requires a focussed and cohesive response; the proceeds of crime should be vigorously pursued; and offenders should be caught, punished and rehabilitated. As is argued throughout this Report, this can often best be achieved through inter-agency collaboration, and a holistic approach to criminal justice.

### **4.2 Reduction in time spent on remand**

It is important in any system of justice for persons charged with criminal offences to have their cases dealt with as expeditiously as possible. If charges are denied then it is in the interest of defendants, victims and witnesses for the trial stage to be reached at the earliest opportunity, whilst events are still fresh in the minds of all concerned. Similarly, it is important to deal with convicted offenders at the earliest opportunity. For example, where a custodial sentence is required, delay in its imposition may mean the release of those offenders into the community without the Prison and Probation services having had the opportunity of fully addressing their offending behaviour with them.

It is perceived that little needs to be done to expedite the throughput of cases in the Magistrates' Court, as there is no reason why summary case work should not be completed within, at most, a matter of weeks of proceedings being brought before that Court.

The position is different in the Royal Court, where the criminal case load has increased significantly from that of only a few years ago. Nevertheless, sittings of the Royal Court to deal with criminal matters have increased significantly over the same time period such that casework can still be completed within a reasonable period – certainly within a shorter time period than equivalent casework in the United Kingdom.

There are, however, two procedural issues in bringing cases before the Royal Court which, if addressed, have the potential to reduce the time taken to deal with cases from charge to disposal.

#### **4.2.1 Committal proceedings**

A committal is the procedure by which a case which begins (as all cases do) in the Magistrates' Court is transferred to the Royal Court. The current procedure is that cases are usually transferred to the Royal Court upon presentation of written statements establishing a prima facie case against a defendant. For the most part, the statements of the prosecution witnesses presented to the Court in these proceedings are accepted by the defence such that, even where a not guilty plea is to ensue, no challenge is mounted to that evidence until the Royal Court trial. But sometimes the statements of the

witnesses are not accepted, and the prosecution have to call witnesses to establish a prima facie case at committal. If that evidence can be shown to be untruthful, or if there is otherwise a deficiency in the prosecution case, then the defendant is discharged at that stage and does not subsequently appear before the Royal Court for trial. Although this procedure is not often used, it may be viewed by some as an important safeguard, enabling a person charged with what is usually a serious offence to challenge the case against him at an early stage without the worry and stigma of a full Royal Court appearance. Committal proceedings, in either form, inevitably add to the length of time that it takes to dispose of a case which is to be heard before the Royal Court.

Where the committal proceeds simply on the basis of statements it will usually involve a period of between five and nine weeks before the committal proceedings stage is reached in the Magistrates' Court. Once a committal has taken place it may be another four weeks before the matter is first listed before the Royal Court for plea and directions, and then a similar period if the matter is to be listed as a guilty plea hearing or a longer period if it is to be listed for trial.

In the case of committal proceedings where witnesses are called, the delay is even longer. Court space has to be found for proceedings which usually take at least a day, and in most cases longer. Witnesses have to give evidence and their evidence has to be taken down verbatim. This is a slow procedure, which not only might be viewed as archaic, but is hardly sympathetic to witnesses, who are faced with the trauma of giving evidence in Court not once but twice. It would not be unusual for cases where witnesses have to give evidence at committal proceedings to take a year before they are finally disposed of by way of a full hearing in the Royal Court.

An alternative system (in many ways similar to that which is now available in certain cases in England and Wales) might work as follows:

- the system would apply to all offences which the Law Officers direct should be heard by the Royal Court or on which a defendant elects to be tried by the Royal Court. It would not apply simply to those matters which must by their nature, be dealt with by the Royal Court;
- at the hearing at which the Law Officers direct the matter should be heard before the Royal Court, the Magistrates' Court would simply send the case to the Royal Court for trial at that stage. This would usually be at the second hearing before the Magistrates' Court which is only, in the normal course of events, in the region of a week or so after the defendant has first been charged. There may, obviously, be cases where the decision cannot be taken at this stage because, for example, the decision whether to prosecute may depend on forensic evidence which may take some time to obtain;
- where a defendant elects trial before the Royal Court the case would be sent to the Royal Court at the next hearing thereafter; and
- a case sent to the Royal Court would be listed for an initial hearing there within a period of two weeks from being sent there. At this hearing the Judge would

set the timetable for the case. In the first instance the prosecution would be allowed a certain period (and the process would have already started by this time) to complete their file preparation. Before that period had elapsed the prosecution would have to serve on the Court and the defence their full bundle of evidence (which will broadly correspond with what is currently served for the purposes of committal proceedings). In the normal course of events this first stage should be reached not later than four weeks after the first hearing before the Royal Court.

The principal benefits of such a system are that the Royal Court is controlling the time schedule of the case from an early stage; that witnesses will no longer have to attend before the Magistrate to swear their statements, and later attend again for the Royal Court trial; and that there will be no need for the Greffe to be involved in preparing Royal Court files, which currently duplicates the effort that has already been undertaken by the prosecution.

We acknowledge that procedures would have to be introduced to deal, inter alia, with:

- bail applications, including disclosure to the defence to enable them to pursue such applications;
- enabling the defence to challenge the prosecution case, without it going to full trial, before a single Judge of the Royal Court, either on the basis of the prosecution bundle of evidence or, with the permission of the Judge, following a preliminary hearing involving witnesses;
- the formal preferment of the indictment; and
- cases where the original charges on sending the case to the Royal Court are not pursued, and it may in consequence be suitable for the matter to be heard in the Magistrates' Court.

#### **4.2.2 Committal for sentence**

Guernsey has never had a procedure by which defendants are committed for sentence. This procedure is well established in England and applies where a defendant before the Magistrates' Court has been convicted (whether on a guilty plea or after trial) of an offence or offences and the Court considers that its powers are inadequate to deal with that defendant or, for some other reason, the defendant ought to be dealt with before the Crown Court.

A similar procedure might be advantageous in Guernsey, where at present it is not infrequent for defendants to be dealt with for some offences before the Royal Court and for other offences before the Magistrates' Court. It is clearly desirable, for example, for one Court to deal with all outstanding matters concerning the same defendant.

It is suggested that it would not be necessary to devise a separate system to enable such '*committals for sentence*' to take place. Instead, the system of sending cases to the

Royal Court, as outlined above, could incorporate a power to be given to the Magistrates' Court to send cases to the Royal Court, whether before or after a guilty plea has been entered or a trial has taken place in the Magistrates' Court, where it would appear to be in the interests of justice to do so.

### **4.3 Criminal justice data sharing and case management**

Each of the agencies involved in the criminal justice system has its own IT supported case management systems designed to enable that agency to fulfil its own particular functions. That must of necessity continue; and, whilst throughout this Report we commend joint working wherever possible, the Group fully appreciate that much of the data concerning individuals in these systems cannot be shared between agencies. Data sharing must be restricted, not only for important data protection, confidentiality and security reasons, but also, and fundamentally, because the fairness of the system relies on some decision makers at some stages **not** having access to certain information which is required by other agencies but which may, or may be perceived to, inappropriately influence their decisions. This paradox is crucial to the administration of justice.

It is equally clear, however, that at some stages in the process and for some purposes information held by particular agencies **must** be made available to others if they are to fulfil their functions properly.

For example, a streamlined case management tool could assist in the delivery of criminal justice by enabling cases to be tracked throughout the system by the various agencies involved. The Group understand that, no doubt in part due to difficulties arising from the sort of issues mentioned above, attempts elsewhere to replace the databases of various agencies with a more integrated model have been expensive and unsuccessful. The better approach seems to be a special database which complements, and only where approved redistributes, the information held in the several agency databases linked to it. Such a tool is used to good effect in Northern Ireland through the Causeway Project<sup>27</sup>, and Jersey are in the process of establishing something similar .

A criminal justice system management tool would also enable statistical information to be collected and analysed in a way that is not currently possible, in order to build up an evidence base to inform policy. It could therefore help to achieve some of the aims outlined in Chapter 2.

### **4.4 Serious and organised crime**

This Report notes an increasing trend in the number of serious cases tried in the Royal Court over recent years, particularly drug trafficking cases. There is public concern about those criminals who make a living out of exploiting the vulnerable; and whilst such organised criminals are a minority of those who enter the criminal justice system, society must be protected from them.

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<sup>27</sup> [www.causeway.gov.uk](http://www.causeway.gov.uk) for further information on this system and its development

The Group have noted that a new Serious and Organised Crime Committee has been formed under the chairmanship of H.M. Procureur. This Committee, which includes the Chief Officers of Police, Customs and Immigration and their senior operational colleagues, will provide a focus for monitoring, recommending and developing strategy to combat such crime. The Committee is aware of serious and organised crime initiatives including the development of legislation in the UK and elsewhere and will keep abreast of relevant issues, which will become an important influence on any second phase of criminal justice policy review. The Group fully support the establishment and work of the Serious and Organised Crime Committee and hope to draw on that work in the future.

#### **4.5 Dealing with the proceeds of crime**

Taking away criminal proceeds, however small or large they may be, is a key element in reducing crime and can be achieved by the criminal justice system. A drug smuggling enterprise is not dismantled if the convicted, from courier to organiser, are left with money illegally accrued, and available for re-investment in the drugs trade. Those assets might appropriately be placed into seized asset funds which can then be released to help reduce crime, and to minimise the effect of crime on the public and victims.

Parallel to the work of this Group has been the development of a law enforcement strategy with regard to financial investigation and the proceeds of crime. Although the work has been undertaken separately, the Group endorse this strategy and envisage it being subsumed into future criminal justice policy work.

The Bailiwick has excellent modern financial crime and money laundering legislation which permits the confiscation of any benefit a criminal has accrued from crime. The relevant agencies are also actively reviewing the recently enacted *Proceeds of Crime Act 2002* introduced in the United Kingdom, which extends powers to deprive criminals of their assets even further.

However, although financial crime legislation has been in force locally over several years the amounts that are confiscated in Guernsey Courts remain relatively low.

The aims of the law enforcement strategy are to maximise the impact of existing legislation, to set up a forum to progress initiatives, and to promote robust policies regarding attacking the proceeds of crime. It will involve developing best practice at the investigative stage and liaison with the Law Officers at the earliest opportunity. This will in turn allow for the an early restraint of assets identified, and submission of a financial statement, to enable the consideration of benefit and any rebuttal in accordance with the aims of the legislation.

It is felt that a more robust and effective use of the current legislation can be achieved by utilising all the resources currently available in a more focused and co-ordinated way. The aim is to build on existing good practice and firmly incorporate parallel financial investigations into existing action undertaken when targeting serious and organised crime (e.g. drug trafficking).

**Chapter 4 key recommendations**

- That further consideration should be given to the replacement of committal proceedings, and the introduction of committal for sentence.
- That further research into the design and implementation of a case management tool should be undertaken.
- To support the work of the Serious and Organised Crime Committee and the development of a proceeds of crime strategy.

## Chapter 5 Victims, witnesses and restorative justice

### 5.1 Introduction

A fundamental issue for any criminal justice system is the need to take care of victims and witnesses. The Group recognise that the needs of victims and witnesses cannot always be met by the criminal justice system on its own and that other social providers, such as the Health and Social Services Department, have a role to play. However, the criminal justice agencies are committed to a review of services and to approaches through which victims and witnesses are moved closer to the centre of the local criminal justice system.

### 5.2 Victims and witnesses

*'Victims of Crime need to feel that the criminal justice system is accessible and responsive, seeks to make amends as far as possible for the damage done by the crime, and will protect them from further harm. They want to be treated with respect, discretion and consideration in direct contacts, letters, at Court and after an offender has been sentenced. They need a timely and effective response, when they may be hurt or frightened. They want to be treated as individuals, with the response being appropriate to them and proportionate to the crime and its effects on them and their family.'*<sup>28</sup>

The Group identified at an early stage that it is vital to acknowledge that victims and witnesses are at the heart of the criminal justice system. The needs of citizens affected by crime range from those who manage without any additional support, through those who can be assisted by the practical help and emotional support provided by voluntary agencies such as Victim Support, to those who are so vulnerable and intimidated that they need protection and intensive support. This latter group include those affected by organised crime, often drug related, or those with special needs such as victims of sexual crimes, children, and those with learning disabilities or mental health problems. Across all these groups is a wide range of needs, including financial, health, employment, accommodation and family difficulties. Not all of these can be dealt with by the criminal justice system alone, indicating the need for an integrated policy for victims supported by all relevant States departments and NGOs.

For the community in Guernsey to feel more engaged and satisfied with the criminal justice system the Group consider that steps should be taken to develop a more strategic approach involving all the agencies concerned from law enforcement, through the Court management system, to the post sentence agencies of Prison and Probation. This would mean that the needs of victims and witnesses are taken into consideration at all points of the process from the incident happening, through the investigation and Court process, to the release of the offender back into the community. The Group have researched developments being looked at elsewhere as other jurisdictions are also realising that their criminal justice systems need a more coherent approach to the issue of victims, and

<sup>28</sup> Home Office (2003), 'A New Deal for Victims and Witnesses,'

that without the confidence of witnesses to come forward and give evidence criminal justice processes can be undermined.

A variety of possible initiatives have been identified; some are already in place locally such as Police Family Liaison Officers and post-sentence involvement of victims by the Probation Service; but these and others need to be further developed to provide a comprehensive service to the victims of crime and to move the issue of victims and witnesses closer to the centre of the local criminal justice system.

The proposals outlined in this section rely not so much on additional resources but the integration and coordination of existing resources, so that the Group's aim of bringing focus on victims closer to the centre of the system can be moved forward.

Alongside the voluntary sector provision by Victim Support there are a range of victim and witness centred issues that may require action from various agencies to produce a more cohesive approach; in the following subsections each of these is considered:

- victim support;
- witness support;
- witness intimidation;
- case preparation, progression and management;
- giving support and information;
- making it easier to give evidence;
- keeping victims involved post sentence;
- management of potentially dangerous offenders;
- criminal injuries compensation; and
- anti-social behaviour approach.

### **5.2.1 Victim support**

Guernsey has had a Victim Support scheme since 1998. The Bailiwick of Guernsey Victim Support Scheme is an independent voluntary organization which has a close relationship with various parts of the criminal justice system. Victim Support has a small group of trained volunteers who provide information, practical help and emotional support to people who have experienced a crime and to their family and friends, and has often extended help and support into helping victims and witnesses through the Court process.

Victim involvement is improved if they are kept informed throughout what can be a complicated and protracted process. This can be enhanced by timely referral and building on the good relationship between Victim Support, the Courts and the Police and Customs. Pathways should be established for information-giving, with clear agency responsibility. Information leaflets about the legal process and Courts can help. It is a firm aspiration of the Group that Victim Support will continue to be supported by the States and allowed to develop as a vital component of the criminal justice system.

### **5.2.2 Witness support**

Justice cannot be done without witnesses, who should be recognised as vital to the system. They, like victims of crime, need the best level of support that can be achieved, and this should be apparent at all stages of the process. They need to be involved, kept informed and provided with appropriate information in the same way as victims. The efforts of all agencies involved should therefore be co-ordinated, and law enforcement agencies must be sensitive to the varying needs of witnesses, as should all those involved in the Court process.

Vulnerable witnesses should continue to be identified at the earliest opportunity, as should any risk of witness intimidation. Identifying risks to witnesses and offering appropriate levels of support are key issues, and the Group would commend the development of two further initiatives:

- Firstly, the establishment of a Court Users Group bringing together the law enforcement agencies, prosecutors, Court managers, Probation, Prison and Victim Support. The principal aim of such a group would be to identify the varying needs of witnesses and help all agencies to respond positively to the requirements identified.
- Secondly, whilst law enforcement agencies and the Law Officers have responsibilities for supporting witnesses giving evidence, support must be seen as impartial and clearly focused on their needs. Witnesses need to know what the procedures are in Court and be properly briefed on the Court layout and the roles of those who participate in the trial process. We have noted that in England and Wales the Court-based Witness Service is run as a separate branch by Victim Support, and the local scheme is in the process of putting volunteers through a specific training programme to provide a witness support service in local Courts. This service will provide trained volunteers to help victims and witnesses, and their families and friends, by familiarizing them with the Court before the hearing, supporting on the day of the hearing, giving information about Court procedures, and arranging further help after the hearing. We would applaud the making available of new resources for this sort of work.

### **5.2.3 Witness intimidation**

Opportunities for witness intimidation should be minimised by good use of the Court facilities provided for witnesses, by escorting them when appropriate, and by avoiding unnecessary confrontations with accused persons, their families and supporters. This

might of course have resource implications which would need to be further researched, but much may be achievable from existing resources, and by developing the role of Victim Support, particularly trained volunteers, into an additional role of witness support.

#### **5.2.4 Case preparation, progression and management**

To increase the likelihood of victims and witnesses attending Court attention needs to be paid to reducing inconvenience to victims and witnesses by making sure that cases go ahead on the day set and that proper witness separation is available in Court. The new Court building will provide better opportunity to manage victims and witnesses in a more sympathetic way but this will depend on law enforcement, Court officials and the voluntary sector working out how best to work together. A needs assessment approach undertaken throughout the process can help to identify those victims / witnesses who require more support than others. These will include children, victims of sexual offences and vulnerable and intimidated witnesses.

#### **5.2.5 Making it easier to give evidence**

The Group are aware that legislation has been introduced in the UK and elsewhere with the aim of making it easier for victims and witnesses to give evidence. Measures are essentially aimed at helping victims and witnesses (including children) by minimising the ordeal of giving evidence. They include the provision of evidence through pre-recorded or live video links, the use of intermediaries, and some restrictions on cross-examination by the defence. Simple measures such as the effective use of screens to separate victim and offender can make a great difference to a victim feeling intimidated by the presence of a perpetrator of a violent or sexual offence. Such measures can also be used to protect the identities of undercover law enforcement officers and covert surveillance officers who face particular difficulties operating in a small community. Considerable progress is being made in this area in that, for example, the new Court building will be equipped with video conferencing facilities; and special attention is being paid to the issues around children giving evidence in the reform of children legislation and practice arising from the review undertaken by the former Children Board. The Group consider that further local legislation to help victims and witnesses through the Court process might appropriately be considered.

#### **5.2.6 Keeping victims involved post-sentence**

The role of the law enforcement agencies generally ends once an offender is sentenced and the responsibility to keep victims informed passes to the Probation Service. Contact with victims post-sentence is generally restricted to victims of a serious violent or any sexual offence, these victims having probably the greatest concern about when and how the perpetrators of the offences against them will be released from prison.

The local Probation Service follows in most cases the guidelines laid down for the National Probation Service in England and Wales (NPS), as a result of the UK's 1996 Victim's Charter. This requires the NPS to provide victims with information about prison sentences in general, how prisoners can proceed through the system and

information about a prisoner's release, including relevant conditions which may be attached to the release.

The Victim's Charter places responsibility on all parties in the criminal justice system, including the Parole Board. Although at present victims of crime do not have any automatic right of representation to the Parole Review Committee (PRC) about an application for parole by a prisoner, the local PRC do take into account the concerns and fears of victims and the prisoner's understanding of the impact of his offending on the victim(s) of his crime. These issues are addressed through the reports submitted by the Probation Service, and in cases involving children and young people the Health and Social Services Department are also invited to make submissions having regard to concerns of the victims and their families.

Although this aspect of victim involvement has been developed and implemented by the Probation Service and PRC, it may be helpful to make more information available to victims and other agencies so that responsibilities and expectations are clearer.

### **5.2.7 Management of potentially dangerous offenders**

Offenders who have committed serious violent or sexual offences or who are for other reasons assessed as being an ongoing serious risk in the community after release are now managed in Guernsey through a Multi Agency Public Protection approach (MAPP). One of the main issues looked at by the agencies who meet to decide protection plans is identification of potential future victims and the risk factors involved. Work is ongoing under the sex offender legislation review (Chapter 8.6.1) to formalise and possibly legislate for agency responsibility for taking part in the MAPP process. Recent guidelines issued in the UK underline the crucial role of victims in some cases where they can provide valuable information into how an offender operates. This may be especially relevant in crimes such as domestic violence or sexual offences by a perpetrator known to the victim. These developments should be closely monitored to assess their value in relevant cases here. The research indicates that victims, if given the right support, welcome the opportunity to be kept informed and involved in decisions being taken about the offender.

### **5.2.8 Criminal injuries compensation**

A Criminal Injuries Compensation Scheme has been approved by the States<sup>29</sup> and will be implemented in 2005. Such a scheme is an important recognition of the community's responsibility toward innocent victims of criminal behaviour. Once this is introduced locally there will need to be relevant information and training for local voluntary and statutory agencies.

### **5.2.9 Anti social behaviour approach**

This type of behaviour causes a high level of disruption of peace and security for some people. An anti-social behaviour approach puts victims at the heart of the process and is

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<sup>29</sup> Article IX of Billet d'État XXIV, 2001

particularly targeted at the kind of behaviour that can affect people's fear of crime and confidence in justice. This may often involve low level criminality but with high impact in relation to repeat victimisation.

Civil remedies and the kind of good behaviour contracts being developed by the Housing Department can be an important part of the system. Family centres and proactive community policing also help to give affected communities a voice and a way to tackle problems in specific areas.

### 5.3 Restorative justice

*'Restorative Justice sees crime as a violation of people and relationships. It creates obligations to make things right. It involves the victim, the offender and the community in a search for solutions that promote repair, reconciliation and reassurance.'*<sup>25</sup>

*Helen Bowen and Jim Consedine*

#### 5.3.1 What is restorative justice?

Restorative justice at its core is about enabling offenders to appreciate the impact of their actions; encouraging repentance and rehabilitation; and as far as possible healing the injury and hurt suffered, by individuals and society in general, in consequence of criminal behaviour. None of this is new or radical, and the Group doubt that it can be regarded as controversial. Where disputation seems more likely – and indeed helpful – is around some of the practical methodologies which have been developed elsewhere to reflect such aspirations, and on many of those the Group recognise that the jury is still out.

That said, we do feel that in the past – and at no time more so than in recent years - society has tended to foster a rights-based culture and ignore the fact that with rights come the responsibilities of individuals and communities to each other. It appears to us that one of the potential benefits of focusing on restorative aspects of society's approaches to criminal justice issues may be to begin to redress this imbalance. The other principal claims which are made for restorative justice, and which the Group feel are worthy of further exploration, are that it:

- makes victims feel part of the criminal justice system;
- reduces re-offending; and
- promotes a harm reduction policy providing an opportunity to address the problems of the offender in a holistic way.

#### 5.3.2 Restorative justice in Guernsey

Restorative justice has already been used in Guernsey for several years. The Police introduced restorative cautioning for juveniles in 1999. Restorative cautions may be

given to juveniles after the Police have consulted with the Youth Offending Panel<sup>30</sup>. The Youth Justice Working Party is currently considering the juvenile and youth justice system with special reference to developing the restorative cautioning scheme. A multi-agency group of Police, Probation officers, youth justice workers and representatives from the Education Department and the Youth Service were trained in Restorative Conferencing by officers from the Thames Valley Police, the pioneers of restorative justice policing in the UK. All Restorative Cautions in Guernsey are now administered in partnership by a trained police representative and a colleague from another agency. The aim of the process is to work with victims and offenders to try to repair the harm caused and make offenders face up to their crimes.

### 5.3.3 How can restorative justice be further implemented?

The UK Government's strategic vision for restorative justice is for full incorporation into the criminal justice system, in time, based on '*what works*'. Restorative justice is an emerging science of criminology and like any other science it must be subject to rigorous testing and evaluation. Success in this instance is judged on its ability to meet victims' needs and to reduce re-offending. Restorative justice might be employed, *inter alia*, in the following areas:

- Area 1: Diversion from prosecution

The dominant model of restorative justice employed in continental Europe is diversion from prosecution by the State Prosecutors. It is well established that prosecution decisions are properly made on the two-stage basis involving sufficiency of evidence and, beyond that, whether prosecution is required in the public interest. Some offences are so serious that, if the evidence test is passed, there will usually be no alternative, at least in the case of competent adults, to a criminal prosecution. But where the requirement to meet victims' needs and reduce re-offending would be best served through a well-resourced available alternative, and the offending behaviour is not as serious as to fall into that category, prosecutors may very well consider an alternative response involving some measure of restorative justice.

- Area 2: Restorative cautioning

Part 3 of the *Criminal Justice Act 2003* sets out a statutory basis for Police conditional cautioning in England and Wales. The Act allows the Police, working with the Crown Prosecution Service, to give first time offenders a caution with conditions attached. These cautions can only be given if the offender admits to the offence and agrees to comply with the terms of the caution. If offenders fail to comply they can be prosecuted for their original offences. The conditions have to be for rehabilitative purposes, which can include restorative processes. The procedure is governed by a code of practice, which has to be approved by Parliament.

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<sup>30</sup> Representatives from the Probation Service, the Education Department, the Child and Adolescent Mental Health Service, the Youth Justice Service and the Police (chair)

- Area 3: Post-conviction and pre-sentence

This option is fully integrated, for example, into the New Zealand criminal justice system, although it is still being piloted in the UK. On an international level it is the mostly widely used form of restorative justice with adults, other than diversion from prosecution. Restorative Justice Conferencing is one of the most traditional models of restorative justice, which involves the victim, offender and their supporters (usually family and friends) and trained restorative justice practitioners who facilitate the conference.

During conferences victims are given a chance to air their views about the offence and offenders are asked to give account for their behaviour. Following these discussions, which can help identify areas where offenders and victims may require help, such as drug or alcohol treatment, an outcome agreement is reached. Outcome agreements usually involve making reparation for the offence, and sometimes more innovative ideas, such as requiring an offender to go into schools and community groups to share his experiences with a view to helping others not to make the same mistakes. Outcome agreements are not legally binding, but the evidence suggests that they are more strictly adhered to than orders imposed by a Court. Judges can and do take them into account as an indication perhaps for a more appropriate sentence but not necessarily a more lenient sentence.

In England and Wales sentencing can already be deferred for up to six months with the offender's consent. The *Criminal Justice Act 2003* enables Courts to impose requirements on offenders who so consent during the deferment period. It is thought that such requirements might include making reparation to victims and the community and participating in restorative justice initiatives, perhaps in the form of a conference as outlined above. When sentencing the Court can consider what has been done in the deferment period.

- Area 4: As part of sentence

There is much work post conviction and sentence, based on restorative principles, that is already practised by Probation Officers and Prison Officers, in Guernsey and elsewhere. However the *Criminal Justice Act 2003* in England and Wales allows Courts to build restorative options into sentences. The sentences introduced by the Act, including generic community sentences and Custody Plus<sup>31</sup>, can have restorative justice options built in.

### 5.3.4 Moving forward with restorative justice

The broadening of areas within which restorative approaches might be incorporated into criminal justice deserves serious thought as there is evidence to suggest that they:

- increase victim satisfaction;

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<sup>31</sup> Magistrates can impose a sentence of a short period in custody followed by a compulsory period of supervision in the community (designed to address the factors that underlie the criminal behaviour).

- can reduce re-offending; and
- engage local communities.

The Group consider the option to defer sentence, perhaps for a restorative justice conference, may be of interest in the future. At the present time in Guernsey there is no statutory power to defer sentencing as such, although cases are frequently adjourned for reports. It is recommend that further consideration be given to this matter, including the attachment of conditions such as attending a drug rehabilitation clinic as well as participation in a restorative justice conference if appropriate.

The Group feel that there is an obligation to consider integrating restorative justice principles further into the Guernsey criminal justice system given the likely benefits to victims and communities affected by crime; but new resources need to be made available. Sir Charles Pollard, Chair of the Youth Justice Board of England and Wales, suggests *'whilst restorative justice certainly can bring major benefits to society it is not something that is straightforward to introduce or develop into an organisation, or to replicate widely and quickly. It is not, for example, simply a question of training some of your staff and leaving them to get on with it. That is likely to fail... restorative justice is far too important an idea to risk failure through trying to replicate it without proper preparation and planning'*<sup>32</sup>.

As indicated above, a great deal of further investigation is required into the detail of when and where restorative approaches may and may not be helpful, and the Group do not yet feel equipped to recommend anything more than an incremental approach, building on the good work already undertaken in areas such as restorative cautioning. But we are convinced that a restorative justice element within the ethos of the criminal justice system, linking victim, offender and community, can be of great benefit to many victims as well as providing an effective contribution to the reduction of re-offending.

#### **Chapter 5 key recommendations**

- Agencies should be encouraged and enabled to work together wherever that can assist the speedy, proportionate and efficient delivery of justice. Phase Two should bring the separate initiatives outlined here together in a review of the criminal justice system and processes.
- To establish a Court Users Group involving all the criminal justice agencies, the Court administration and Victim Support, to help agencies to respond positively to the needs of victims and witnesses.
- That the States should continue to fund Victim Support with service level agreements extending to the provision of witness support in the Courts.

<sup>32</sup> Sir Charles Pollard, 'How to introduce restorative practices into an organisation: An implementation model'

- To adopt a needs assessment approach to the management of victims and witnesses going through the Courts.
- That consideration is given to whether legislation is needed in relation to alternative ways of giving evidence in Court.
- That research is undertaken on how victims' needs can be represented in the Multi Agency Public Protection system.
- That the implementation of the Criminal Injuries Compensation Scheme is progressed.
- That further consideration is given to alternative approaches to anti-social behaviour.
- That restorative approaches should be further considered, including the possibilities for deferment of sentencing at some future time.

## Pillar 2: Reducing the incidence of crime

*'Crime prevention policies are not delivered in a vacuum.'*<sup>33</sup>

*Professor Sherman*

By comparison to the rest of the Report this section is relatively short as it was not a main part of the Group's initial mandate specifically to consider crime reduction initiatives. To reduce the amount of crime committed is, of course, a key aspiration of many of the recommendations, both for implementation at this stage and for further consideration, in every part of this Report. For example, the proposals under Pillar 3 highlight how various methods of dealing with the perpetrators of crime can reduce re-offending; we are obviously hopeful that the restorative approaches discussed in Chapter 5 might play a part in the genuine rehabilitation of former offenders; and Chapter 4 refers to initiatives which are obviously underpinned by a determination to convince those who may otherwise contemplate serious offending that it is not worthwhile. But in this part we refer to specific and general crime prevention and reduction initiatives through which society can try to stop crimes from being committed in the first place, as previous reviews of sentencing in Guernsey have shown that *'prevention is better than cure'*<sup>34</sup>.

### **Pillar 2:**

- Reviews existing crime prevention work.
- Comments on possible future initiatives.
- Discusses the importance of community involvement in crime prevention measures.

<sup>33</sup> Sherman, L (1997), 'Preventing Crime: What Works, What Doesn't and What's Promising: A report to US Congress,' National Institute of Justice p.3

<sup>34</sup> Billet d'État, XIII 1984, p.533

## Chapter 6 Crime prevention

### 6.1 Who should be involved in crime prevention?

As part of our review the Group have considered the large amount of work already done in this area, and we commend the proactive policies of, for example, the Island Police and the Drug Strategy. However we feel that there is still room for improvement through work which requires the expertise and resources of Departments such as Education and Health and Social Services. As the proposals outlined in Chapter 3 suggest, these agencies and others should have a dedicated place at the table in future policy and strategy discussions. A sometimes neglected group which also have a huge amount to offer are the non-governmental organisations such as Guernsey Alcohol and Drug Abuse Council, National Children's Home Youth Housing (NCH) and others too numerous to mention; again our framework for joint working (page 21) provides for inclusive policy making, involving the NGOs as key partners.

The community at large also needs to be encouraged to take responsibility for crime prevention, but in order for this to be a reality the community has to feel confident that the system is effective and supportive. For example, it is estimated that in England and Wales half of all crimes are not reported to the Police by witnesses because they lack confidence in the way they will be treated<sup>35</sup>. In the Report '*No Witness: No Justice*'<sup>36</sup>, H.M. Government in the UK outlined plans for making the system better for witnesses in order to encourage the reporting of more crimes. By encouraging more people to report crime there is a positive effect on crime prevention as this acts as a deterrent. The community and the system both have responsibilities in this area, and further comments and suggestions for a review of services in order to provide better for the needs of victims and witnesses are outlined in Chapter 5.

#### 6.1.1 Current crime rates

Guernsey currently enjoys a relatively low crime rate with approximately 50% less crime committed, in all categories, per 1000 population than in England and Wales<sup>8</sup>. Further when asked what three things could be done to improve quality of life in Guernsey crime always had the lowest response with respondents looking instead to traffic and parking as major quality of life issues<sup>10</sup>. These positive results however should not be cause for complacency, and, although they generally provide an optimistic outlook, it must be borne in mind that they offer only a snapshot of views. We suggest that as part of Phase Two a more comprehensive survey is undertaken, looking at crime, fear of crime, and victim satisfaction; such a survey would provide useful data for strategic planning and serve as a benchmark to assess the effectiveness of crime prevention measures.

<sup>35</sup> Dodd, T, Nicholas, S, Povey, D & Walker, A (2004), 'Crime in England and Wales 2003/4,' a Home Office Statistical Bulletin 10/04.

<sup>36</sup> Report of the Interagency Working Group on Witnesses, (2003), 'No Witness: No Justice: Towards a national strategy for witnesses.'

## 6.2 Crime prevention and reduction initiatives

Social exclusion breeds and perpetuates antisocial behaviour and offending. Social policies seek to reduce social exclusion and therefore are crime preventative as they focus on reducing the risk factors associated with offending and antisocial behaviour, such as unemployment, and enhance protective factors, such providing safe environments to live in<sup>37</sup>. The Social Policy Working Group (SPWG) who designed the Corporate Anti-Poverty Programme (CAPP)<sup>38</sup>, have already, under action area E<sup>39</sup>, commissioned subgroups to research social policies which will seek to reduce social exclusion.

Some of these initiatives are listed below.

1. Early intervention measures to prevent offending:
  - development of the Family Centres;
  - Youth Inclusion Programmes, Holiday Splash Schemes, Karabiner (Youth Service / Drug Strategy); and
  - working in schools.
2. Crime reduction measures:
  - improving community policing;
  - encouraging the enhancement of neighbourhood watch;
  - improving the security of individual homes of low income households; and
  - developing a more inclusionary crime policy through public consultation on police issues.
3. Work with offenders to reduce re-offending:
  - developing drug and alcohol rehabilitation programme in prison;
  - improving education, training and employment opportunities for prisoners;
  - expanding offending behaviour programmes in prison;
  - developing resettlement schemes; and
  - greater focus on rehabilitation of young offenders.

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<sup>37</sup> See Appendix 3 for information on risk factors and analysis of risk

<sup>38</sup> The CAPP was drafted as a result of the Townsend review

<sup>39</sup> Other initiatives can be found under Action Areas D and B

As part of Phase Two Senior Officials would look to work with the various subgroups of the SPWG to progress these initiatives and possibly in the long term integrate them with any Criminal Justice Strategy. They would also consider experiences and ideas coming from other jurisdictions, building in this respect on the work of the present Group, who have already consulted the latest strategies from Jersey, *'Building a Safer Society'*<sup>40</sup> and England and Wales, *'Confident Communities in a Secure Britain'*<sup>41</sup>.

#### **Chapter 6 key recommendations**

- That Crime Prevention must be a key part of any criminal justice policy. Policies must attempt to prevent crime rather than being drafted as a reaction to a situation which has escalated out of control.
- That there should be greater co-operation and consultation between States funded projects and non-governmental organisations.

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<sup>40</sup> States of Jersey Home Affairs, 'Building a Safer Society: A strategy aimed at minimising the harm caused by crime, anti-social behaviour and substance misuse, 2005-2009': Appendix 6

<sup>41</sup> HM Government, Home Office, 'Confident Communities in a Secure Britain: The Home Office Strategic Plan 2004-2008'

### **Pillar 3: Dealing effectively with the perpetrators of crime**

*'The States of Guernsey may wish to consider extending its punishment in the community programmes by introducing Enhanced Community Supervision, Community Service or even tagging as alternatives to imprisonment... If these alternatives are introduced every effort should be made to ensure that they are genuine alternatives to custody.'*<sup>42</sup>

*Professor Gordon*

The main focus of the Group in this first phase has been to review the sentencing options available to the Courts and to consider alternatives, based on assessment of the situation in Guernsey and by reviewing the work of other jurisdictions. Thus this pillar of the Report contains the most concrete recommendations for action. We recommend the introduction of Community Service Orders and Enhanced Community Supervision, and further consideration of other possible options, such as electronic monitoring.

#### **Pillar 3:**

- Reviews what works to reduce re-offending.
- Outlines proposals for the introduction of Community Service and Enhanced Community Supervision.
- Gives consideration to other disposal options.
- Reviews some other current projects.

<sup>42</sup> *Anti-Poverty Policies – a Range of Possible Options for Guernsey*, Gordon et al, Townsend Centre for International Poverty Research, University of Bristol, November 2002, p 116

## Chapter 7 Community sentences

### 7.1 Introduction

It has been our approach throughout this review to reject the defeatist idea that *'nothing works with offenders'* and turn instead to the wealth of available literature from around the world on *'what works'* studies. *'What works'* literature is based on scientific analysis of *'what works'* to reduce re-offending and rehabilitate offenders.

Professor Sherman in *'Preventing Crime: What Works, What Doesn't and What's Promising'*<sup>43</sup>, has outlined how debates about crime and punishment in the public arena can inappropriately influence public policy decision making, and argues the seemingly obvious position that policy should be rooted in the available evidence about what does actually work.

*'Which definition of crime prevention ultimately dominates public discourse is a critically important issue in [governmental] and public understanding of the issues. If the crime prevention debate is framed solely in terms of the symbolic labels of punishment versus prevention, policy choices may be made more on the basis of emotional appeal than on solid evidence of effectiveness.'*

*Professor Sherman*

Allen, in *'Criminal Justice Matters'*<sup>44</sup>, opines that policy and practice in the criminal justice system in England and Wales have *'developed in the context of penal populism, with initiatives introduced and decisions taken more with their eye on public opinion than on crime and offending'*.

We are of course concerned about how the general public might respond to the changes that we propose. There have been worries, for example, that the public might view community sentencing as a soft option for offenders. We argue that it is wrong to see punishment and prevention as mutually exclusive concepts, or to regard community and custodial sentences as *'polar opposites on a continuum of soft versus tough responses to crime'*<sup>43</sup>. If such a dichotomy is created, the results achieved by different methods are by-passed in favour of decision-making based purely on the punitive value of a sentence, so called penal populism. We argue throughout that evidence must inform policy and that we have a duty to prove *'what works'* to the public by producing regular monitoring and evaluation reports in order to inform debate.

Some would argue that because the Island is unique we cannot just import measures from elsewhere. We would agree, at least in part, that the Island is unique and requires measures tailored to suit local culture; we do not advocate importing identical measures and legislation from elsewhere. But we know that in Guernsey the offender profile, in

<sup>43</sup> Sherman, L (1997), 'Preventing Crime: What Works, What Doesn't and What's Promising: A report to US Congress,' National Institute of Justice, p.8

<sup>44</sup> Allen, R (2002), 'Editorial: Public Perception and Participation,' in 'Criminal Justice Matters,' No. 49 (3), p.3

general, is similar to that in other jurisdictions: for example the majority of the offending population are young males, aged between 15 and 25 as Graph 10 illustrates<sup>45</sup>. In those circumstances it does seem appropriate to apply evidence from other jurisdictions in assessing the possible merits of a shift in approach<sup>46</sup>.

In compiling this review we have been fortunate to draw on the work of the Jersey Probation Service, who have been working in conjunction with the University of Swansea Cognitive Foundation Centre for many years, monitoring the outcomes of different sentences in Jersey. Jersey is a similar sized jurisdiction facing many of the socio-economic and cultural issues we face in Guernsey and as such provides a useful comparison. The results of some of their work are outlined in subsequent sections, supported with evidence from further afield.

Throughout this chapter we have made assumptions, based on ‘*what works*’ literature, about the nature of sentencing, namely that it is to do with:

- punishment;
- reducing re-offending; and
- rehabilitation.

In order to adopt a ‘*what works*’ approach sentencing has to include all three aspects. As Halliday outlines in ‘*Making Punishments Work*’<sup>47</sup>, ‘*the available evidence suggests that greater support for reform and rehabilitation, within the appropriate punitive envelope of the sentence, to reduce the risks of re-offending, offers the best prospects for improved outcomes. Even here reduction, rather than immediate elimination, of recidivism is the realistic target*’.

## 7.2 Nature and scope of community sentences

This chapter makes proposals to increase the spectrum of sentences available to the Courts, primarily focussing on those offenders / offences currently likely to attract prison sentences of up to 12 months. Our proposals include both punitive and rehabilitative aspects.

The sentencing framework in Guernsey has not to date included many stand alone community sentencing options for people convicted of criminal offences. The current sentencing disposals available to the criminal Courts in Guernsey are tabled below:

- Sentencing powers of criminal Courts for adult offenders:

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<sup>45</sup> Page 12

<sup>46</sup> Please refer also to the Annual Statistical Digest 2004

<sup>47</sup> Halliday, J (2001), ‘*Making Punishments Work: report of a review of sentencing framework for England and Wales,*’ Home Office, p. ii

- Immediate imprisonment;
  - Suspended imprisonment;
  - Suspended Sentence Supervision Order;
  - Probation Order;
  - Fine;
  - Common Law bind-over;
  - no order; and
  - conditional discharge and dismissal of charge.
- Sentencing powers of criminal Courts for young offenders:
    - Youth Detention (under 21);
    - Suspended Youth Detention (under 21);
    - Suspended Sentence Supervision Orders;
    - Probation Order;
    - Fine;
    - Special Care Order / Fit Person Order / Supervision Order;
    - Attendance Centre Order (under 21);
    - Common Law bind-over;
    - no order; and
    - conditional discharge and dismissal of charge.
- Ancillary Orders for adult and young offenders:
    - compensation;
    - restitution;
    - confiscation; and
    - driving licence suspension.

In other jurisdictions two types of disposal most commonly represent community sentences. Firstly some kind of unpaid community work, usually imposed as a set number of hours to be completed, and secondly, various types of structured supervision aimed at modifying the offending behaviour exhibited in the commission of the offence. Community sentences offer a way to punish and treat (where applicable) offenders who present a low enough risk of harm to be managed in the community. Currently in Guernsey many of these offenders are sentenced to a period of 12 months or less imprisonment, some are given suspended sentences, and some high fines. The introduction of stand-alone community sentences would therefore be aimed at those at risk of a 12 month or less custodial sentence, suspended or immediate. It is not designed, and could not be used, to deal with high risk offenders, or the most serious offences, where custody will remain the only realistic option.

The most common sentences in Guernsey, after fines, are Suspended Sentences (SS) or Suspended Sentence Supervision Orders (SSSO). In 2004 107 people were under supervision with the Probation Service on SSSOs. Although with the SS or SSSO the offender initially avoids prison, they are not truly community sentences as they increase the likelihood of a prison sentence if a further offence is committed within the period of suspension, sometimes where conviction for that offence would not have attracted a custodial sentence in its own right.

The majority of the prison population at any one time are serving quite lengthy sentences for serious offences, most notably drug trafficking, in respect of which the Courts would rarely if ever consider a community sentence appropriate; and there will always be some recidivist offenders who fail to respond to alternative methods of disposal so that prison becomes the only remaining option. Accordingly the introduction of community sentences in Guernsey may not impact significantly on prisoner numbers. They could, however, potentially be used to good effect in place of some immediate custodial sentences of less than 12 months, and some suspended sentences of imprisonment.

On average 38% of the prison population, at any one time in 2003, were serving shorter-term sentences (under one year); most are low risk offenders in terms of violence although some are repeat offenders. The available evidence strongly suggests that short prison sentences are the most disruptive to prisoners' lives and result in them being at a higher risk of re-offending, thus putting the community at a greater risk from criminal activity once offenders are released back into the community. Where a Community Sentence can safely be imposed, the disruption to offenders' lives is reduced, whilst they are forced to take responsibility for their actions. Community sentences try to address the causes of crime as well as holding those who commit it to greater account. They can reduce recidivism, and consequently the number of victims of crime.

As a result of our investigations into alternatives to custody the Group are minded to recommend the following additions to the sentencing options available to the Courts:

- Community Service; and

- Enhanced Community Supervision;

but without the unnecessarily complex constraints which have so unhelpfully complicated the systems in other jurisdictions.

### 7.3 Community Service

Community Service as a sentence can represent reparation as well as punishment and should be targeted at those who commit relatively serious offences but present a low risk of harm to the community.

There is a long history of Community Service in many countries throughout the world. Community Service has evolved from a straightforward punishment and pay back regime to one that involves reparation and rehabilitation. For example the Enhanced Community Punishment Order (ECP) which has recently been introduced in England and Wales *'provides a new opportunity for sentencers to combine a tough and demanding community penalty with significant rehabilitation'*<sup>48</sup>. It gives offenders skills training and a chance to receive recognition for skills learned. It addresses the need to punish, rehabilitate the offender, and make reparation to the community. It is anticipated that a similar model might be created here, whereby offenders would be sentenced to unpaid work and where necessary and appropriate this would be accompanied by basic skills and literacy training.

Research evidence suggests that Community Service can be of benefit to the community and to offenders for the following reasons:

- it makes offenders accountable to the community for their actions;
- it focuses on rehabilitation and reparation;
- it reduces re-offending and therefore reduces the number of victims; and
- it allows offenders to remain, where appropriate, with their families, which is important for rehabilitation.

There is considerable evidence to suggest that Community Service can reduce re-offending and therefore reduce the number of victims and improve quality of life for the community. In Jersey, for example, without ignoring the obvious consideration that the latter category [those sentenced to prison] were presumably at greater risk of re-offending, it may be significant that a reconviction and risk analysis study found that those adults sentenced to Community Service had a 23% reconviction rate after two years compared to 48% for those sentenced to prison<sup>49</sup>.

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<sup>48</sup> National Probation Service for England and Wales (2003), 'Important Information for Sentencers: Enhanced Community Punishment,' No. 4

<sup>49</sup> Raynor, P and Miles, H (2004), 'Community Sentences in Jersey: Risk Needs and Rehabilitation,' Jersey Probation and Aftercare Service

The England and Wales model of enhanced community punishment might appropriately be used to design a Guernsey model of Community Service. It focuses on improving the employability of offenders based on the evidence of 'what works'. As Professor Sherman states, *'theoretical and empirical support for the crime preventative value of employment is generally quite strong... labour markets may be the most powerful in preventing crime precisely because they respond negatively to criminal histories. While employment may give would-be offenders a stake in society, its crime preventative value may hinge on the threat of losing that stake. Maintaining that threat without creating a large group of unemployable outcasts is a major crime prevention challenge for the future of labour market practices'*<sup>50</sup>. A good model of Community Service will build skills that can be used in the work place, and built-in educational initiatives can increase compliance rates and produce better long-term effects.

Whilst publicly denouncing the conduct in which the offender was involved, Community Service aims to:

- act as deterrence to the offender or other persons from committing the same or similar offences;
- get work done for the community that may not otherwise be done by any agency, whether public or private;
- promote in the offender a sense of responsibility for and acknowledgement of harm caused, so as to assist in the offender's rehabilitation and re-integration into the community; and
- by naming projects that offenders have completed, increase public confidence in the system and highlight work done at limited cost to the public purse.

These benefits would in time hopefully overcome any fears that the public may have of offenders working openly in the community.

Community Service was considered by the States of Deliberation in 1979, 1983 and 1984<sup>51</sup>. At those times the analysis appeared to show that the numbers would be too few to warrant the implementation of the necessary legislation and allocate the resources to it; but our review of the available evidence and the statistical analysis that has been carried out suggest that this argument may no longer be valid. As the next section reports, there would be a significant pool of people potentially eligible for Community Service.

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<sup>50</sup> Sherman, L (1997), 'Preventing Crime: What Works, What Doesn't and What's Promising: A report to US Congress,' National Institute of Justice p.13

<sup>51</sup> Billets d'État XXIII 1979, XV 1983 and XIII 1984

### 7.3.1 Categories potentially eligible for Community Service

The numbers below are taken from Police data for the past five years. The totals are in line with the numbers found in similar jurisdictions such as Jersey and the Isle of Man where there are established schemes<sup>52</sup>.

Numbers are average per annum over 1999 – 2003:

Court appearances resulting in immediate custodial sentences of less than 12 months:

1999	2000	2001	2002	2003
84	95	88	85	98
<b>Average: 90</b>				

Court appearances resulting in suspended sentences (including SSSO):

	1999	2000	2001	2002	2003
<b>SS</b>	121	112	74	120	118
<b>SSSO</b>	21	40	55	54	41
<b>Total</b>	<b>142</b>	<b>152</b>	<b>129</b>	<b>174</b>	<b>159</b>
<b>Average: 151</b>					

In Jersey and other jurisdictions, Community Service is also used for serious offences of drink driving where the Court is considering custody, and in place of high fines where a financial penalty would have little deterrent effect.

The Group recommend that legislation be enacted to enable the Courts to:

- make a Community Service Order in respect of a person aged 16 years or more who is found guilty of an offence punishable by imprisonment;
- designate the number of hours which a person may be required to work, which should normally be not less than 40 hours and not more than 120 hours for an order made in the Magistrates' or Juvenile Courts, and not more than 240 hours where the order is made in the Royal Court;
- require the hours to be worked within a specified period not exceeding 12 months of the making of the order.
- provide that proven failure to comply with an order may be dealt with by means of continuation of the order with or without a fine, or by revoking the order and dealing again with the original offence.

It is usual for a Court considering a Community Sentence to receive a report from a Probation Officer assessing the person's suitability. The Probation Service will

<sup>52</sup> See the Annual Statistical Digest 2004 for a comparison of jurisdictions

normally only recommend Community Service for those at risk of a custodial sentence, immediate or suspended. In this way the scheme will be reserved in general for those at risk of custody rather than those who would otherwise have received a fine or bind-over. Exceptionally, however, Community Service could also be used for those who would otherwise receive a high fine for offences such as driving with excess alcohol.

#### **7.4 Enhanced community supervision**

Supervision or treatment in the community is designed for those offenders who, because of various problems and maladaptations, are likely to re-offend if their attitudes and behaviour remain unchanged. Over the last decade, research has suggested that some forms of rehabilitative work can be effective in reducing re-offending. Among the range of methods of working with offenders, those encompassed within the term '*cognitive behavioural*' are widely viewed as being effective when delivered by professional staff able to assess each offender's particular situation. '*Cognitive behavioural*' interventions broadly involve helping offenders to face up to the consequences of their actions, to understand their motives, and to develop new ways of controlling their behaviour.

It is important to identify and work on those factors which contribute directly to criminal behaviour such as anti-social attitudes, drug dependency and limited cognitive / social skills. The approach assumes that offenders are shaped by their environment and have failed to acquire certain cognitive skills or have learned inappropriate ways of behaving.

'*Cognitive behavioural*' change is generally effected by use of well researched and developed programmes each designed to address a specific area of offence related behaviour, for example:

- general offending behaviour programme for those persistently committing antisocial offences including theft;
- programme for offenders whose main problem is uncontrolled violence;
- programme for men committing violence against women they know (domestic violence);
- substance abuse programme; and
- sex offender programme.

In control groups, experience elsewhere suggests that these programmes are more successful than short-term prison sentences.

Well targeted intervention at key points in criminal careers is another tool in the spectrum of sentences which works with some people and could certainly be argued to be more successful and less damaging for most people than a short custodial sentence.

Most offenders grow out of their offending behaviour as they reach their mid twenties, as is shown in Graph 10<sup>53</sup>. If the extent of their offending allows them to be managed safely in the community, this must be preferable to exposing sometimes very inadequate young people to a prison environment.

The Group believe, based on available evidence, that structured community sentences can reduce re-offending. Research suggests that the most effective community supervision programmes reduce offending by an average of 15% more than prison sentences<sup>54</sup>. For example, a Jersey review of offenders sentenced to attend the Alcohol Study Group (ASG) course showed that there was a reconviction rate of 10% in two years compared to 21% for those sentenced to short term custody<sup>55</sup>.

Enhanced Community Supervision avoids the contaminating effect of prison (especially for young offenders) and is less disruptive to family and work life. It reduces the risk factors which lead to re-offending, such as loss of home, family and employment. Like the Community Service sentence, Enhanced Community Supervision can be rigorous and demanding, and can make offenders face up to the consequences for other people, including the victims, of their crimes.

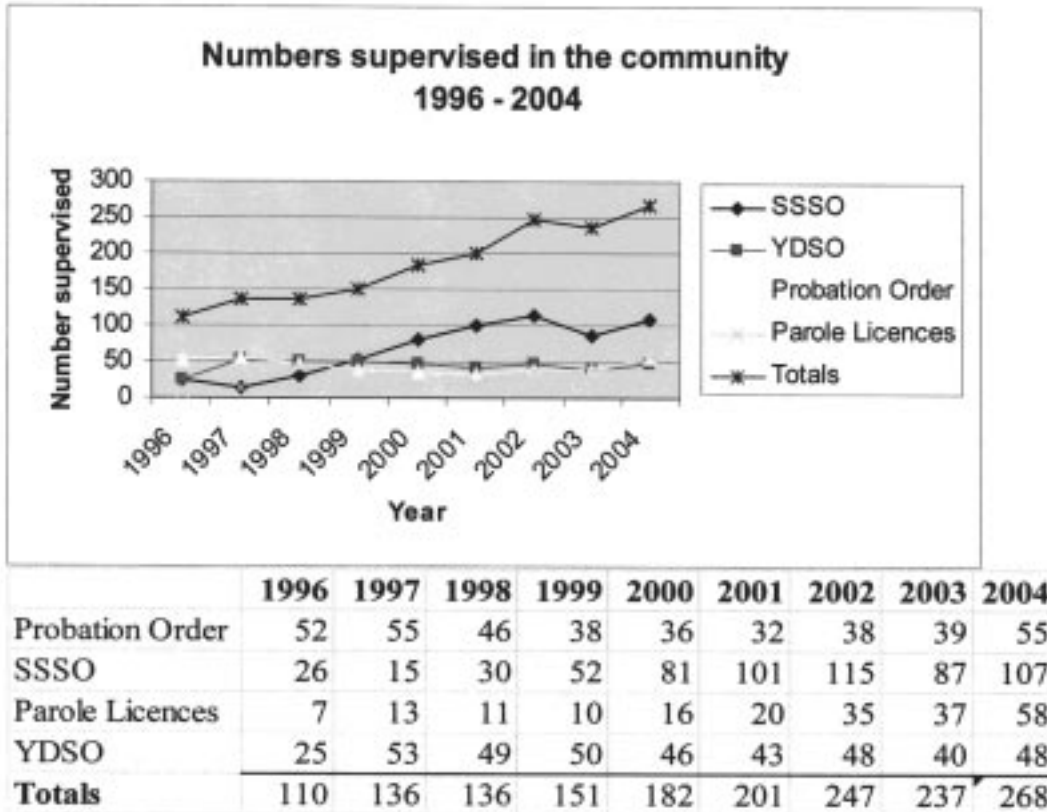
Enhanced Community Supervision is not as immediate or visible as imprisonment and the public perception may be that supervision is less harsh than prison or the threat of prison. But, perhaps surprisingly, current research in this area suggests that community penalties are often harder on the offender than going to prison where, if they so choose, offenders can be passive and idle, and do little or nothing to address their offending behaviour.

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<sup>53</sup> See page 12

<sup>54</sup> Vennard, J, Sugg D, Hedderman C, 'Changing offenders' attitudes and behaviours: What works?' – Home Office Research Study 171, 1997

<sup>55</sup> Raynor, P and Miles, H (2004), 'Community Sentences in Jersey: Risk Needs and Rehabilitation,' Jersey Probation and Aftercare Service



**Graph 18<sup>56</sup>: Number of supervised in the community 1996 - 2003**

In the last eight years the numbers being supervised in the community have been rising steadily, by 41% since 1996, (see Graph 18). Against that background it has to be accepted that Enhanced Community Supervision will add to the Probation Service's requirement for additional staff, firstly to reflect the increase in numbers being supervised, but also to allow the capacity to deliver a range of programmes and so improve the efficacy of the Service.

All Probation staff are trained in '*cognitive behavioural*' techniques and some are trained in specific offending behaviour programmes. At present, due to pressure of an expanding workload there is not the capacity to put the developmental time into the kind of structured rolling group-work programme which it is envisaged would be most appropriate for the profile of offenders coming through the Courts. Preliminary analysis of those currently under supervision indicates that substantial work is being done by Probation Officers across the whole range of offences, but we believe that it would be more efficient and more effective to deliver specific approved programmes to those on supervision.

The Group recommend that legislation be enacted to enable the Courts to:

<sup>56</sup> Probation Service Statistics

- make a Community Supervision Order in respect of a person who is convicted of an offence in the Juvenile, Magistrates' or Royal Court, up to a maximum period of supervision of three years;
- add any condition to such an order considered necessary for preventing a repetition of the same offence or the commission of other offences;
- provide that proven failure to comply with an order may be dealt with by means of continuation of the order, with or without a fine, or by revoking the order and dealing again with the original offence.

As with Community Service Orders it would be usual for the Court to receive a Probation report prior to making a Community Supervision Order. The report would identify those offenders who require supervision in order to moderate their offending behaviour. Probation supervision is not generally suitable for offenders who do not pose a significant risk of further offending behaviour.

## 7.5 Conclusion on community sentencing

The Guernsey Probation Service ethos can be summarised in the following statement:

*'Through effective targeting of effective intervention it is, in the longer term, safer for the community and known to be less damaging for some offenders to be dealt with in a structured way in the community rather than going to prison'.*

It is based on currently available evidence and strongly supported by the comprehensive findings of the 2001 Halliday Report, *'Making Punishments Work'*:

*'The Prison Service has little opportunity to work on the factors which underlie the criminality because the time served in custody is so limited - and yet these sentences are used for large numbers of persistent offenders who are likely to re-offend... Unless only a prison sentence of 12 months or more would meet the needs for punishment, sentencers should consider the scope for a community sentence to meet the needs of punishment, crime reduction and reparation'<sup>57</sup>.*

Evidence suggests that a robust system of community sentences, along with recognition that in some cases short-term prison sentences are more likely to be harmful than helpful, can have beneficial effects in regard to reducing longer term harm, both to offenders and to the community.

However sentencers can only make use of new sentencing options if the resources are available for them to be delivered. We therefore recommend that the necessary

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<sup>57</sup> Halliday, J (2001), *'Making Punishments Work: report of a review of sentencing framework for England and Wales,'* Home Office, p. iv

legislation be enacted to create the community sentences described above, and that the resources are made available for the long term effective delivery of such sentences.

### **Chapter 7 key recommendations**

That legislation be enacted to enable the Courts to:

- Make a Community Service Order in respect of a person aged 16 years or more who is found guilty of an offence punishable by imprisonment.
- Designate the number of hours which a person may be required to work, which should normally be to be not less than 40 hours and not more than 120 hours for an order made in the Magistrates' or Juvenile Courts, and not more than 240 hours where the order is made in the Royal Court.
- Require the hours to be worked within a specified period not exceeding 12 months of the making of the order.
- Provide that proven failure to comply with an order may be dealt with by means of continuation of the order with or without a fine, or by revoking the order and dealing again with the original offence.
- Make a Community Supervision Order in respect of a person who is convicted of an offence in the Juvenile, Magistrates' or Royal Court, up to a maximum period of supervision of three years.
- Add any condition to such an order considered necessary for preventing a repetition of the same offence or the commission of other offences.
- Provide that proven failure to comply with an order may be dealt with by means of continuation of the order, with or without a fine, or by revoking the order and dealing again with the original offence.

That additional resources be made available to enable the Probation Service to deliver such sentences effectively.

## Chapter 8 Further options and other current projects

### 8.1 Introduction

In this chapter we review certain other aspects of the arrangements for dealing with perpetrators of crime. Each section contains an outline of the current situation and, where applicable, our recommendations for change. The Group have also considered reviews being carried out by other agencies. It is thought that, should the broad framework for future working outlined in Chapter 3 be adopted, these areas of policy review might helpfully, at least in some cases, be further progressed through that framework.

### 8.2 Electronic monitoring and curfews

Guernsey currently does not make use of electronic monitoring. The electronic monitoring (EM) of curfews has become an integral part of the criminal justice system in England and Wales supported by three service providers using EM tagging<sup>58</sup> (i.e. a radio frequency tag worn by the offender and a base unit installed at a pre-specified location to confirm that the offender is at the location at prescribed times). In the existing system the transmitter is a tag securely fitted to the offender's ankle and the monitoring of the unit is connected to a standard telephone line in offenders' homes. Subjects are then monitored to ensure they adhere to the restrictions of their Court Orders. In future Global Positioning Systems (GPS) and the GSM mobile phone telephone network will extend the capability of electronic monitoring.

Although monitoring systems are used in many countries throughout the world, this section of the Report focuses on England and Wales, where there are similar judicial processes to those of the Bailiwick.

The three main areas where EM is used elsewhere are:

- as part of an early release scheme for those serving a custodial sentence, such as the Home Detention Curfew;
- providing an additional sentencing option for the Courts with a stand-alone curfew or in conjunction with Probation supervision; and
- as a bail option.

EM aims to introduce routine to the disordered lifestyle of some offenders, although it is not suitable for those chaotic lifestyles usually associated with heavy substance misuse.

In Guernsey the use of EM-supported curfews could be a practical way to tackle offending in town on Friday and Saturday nights by requiring offenders to stay at home between specified hours, for example 1900 – 0700. In comparison to measures which have the same intention, such as weekend custody, it is seen as a preferable option as it

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<sup>58</sup> See Appendix 5 for information on the Home Office electronic monitoring schemes

punishes offenders in the community at all times, it is less administratively burdensome, and it costs considerably less.

An EM-supported curfew is not a suitable sentence for very violent offenders, domestic violence perpetrators or sex offenders, although post custodial supervision for these types of offenders could include EM.

In Jersey, although there is currently no Parole system in place, a Temporary Release Monitoring Scheme (TRMS) with electronic tagging has recently been introduced. This early release scheme appears to be proving successful and it is possible that Jersey may expand its EM scheme in the future. However as Guernsey has a system of Parole and ROTL (Release on Temporary Licence) and both are very successful, it is doubted whether EM as an early release option would add many benefits.

The research undertaken by the Group into EM indicates that it may have some potential use with a curfew as a sentencing option for the criminal Courts of Guernsey, or as a bail option. The Group feel unable at this time to make a full judgement on the issues but strongly suggest that a detailed review including a full costing exercise and analysis of public opinion is carried out as part of a second phase.

### 8.3 Fine defaulters

Gordon et al<sup>42</sup>, suggested that imprisonment for non-payment of fines should be ended. The recommendation came largely from concern about the impact on families already considered relatively poor by the survey. However no in-depth review was conducted and the Group have looked into the issue further.

We accept that the concern underlying the Townsend recommendation is genuine, and of great importance in some cases. Over against this, however, is the fact that in the vast majority of cases the system has worked well to date and Guernsey boasts one of the highest fine collection rates (approximately 95%) in the world, unlike England and Wales who are currently trying to rebuild fines as a credible sentence<sup>59</sup> as their payment rate is approximately 55%. The way forward, in the Group's view, is not to abolish the serious threat of imprisonment for those who simply refuse to pay, but to remove any potential unfairness in the automatic imposition of that ultimate sanction on those who cannot pay. In developing our thinking on this matter the Group have had regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms, and in particular to *Article 5*, which guarantees the right to liberty, save in prescribed cases and where in accordance with a procedure prescribed by law, and the right of any detained person to take proceedings by which the lawfulness of his detention is decided speedily by a Court.

So far as the domestic law is concerned, Article 6 of the *Loi ayant rapport aux Procédures en Crime* requires that whenever a defendant is ordered to pay a fine it must be provided in the sentence (*'par l'acte de condamnation'*) that in default of payment

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<sup>59</sup> See the Court Act 2003 and Carter, P (2003), 'Managing Offenders, Reducing Crime: A New Approach,' HM Government Strategy Unit

the defendant will go to prison for a specified time; and *Article 7* sets out the maximum terms of imprisonment which may be so specified, dependent on the amount of the fine. So when the Sheriff commits a fine defaulter to prison she is giving effect to an order made by the Court following conviction of an offence, and at first sight such detention would appear to be justifiable, provided the other general conditions are met, under Article 5 (1)(a) of the European Convention on Human Rights (detention after conviction by a competent Court).

But this is unlikely to be the correct analysis because the Court at the time of sentencing has not decided, after considering all the circumstances of the case and the defendant, that a term of imprisonment is the appropriate penalty. On the contrary, the Court has decided that a fine is the appropriate penalty, and has had no alternative but to order a term of imprisonment to be served in default of payment. Further, although under domestic law the Court could have fixed what it considered to be an appropriate term of imprisonment in default after carefully considering all the circumstances of the offence and the defendant, there is in practice a tariff based purely on the amount of the fine (currently, one day for each £20). Moreover imprisonment in default is imposed, as it has to be under domestic law, when somebody is sentenced for an offence which does not in itself attract any option of a custodial sentence. In reality a person who goes to prison having been convicted of speeding, fined £500, and not paid the fine, does not go to prison because he has been speeding but because he has not paid a fine. Thus the relevant Convention provision is not detention after conviction by a competent Court, but detention for non-compliance with the lawful order of a Court (Article 5(1)(b)).

This leads us to conclude that a challenge could be asserted under Article 5 by a defendant claiming that there has never been careful judicial consideration of the 'prison alternative' imposed at the time of the original sentence, the defendant's circumstances have changed, and the defendant has no obvious right to a review of the position by a Court when the Sheriff decides it is time to send the defendant to prison. In our view, the mandatory imposition of a 'prison alternative' and the fixed tariff referable only to the amount of the fine should both be abolished.

The Group recommend that the Court at the time of passing the original sentence of a fine should have power to make an appropriate judicially considered order in each case in the event that the fine is not paid; it should be made clearer to those fined that they can, and how they can, come back to the Court for a variation if circumstances change and they cannot keep up the payments; and where a term of imprisonment in default is imposed, the defaulter should have access to a review by the Court before he is actually taken to prison.

#### **8.4 Weekend prison confinement**

Weekend sentencing is an alternative to full-time custody. Its aim is to reduce the negative consequences that can result from short periods of full-time custody, including the loss of employment and family disintegration, by allowing offenders to serve their prison term at weekends and remain in the community during the week. It is aimed at offenders who have committed relatively serious crimes but present a low risk to the

public. Weekend custody elsewhere is subject to offender consent and full Probation involvement in risk assessments.

Weekend imprisonment has previously been considered by the States<sup>60</sup> but rejected due to insufficient facilities at the prison and the resource implications. The need for more resources has not changed, and those incarcerated for the weekend would require:

- segregation from prisoners in full custody;
- staff to process all prisoners arriving at reception and screen prisoners, including a health check; and
- access to primary clinical and mental health services, and to structured rehabilitation programmes, education classes and physical training activities.

All of these would require a greater staff commitment and re-profiling of prison workload. The Prison Governor estimates the cost of setting up a weekend custody scheme as £1 million, to which would have to be added significant additional and on-going staffing costs.

Although weekend custody supports punishment and rehabilitation of offenders, there is little evidence to suggest that it reduces re-offending, and it is not thought to offer itself at this time as a viable alternative to full custodial sentences. The additional administration and expense required to facilitate such a scheme would seem to outweigh the benefits, and it is thought that electronic monitoring with Probation supervision involvement would, if pursued, offer a better alternative. The Group are of the opinion that at this time weekend custody should not be introduced.

## **8.5 Post-custodial supervision**

Whilst in some cases a custodial sentence cannot be avoided it is acknowledged by the Group that custody often results in negative consequences such as loss of accommodation, employment and family ties which can increase the risk of re-offending after release. Therefore the Group have begun to look at the best balance between the length of time spent in custody and the rehabilitative period spent on supervision or licence after release. A crucial aspect of the transition between custody and community is the sentence planning process managed in partnership between the Prison and Probation Services which starts at sentence and plans for the offender's progression through prison and back into the community.

In Guernsey prisoners are currently released after serving two thirds of their sentence. This applies to all those serving less than 15 months but those sentenced to longer are entitled to be considered for Parole either from the one third point of their sentence or after having served ten months whichever is the greater.

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<sup>60</sup> See Billets d'État XV, 1983 and XIII, 1984

Parole is a form of discretionary release which includes a period of supervision in the community under licence conditions. The purposes of Parole are:

- to protect the public;
- to prevent re-offending; and
- to help successful resettlement into the community.

The provisions for early release are set out in the *Parole Review Committee (Guernsey) Law, 1989* and the *Parole Review Committee (Guernsey) Ordinance, 1991*, as amended.

The Carlisle Committee set out the criteria for granting Parole in England and Wales as follows:

*'the Parole decision will thus be based on an evaluation of the risk to the public of the person committing a further serious offence at a time when he would otherwise be in prison, as against the benefit to both him and the public of his being released from prison back into the community under a degree of supervision which might assist his rehabilitation and thereby lessen the risk of his re-offending in the future'.<sup>61</sup>*

The Group noted that just as Parole was introduced in Guernsey the *Criminal Justice Act 1991* fundamentally changed the framework for Parole in the UK. Thus whilst Guernsey adopted the pre Carlisle system of discretionary release after a third of a longer term sentence, the UK moved to Automatic Conditional Release (ACR) at the halfway point of the sentence for those serving between one and four years and Discretionary Conditional Release (DCR / Parole) for those serving over four years. Thus all those serving sentences of over 12 months were subject to some kind of condition of supervision after custody. This put our system out of step with the UK which has caused some problems as a significant proportion of prisoners in Les Nicolles originate from the UK and elect to remain under Guernsey legislation to take advantage of the more generous Parole provisions.

One option now is to update to the UK 1991 position. However, the provisions in the UK *Criminal Justice Act 2003* change the position there further. The effect of these changes is to significantly alter the rules relating to those receiving a custodial sentence greater than 12 months. In effect the distinction between long-term and short-term prisoners is removed. The new provisions will ensure release on licence at the halfway mark of any fixed term sentence and any licence will extend through the term of the whole sentence, not, as previously, terminating at the two-thirds point. The exception to this automatic release at the halfway point will be those considered a high risk by reason of committing serious violent or sexual offences.

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<sup>61</sup> *The Parole System in England and Wales*, Report of the Review Committee Chaired by Lord Carlisle of Bucklow QC (CM532, 1988)

The Parole Board in England and Wales will continue to assess certain applications for early release, its focus moving to those prisoners who represent the greatest risk to the public and / or the greatest risk of re-offending. That is, its focus will be directed towards looking at the risk which the most dangerous offenders (those convicted of violent or sexual offences) present.

The changes brought about in the new Act are based on recommendations made in the Halliday Report<sup>62</sup>. The Report concluded:

*'...prison sentences should be served partly in prison and partly in the community, so that resettlement and behaviour after release can be steered and monitored under conditions whose breach may necessitate return to prison. But to make prison sentences more meaningful they should be served in full. The first half should always be in prison. Whether any part of the second half needs to be in prison should depend on the offender's compliance with conditions imposed on release. Those conditions should be based on up to date assessments of risks, and of needs for continuing work to prevent re-offending and protect the public.'*

It may be thought that the fundamental elements of this system are possibly worth looking into for Guernsey as that would have the dual advantages of being in step with the provisions in England and Wales and based on the fundamental principal of all those released from prison having a period of supervision in the community, providing a real chance to break the cycle of offending.

Another part of the equation to be considered when looking at the most appropriate arrangements for Guernsey, however, is the major piece of legislation approved by the States of Deliberation on 29<sup>th</sup> September 2004. At present Parole provides the only form of statutory supervision for adult offenders on release from custody. However, when it has received Royal Sanction the *Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law 2004* will introduce in the Bailiwick conditional release under supervision for all adult offenders serving 12 months or longer. Also included in this legislation is provision for the sentencing Court to impose an extended period of supervision on sex offenders irrespective of length of sentence. This will give the Probation Service the statutory provision to monitor and supervise sex offenders after release from prison that does not exist at present unless the offender is serving long enough to come under the provisions of the Parole legislation. Many sex offenders are dealt with in the Magistrates' Court and receive relatively short sentences with no post release supervision at present. Also included in the new Law is a similar provision for extended supervision on those convicted of serious violent offences who receive sentences of over four years.

It is generally accepted, and research shows, that dangerous and high-risk offenders need special measures. It is for this reason that release schemes are increasingly

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<sup>62</sup> Halliday, J (2001), 'Making Punishments Work: report of a review of sentencing framework for England and Wales,' Home Office

concentrating on, and putting resources into, those offenders who present the greatest risk to the public.

The two groups which high risk offenders are generally categorised into are:

- those who have committed sexual offences against children or adults; and
- those who have committed offences of serious violence.

It is these offenders for whom the new Act in England and Wales reserves discretionary release and extended periods of supervision, and it is for exactly these groups that the extended licence conditions are designed in the new Bailiwick Law.

The Group gave some consideration to reviewing the operation of the local Parole Law and Ordinance and considered the advantages and disadvantages of being more in line with England and Wales provisions given the high proportion of the long-term inmates from the UK. However the Group have concluded that, given the very recent changes in England and Wales and the need to evaluate the impact of post custodial supervision locally, it would be prudent to remain with the status quo for the time being and review the situation once the local and UK legislative changes are in force and can be evaluated.

## **8.6 Other current projects**

This section mentions aspects of criminal justice where the Group are aware of work which is already being carried out by others. We include summaries of progress made and very brief comment from the Group's perspective. It is thought that should the framework for joint working outlined in Chapter 3 be adopted these areas of policy review might, in some cases, appropriately be further progressed within that framework.

### **8.6.1 Legislation relating to sex offenders**

The proposed legislation to introduce a Sex Offender Register and associated provisions within the Bailiwick is currently under review by the Sex Offender Legislation Working Group, chaired by the Chief Probation Officer.

Currently only those charged and convicted of sexual offences in Guernsey Courts are known to the authorities. People convicted of sexual offences in another jurisdiction are not under any obligation, apart from the Housing Laws where relevant, to admit their offences. There is little that can be done at present to restrict sex offenders' behaviour, or effectively monitor them in the community.

The serious effects of sexual offences on victims, coupled with evidence that re-offending rates for sexual offenders are significant, require as much control and monitoring of known offenders as possible. There has been concern in the Bailiwick for some time that the absence of the stringent UK requirements for sex offenders to register with the Police may make the Islands less secure against paedophilia and other sexually deviant behaviour. This applies as much to local people convicted of sexual

offences and not required to register as to outsiders coming in. With the expansion of the Internet and the pornography known to be distributed over that medium, any inadequacy in legislation could potentially be exploited.

A consultative document is currently being researched and prepared which will put forward proposals for a comprehensive new Law in the Bailiwick based on the *Sexual Offences Act 2003*. This should facilitate the reciprocity between jurisdictions essential to the effective working of any Register and ensure that a comprehensive set of proposals are put forward. Those proposals will be subject to consultation with appropriate agencies.

There is likely to be a proposal to put multi-agency public protection arrangements on a statutory basis, making it the responsibility of Police, Probation and other agencies to assess and monitor offenders who pose a risk to the public and to take appropriate action to reduce the risk.

Work on the initial part of this review is now completed and is with the Law Officers for consideration. The Sex Offender Legislation Working Group report will detail the resources required to deliver the new legislation. The Criminal Justice Policy Working Group are fully supportive of any measures which improve the regime for dealing with the perpetrators of sexual offences in order to protect the community.

### **8.6.2 Sentencing options for juveniles and the youth justice system**

The detention of juveniles in the States Prison has been subject to review sporadically over the last 25 years. Previous reviews<sup>63</sup> have supported alternatives to prison for juveniles serving a custodial sentence but have always concluded that the numbers who would require a juvenile detention facility are too small to justify the large scale capital and revenue expenditure. This Working Group has reached similar conclusions, but acceptance that numbers do not warrant the building of a special facility does not mean that nothing should be done in other areas.

The proposed wide-ranging revision of legislation and practice concerning children<sup>64</sup>, including the establishment of a Child, Youth and Community Tribunal to a large extent based on the Scottish Children's Hearing, derives from extensive work over several years initiated under the auspices of the former Children Board. That work involved, amongst much else, the publication of a number of consultation documents, one of which – *'An Evaluation of Sentencing Options and Community-Based initiatives for Young Offenders and those at Risk of Offending'*<sup>65</sup> - contained the following pertinent observations:

*'Research has shown that overly punitive measures, particularly imprisonment, are associated with increased levels of crime.'*

<sup>63</sup> See Billets d'État XXIII 1979, XV 1983 and XIII 1984

<sup>64</sup> Billet d'État XVII, 2004

<sup>65</sup> States of Guernsey Children Board (2003), *'An Evaluation of Sentencing Options and Community-Based initiatives for Young Offenders and those at Risk of Offending'* p3-6

*Increasingly many jurisdictions are seeking alternatives to a formal criminalizing Court system for dealing with young offenders (e.g., restorative conferences and family group conferences) seeking to involve ordinary members of the community in dealing with youth crime. [It is seen that] measures that target the needs and best interests of the young offender will also be in the best interests of the wider community if they succeed in preventing / reducing youth crime...(p.3).*

*... the Children Board's experience, born out of research, is that the deterrent effect of prison is counterbalanced by such institutions being universities of crime. Further in order to cope with the trauma of being incarcerated the majority of young persons develop a hard man shell. The experience and stigma of imprisonment, at an impressionable age, often works against reintegration into normal, law-abiding society. The Children Board in conjunction with the Probation Service recommends that the range of measures available to deal with criminal behaviour should be extended, with imprisonment being avoided in all but the most extreme circumstances (p.6)'.*

We fully support the use of non-custodial options for low risk juveniles, recognising that juveniles' and young offenders' needs and offending behaviour should be addressed in a holistic manner and where possible custody should be avoided. We also suggest that the introduction of Community Service and Enhanced Community Supervision could be used to good effect with older juveniles, building on the Intensive Supervision Scheme already run through Youth Justice by the Health and Social Services Department.

A Youth Justice Working Party is currently reviewing changes to the youth justice system, such as the introduction of youth offending teams. Senior Officials would undoubtedly be keen to work with this Working Party in the future.

### **8.6.3 Mental health patients**

There must be considerable concern about the detention in prison of persons suffering from significant mental illness, whether following conviction of a criminal offence or on remand pending trial. Even more worrying, perhaps, are the admittedly rare cases in which application has to be made to the Royal Court entirely outside the context of criminal proceedings to exercise that Court's power under the *Mental Treatment Law 1939* to order the detention of a person suffering from mental illness as a 'single patient' in the prison because he requires a level of security which cannot currently be provided elsewhere. The Prison and Mental Health services work closely together to provide the best reasonably practical care for people with mental illnesses sent to the prison pursuant to a criminal, or very rarely 'civil' *Mental Treatment Law*, Court Order, and also for prisoners who develop mental illness whilst serving a sentence or remanded in custody. But the prison is obviously not equipped or staffed as a mental health hospital and cannot be regarded as an appropriate environment in which to address mental health issues. Mental health patients requiring a secure environment should be accommodated in an appropriate psychiatric care facility with trained professional staff.

In November 2002 the States approved the enactment of new Mental Health legislation which will, inter alia, enable the Courts to make orders:

- remanding an accused person to hospital for psychiatric assessment, reports, and urgent treatment;
- on conviction (or without proceeding to conviction in certain circumstances), authorising admission and detention in hospital for psychiatric treatment; and
- for the transfer to hospital of a prisoner suffering from a mental disorder.

The Group have been pleased to learn that the awaited legislation has recently been re-classified as top priority and its drafting has commenced; and it must be taken as read that in recommending the enactment of these new Court powers the then Board of Health had every intention of ensuring the existence of appropriate facilities to enable the Courts to use them. In this respect the Group understand that the Health and Social Services Department plan to provide a temporary unit which will provide more security at the Castel Hospital, once the elderly care wards have relocated to the Oberlands site, followed by a more permanent unit at Oberlands by 2008. This type of facility should go some way to enabling the accommodation of patients requiring some degree of security, whether introduced via the criminal justice system or not. However, the Group acknowledge the force of the widely-held view that a medium to high security hospital facility cannot reasonably be provided in Guernsey due to the high construction and maintenance costs for the small numbers for whom it would be appropriate. We therefore firmly support a second initiative currently understood to be under consideration, which is the establishment of a formal agreement and protocol between the relevant authorities to facilitate the easier transfer of such patients to an appropriate hospital in England. As part of this initiative it is hoped that a secure bed will be available on a permanent basis at such a hospital. Such an agreement would alleviate the pressures on prison resources that arise from detaining such patients; and the Group express the hope, although this initiative began in the context of 'civil' *Mental Treatment Law* admissions, that the legislation can be drafted and the agreement can be made in such a way as to extend in appropriate cases to those admitted to hospital pursuant to an Order made in criminal proceedings.

#### **8.6.4 Non-violent recidivist drinkers**

The prison currently detains what are referred to as 'chronic non-changing recidivist drinkers'. This is a relatively small group of offenders who present an ongoing and unresolved problem to the criminal justice system. The Police have modified their approach to dealing with non-violent drunks, resulting in a reduction of the number of charges, but this has not eliminated the problem altogether. This group of offenders absorb valuable prison resources since they generally incur short sentences of approximately seven to 14 days (five to ten days with remission). Recidivism is usually inherent as alcoholics are dried out for a short period of time but swiftly yield to their addiction after release and the cycle begins again. The use of short sentences for this

category of prisoner means that little work can be done to address their addictive behaviour.

It is the recommendation of this Group that in dealing with non-violent recidivist drinkers alternatives to custody must be considered, for the benefit of the Island and the public purse but also the well being of the individuals concerned. Our view is supportive of ideas outlined in the consultation document *'The need for a Guernsey Alcohol Strategy'*<sup>66</sup> that the Courts could consider *'the value of non-custodial sentence options, involving education and treatment orders'*. Whilst completely accepting that sentencing discretion is entirely a matter for the Courts, which must have drawn to their attention all relevant circumstances, the Group have to question whether seven to 14 day sentences in these cases can be effective in breaking the cycle of offending behaviour.

The Group are supportive of any proposals that would direct such offenders away from the prison to a facility where they could be given treatment appropriate to their needs and offending behaviour. This would also save considerable prison resources spent on admission and discharge procedures. It is understood that the use of St Julian's Hostel is currently being considered by the Health and Social Services Department. In the proposed Phase Two of the criminal justice review Senior Officials would hope to liaise further with the Health and Social Services Department on this matter in the context of the future Alcohol Strategy.

#### **Chapter 8 key recommendations**

- That a detailed review of electronic monitoring, including a full costing exercise, should be undertaken.
- That a Court imposing a fine should have power to make an appropriate considered order in each case in the event that the fine is not paid. That the review process should be made clearer to offenders so that if their circumstances change they can return to Court to ask for a review. That where a term of imprisonment in default is imposed, the defaulter should have access to a review by the Court before he is actually taken to prison.
- That weekend imprisonment is not introduced as a sentencing option at this time.
- Given the anticipated changes in England and Wales to the parole legislation and the need to evaluate the impact of changes to local post custodial supervision, that the existing local parole legislation should be retained at present but that UK changes should be closely monitored.

<sup>66</sup> Dr Jeffs, (2000), 'The need for a Guernsey Alcohol Strategy,' Health and Social Services Department, p.29

**Response to other current projects:**

- The Group support any measures which improve the regime for dealing with the perpetrators of sexual offences in order to protect the community.
- The Group support the use of non-custodial options for Juveniles, and work of the Youth Justice Working Party.
- The Group strongly endorse the efforts of the Health and Social Services Department to make more appropriate provision, including off-island provision where necessary, for mentally ill offenders and other patients.
- The Group are supportive of any proposals that would direct non-violent recidivist drinkers away from the prison to a facility where they could be given treatment appropriate to their needs and offending behaviour.

## **Chapter 9 Resources**

### **9.1 Introduction**

A robust criminal justice system requires that offenders be brought before the Courts and appropriately sentenced, which in turn requires resources to be devoted to all aspects of the system, including law enforcement, Law Officers, the Courts, Legal Aid, the Probation Service, the Prison Service and Parole. Some may consider that by reducing the short-term prison population resources could be re-directed elsewhere. In reality, the prison runs on the minimum of staff and all areas of the prison need to be manned for necessary segregation reasons, irrespective of the numbers incarcerated. The Group believe that the number of offenders thought suitable for alternatives to custody, such as community based sentences, will at the outset be comparatively small. The Group acknowledge that the Courts cannot be compelled to make use of community disposals and will only do so in the longer term if the early outcomes are positive in terms of achieving the objectives of sentencing policy, which include crime reduction, rehabilitation, public protection and reparation, as well as punishment.

The Group are clear that it is absolutely vital that the already stretched resources of the agencies within the criminal justice system, including law enforcement, Law Officers, Courts, the Probation Service and the Prison, are maintained. This is especially so following the recent introduction of the *Police Powers and Criminal Evidence and Regulation of Investigatory Powers Laws*, which has placed significant additional burdens on the system.

Additional resources will therefore need to be requested in the short to medium term if the Island is to achieve the longer term benefits which the Group feel the proposals within this Report have the potential to bring about.

### **9.2 The criminal justice budget**

Financial arguments about criminal justice are complex and the actual costs of the system are difficult to quantify.

The principal difficulty in establishing the true amount of the various agencies' budgets consumed by criminal justice matters is that most have responsibilities beyond the scope of the criminal justice system. The Group have attempted to investigate the spread of costs across different facets of the criminal justice system, but the diversity of these makes it very difficult to assign actual costs to the investigation of crime, the prosecution of offenders and the management of sentences. For example, a significant percentage of the overall budget of the Island Police Force is spent on duties not directly concerned with the prevention, detection or reduction of crime, such as traffic management, liquor licensing and many other important functions. Similarly the total budget of the Customs and Immigration Department is spread between law enforcement and work such as immigration and nationality and the assessment and collection of excise duties. And a similar pattern exists across all the agencies and offices examined. A very rough and ready estimate puts the total costs of operating the criminal justice

system for 2004 at around £15m - £16m including Legal Aid currently running at £1.5m per annum, which estimate does not therefore include these *'non-criminal justice'* costs. Within that rough figure, the most that can be said with confidence is that Police and Customs account for just over 50% of the *'criminal justice budget'*, and the Prison for about 20%.

The Group are also mindful that within each agency a significant percentage of total costs are fixed. That is, they will not increase or decrease in proportion with the number of crimes committed, persons arrested, or offenders sentenced.

### 9.3 The cost of crime to society

The Group recognise the significant impact of crime on society. The cost undoubtedly extends far beyond the actual costs of law enforcement, bringing offenders before the Courts, and carrying out sentences imposed. We have reviewed a significant body of research about the cost and impact on society of offending, and noted a recurring theme that once somebody has commenced offending the cycle becomes increasingly hard to break as time goes on and the offending continues. The following quotation from the foreword to a report by the UK's Social Exclusion Unit<sup>67</sup> is pertinent:

*"Crime can have a devastating impact on the lives of victims. It scars entire communities and the costs to society as a whole are huge. People who have been in prison account for one in five of all crimes. Nearly three in five prisoners are re-convicted within two years of leaving prison. Offending by ex-prisoners costs society at least £11 billion a year."*

The Group hope that where it is appropriate for the Courts to consider non-custodial sentences there will be significant cost savings in that broader sense, but equally acknowledge that such intangible savings are unlikely to be apparent in the short term, or perhaps even the medium term. An investment into the criminal justice system together with other Island social policy initiatives will however, in the Group's view, be of significant long-term benefit to the community. This will be especially so, as suggested above, if offending cycles can be broken.

### 9.4 Estimated cost of the Group's recommendations

The proposals in this Report would require additional resources. The Group are of the opinion, for example, that it will not be possible to provide for the effective implementation of a greater range of sentencing options in the Courts from within the current budgets of the Home Department and other States Departments; and we are very firmly of the opinion that acceptance of any of our recommendations must not be to the detriment of law enforcement, the Prison, or other criminal justice agency resources.

The current estimate of costs for the proposals outlined in this Report is as follows:

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<sup>67</sup> 'Reducing re-offending by offenders', Office of the Deputy Prime Minister.

**Set-up costs**

Criminal justice case management	£80,000
Establishment of a Community Service scheme	£50,000
	<b>£130,000</b>

**Ongoing annual costs**

Community Service Scheme and staffing (Probation Officer x 2, clerical support x 1)	£90,000
Enhanced Community Supervision (Probation Officer x 1)	£30,000
Coordinator (three to five year contract)	£35,000
Other (data collection, crime prevention, Victim and Witness Support)	£50,000
Total	<b>£205,000</b>

**Phase Two costs**

Research, consultancy and specialist advice	<b>£60,000</b>
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Over the coming years Guernsey will need to invest additional resources in the criminal justice system, not least in proposals already approved by the States, (such as the *Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law 2004*), as well as those put forward in this Report and any which may arise from the proposed Phase Two of the review. The Group understand that this may not immediately be welcomed by any who imagined that imprisoning fewer people would immediately create large net cost savings in the criminal justice system. Evidence from other jurisdictions does suggest that savings in social costs can be achieved in the longer term through alternative well-resourced responses to offending that does not inevitably require a custodial sentence; but these potential savings have not been costed as this would be beyond the Group's expertise. It is proposed, however, that this exercise is undertaken as part of Phase Two.

The Group's philosophy has been directed towards improving criminal justice for, and with the help of, the whole community; appreciating that some investment is required; and hoping that the community, through its elected representatives, will have the foresight to make that investment for all of our futures.

**Chapter 9 key recommendations**

- That the resources of the criminal justice agencies must be maintained.
- That appropriately directed investment in additional human and financial resources could achieve long term benefits for the community.
- That additional funding should at this stage be provided for:
  - a criminal justice case management tool, and establishment of a Community Service scheme (£130,000);

- additional probation officers and support staff, a contracted coordinator, data collection, crime prevention, victim and witness support; (£205,000 annually) and
- a second phase to undertake further research (£60,000).

## **Appendix 1 Criminal Justice Policy Working Group Group Membership**

H.M. Comptroller

Lieutenant Bailiff

Crown Advocate

Advocate and Guernsey Bar representative

Head of Policy and Research Unit, Policy Council

Chief Officer, Home Department

Chief Officer of Police

Governor of the Prison

Chief Officer, Customs and Immigration

Chief Probation Officer

Secretary to the Parole Review Committee

Junior Executive, Home Department

## **Appendix 2 Criminal Justice Policy Working Group Terms of Reference**

The terms of reference for the Working Group on Criminal Justice Policy are as follows:

1. To explore existing and alternative approaches to criminal justice in Guernsey (including reference to current reviews and initiatives impacting on criminal justice issues in Guernsey and elsewhere), concentrating initially on the areas identified at 2 below.
2. To review existing legislation and policy concerning custodial remands and sentences, and to examine alternative remand and sentencing options.
3. To give initial consideration to the implications of developing, and the possible ambit of, a comprehensive criminal justice policy.
4. To consult as appropriate with relevant agencies and organisations in Guernsey; and to seek advice and assistance from elsewhere, subject to the approval of the States Advisory and Finance Committee as respects any funding implications.
5. To report to the Home Department by not later than September 2004.

## **Appendix 3 Recommendations of the Criminal Justice Policy Working Group**

### **Chapter 2 key recommendation**

- That resources should be made available to enable satisfactory monitoring and evaluation of the criminal justice system, including sentencing outcomes and reconviction rates.

### **Chapter 3 key recommendations**

- That work on criminal justice policy review should continue to a second phase.
- That the framework for working on criminal justice policy and strategy, outlined in Figure 1, should be adopted.
- That the resources to finance a review should be made available, including the funding of a co-ordinator's post for a three to five year contract.

### **Chapter 4 key recommendations**

- That further consideration should be given to the replacement of committal proceedings, and the introduction of committal for sentence.
- That further research into the design and implementation of a case management tool should be undertaken.
- To support the work of the Serious and Organised Crime Committee and the development of a proceeds of crime strategy.

### **Chapter 5 key recommendations**

- Agencies should be encouraged and enabled to work together wherever that can assist the speedy, proportionate and efficient delivery of justice. Phase Two should bring the separate initiatives outlined here together in a review of the criminal justice system and processes.
- To establish a Court Users Group involving all the criminal justice agencies, the Court administration and Victim Support, to help agencies to respond positively to the needs of victims and witnesses.
- That the States should continue to fund Victim Support with service level agreements extending to the provision of witness support in the Courts.

- To adopt a needs assessment approach to the management of victims and witnesses going through the Courts.
- That consideration is given to whether legislation is needed in relation to alternative ways of giving evidence in Court.
- That research is undertaken on how victims' needs can be represented in the Multi Agency Public Protection system.
- That the implementation of the Criminal Injuries Compensation Scheme is progressed.
- That further consideration is given to alternative approaches to anti-social behaviour.
- That restorative approaches should be further considered, including the possibilities for deferment of sentencing at some future time.

#### **Chapter 6 key recommendations**

- That Crime Prevention must be a key part of any criminal justice policy. Policies must attempt to prevent crime rather than being drafted as a reaction to a situation which has escalated out of control.
- That there should be greater co-operation and consultation between States funded projects and non-governmental organisations.

#### **Chapter 7 key recommendations**

That legislation be enacted to enable the Courts to:

- Make a Community Service Order in respect of a person aged 16 years or more who is found guilty of an offence punishable by imprisonment.
- Designate the number of hours which a person may be required to work, which should normally be to be not less than 40 hours and not more than 120 hours for an order made in the Magistrates' or Juvenile Courts, and not more than 240 hours where the order is made in the Royal Court.
- Require the hours to be worked within a specified period not exceeding 12 months of the making of the order.
- Provide that proven failure to comply with an order may be dealt with by means of continuation of the order with or without a fine, or by revoking the order and dealing again with the original offence.

- Make a Community Supervision Order in respect of a person who is convicted of an offence in the Juvenile, Magistrates' or Royal Court, up to a maximum period of supervision of three years.
- Add any condition to such an order considered necessary for preventing a repetition of the same offence or the commission of other offences.
- Provide that proven failure to comply with an order may be dealt with by means of continuation of the order, with or without a fine, or by revoking the order and dealing again with the original offence.

That additional resources be made available to enable the Probation Service to deliver such sentences effectively.

### **Chapter 8 key recommendations**

- That a detailed review of electronic monitoring, including a full costing exercise, should be undertaken.
- That a Court imposing a fine should have power to make an appropriate considered order in each case in the event that the fine is not paid. That the review process should be made clearer to offenders so that if their circumstances change they can return to Court to ask for a review. That where a term of imprisonment in default is imposed, the defaulter should have access to a review by the Court before he is actually taken to prison.
- That weekend imprisonment is not introduced as a sentencing option at this time.
- Given the anticipated changes in England and Wales to the parole legislation and the need to evaluate the impact of changes to local post custodial supervision, that the existing local parole legislation should be retained at present but that UK changes should be closely monitored.

### **Response to other current projects:**

- The Group support any measures which improve the regime for dealing with the perpetrators of sexual offences in order to protect the community.
- The Group support the use of non-custodial options for Juveniles, and work of the Youth Justice Working Party.
- The Group strongly endorse the efforts of the Health and Social Services Department to make more appropriate provision, including off-island provision where necessary, for mentally ill offenders and other patients.

- The Group are supportive of any proposals that would direct non-violent recidivist drinkers away from the prison to a facility where they could be given treatment appropriate to their needs and offending behaviour.

#### **Chapter 9 key recommendations**

- That the resources of the criminal justice agencies must be maintained.
- That appropriately directed investment in additional human and financial resources could achieve long term benefits for the community.
- That additional funding should at this stage be provided for:
  - a criminal justice case management tool, and establishment of a Community Service scheme (£130,000);
  - additional probation officers and support staff, a contracted coordinator, data collection, crime prevention, victim and witness support; (£205,000 annually) and
  - a second phase to undertake further research (£60,000).

## **Appendix 4 Methods used by the Probation Service in analysis of risk**

Risk analysis in regard to those who have committed offences looks at two main issues:

- The likelihood of further offending happening.
- The harm to others that the offending would cause if it occurred.

Ongoing risk assessment is inherent in the Probation Service's contact with offenders – either in prison or in the community. It becomes formalised at key points such as:

- Sentencing.
- Treatment planning and assigning level of supervision.
- Release from prison on Temporary license or Parole.
- Post release monitoring of high-risk offenders.

### **4.1 Best predictors of criminal conduct include:**

- Antisocial attitudes.
- Antisocial friends and associates.
- Antisocial personality.
- A history of antisocial and problematic behaviour, difficulties at home, work, school and leisure.

Risk increases with the number and variety of risk factors present plus situational factors. Within the immediate situation the individual arrives at a judgement that the potential rewards from criminal behaviour would outweigh the costs involved.

### **4.2 Offender assessments**

Most look at major risk factors and stress the importance of dynamic or changeable risk factors such as antisocial attitudes, delinquent associates and situational triggers. It is these dynamic factors that can potentially be changed through supervision and treatment to lower the risk of re-offending.

Guernsey Probation Service use a well researched and widely used assessment scale known as 'The Level of Service Inventory – Revised (LSI-R)'. This samples many of the major and minor risk factors in order to provide a comprehensive risk / needs assessment. The subcomponents (e.g. criminal history, companions, and attitude) are indicators of the risk factors identified by theory and research.

The LSI-R is a way of systematically bringing together risk and needs information important to offender treatment, planning, and for assigning levels of supervision. The place of professional judgement is not underestimated – many of the judgements needed to accurately score the subcomponents are inherent in professional training and interview skills.

The LSI-R is composed of 54 items divided into the following subcomponents:

- Criminal History (10)
- Education / Employment (10)
- Financial (2)
- Family / Marital (4)
- Accommodation (3)
- Leisure / Recreation (2)
- Companions (5)
- Alcohol / Drug problems (9)
- Emotional / Personal (5)
- Attitudes / Orientation (4).

The numbers in brackets indicate the number of questions in each topic – showing relative risk weightings.

Many of the subcomponents consist of items that are changeable or ‘dynamic’. They give direction to the supervision officer on which areas need to be changed in order to reduce the risk of re offending. In this way the LSI-R acts as a risk predictor and a guide to treatment targets. LSI-R scores are used to target Probation resources. Research indicates that intensive intervention with low risk offenders can be counterproductive. Therefore in line with research findings supervision is not recommended in Court referrals unless a score of over 15 is recorded. LSI-R scores are also used to target those most in need of the ‘*cognitive behavioural*’ groups available in the prison. The Youth Justice Team (Health and Social Services Department) use a tool called ASSET for assessing the risk & needs of young offenders. The Working Party currently looking at Youth Justice will be making recommendations about standardising the assessments process used with young offenders.

In addition to LSI-R there are similar assessment scales which are used with sex offenders and those who have committed very violent crimes. All these screening and testing tools are used by professionals specially trained in their administration and interpretation and having knowledge of the limitations of their use.

## Appendix 5 Electronic Monitoring

There are several companies which run electronic monitoring (EM) schemes in England and Wales which for the purpose of EM is divided into four regions:

<b>Region</b>	<b>Contracted Company</b>
Northern	Securicor
Midlands and Wales	Premier
London and the East	Premier
Southern	Reliance (also have the contract for the Scottish Executive)

The Home Office manages the electronic monitoring contracts through a team consisting of 15 civil servants. Their functions include auditing the performance of the contractors against a detailed operational specification, through meetings, visits and studying case files; ensuring that contractor invoices are paid on time (subject to any financial deductions for under-performance); developing new uses of electronic monitoring as new technology becomes available; advising Government Ministers and colleagues and other criminal justice agencies on the operation of the programmes, and managing the procurement project for the next round of electronic monitoring contracts.

The current contracts are due to expire in April 2005 and a Procurement Project is currently being undertaken, inviting bids from the above contractors and additional companies who have expressed interest. As part of the project the Home Office team produced detailed specification requirements and invited bids accordingly. These specifications did not however detail which types and models of equipment that had to be used, this is determined by the contractor. Each contractor has its own arrangements and may sub-contract equipment bids to other companies.

## Appendix 6 Jersey: Building a Safer Society Strategy

The following information is adapted from the document entitled '*Building a Safer Society: A Strategy aimed at minimising the harm caused by crime, anti-social behaviour and substance misuse 2005 – 2009*' published by the States of Jersey. The main part of the strategy contains strategic objectives under each of the priorities and what initiatives and targets have been set to help achieve them.

The '*Building a Safer Society*' (BASS) strategy is a result of merging '*Crime and Community Safety Strategy (1999-2009)*' and the '*Substance Misuse Strategy (1999-2004)*', to address crime, disorder, anti-social behaviour and substance misuse within a single co-ordinated strategy. Merging has come about as '*t[w]o separate initiatives which seek to tackle risk factors, such as poor parenting, low literacy, school suspension into either community safety or substance misuse is ambiguous and places critical boundaries around the problem*'. The strategy aims to minimize the harm caused by crime, anti-social behaviour and substance misuse.

*'...three main priorities are:*

- 1. To create a safer environment by reducing crime, public disorder and anti-social behaviour.*
- 2. To provide people with opportunities to develop their potential as lifelong learners and active and responsible members of society.*
- 3. To reduce the harm caused by the misuse of drugs, alcohol and solvents.'*

It is a fresh look at the way [Jersey] seeks to address these social challenges.

*Building a Safer Society* is a local strategy, drawing on local information, local experience and local opinion geared to producing local results. It will have a thorough and co-ordinated approach.

The strategy continues co-ordinated projects and those funded by the strategy but also work which is done by departments as part of their normal business.

Design of the strategy included public consultation; consultation with statutory and non-statutory agencies; use of biennial Police Survey; Jersey Crime Survey; Health related Questionnaire and the use of recent studies including the Rutherford Report, the Bull Report and Imperial College Report.

It is a working document which will change with emerging research and monitoring and evaluation. Detailed action plans will be produced each year.

The real strength of the Strategy is that it invests in the future. We know from evidence around the world that resources invested in preventing future problematic behaviour still pay handsome dividends in ten to 15 years time.

**IN THE STATES OF THE ISLAND OF GUERNSEY**

**ON THE 28<sup>th</sup> DAY OF SEPTEMBER 2005**

The States resolved as follows concerning Billet d'État No XIV  
dated 9<sup>th</sup> September, 2005

**PROJET DE LOI**

entitled

**THE PROTECTION FROM HARASSMENT  
(BAILIWICK OF GUERNSEY) LAW, 2005**

I.- To approve the Projet de Loi entitled "The Protection from Harassment (Bailiwick of Guernsey) Law, 2005", and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for her Royal Sanction thereto.

**PROJET DE LOI**

entitled

**THE SMOKING (PROHIBITION IN PUBLIC PLACES  
AND WORKPLACES) (GUERNSEY) LAW, 2005**

II.- To approve the Projet de Loi entitled "The Smoking (Prohibition in Public Places and Workplaces) (Guernsey) Law, 2005", and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for her Royal Sanction thereto.

**THE LEGAL AID LAW (COMMENCEMENT) ORDINANCE, 2005**

III.- To approve the draft Ordinance entitled "The Legal Aid Law (Commencement) Ordinance, 2005" and to direct that the same shall have effect as an Ordinance of the States.

**THE PERFORMERS' RIGHTS  
(BAILIWICK OF GUERNSEY) ORDINANCE, 2005**

IV.- To approve the draft Ordinance entitled "The Performers' Rights (Bailiwick of Guernsey) Ordinance, 2005" and to direct that the same shall have effect as an Ordinance of the States.

**THE COPYRIGHT (BAILIWICK OF GUERNSEY) ORDINANCE, 2005**

V.- To approve the draft Ordinance entitled "The Copyright (Bailiwick of Guernsey) Ordinance, 2005" and to direct that the same shall have effect as an Ordinance of the States.

## **POLICY COUNCIL**

### **NOTRE DAME CHURCH AND PRESBYTERY**

VI.- After consideration of the Report dated 8<sup>th</sup> August, 2005, of the Policy Council:-

1. That legislation be enacted as recommended in that Report.
2. To approve the Projet de Loi entitled "The Notre Dame du Rosaire Church and Presbytery Law, 2005" and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

## **PRIAULX LIBRARY**

### **NEW TRUSTEE**

VII.- To elect Deputy Mrs C. H. Le Pelley as a Trustee of the Priaulx Library, to replace Mr P. L. De Garis.

## **PUBLIC SERVICES DEPARTMENT**

### **NEW MEMBER**

VIII.- To elect Deputy S. J. Ogier as a member of the Public Services Department to complete the unexpired portion of the term of office of the late Deputy M. E. W. Burbridge, namely until May, 2008.

## **SCRUTINY COMMITTEE**

### **NEW MEMBER**

IX.- To elect Deputy D. W. Staples as a member of the Scrutiny Committee to complete the unexpired portion of the term of office of the late Deputy M. E. W. Burbridge, namely until May, 2008.

## **GUILLE-ALLÈS LIBRARY COUNCIL**

### **NEW MEMBER**

X.- To elect Deputy J. M. Tasker as a member of the Guille-Allès Library Council to complete the unexpired portion of the term of office of the late Deputy M. E. W. Burbridge, namely until 31<sup>st</sup> May, 2007.

## **POLICY COUNCIL**

### **WIRE TRANSFER LEGISLATION**

XI.- After consideration of the Report dated 22<sup>nd</sup> August, 2005, of the Policy Council:-

- 1 To enact legislation as set out in that Report.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

## **TREASURY & RESOURCES DEPARTMENT**

### **LATE PAYMENT AND LATE REPAYMENT OF TAX**

XII.- After consideration of the Report dated 21<sup>st</sup> June, 2005, of the Treasury and Resources Department:-

1. To amend the Income Tax (Guernsey) Law 1975, as amended, as set out in that Report.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

## **COMMERCE AND EMPLOYMENT DEPARTMENT**

### **REVIEW OF COMMERCIAL LEGISLATION**

XIII.- After consideration of the Report dated 14<sup>th</sup> July, 2005, of the Commerce and Employment Department:-

1. To approve the proposals for the revision of company and other commercial legislation in accordance with the principles set out in section 3 of that Report.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

## **COMMERCE AND EMPLOYMENT DEPARTMENT**

### **REQUÊTE – MISUSE OF FIREWORKS**

XIV.- TO GRANT LEAVE TO WITHDRAW this Article, at the instance of the Minister, Commerce and Employment Department.

## **HEALTH AND SOCIAL SERVICES DEPARTMENT**

### **MIGNOT MEMORIAL HOSPITAL RE-FURBISHMENT AND RE-DEVELOPMENT PROJECT (ADDITIONAL FUNDING)**

XV.- After consideration of the Report dated 26<sup>th</sup> July, 2005, of the Health and Social Services Department:-

1. To approve the replacement of the Aurigny Wing and refurbishment of the main hospital building at the Mignot Memorial Hospital, Alderney and approve the

completion of essential maintenance works at a total cost of £6,186,000 (including construction, equipment and consultants' fees already approved of £3,820,000).

2. To approve the appointment of Charles Le Quesne (Guernsey) Ltd as main contractor for the project.
3. To vote the Health and Social Services Department a credit of £2,366,000 in respect of the construction and essential maintenance works, such sum to be charged to the capital allocation of the Department.
4. To authorise the Treasury and Resources Department to transfer an appropriate sum from the Capital Reserve to the capital allocation of the Health and Social Services Department to cover the above requirements.

**K. H. TOUGH**  
**HER MAJESTY'S GREFFIER**

# **IN THE STATES OF THE ISLAND OF GUERNSEY**

## **ON THE 29<sup>th</sup> DAY OF SEPTEMBER 2005**

(Meeting adjourned from 28<sup>th</sup> September, 2005)

The States resolved as follows concerning Billet d'État No XIV  
dated 9<sup>th</sup> September, 2005

### **SOCIAL SECURITY DEPARTMENT**

#### **BENEFIT AND CONTRIBUTION RATES FOR 2006**

XVI.- After consideration of the Report dated 27<sup>th</sup> July, 2005, of the Social Security Department:-

1. That, with effect from 2<sup>nd</sup> January, 2006, the standard rates of social insurance benefits shall be increased to the rates set out in paragraph 11 of that Report.
2. That, with effect from 1<sup>st</sup> January, 2006, for employed and self-employed persons the upper weekly earnings limit, the upper monthly earnings limit and the annual upper earnings limit shall be £693, £3,003 and £36,036 respectively.
3. That, with effect from 1<sup>st</sup> January, 2006, for non-employed persons the upper and lower annual income limits shall be £36,036 and £12,610 respectively.
4. That the Social Insurance (Guernsey) Law 1978, as amended, shall be further amended as described in paragraphs 35 to 40 of that Report.
5. That, with effect from 1<sup>st</sup> January, 2006, the prescription charge per item of pharmaceutical benefit shall be £2.50.
6. That, with effect from 2<sup>nd</sup> January, 2006, the contribution (co-payment) required to be made by the claimant of care benefit, under the long-term care insurance scheme, shall be £140 per week.
7. That, with effect from 2<sup>nd</sup> January, 2006, care benefit shall be a maximum of £581 per week for persons resident in a nursing home or the Guernsey Cheshire Home and a maximum of £312.50 per week for persons resident in a residential home.
8. That, with effect from 2<sup>nd</sup> January, 2006, respite care benefit shall be a maximum of £721 per week for persons receiving respite care in a nursing home or the Guernsey Cheshire Home and a maximum of £452.50 per week for persons receiving respite care in a residential home.
9. That, with effect from 6<sup>th</sup> January, 2006, the supplementary benefit requirement rates shall be as set out in paragraph 68 of that Report, subject to the modifications that for a non-householder under 18 the long-term rate shall be increased from £96.35 to £100.45

and the short term rate shall be increased from £76.90 to £80.40.

10. That, with effect from 6<sup>th</sup> January, 2006, the weekly benefit limitations for supplementary benefit shall be:
  - (a) £287 for a person living in the community;
  - (b) £396 for a person who is residing in a residential home; and
  - (c) £570 for a person who is residing as a patient in a hospital, nursing home or the Guernsey Cheshire Home;
11. That, with effect from 6<sup>th</sup> January, 2006, the amount of the personal allowance payable to persons in residential or nursing homes who are in receipt of supplementary benefit shall be £22 per week.
12. That a supplementary fuel allowance of £17.00 per week be paid to supplementary beneficiaries who are householders from 28 October 2005 to 28 April 2006.
13. That, with effect from 6<sup>th</sup> January, 2006, the earnings disregard for supplementary benefit be increased to £30 per week.
14. That, with effect from 6<sup>th</sup> January, 2006, the minimum rate of non-householder rent allowance be reduced to zero.
15. That, with effect from 3<sup>rd</sup> January, 2006, family allowance shall be £12.75 per week.
16. That, with effect from 2<sup>nd</sup> January, 2006, the rates of attendance allowance and invalid care allowance and the annual income limits shall be as set out in paragraph 88 of that Report.
17. That, with effect from 1<sup>st</sup> January, 2006, the non-statutory medical expenses assistance scheme (MEAS) be extended to cover residents of Alderney.
18. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

## **PUBLIC SERVICES DEPARTMENT**

### **ST SAMPSON'S HARBOUR PUMPING STATION AND NORTH SIDE FIRE MAIN**

XVII.- After consideration of the Report dated 28<sup>th</sup> July, 2005, of the Public Services Department:-

To sanction the overspend of £950,160.37 on the capital vote for the construction of a new pumping station and ancillary works at St Sampson's Harbour and to extend the firemain to North Side, which overspend shall be charged to the capital allocation of the Public Services Department.

***STATUTORY INSTRUMENTS LAID BEFORE THE STATES***

**THE HEALTH SERVICE (BENEFIT) (LIMITED LIST) (PHARMACEUTICAL BENEFIT) (AMENDMENT NO.2) REGULATIONS, 2005**

In pursuance of Section 35 of The Health Service (Benefit) (Guernsey) Law, 1990, the Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment No 2) Regulations, 2005, made by the Social Security Department on 18<sup>th</sup> August, 2005, were laid before the States.

**THE HEALTH SERVICE (PHYSIOTHERAPY BENEFIT) (AMENDMENT) REGULATIONS, 2005**

In pursuance of Section 35 of The Health Service (Benefit) (Guernsey) Law, 1990, the Health Service (Physiotherapy Benefit) (Amendment) Regulations, 2005, made by the Social Security Department on 18<sup>th</sup> August, 2005, were laid before the States.

**THE HEALTH SERVICE (PHARMACEUTICAL BENEFIT) (AMENDMENT) REGULATIONS, 2005**

In pursuance of Section 35 of The Health Service (Benefit) (Guernsey) Law, 1990, the Health Service (Pharmaceutical Benefit) (Amendment) Regulations, 2005, made by the Social Security Department on 19<sup>th</sup> August, 2005, were laid before the States.

**THE HEALTH SERVICE (MEDICAL APPLIANCES) (AMENDMENT NO.2) REGULATIONS, 2005**

In pursuance of Section 35 of The Health Service (Benefit) (Guernsey) Law, 1990, the Health Service (Medical Appliances) (Amendment No 2) Regulations, 2005, made by the Social Security Department on 19<sup>th</sup> August, 2005, were laid before the States.

**K. H. TOUGH  
HER MAJESTY'S GREFFIER**