



LAW OFFICERS OF THE CROWN

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

Your Ref:

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

2nd June 2009

Gentlemen,

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

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

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

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

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

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

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

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

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

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

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

Yours faithfully



H E Roberts Q C
HM Comptroller