

Preface, John Le Fondré

I would like to thank Sir David Calvert-Smith for his work and diligence that has gone into producing this report. I think this has been an important and useful undertaking which clearly poses areas of learning for the Council of Ministers, States Assembly and Ports of Jersey to take forward.

The purpose of this preliminary report has been to seek to establish the facts and circumstances surrounding the events before and after the removal of the RNLI St Helier lifeboat from service in November 2017. In particular I commissioned this report in order to inform the Government on any lessons to be learned for the future, regarding this issue or for similar situations in the future that might arise. Whilst the background to this report is therefore the provision of maritime search and rescue, its subject matter is one solely focused on governance and the role played by those in positions of authority.

It is a report commissioned by the Chief Minister in response to undertakings that were previously given publicly. Given that as an individual I know and encounter many views on the subject matter, I have not expressed a view and we have endeavoured to keep the process as objective and arms length as possible.

What I will note is that some parties have raised the concern that the author of the report does not have any knowledge of the subject matter. That is the whole point. The issue at hand is not about the sea. It is about governance.

The report produced by Sir David has raised a number of recommendations for the next Council of Ministers. From my perspective, I consider there are five key areas for future improvement which I hope future governments will consider (as well as the detail remarks from Sir David) :

- Firstly, the Freedom of Information Law 2011 does not currently incorporate Ports of Jersey. The States Assembly has previously agreed that the FOI law should be extended to PoJ and other ALO's via P.149/2014. This Council of Ministers has reiterated the point and expressly agreed that the FOI law should be extended to Ports of Jersey (in keeping with enacting the decision of the States Assembly back in 2014). Accordingly direction has been given for legislation to be drafted, (which will need to respect commercial confidentiality), and which will be presented for the new Assembly's consideration in due course.
- Secondly, the process of commissioning this report has underscored the importance of an inquiries law. Jersey Law does not currently provide for public inquiries and investigations have to date been commissioned either by the States Assembly or, in this case, by the Chief Minister. The Government undertook a consultation on the proposed Public Inquiries Law in 2021 and proposals are in hand to bring to the States Assembly later this year. The overall delay being due to the impact of the pandemic.

The proposed new law must provide a more robust framework for the set up and delivery of independent public inquiries, including matters related to management of data and financial spend. It will also be important to ensure that future inquiries are furnished with the appropriate resources and powers that they may require, and also that there is scope to ensure that small scale inquiries can be easily and quickly implemented.

- Thirdly, this report has highlighted the important role the Government must play in acting as an honest broker. The Government clearly has a duty, in any mediation to

endeavour to act impartially and professionally when arbitrating disputes and ensure that it cannot be accused of failing to act on such an impartial basis at any point in the future. This must be to ensure that all parties in a dispute can have confidence in Government to act independently, and without bias.

Given the lack of submissions from some of the relevant figures at the time, it is difficult to make a specific suggestion as to what should have been done. However, future Councils of Ministers should take steps to ensure that the Government acts with appropriate impartiality if called to mediate in future disputes. This needs to be a mindset amongst both politicians and officials from the very start, and should cover all aspects, including any undertakings given / promises made; the use of venues for meetings etc etc.

Similarly, it is essential that anyone tasked with an investigation, such as this preliminary report, be objective, impartial and has no conflicts of interest. This is especially important in a small Island community such as Jersey and our neighbouring Islands.

Sometimes it will not be sufficient in what is likely to be a small community even within the Channel Islands as a whole, to bring in someone from another Island to investigate and report. Officials should expressly consider whether this is sufficiently impartial, and should also take account of who commissions a report, again from the perspective of being seen to be without bias.

I believe that Sir David has demonstrated these qualities throughout his report focusing on the available evidence provided to him and not on preconceptions.

- Fourthly, in the course of considering this preliminary report, it has struck me that the regulatory arrangements surrounding maritime search and rescue could merit further review.

Specifically, at face value, the [Air and Sea Ports \(Incorporation\) \(Jersey\) Law 2015](#) appears ambiguous over the powers afforded to Ports of Jersey with regards to the regulation of maritime search and rescue. Article 6(1)a of the Law refers to POJ's responsibility over 'co-ordinating' but does not, at first glance, seem to explicitly reference 'regulating' maritime search and rescue activities :

“(a) co-ordinating, or providing resources for co-ordinating, maritime search and rescue within the Jersey Search and Rescue Region;”

I would suggest that this should be reviewed and, if necessary, the law revised to clearly demarcate the authority provided to Ports of Jersey.

Furthermore, it may be appropriate for the responsible Minister to consider the practicability of Ports of Jersey maintaining both a regulatory and operational function. From the perspective of what is known as 'segregation of duties' I do not see how one body can perform both operational and regulatory functions. It could potentially mean that a body is in essence 'marking its own homework'. This is, I should stress, an initial observation, and could be subject to change, but it is of sufficient importance that I believe it does warrant the attention of the next Minister.

I would suggest that such a review is conducted across the relevant Arm's Length Organisations where incorporated bodies hold similar overlapping responsibilities.

- Fifthly, as an observation, it does not feel right, that a report can be produced in relation to a complaint about an individual ; that may be used as evidence / rationale in arriving at a decision about that individual ; and that individual does not have some form of right to see the full contents of that report, and to comment thereon.

I accept that is a very simple statement, on what can be a very complicated area, including protection of witnesses etc, but as a principle, it does not feel correct, and may be worth further deliberation, perhaps in terms of guidance to be issued, or further.

The events detailed within this report are now nearly half a decade old, but I nevertheless believe it important for the Government to appraise its actions and take forward areas to improve. I am grateful to all those who have provided submissions to assist Sir David in this report and I wish to thank him for his thorough piece of work.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end.

John Le Fondré
Chief Minister