
STATES OF JERSEY



CIRCUMSTANCES SURROUNDING THE DISMISSAL OF AN EMPLOYEE OF THE STATES OF JERSEY: REPORT BY PROFESSOR ROBERT UPEX

**Presented to the States on 15th July 2008
by the Chief Minister**

STATES GREFFE

REPORT

1. I present this report to the States as Chairman of, and on behalf of, the States Employment Board.
2. In response to a question in the States, I gave a commitment that all the information that was denied as a result of the abrupt termination of the Employment Tribunal would be revealed publicly through the findings of the Professor's report. A redacted version of his report (see paragraphs 21 and 22 below) is therefore published in full at Appendix A.

Overview of the report

3. Professor Upex's key conclusions in respect to the application of the Employment (Jersey) Law can be found in paragraph 97 of his report. There are 3 elements to these conclusions which relate to unfair dismissal, reasons for the dismissal and reinstatement.
4. In relation to whether the dismissal was technically unfair he comments: *"Bearing in mind that in the Joint Statement issued to the press after the conclusion of the employment tribunal proceedings the States Employment Board accepted that employment procedures had not been followed as closely as they should have been and that the first term of reference of this Inquiry invites me to inquire into all the circumstances surrounding the termination of Mr. Bellwood's employment with the States of Jersey, I do not think it possible to fulfil this undertaking without expressing a view as to the fairness or otherwise of his dismissal. Had my advice as Counsel been sought on this matter in advance of the proceedings, I would have advised that in my opinion the outcome was very likely to be that Mr. Bellwood's dismissal would in all the circumstances be considered unfair."* This conclusion is accepted as it was the basis on which the employer agreed to the settlement. It is based on the fact that Mr. Bellwood's employment was terminated as if he was still in the probationary stage of his employment, when in fact he had passed the 6 month threshold set under the law and had assumed full employment rights.
5. Professor Upex also states that *'It is clear to me, having investigated fully the circumstances of Mr. Bellwood's dismissal (including the matters which the States Employment Board planned to put before the Tribunal), that the Board intended to make a case that it had good reason for dismissing him (paragraph 97)'*. It was the intention of the Health and Social Services Department to present evidence at the Employment Tribunal – through documents and through witness statements – that Mr. Bellwood's performance was inadequate to the extent that it gave rise to the serious risk of harm to both children and staff. It was the intention of the Health and Social Services Department also to present evidence that Mr. Bellwood used demeaning, offensive and abusive language when speaking to members of his staff. The Department owes a duty of care not only to the children at Greenfields, but to its members of staff who work there.
6. Professor Upex states that *'Even if the Jersey Law contained an equivalent provision to that contained in the Employment Rights Act 1996, it would have been improbable that a reinstatement order would have been made in his*

favour, in view of the fact that there had clearly been a breakdown in the employment relationship' (paragraph 97). Given the unacceptable standard of conduct and capability on the part of Mr. Bellwood, as described above, this is agreed.

7. Further, notwithstanding Mr. Bellwood's unacceptable failures, the States Employment Board and Mr. Bellwood freely entered into a joint agreement which was reached under the auspices of the Jersey Advisory and Conciliation Services (JACS). This joint agreement was reached before the States of Jersey could present its case against Mr. Bellwood. In the joint statement issued as part of that agreement Mr. Bellwood confirms that he "*wishes to clarify that he personally has never alleged, and does not now claim, that he was dismissed because of any so called whistleblowing on his part*". Throughout the proceedings of the Employment Tribunal, Mr. Bellwood was supported by the British Association of Social Workers (which is his professional organisation) and was legally represented by an experienced Jersey Advocate and by a Barrister from the United Kingdom, both of whom were experts in Employment Law. Mr. Bellwood therefore received well informed, robust and comprehensive advice and, to repeat, freely entered into an agreed settlement with his employer.

The Report and actions to remedy the problems identified

8. Following this agreement between the States of Jersey and Mr. Bellwood on 12th March 2008, in full and final settlement of a complaint to the Jersey Employment Tribunal, it was agreed that there would be a full independent inquiry into all the circumstances surrounding the termination of Mr. Bellwood's employment to enable the States of Jersey to learn any lessons arising.
9. Following a recommendation by Mr. David Witherington, the Director of the Jersey Advisory and Conciliation Service, Professor Robert Upex MA LL.M. ACI Arb FRSA was appointed to undertake the inquiry.
10. Professor Upex was appointed on 28th March 2008, commenced his Inquiry on 7th April 2008 and delivered his final report to the Chief Executive to the Council of Ministers on Monday 23rd June 2008. His report was considered by the States Employment Board (SEB) at its meeting on Tuesday 8th July 2008. Professor Upex at all times acted independently from the States of Jersey using the facilities of, and being supported by, JACS.
11. The terms of reference for his Inquiry were –
 - (a) To inquire into all of the circumstances surrounding the termination of Mr. Bellwood's employment with the States of Jersey; and
 - (b) To review and comment upon the structure and management of employment practices and procedures in the light of the above and to make recommendations.
12. It is important to note that Professor Upex has confined himself to those terms of reference. He says in his report: "*Although the terms of reference agreed*

upon between me and the States Employment Board are wide, I did not consider it appropriate to venture into areas where I have no qualifications or experience. That means, for example, that I have not seen it as part of my brief to inquire into, or express views upon, the way a secure unit such as Greenfields is run or the way children who are brought into the Unit should be treated.”

13. Much of Professor Upex’s report concentrates upon and is a commentary upon the application of policies and procedures leading up to the dismissal of Mr. Bellwood (in particular the Probation policy, the Raising Serious Concerns policy and the Bullying and Harassment policy) and also the application of the Employment (Jersey) Law 2003.
14. His key conclusion in respect to the application of the Employment (Jersey) Law can be found in paragraph 97 of his report where he states: *“Bearing in mind that in the Joint Statement issued to the press after the conclusion of the employment tribunal proceedings the States Employment Board accepted that employment procedures had not been followed as closely as they should have been and that the first term of reference of this Inquiry invites me to inquire into all the circumstances surrounding the termination of Mr. Bellwood’s employment with the States of Jersey, I do not think it possible to fulfil this undertaking without expressing a view as to the fairness or otherwise of his dismissal. Had my advice as Counsel been sought on this matter in advance of the proceedings, I would have advised that in my opinion the outcome was very likely to be that Mr. Bellwood’s dismissal would in all the circumstances be considered unfair. It is clear to me, having investigated fully the circumstances of Mr. Bellwood’s dismissal (including the matters which the States Employment Board planned to put before the tribunal) that the Board intended to make a case that it had good reason for dismissing him. Had it done so (which in the event it did not because the case was settled), it may well be that it would have discharged the burden placed upon it by Article 64(1) of the Employment (Jersey) Law 2003 of satisfying the tribunal as to the reason for Mr. Bellwood’s dismissal. What, in my opinion, would have caused the dismissal to be deemed unfair was the failure to follow appropriate procedures. I say this taking account of the outcomes of the various reports, and of the fact that once the Senior HR Manager (ESC)’s report had been considered matters moved to a speedy conclusion without Mr. Bellwood being given the opportunity of appealing under either of the Policies.) I would also have advised, in the light of my experience as an employment tribunal Chairman in the United Kingdom, that, even if the Jersey Law contained an equivalent provision to that contained in the Employment Rights Act 1996, it would have been improbable that a reinstatement order would have been made in his favour, in view of the fact that there had clearly been a breakdown in the employment relationship. Further, since he was not given the amount of notice to which he became entitled once his contract became permanent, he was also dismissed in breach of contract”.*
15. It was acknowledged at the time of the Employment Tribunal, by the SEB, that employment procedures had not been followed as closely as they should have been and that there was a possibility that the Employment Tribunal would find Mr. Bellwood’s dismissal technically unfair. In the event, the States of Jersey reached an agreement with Mr. Bellwood “in full and final

settlement” and compensated him in a sum equal to his full statutory and contractual entitlements.

16. The States of Jersey did proceed with the case to the Employment Tribunal notwithstanding the knowledge that the dismissal may be found to be unfair. It did this though in the knowledge that it had at its disposal a considerable body of evidence concerning the performance and particularly the conduct of Mr. Bellwood which it believed justified the non-confirmation of his appointment at the end of his probationary period.
17. In the event, whilst this evidence would have been fully explored and illuminated under cross-examination, all of the evidence was not presented to the Employment Tribunal as the matter was settled before this was possible.
18. At its meeting on 8th July 2008, the SEB considered a summary of the evidence that would have been placed before the Tribunal. Having done so, the SEB, whilst accepting Professor Upex’s view that the dismissal would probably have been deemed unfair because of the failure to follow appropriate procedures, agreed that the termination of Mr. Bellwood’s employment remained appropriate.
19. Professor Upex also states in his report: *“In my opinion, the impact of the new legislation was insufficiently appreciated. This is understandable. When the original unfair dismissal legislation was introduced in the United Kingdom, it took some time to settle down and for employers to adapt to and appreciate its impact. I have no doubt that the same learning process needs to take place in Jersey. In my view, what happened in this particular case was a consequence of a lack of experience with the new legislation...”*
20. The SEB noted that managers and HR professionals in the UK have had many years of experience of employment legislation, policies such as bullying and harassment and, discrimination legislation. Similarly therefore, managerial practice (and the HR profession) has had many years to develop and respond. In Jersey this has not been the case and thus managers, and HR professionals, may not yet have fully developed the range of skills necessary to operate in this new and developing environment.
21. Notwithstanding the fact that the document concerned is considered to benefit from the transitional relief provisions of the Data Protection (Jersey) Law 2005 (Schedule 8, Part 2, paragraph 4), equivalent standards will be applied as a matter of good practice. Given that Professor Upex’s report is concerned with a commentary on the processes, procedures and practices followed and not about individual acts or performance (indeed he says: *“In my view, what happened in this particular case was a consequence of a lack of experience with the new legislation but I do not believe that any individual involved should be made a scapegoat for what was in effect a systemic failure”*), and given the duty of care the States has as an employer to those involved in this case, the inclusion of individual names cannot be considered ‘necessary’ (as described in the Data Protection (Jersey) Law 2005, Schedule 2, paragraph 6).

22. His report therefore is published in total but redacted only to remove the names of individuals (other than Mr. Bellwood who is clearly pertinent to the report) and replaced by those individuals' job titles. This best meets the balancing act required under the Data Protection legislation by ensuring both that the report is in the public domain, thus meeting the needs of the data controller (the States Employment Board) to publish it, whilst also protecting the interests of the data subjects (employees named in the report).
23. Professor Upex makes a series of recommendations in his report and these were considered by the SEB on 8th July 2008. These and the decisions taken by the SEB are produced at Appendix B. **All the recommendations made by Professor Upex were accepted.**

Chief Minister
15th July 2008

REPORT OF AN INQUIRY

**INTO THE CIRCUMSTANCES
 SURROUNDING THE DISMISSAL OF
 AN EMPLOYEE OF THE STATES
 EMPLOYMENT BOARD OF THE
 STATES OF JERSEY AND THE
 IMPLICATIONS FOR THE BOARD'S
 EMPLOYMENT POLICIES,
 PROCEDURES AND PRACTICES**
PROFESSOR ROBERT UPEX

| | | |
|---|---|--|
| London 10-11 Bedford Row London WC1R 4BU DX 1046 London/Chancery Lane T +44 (0) 20 7269 0300 F +44 (0) 20 7269 1387 | Bristol 3 Orchard Court, St Augustine's Yard Bristol BS1 5DP DX 78229 Bristol 1 T +44 (0) 117 930 5100 F +44 (0) 117 927 3478 | E clerks@oldsquare.co.uk W www.oldsquare.co.uk |
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TERMS OF REFERENCE OF THE INQUIRY

1. To inquire into all the circumstances surrounding the termination of Mr. Simon Bellwood's employment with the States of Jersey.
2. To review and comment upon the structure and management of employment practices and procedures in the light of the above and to make recommendations.

EXECUTIVE SUMMARY

My conclusions on the specific issues which I consider to have been raised by this inquiry are as follows:

Conclusion 1

- (a) At the end of his probationary period (31 January 2007), in the absence of any indication to the contrary, Mr. Bellwood's employment with the States Employment Board became permanent.
- (b) The consequence of his employment becoming permanent was that, because he was a Grade 6 employee, he became entitled to three months' notice.
- (c) A further consequence of his employment lasting beyond 31 January 2007 was that by the time he was given notice of dismissal he had sufficient length of service to become entitled to the right not to be unfairly dismissed by virtue of Article 73(1) of the Employment (Jersey) Law 2003.

Conclusion 2

- (a) It was not appropriate in the circumstances to ask the Service Coordinator – Children's Executive to undertake an investigation into the concerns raised by Mr. Bellwood since that had the effect of leaving a management vacuum in relation to Mr. Bellwood.
- (b) The time taken to inform Mr. Bellwood of the outcomes of the investigations was too long.
- (c) Mr. Bellwood should have been given feedback on the outcomes before anyone else, in view of the fact that he was the person who raised the concerns in the first place.
- (d) Mr. Bellwood should have been given the opportunity of appealing against the outcome of the investigations under this Policy.

Conclusion 3

- (a) The fact that the Senior HR Manager (ESC) found herself taking a managerial role in relation to Mr. Bellwood means that there was in effect a “managerial vacuum”, in other words that there was nobody to manage him during this time.
- (b) It was clearly appropriate that he should have been placed on some sort of “special leave”, as contemplated by the Bullying and Harassment Policy, but this period of leave should have been short.
- (c) Once the Senior HR Manager (ESC) had received the advice to ignore the “off the record” statements, they should have been deleted and all reference to them removed from her report.
- (d) The time taken by the investigation is in clear contravention of the timescales set out in the Policy.
- (e) Once the investigation had been completed Mr. Bellwood should have been given a copy of the report and it should have been discussed with him. This did not happen.
- (f) He was denied the right of appeal under this Policy.

Conclusion 4

- (a) Formal steps to monitor Mr. Bellwood’s performance should have been taken at an earlier stage in his probation.
- (b) Although of themselves the actions taken by the Residential Secure Manager during the period of Mr. Bellwood’s leave in December 2006 did not breach the duty of trust and confidence, they were actions which would have the effect of undermining Mr. Bellwood.
- (c) The dismissal of Mr. Bellwood was in breach of contract, because he was not given the notice to which he had become entitled.
- (d) In my opinion, it is likely that the outcome of the Employment Tribunal proceedings would have been a decision that his dismissal was unfair but that, even if a power to order reinstatement had been given to the Jersey Employment Tribunal, it would have been unlikely to have exercised it.

My general conclusions are as follows:

1. The fact that the probationary period for those starting employment with the States Employment Board is six months and is co-terminous with the qualifying period for the right not to be unfairly dismissed means that – as both the contractual provisions and the present state of the Law stand – at the end of the probationary period an employee acquires the right not to be unfairly dismissed. If such an employee is to be given the notice envisaged by the contract without acquiring the right not to be unfairly dismissed, such notice would have to be given more than one month before the end of the six-month period. That means that his or her manager would need to make a final assessment within the first 4½ months of the employee’s employment. If notice is given during the last month, the effective date of termination of the employment will be one month afterwards: see the Employment (Jersey) Law 2003, article 63(1)(a). At the expiry of the notice the employee will be within the scope of the Law.
2. In the light of what I have said about the performance management of Mr. Bellwood during the course of his probation, it seems to me that there was a lack of guidance given to managers about the management of probationary employees.
3. The events I have considered and commented upon – in particular the investigations carried out by the Senior HR Manager (ESC), the Service Coordinator – Children’s Executive and the Manager Intake and Assessment – Child Protection Team – raise questions about the appropriateness of drafting in staff from other departments or Ministries to carry out investigations.
4. The problems caused by the “off the record” statements which the Senior HR Manager (ESC) obtained in the course of her investigation suggest that this aspect of the Policy, amongst others, warrants re-consideration.
5. The fact that there was what I have called a “managerial vacuum” caused by the fact that the Residential Secure Manager was being investigated under the Bullying and Harassment Policy and the Service Coordinator – Children’s Executive was carrying out an investigation under the Serious Concerns Policy suggests a certain lack of clarity in relation to the management of employees who fall within the ambit of the Children’s Executive, particularly in the kinds of circumstances I have been considering.
6. In the light of my remarks about the handling of the outcomes of the investigations there is a need for greater awareness and understanding as to how such outcomes should be dealt with.

7. Bearing in mind what I have said about the outcomes of the investigations becoming enmeshed in the dismissal process, there needs to be greater clarity about the purposes of the two Policies and the results of investigations carried out under them, and about the need to keep them separate from the processes and procedures leading up to the termination of an employee's employment.

8. What I have said above, particularly in relation to the circumstances of Mr. Bellwood's dismissal and the events leading up to it, suggests a lack of awareness of the impact of the Employment (Jersey) Law 2003. Bearing in mind that it came into effect on 1 July 2005 – and had thus only been in operation for some two years – it seems to me that insufficient attention was paid to its provisions, particularly Article 64(4) (whose wording is more or less identical to that of section 98(4) of the UK's Employment Rights Act 1996. That provision states that “the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) shall (a) depend on whether in the circumstances ... the employer acted reasonably in treating it as a sufficient reason for dismissing the employee and (b) be determined in accordance with equity and the substantial merits of the case.” The case-law in the United Kingdom relating to this question is voluminous. What it makes clear, however, is that the employer needs to go through a fair procedure when arriving at the decision to dismiss. In my opinion, the impact of the new legislation was insufficiently appreciated. This is understandable. When the original unfair dismissal legislation was introduced in the United Kingdom, it took some time to settle down and for employers to adapt to and appreciate its impact. I have no doubt that the same learning process needs to take place in Jersey. In my view, what happened in this particular case was a consequence of a lack of experience with the new legislation but I do not believe that any individual involved should be made a scapegoat for what was in effect a systemic failure. Needless to say, however, if lessons were not learnt as a result then that would undoubtedly be a serious failure.

My recommendations are as follows:

1. I RECOMMEND that the operation of probationary contracts be reviewed and, in particular:
 - (a) that consideration be given to the continued use of such contracts in view of the introduction of a qualifying period of employment under the Employment (Jersey) Law 2003 of the same length as the current probationary period;
 - (b) if the use of such contracts is to be continued, that the length of the probationary period be reviewed and that the relevant clause in the employment contract be re-drafted so as to indicate clearly what is to happen to the contract at the end of the period.
 - (c) that consideration be given to the provision of guidance to managers in relation to the handling of probationary employees and the management of their probation.

2. I RECOMMEND that the operation of the Serious Concerns Policy and the Bullying and Harassment Policy be reviewed and, in particular:
 - (a) that consideration be given to the choice of those asked to conduct investigations under those Policies;
 - (b) that consideration be given to the use of external advisers for such investigations;
 - (c) that there be greater emphasis on the observance of the time limits set out in the Bullying and Harassment Policy;
 - (d) that consideration be given to clarifying how the outcomes of investigations under the two Policies should be handled;
 - (e) that those parts of the Bullying and Harassment Policy relating to “off the record” statements be reviewed and that further consideration be given to dealing with such statements;
 - (f) that consideration be given to the introduction into the Serious Concerns Policy of time limits similar to those set out in the Bullying and Harassment Policy.

3. I RECOMMEND that, in the interests of consistency, consideration be given to the provision of further training for managers tasked with handling the outcome of investigations under the Policies and to the preparation of a manual to be made available for the use of present and future managers.

4. I RECOMMEND that further training be given to managers and senior managers so as to raise awareness of the impact of the Employment (Jersey) Law 2003 and the importance of the procedures used when considering the termination of an employee's employment.

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I INTRODUCTION

1. I was appointed on 28 March 2008 to carry out an inquiry into the circumstances surrounding the dismissal of Mr. Simon Bellwood from the position of Centre Manager at the Greenfields Residential Centre and the implications for the States Employment Board's employment policies, procedures and practices.
2. The terms of reference agreed between me and the Board are set out in the letter of appointment dated 28 March 2008 and are as follows:
 - (a) To inquire into all the circumstances surrounding the termination of Mr. Simon Bellwood's employment with the States of Jersey.
 - (b) To review and comment upon the structure and management of employment practices and procedures in the light of the above and to make recommendations.
3. The inquiry has been commissioned as a result of proceedings taken by Mr. Bellwood in the Jersey Employment Tribunal against the States Employment Board. The proceedings started on 10 March 2008 and were settled by the parties on 12 March. In the Joint Statement issued to the media after the conclusion of the case, the States Employment Board stated that it accepted that employment procedures were not followed as closely as they should have been in Mr. Bellwood's case and that it had agreed to compensate him in a sum equal to his full statutory and contractual entitlement. The Joint Statement also announced that there would be a full independent inquiry into all the circumstances surrounding the termination of his employment.
4. I started the inquiry on 7 April 2008 and, when I was in Jersey, worked from the offices of the Jersey Advisory and Conciliation Service. I am grateful to its Director, David Witherington, for allowing me the use of the facilities of JACS, including the use of an office. I would also like to acknowledge the assistance given to me by Patricia Rowan, the Senior Advisory and Conciliation Officer, whose help in setting up meetings and acting as a conduit of communication has been invaluable.
5. I was provided with the documents used by the parties in the case before the Employment Tribunal. These consisted of three lever arch files containing the documents relied on by Mr. Bellwood and one lever arch file containing the States Employment Board's documents. These documents were supplemented by further documents requested by me during the course of the inquiry and which are referred to more specifically below.

6. I also conducted interviews with the following people:

The Directorate Manager – Social Services
 Mr. Simon Bellwood
 The Centre Manager – La Preference
 The Senior HR Manager (HSS)
 The Senior HR Manager (ESC)
 The Service Coordinator – Children’s Executive
 The Manager Intake and Assessment – Child Protection Team
 A sessional Youth Worker
 The Residential Secure Manager
 The Service Manager – Children’s Service
 The Director of Education Sport and Culture
 The Chief Executive, Department of Health and Social Services

The interviews were all tape-recorded with recording equipment which was PACE-compliant and which recorded the interview on three tapes simultaneously. At the end of each interview the interviewee was offered one of the tapes as a record of the interview. The tapes were not, however, transcribed.

7. I think it also important to stress that my background is as a lawyer specialising in Employment Law. Although the terms of reference agreed upon between me and the States Employment Board are wide, I did not consider it appropriate to venture into areas where I have no qualifications or experience. That means, for example, that I have not seen it as part of my brief to inquire into, or express views upon, the way a secure unit such as Greenfields is run or the way children who are brought into the Unit should be treated.

II THE FACTS RELATING TO MR. BELLWOOD’S EMPLOYMENT

(a) The facts in outline

8. In the paragraphs which follow, I set out my findings of fact, based on the interviews I have conducted with the people listed above and on the relevant documentation. I then examine certain episodes in greater detail: see paragraph 24.
9. On 29 January 2006 Mr. Bellwood applied for the job of Manager of the Greenfields Centre. He was interviewed by the Service Coordinator – Children’s Executive; the Residential Secure Manager and an Assistant Human Resources Officer. The Assistant Human Resources Officer wrote to him on 13 March telling him that he had been successful in the first stage of the recruitment process and that his

application would be processed further. References were taken up by her on 20 March and she finally wrote to him on 12 May with a formal offer of employment, which he accepted. His employment started on 1 August 2006. Questions have been raised about the references and I shall examine them in more detail later.

10. He was employed under a “Non-permanent ‘J’ Category” Contract of Employment. Clause 3 of the contract stated that it was expected to continue for 5 years. Clause 6 stated that the appointment was subject to the successful completion of a 6-month probationary period, “or such longer period as the Employer may require”, and that it was also subject to the Residential Child Care Officer Terms and Conditions of Employment. Clause 16 stated that for a person at the grade at which Mr. Bellwood was appointed the notice required to be given by the employer during probation was one month; after that it was 3 months.
11. The Greenfields Centre is one of three residential units for young persons, the other two being Heathfield) and La Preference. The purpose of the Greenfields Centre is to provide secure and residential support for adolescent children. During the course of 2006 a new 8-bedded secure unit was under construction. Mr. Bellwood’s role involved him in the final stages of the construction of the new unit, which opened on 8 October 2006, and the implementation of appropriate policies and procedures.
12. Mr. Bellwood’s supervisor was the Residential Secure Manager (who had been manager of the Greenfields Centre since 2003). In turn the Residential Secure Manager reported to the Service Coordinator – Children’s Executive.
13. During October, November and early December the relationship between Mr. Bellwood and the Residential Secure Manager deteriorated. Various meetings took place and these are considered more fully later.
14. Mr. Bellwood was away on leave from 16 – 28 December. During his absence, the Residential Secure Manager caused a new admission procedure for Greenfields to be implemented. Mr. Bellwood only learned of these changes on 29 December, on his return from leave, when one of his colleagues at the Centre told him of them.
15. On 29 December, Mr. Bellwood was asked to go to a meeting with the Residential Secure Manager and the Service Coordinator – Children’s Executive, who was then Chair of the Children’s Executive Board. During the course of the meeting the Residential Secure Manager read a pre-prepared statement outlining his concerns in relation to the management of Greenfields. Mr. Bellwood asked for time to consider the points raised by the document and it was agreed that a further

meeting would be held on 2 January 2007, at which Mr. Bellwood would be allowed to bring a representative.

16. At the meeting on 2 January 2007 Mr. Bellwood said that he wished to raise various questions, the answers to which would enable him to comment on the previous meeting. The Residential Secure Manager's concern was to discuss what he regarded as more pressing issues, which related to problems with Greenfields and to the relationship between him and Mr. Bellwood. After a short time, the Residential Secure Manager adjourned the meeting and Mr. Bellwood returned to Greenfields.
17. After the meeting with the Service Manager – Childrens Service and the Residential Secure Manager, Mr. Bellwood went to see the Directorate Manager – Social Services and then the Chief Executive, Health and Social Services. He handed to them both a letter he had written dated 1 January 2007 (“the Serious Concerns letter”).
18. After the meetings of 2 January Mr. Bellwood went to see his doctor and was signed off sick until 15 January. On that same day he had a meeting with the Senior HR Manager (ESC) and on 16 January he went on what was called “garden leave”. He never returned to work at Greenfields.
19. The Service Coordinator – Children’s Executive and the Manager, Intake and Assessment – Child Protection Team, duly produced their reports and these were considered at a meeting of the Chief Officers of the three Ministries involved with the Children’s Executive on 29 March. The Senior HR Manager (ESC) produced her report at the beginning of May and this was considered at a meeting on 3 May attended by the Senior HR Manager (ESC).
20. On 10 May 2007 the Chief Executive, Health and Social Services wrote to Mr. Bellwood inviting him to a meeting on 16 May. In the event, that meeting did not take place but a subsequent meeting was held on 23 May, chaired by the Service Coordinator – Childrens Executive, who told him that his probation period would not be confirmed and that as from 23 May he would be given one month’s notice. The Senior HR Manager (HSS) wrote to him on 30 May confirming the notice of termination and summarising the matters discussed at the meeting.
21. After receiving the Senior HR Manager (HSS)’s letter Mr. Bellwood wrote a letter to the Service Coordinator – Childrens Executive, dated 8 June 2007. In that letter, a copy of which he sent to the Senior HR Manager (HSS), he stated that he wished to appeal against his dismissal to the Chief Executive of the Chief Minister’s Department and to appeal against the outcome of his Serious Concerns Complaint to the then Minister for Health and Social Services.

22. The Senior HR Manager (HSS) replied to Mr. Bellwood's letter on 20 June. In it she stated that she had received his grievance that day and that she would forward it to the Service Coordinator – Children's Executive immediately. She pointed out that it would not be possible to arrange a grievance hearing before the termination of his employment (22 June). She later sent him an email on 26 June confirming that it would not be possible for him to use the grievance procedure.
23. Mr. Bellwood lodged his complaint in the Employment Tribunal on 10 July 2007; it was registered on 16 July. The case came on for hearing on 10 March 2008 and was settled on 12 March.
24. The following matters mentioned above are considered in more detail below:
 - Mr. Bellwood's references: paragraphs 25 – 28;
 - The situation in late 2006 and early 2007: see paragraphs 29 – 38;
 - The "serious concerns" letter of 1 January 2007 and the reports produced in response to it: see paragraphs 39 – 60;
 - The termination of Mr. Bellwood's employment: see paragraphs 61 – 65.

(b) Mr. Bellwood's references

25. References were requested by the Assistant Human Resources Officer from two previous employers (A and B). Both referees said that they would re-employ him. In the reference form he completed, which asked for an assessment of certain skills, one previous employer A assessed his "Interpersonal skills" and "Relations with others" as being between good and fair. He also said: "I would certainly re-employ".
26. The Service Coordinator – Children's Executive has said that he did not see the references until Mr. Bellwood had been in post for a few months. The same is true of the Residential Secure Manager. The Service Coordinator – Children's Executive also said that, when he did see the references, they caused him some concern, particularly the part of the reference which related to relations with others. On the other hand, I have also been told that it is standard HR procedure to send references to the interviewers for "sign off" before the contract is sent out. There is clearly a divergence of recollection here.

27. A number of those I have seen – notably the Service Coordinator – Children’s Executive; the Residential Secure Manager, the Chief Executive, Health and Social Services, the Directorate Manager – Social Services and the Service Manager – Childrens Service – have expressed reservations in relation to Mr. Bellwood’s references, particularly previous employer A’s reference. To an extent, no doubt, these reservations have been expressed with the benefit of hindsight. Both referees said that they would re-employ him. Previous employer A’s assessments on the “tick box” part of the reference form of fair to medium were in relation to 2 out of the 9 skills or attributes on the form he completed. Of the remaining 7 four were marked as good and two as very good. His health record scored a fair to medium. Some of those I have interviewed have expressed disquiet about the additional comments made by previous employer A, and suggested that those comments would have warranted a telephone call to the referee. Nevertheless, bearing in mind that the number of applicants for the post was small, I think it fair to say that, even had the Service Coordinator – Childrens Executive and the Residential Secure Manager seen the references before Mr. Bellwood’s appointment was confirmed in mid-May 2006, they might well have concluded that he was appointable.
28. In the overall context of this Inquiry I do not regard this as a significant issue and do not propose to express a conclusion in relation to it. Clearly, however, it would be good practice to ensure that those conducting interviews “sign off” the references before an offer of an appointment is made.

(c) The situation in late 2006 and early 2007

29. The relationship between Mr. Bellwood and the Residential Secure Manager deteriorated during this period, particularly after the opening of the new unit at Greenfields on 8 October 2006.
30. Mr. Bellwood had two supervision meetings with the Residential Secure Manager, on 27 October and 24 November respectively. It is clear from what Mr. Bellwood and the Residential Secure Manager have told me about these meetings that they both held differing views on what such meetings were designed to achieve. Mr. Bellwood referred me to a document entitled “National Minimum Standards and Regulations for Children’s Homes”, produced by the Department of Health in the United Kingdom. In particular, he drew my attention to Standard 28 (on page 43), which states as an outcome that “Children are looked after by staff who are themselves supported and guided in safeguarding and promoting the children’s welfare”. Mr. Bellwood told me that he regarded supervision as a two-way process and that it was separate from the process of review and appraisal to which as a probationary employee he was subject. The Residential Secure Manager, on the other hand, considered Mr. Bellwood to be obsessed

with supervision and regarded the supervision meetings as combining the element of supervision and performance management of a probationer. At the outset, it can be seen that they approached these meetings from different standpoints.

31. The first supervision meeting took place on 27 October. It is worth noting that this meeting took place halfway through Mr. Bellwood's probationary period. As far as I can tell, until that time there had been no formal meetings to appraise his performance as a probationer. The notes of that meeting, signed by the Residential Secure Manager and the Service Coordinator – Children's Executive, are dated 7 November but were not given to Mr. Bellwood until he asked for them at the second supervision meeting on 24 November, almost a month later. Mr. Bellwood commented that paragraph 2.3 of this document was all about the Residential Secure Manager's views and said nothing of his own views, but that the remaining paragraphs of the document (2.4 – 2.6) were very positive. The section headed "Overall Comments and Recommendations" (on p. 47) states: "Simon is a very focussed manager who for the past 12 weeks has produced a prodigious amount of work. He has consistently worked beyond his contracted hours and shown great enthusiasm for the Secure Centre's Development." The next paragraph goes on to record the Residential Secure Manager's concern that he has been unable to develop a rapport with Mr. Bellwood and his impression that he and the Service Coordinator – Children's Executive were not welcome at Greenfields. The two final pages of this document are headed "Employee Personal Training and Development Plan" and "Employee Action Plan". The first refers to a course of study being undertaken by Mr. Bellwood, the provision of direct observation by the Residential Secure Manager or the Service Coordinator – Children's Executive and UK based training events. The second is blank.
32. The next meeting took place on 24 November. Before the meeting Mr. Bellwood produced a document referring to matters which he wished to discuss with the Residential Secure Manager during that supervision meeting; the notes of the meeting are dated 26 November. The format of these notes is different from the format of the notes of the previous meeting which were on a pre-printed form containing set headings. These notes set out an Agenda and the notes follow the agenda items. As with the previous notes, Mr. Bellwood's comments on them was that they contained no reference to the discussions which took place or to what he himself said. As with the previous meeting, Mr. Bellwood's criticism of it was that it was not a supervision meeting as he understood it.
33. Soon after the second supervision meeting, in late November/early December the Residential Secure Manager asked Mr. Bellwood and the Centre Manager – La Preference to conduct interviews for recruitment

to some Grade 3 posts. They conducted the interviews on 1 December and then had a meeting with the Residential Secure Manager on 5 December to discuss their recommendations. During that meeting a dispute arose between the Residential Secure Manager and Mr. Bellwood. The crux of Mr. Bellwood's concerns was that the Residential Secure Manager had proposed to interfere with decisions made by himself and the Centre Manager – La Preference. Ultimately, the matter was resolved to the apparent satisfaction of those involved, but not before the Service Coordinator – Childrens Executive had become involved in the dispute and a series of emails had been exchanged.

34. Before the dispute had been resolved, Mr. Bellwood wrote a long letter to the Residential Secure Manager (with a copy to the Service Coordinator – Childrens Executive), dated 6 December, in which he set out at length and in detail his concerns about the Residential Secure Manager's role as his line manager. Following a further meeting between the three of them on 7 December, Mr. Bellwood wrote another letter, in which he said that he was pleased and relieved that the dispute had been resolved. He attached his letter of 6 December to this letter. The letter of 7 December elicited an email in response from the Service Coordinator – Childrens Executive dated 22 December, in which he said that he felt "the need to counter some of your statements with my view of the discussions that took place between us".
35. At this juncture I need to consider a document produced by the Residential Secure Manager around this time. It is dated 4 December 2006 and is headed "Probation Report Mid-Point Review". In it he expressed concerns about the development of Greenfields under Mr. Bellwood's management. The report concluded with the words: "... I am recommending an extension of probation for a further 3 months..." Mr. Bellwood was not aware of this document and only became aware of it when the Service Coordinator – Childrens Executive referred to it at the meeting of 23 May 2007 at which he was given notice of dismissal. Mr. Bellwood told me that, in the light of the fact that he had never seen the document before and that it had never been discussed with him, the Service Coordinator – Childrens Executive agreed that no reliance would be placed upon it. In other words, the document was in effect withdrawn. (Nevertheless, the Senior HR Manager (HSS) referred to it in the letter confirming his dismissal, dated 30 May 2007.) The way in which this document came to light and the fact that Mr. Bellwood only became aware of its existence at a date much later than the date stated on the face of the document have given rise to suggestions that the Residential Secure Manager prepared it clandestinely and as part of a strategy for getting rid of Mr. Bellwood, particularly as it appears from the computer records that the document was in fact created on 6 December, not 4 December. I have explored the circumstances surrounding this document extensively and am satisfied

that the Residential Secure Manager prepared the document intending to discuss it with Mr. Bellwood but that, bearing in mind that he prepared it at a time when there were other preoccupations, never in fact discussed it. In the light of this, it is unfortunate that it was not destroyed. In the circumstances, it is understandable that Mr. Bellwood construed it as a document created to build a case against him and to justify the termination of his employment.

- 36 Mr. Bellwood was away on leave from 16 – 28 December. During his absence on leave, the Residential Secure Manager caused a new admission procedure for Greenfields to be implemented. It appears that this change took effect from 20 December 2006, according to a copy of the relevant entry in the Communication Book. On his return from holiday, Mr. Bellwood went into the Centre on 29 December. He told me that, on entering the Centre, he found what he described as an “unsettling atmosphere”; he went to the staff room and read the Communications Book. In it he discovered the changes that had been implemented by the Residential Secure Manager. These included changes to the regularity of meetings and changes to the admissions system. Although one of the members of staff had suggested to the Residential Secure Manager and the Service Coordinator – Children’s Executive that someone should tell Mr. Bellwood of these changes, this was not done. Since at this time the Service Coordinator – Childrens Executive was on holiday, the appropriate person to have done so would have been the Residential Secure Manager. In the course of the interviews I had with the Residential Secure Manager I asked him a number of times what steps he had contemplated taking to inform Mr. Bellwood of these changes and when he intended that he should be told of them. He did not answer these questions.
37. Soon after his arrival in Greenfields on 29 December, Mr. Bellwood was called to a meeting later that morning with the Residential Secure Manager and Service Manager – Childrens Service, the then Chair of the Children’s Executive Board. The Service Manager – Childrens Service was present in the absence of the Service Coordinator – Childrens Executive who was away on leave. At the meeting the Residential Secure Manager read out a pre-prepared statement setting out the concerns he felt regarding Mr. Bellwood’s management of the Greenfields Unit and the relationship between the two of them. The statement concluded: “Simon’s probation comes to an end at the end of January... Unless there is a marked and sustained change in this situation which is demonstrated during the remainder of this probationary period I would not be willing to offer Simon the post.” There followed a brief discussion and it was agreed that Mr. Bellwood should go away and read the statement and that there should be a further meeting on 2 January 2007.

38. At the meeting on 2 January, the participants were Mr. Bellwood, the Residential Secure Manager and the Service Manager – Childrens Service. Mr. Bellwood produced a document which contained various matters which he wished to discuss with the Residential Secure Manager. The Residential Secure Manager responded by saying that there were more pressing matters to be discussed before the matters raised by Mr. Bellwood could be discussed. This meeting lasted a very short time. Later Mr. Bellwood went to see the Directorate Manager – Social Services and the Chief Executive, Health and Social Services and gave them copies of the letter dated 1 January 2007 (the “Serious Concerns letter”). He also saw his doctor and was signed off for a period of sick leave until 15 January.

(d) The “serious concerns” letter of 1 January 2007 and the reports produced in response to it

39. In the “Serious Concerns” letter of 1 January 2007, Mr. Bellwood raised concerns under four separate heads. First, he stated that he believed that the Residential Secure Manager’s conduct towards the vulnerable children and young people in the secure accommodation provision at Greenfields constituted serious abuse. In particular, he drew attention to the fact that, whilst he (Mr. Bellwood) was away over the Christmas period, the Residential Secure Manager had enforced a behaviour management procedure which could potentially involve locking a young person in a room for 36 hours, which, in his view, contravened a variety of national and international instruments. (The change was instituted by the Residential Secure Manager on 20 December.) The second area of concern raised by Mr. Bellwood was that he had felt harassed and bullied by the Residential Secure Manager ever since the opening of the secure unit on 8 October 2006. In particular, he said that he found the Residential Secure Manager “intimidating, oppressive, undermining and manipulative” and that he had failed to respond to Mr. Bellwood’s “frequent reasonable requests for support and collaboration”. He said that, although he had not hitherto formalised his complaint against the Residential Secure Manager, he now felt that his harassment and bullying had become intolerable and he feared that his employment was in jeopardy because of the Residential Secure Manager’s “victimising behaviour” towards him. The third area of concern was that he believed that the Residential Secure Manager’s professional practice contravened the States of Jersey Code of Conduct, notably in relation to his actions relating to recruitment, grievance and disciplinary procedures. He commented specifically on the episode I considered in paragraph 33 above and said that, since then, he had felt “personally and professionally threatened by the Residential Secure Manager”. The final area of concern arose from the fact that he (Mr. Bellwood) had been informed of “numerous

incidences of malpractice, including sexual harassment and bullying”. He said: “It has been suggested on a number of occasions that members of staff have felt unable to formally raise these concerns about the Residential Secure Manager for fear of reprisal. As their manager, I feel I have a duty to advocate for them and I hope that this formal complaints process will offer them protection and enable them to express their concerns in confidence.”

40. The first concern raised led to the commissioning of reports from the Service Coordinator – Childrens Executive and the Manager, Intake and Assessment – Child Protection Team – Child Protection Team under the Serious Concerns policy; the second, third and fourth to the commissioning of the report from the Senior HR Manager (ESC) under the Bullying and Harassment policy. I consider each policy in turn. I then consider the response to Mr. Bellwood’s letter.

(i) *The Serious Concerns Policy*

41. This Policy tells employees how to raise a concern and suggests that in the first instance employees should do so with their Line Manager or, if more serious matters are involved, with the manager to whom the Line Manager reports. The statements made under the heading “Aims and Scope of this Policy” suggest that it is an employee-focussed policy. It talks, amongst other things, about encouraging employees to question and act upon serious concerns and to feel confident in raising them and about reassuring employees that they will be protected from reprisals or victimisation. These aspirations should be borne in mind in the light of subsequent events.
42. The Policy provides a suggested format for raising a concern (to be found in Appendix A of the Policy). The Policy goes on to set out ways in which the States will respond. These include internal investigation, which is what happened in Mr. Bellwood’s case. The Policy goes on to state that the officer who receives the notification of a serious concern will contact the employee immediately to acknowledge the receipt of the serious concern. After that, the investigating officer should write to the employee within 10 working days of the receipt of the notification to indicate how it is proposed to deal with the matter, give an estimate of how long it will take to provide a final response, tell the employee whether any initial enquiries have been made and inform the employee whether further investigations will take place and, if not, why not. The Policy also states:

“The organisation accepts that the employee needs to be assured that the matter has been properly addressed. Thus, subject to legal constraints, the employee will receive information about the outcomes of any investigations.”

The other relevant part of the Policy is that which deals with taking the matter further. It states:

“However, in exceptional circumstances, an employee may feel that after the conclusion of the investigation, the only course of action open to them is to take the matter further.”

It then suggests further appropriate contact points, including the Minister responsible for the relevant department, a relevant professional body or regulatory organisation, a legal representative, or the police.

(ii) *The Bullying and Harassment Policy*

43. This Policy sets out clearly and in considerable detail how complaints of harassment and bullying are to be dealt with. “Harassment” and “bullying” are defined in paragraph 4. It should be noted that paragraph 4.2 stresses that what constitutes harassment “is the **impact** [emphasis not added by me] of the harassment on the individual and not the **intention** of the perpetrator”. Paragraph 4.3 defines the two terms; paragraph 4.4 gives examples of unacceptable behaviour and paragraph 4.5 gives examples of what does not constitute bullying.
44. Part Two of the Policy sets out the procedure for dealing with complaints of harassment and bullying, Paragraph 9.1 set out advice for employees; paragraph 9.2 explains the role of the Manager/Team Leader. Paragraph 9.2.2 deals with the receipt of a formal complaint (such as Mr. Bellwood’s) and refers to Appendix B which contains advice for investigators. Paragraph 9.2.3 deals with working relationships during the investigation and suggests that “it may be appropriate to give a period of special leave or redeploy temporarily, for a very short period of time, the alleged harasser and to give a period of special leave to the ‘victim’.” Paragraph 9.2.4 gives advice to the Manager who receives the complaint as to how to set up the investigation, including identifying a suitable person to undertake it, agreed timescales and terms of reference etc.
45. Appendix B contains guidance to the investigator appointed to look into allegations of bullying and harassment. Paragraph 2 sets out the timescales; paragraph 2.2 states that “the aim is that the investigation should be completed within four weeks of the formal complaint being made”. It then stresses to the investigator that the investigation must be given the highest priority. (This timescale is also reflected in paragraph 9.1.4 which informs the employee/complainant that “it is expected that the investigation will normally be completed within four weeks of the formal complaint being made, and the outcome will normally be discussed with you during the following week.”) Appendix B, paragraph 5.3 offers advice in circumstances where witnesses express a wish to make an anonymous statement.

46. At the end of paragraph 9.1.3 the Policy states that, if the complaint is not upheld, the employee may appeal against the decision “using the formal part of the appropriate Grievance Procedure.”

(iii) The response to the “Serious Concerns” letter

47. In response to Mr. Bellwood’s letter of 1 January, a small group of the Children’s Executive was set up, consisting of the Service Manager – Childrens Service, the Director of Education Sport and Culture, and the Directorate Manager – Social Services. The decisions of that meeting are set out in a document dated 5 January 2007, which was prepared by the Directorate Manager – Social Services. The Service Coordinator – Childrens Executive and the Manager, Intake and Assessment – Child Protection Team were to be asked to investigate the concerns raised by Mr. Bellwood in relation to the welfare of the children at Greenfields and the policies and procedures in operation there, including the procedures instituted by the Residential Secure Manager during Mr. Bellwood’s absence. The Senior HR Manager (ESC) was to be asked by the Director of Education Sport and Culture to investigate Mr. Bellwood’s allegations of bullying and harassment by the Residential Secure Manager and other related matters. The Directorate Manager – Social Services wrote to the Service Coordinator – Children’s Executive on 8 January 2007 confirming the decision that he and the Manager, Intake and Assessment – Child Protection Team should “undertake a full investigation into all professional, practice and policy issues at Greenfields Secure Unit in order to establish whether quality of care, welfare and human rights safeguards are of an appropriate standard and quality”. She also wrote to Mr. Bellwood on 10 January 2007 confirming these arrangements. The Senior HR Manager (ESC) was on leave at the time of the meeting but returned to work on 8 January when she was apprised of the fact that she had been deputed to carry out the investigation into Mr. Bellwood’s allegations against the Residential Secure Manager of bullying and harassment.
48. Mr. Bellwood responded to the Directorate Manager – Social Services’ letter of 10 January with a letter dated 19 January. In it, he raised three matters. First, he expressed concern about the Service Coordinator – Childrens Executive’s role in the investigation. Second, he reiterated his concerns about previous practice within the secure centre and asked for the investigation to be extended to include analysis of historical evidence. Third, he said that he was worried that the matters about which he had expressed his concerns were being investigated internally. The Directorate Manager – Social Services responded on 23 January confirming that the terms of reference of the investigation had been broadened to include previous practice and that, in relation to the issue of internal investigation, she was referring the matter to a senior colleague for consideration. There were further exchanges of emails

between the two of them during late January and February. In an email dated 2 March (in response to one from Mr. Bellwood of 28 February) she referred to the request he had made in his letter of 10 January – that the practices at Greenfields should be subject to external investigation – and said that this matter would be considered by the Corporate Parent once they had reviewed the reports prepared by the Service Coordinator – Childrens Executive and the Manager, Intake and Assessment – Child Protection Team. There were further emails relating to this matter dated 5 March, 15 March and 18 March. This last – from Mr. Bellwood to the Directorate Manager – Social Services – amplified concerns about the investigations which he had previously expressed, and expressed further concerns about the investigations. It led to an email in response (dated 28 March) attaching a letter responding in detail to the points made by him. He responded on 4 April.

(iv) The Serious Concerns Investigations and Reports

49. In the document dated 5 January 2007, the Directorate Manager – Social Services recorded that the Service Coordinator – Childrens Executive would urgently investigate on 3 January the first concern raised by Mr. Bellwood, that arrangements then in place at Greenfields constituted serious abuse of vulnerable children, and would report immediately on any or all actions in that respect. In addition, he and the Manager, Intake and Assessment – Child Protection Team were asked to conduct an investigation, the terms of reference of which are set out above.
50. So far as the immediate action was concerned the Service Coordinator – Childrens Executive reported that the arrangements did not put young people at risk. He also went ahead and conducted the investigation requested by the sub-group. The steps he took are outlined in paragraph 3 of his report and involved interviews with individual members of staff, discussions at a staff meeting, an interview with one particular resident of the Unit, scrutiny of daily log books, communication records and children’s files, scrutiny of the policies and procedures relating to the unit and direct observation of practice. The Service Coordinator – Childrens Executive’s conclusion was that there was no cause for concern. It was completed in March.
51. The Manager, Intake and Assessment – Child Protection Team – Child Protection Team carried out her part of the investigation during January and concluded that there was no evidence that the safeguarding of young people in the centre were compromised in any way. Subsequently, she was asked by the Directorate Manager – Social Services to meet Simon Bellwood, as Mr. Bellwood had stated in his letter to her of 19 January that he had objections to the Service Coordinator – Childrens Executive conducting an interview with him.

She did so on 26 January. That meeting is summarised in an addendum, at the end of which she repeated that she had not found anything that concerned her about the safeguarding of children and young people at Greenfields.

52. Mr. Bellwood has criticised both reports on a number of grounds, one of which concerned the Service Coordinator – Childrens Executive’s role in the investigation. Mr. Bellwood’s objections are set out in more detail in the letter of 19 January to the Directorate Manager – Social Services and in the subsequent exchanges of emails and/or letters which I have detailed in paragraph 48. When I interviewed the Service Coordinator – Children’s Executive, he said that – with the benefit of hindsight – he felt that he should not have been involved in carrying out the investigation since he did not believe that Mr. Bellwood would have accepted his report. Nevertheless, he acknowledged that he was the appropriate manager to undertake the investigation at that time.
53. The terms of the Directorate Manager – Social Services letter to Mr. Bellwood of 28 March (attached to an email of the same date) and his email in response of 4 April suggest that at this stage he still did not know what had been said in the Service Coordinator – Children’s Executive’s and the Manager, Intake and Assessment – Child Protection Team’ reports. The Directorate Manager – Social Services letter mentions that the outcome of those inquiries was being considered by the Chief Executives of Health and Social Services, Education, Sport and Culture, and Home Affairs. So far as this last matter is concerned, there is a document entitled “Investigation into serious Concerns raised by Mr. Simon Bellwood”, prepared by the Directorate Manager – Social Services and dated March 2007, which was submitted for consideration by the Chief Executives of the three ministries involved in the Children’s Executive. In it, she concluded (at paragraph 3.1): “The evidence gathered indicates that Mr. Bellwood’s concerns are unfounded”. This document was considered at a meeting of those officers on 29 March. One of the recommendations contained in it (at paragraph 4.1) is that a letter should be sent to Mr. Bellwood indicating that it was proposed to take no further action under the Serious Concerns Policy and summarising the outcomes of the investigation. As far as I can tell from going through copies of all the correspondence, no such letter was sent to Mr. Bellwood until the Chief Executive, Health and Social Services’s letter dated 10 May 2007. It appears also that at no stage before his dismissal did he see a copy of these two reports.

(v) *The Bullying and Harassment Investigation and Report*

54. The Senior HR Manager (ESC) was asked to investigate the allegations of bullying and harassment made by Mr. Bellwood against the Residential Secure Manager. She was also asked to look into the

alleged contravention by the Residential Secure Manager of Codes of Conduct and his alleged failure to comply with recruitment, grievance and disciplinary procedures and “provide an opinion whether procedures followed were States compliant”. Paragraph 7 of the document of 5 January 2007 prepared by the Directorate Manager – Social Services states:

“At an early stage, and in light of Mr. Bellwood being near the end of his probation period and his having expressed concerns that his employment may be terminated at the end of that period, the Senior HR Manager (ESC) will be asked to advise on any appropriate early action which should be taken from an employment/ human resources perspective.”

55. The Senior HR Manager (ESC) wrote to Mr. Bellwood on 8 January and arranged a meeting with him for 15 January. On 16 January she decided to refer him to the occupational health service, run by Capita Health Solutions. She told me that the decision to refer was made after discussion with him and that she felt it was important to offer him some form of support. She wrote to Capita attaching a referral report. Such referrals are normally made by the Personnel Department or the employee’s line manager, but in question 1 of the Line Manager’s Supplementary Report she explained that he had made a complaint against his line manager, that he was prepared to return to work but that she had told him to take “gardening leave” until such time as either her investigation was complete or he had met with Capita to ensure that he was fit to return. She went on to say: “My concerns about him returning at the moment centre round the fact that the situation at work is no different today as they were when he returned to work after Christmas and subsequently went on sick leave for stress. I was hoping that you would be able to discuss strategies with him to manage the situation.” Capita saw Mr. Bellwood on 6 February. In the report sent to the Senior HR Manager (ESC) on 7 February Capita said: “...I would view Mr. Bellwood as being entirely fit to be at work. He is showing no signs of any medical illness...[T]here is no sign that this [i.e. his return to work] would cause a medical problem; it seems that it will only cause a managerial problem.”
56. Before I consider the Senior HR Manager (ESC)’s investigation more fully, I need to look at the decision to put Mr. Bellwood on “gardening leave”. This was the term used by the Senior HR Manager (ESC). In my interviews with both her and the Service Coordinator – Childrens Executive I asked who had made the decision. The Service Coordinator – Childrens Executive told me that he was not involved in the decision. The Senior HR Manager (ESC) told me that she suspected that she made the decision; this is implicitly confirmed by question 1 of the Line Manager’s Supplementary Report mentioned above.

57. This aspect of the matter has caused me concern and I explored it with the Senior HR Manager (ESC) in some detail. The term “gardening leave” is one more usually associated – at any rate in UK Employment Law – with an employee’s departure from their employment. In this context, however, the Senior HR Manager (ESC) seems to have had in mind a period of “special leave” when Mr. Bellwood would be on full pay, but, in view of the ongoing investigation, would not be required to be at work. Indeed, paragraph 9.2.3 of the Bullying and Harassment Policy contemplates that “it may be appropriate ... to give a period of special paid leave to the ‘victim’.” The two points to note at this juncture are that (i) there is no contractual right to place employees on “gardening leave” and (ii) that the Senior HR Manager (ESC) was placed in the position of having to make a decision in relation to Mr. Bellwood as if she was his line manager, whereas, of course, she was not.
58. In the course of her investigation she saw a number of people, in addition to Mr. Bellwood and the Residential Secure Manager. These took place in late January and during February. I have seen the statements, which are in one of the bundles of documents presented to the tribunal by Mr. Bellwood. Although attempts have been made to conceal the identity of the authors of the statements, the use of the person’s initials makes identification simple. This made it unnecessary for me to ask the Senior HR Manager (ESC) to provide me with unmarked copies of the statements. I have read the statements carefully but do not consider it necessary to comment on them.
59. I turn to consider the so-called “off the record” statements. These were referred to by the Senior HR Manager (ESC) in paragraph 1.4 of her report, in which she referred to these statements. She stated that she had taken advice from the Deputy Chief Executive and went on: “...this information is to be ignored, as this information could not be challenged or questioned if this report were to go forward to a disciplinary hearing.” He also advised her that the Bullying and Harassment Policy requires that witness statements “must be signed and dated”. I have discussed this matter in some detail with the Senior HR Manager (ESC). It appears that these statements remained on the Senior HR Manager (ESC)’s system and came to light when an order for discovery was made in the course of the employment tribunal proceedings. In response to the tribunal order, the Senior HR Manager (ESC) asked her secretary to check if they were still on the system and, as they were, they were disclosed.
60. The Senior HR Manager (ESC)’s investigation lasted from 8 January to the beginning of May; she presented her report at a meeting on or around 4 May. (There is some dispute about whether the meeting took place on 3 or 4 May, but nothing turns on this.) It took almost four months from the time she was requested to undertake the investigation

to the time it was presented. In view of the time frames contemplated by the Bullying and Harassment Policy, the length of time taken was considerable. I explored this matter with the Senior HR Manager (ESC). She told me that the delay in completing the report was in part due to the fact that she had periods of annual leave and illness and in part due to the fact that she had to contend with the commitments of the people from whom she took the statements, a fact upon which she comments in paragraph 1.5 of her report. She was also involved in two other ongoing Investigations. In addition, of course, she had her full-time job to do. I have to say that the time taken to complete this report causes me concern.

(e) The termination of Mr. Bellwood’s employment

61. Following the meeting of 3 May, the Chief Executive, Health and Social Services wrote to Mr. Bellwood on 10 May inviting him to a meeting on 16 May. This letter informed him of the outcome of the two investigations and went on to say:

“In view of all of the above [i.e. the outcomes of the investigations] and in light of concerns about your performance which existed prior to the initiation of these enquiries having been further evidenced through the compilation of these reports, you are now invited to attend a meeting... The meeting ... will focus upon the performance issues that have been identified both prior to and as a result of the investigations... Please note that a decision regarding your continued employment with the Children’s Executive will be made following this meeting.”

In the event, that meeting did not take place but was re-arranged for 23 May. In a subsequent letter, dated 17 May, referring to the re-arranged meeting, the Chief Executive, Health and Social Services said:

“...[T]he purpose of this meeting will be to discuss the outcomes of the Serious Concerns and Bullying and Harassment investigations. Concerns about your performance, raised with you prior to the initiation of these enquiries, will also be discussed. In addition, further evidence from these investigations will be examined as potential corroboration of the original concerns...After this meeting, if you remain dissatisfied with the outcome of the Bullying and Harassment investigation, as you are clearly aware, you have the right to appeal using the relevant Grievance Procedure.”

The re-arranged meeting on 23 May was chaired by the Service Coordinator – Childrens Executive. Also in attendance were Senior HR Manager (HSS), Mr. Bellwood, Mr. Bellwood’s representative and an HR Assistant who took the minutes. At the meeting, the Service

Coordinator – Childrens Executive discussed the outcomes of the two investigations which had been set up as a result of the “Serious Concerns” letter and Mr. Bellwood’s performance during his probation. During the course of the discussion, the Service Coordinator – Childrens Executive referred to the document which I discussed in paragraph 35 above, the document dated 4 December and headed “Probation Report Mid-Point Review”. At this point Mr. Bellwood told him that he had never seen the document before and that it had never been discussed with him. The Service Coordinator – Childrens Executive told me that his response was to say that it was unfair to have that document included in the bundle of documents they were discussing. He removed it from the bundle and went on to discuss the other documents.

62. The notes of the meeting record that Mr. Bellwood asked if he would have the opportunity to provide a response after the meeting and that the Senior HR Manager (HSS) said that there were mechanisms cited in each Policy for responding. She explained that the appeal route under the Bullying Harassment Policy was to raise a grievance and she suggested that he should use the Civil Service Grievance procedure, rather than an older policy.
63. After a discussion, the Service Coordinator – Childrens Executive told Mr. Bellwood that his probation period would not be confirmed and that as from 23 May he would be given one month’s notice. The Senior HR Manager (HSS) wrote to him on 30 May confirming the notice of termination and summarising the matters discussed at the meeting of 23 May. It is to be noted that that letter referred to the document of 4 December 2006, despite the fact that the Service Coordinator – Childrens Executive had withdrawn it. After referring to the various episodes which I have also considered, her letter continues:

“The Serious Concerns and Bullying and Harassment investigations provided additional evidence of the interpersonal conflicts you have had with both management and staff and also raised concerns about the assessment process for young people being admitted to the Unit which you had put in place.

Therefore, in consideration of all the facts surrounding your performance, discussed and documented during the course of your probation period, combined with further evidence arising from the two recent investigations which corroborate the original concerns, there is no alternative other than to terminate your employment with the Children’s Executive...”

At the end of her letter, she said that she “had given some thought to how to progress any grievance you may choose to raise” and set out the three stages of the appeal if he selected the Civil Service Procedure.

The first stage would be an appeal to the Service Coordinator – Childrens Executive, the second stage an appeal to the Directorate Manager – Social Services and the final stage to the Chief Executive, Health and Social Services. She added: “There is no right of appeal after this final stage.”

64. After receiving the Senior HR Manager (HSS)’s letter Mr. Bellwood wrote a letter to the Service Coordinator – Childrens Executive, dated 8 June 2007. In it he stated that he wished to appeal against his dismissal to the Chief Executive of the Chief Minister’s Department and to appeal against the outcome of his Serious Concerns Complaint to the Minister for Health and Social Services. Mr. Bellwood also sent in a “Grievance Form” dated 13 June 2007 in which he stated that his belief that his dismissal was substantially and procedurally unfair. This is stamped as having been received in the Chief Minister’s Department on 15 June. In her response dated 20 June, the Senior HR Manager (HSS) said that she had received his grievance that day and that she would forward it to the Service Coordinator – Childrens Executive immediately. She pointed out that it would not be possible to arrange a grievance hearing before the termination of his employment (22 June). Later, on 26 June, she sent him an email in which she said: “As you are no longer an employee of the Children’s Executive you are not entitled to raise a grievance using a States of Jersey grievance procedure...”
65. The following facts should be noted:
- (1) The Senior HR Manager (HSS)’s letter includes as an issue discussed at the meeting of 23 May an episode which had been expressly abandoned by the Service Coordinator – Childrens Executive;
 - (2) although the Senior HR Manager (HSS)’s letter refers to the termination of Mr. Bellwood’s employment, the notes of the meeting of 23 May state that the Service Coordinator – Childrens Executive and the Senior HR Manager (HSS) “re-affirmed that SB’s probation was not being confirmed”;
 - (3) in his letter to the Service Coordinator – Childrens Executive of 8 June 2007 Mr. Bellwood stated that he wished to appeal against his *dismissal* to the Chief Executive of the Chief Ministers Department and that he wished to appeal to the Minister for Health and Social Services against the outcome of his Serious Concerns Complaint;
 - (4) the grievance form referred to above also stated that Mr. Bellwood wished to appeal against his dismissal.

III THE ISSUES ARISING

66. It seems to me that, in the light of the terms of reference of this Inquiry, the facts I have considered above give rise to the following issues which require consideration:

- (1) the nature of the probationary contract under which Mr. Bellwood worked after his appointment;
- (2) the investigations carried out under the Serious Concerns Policy;
- (3) the investigation carried out under the Bullying and Harassment Policy;
- (4) the treatment of Mr. Bellwood during his employment, and the termination of his employment.

I set out my conclusions to these specific issues at paragraphs 79, 85, 91, and 98. I also set out some general conclusions at paragraph 99.

(a) The nature of Mr. Bellwood's contract

67. Mr. Bellwood was employed under a "Non-permanent 'J' Category" contract of employment. Clause 6 stated that the appointment was subject to the successful completion of a 6-month probationary period, "or such longer period as the Employer may require", and that it was also subject to the Residential Child Care Officer Terms and Conditions of Employment. Clause 16 stated that for a person at the grade at which Mr. Bellwood was appointed the notice required to be given by the employer during probation was one month; after that it was 3 months. As I have already noted, it did not contain a garden leave clause.

68. The question here is what happened at the end of Mr. Bellwood's probationary period his contract and whether his contract became permanent. My conclusions are set out at paragraph 79.

(b) The investigation carried out under the Serious Concerns Policy

69. The issue here is whether the provisions of the Serious Concerns Policy were complied with. My conclusions are set out at paragraph 85.

(c) The investigation carried out the Bullying and Harassment Policy

70. The issues which arise here relate to:
- (1) the decision to place Mr. Bellwood on “gardening leave”;
 - (2) the decision to make a referral to Capita;
 - (3) the use of “off the record” statements;
 - (4) whether the provisions of the Bullying and Harassment Policy were complied with.
71. I have noted that the Senior HR Manager (ESC) found herself in the position of making decisions in relation to Mr. Bellwood as if she were his manager. The decisions were (1) to place him on “gardening leave” and (2) to make a referral to Capita.
72. So far as the off the record statements are concerned, it will be recalled that the Senior HR Manager (ESC) stated (in paragraph 1.4(c)) that she had taken advice from the Deputy Chief Executive about this matter and that he had advised her that this information was to be ignored. At the end of her report the Senior HR Manager (ESC) said:
- “I can categorically state that no mention of malpractice, sexual harassment or bullying has been divulged to me. Had this been the case, I would have pursued more vigorously the advice of the Deputy Chief Executive in not disclosing ‘off the record’ information.”
- Appendix B, paragraph 5.3 of the Bullying and Harassment Policy states:
- “Witnesses sometimes ask a Manager if they can make an anonymous statement as they are concerned about repercussions in the workplace. You should reassure them that they will be protected from victimisation and try to allay their fears. You should seek further advice from HR if this situation occurs.”
- My conclusions in relation to this issue are set out at paragraph 91.
73. As I have said, the Senior HR Manager (ESC) completed her report and presented it a meeting on 3 or 4 May 2007. It took almost four months from the time she was requested to undertake the investigation to the time it was presented. In view of the time frames contemplated by the Bullying and Harassment Policy, the length of time taken was considerable. I explored this matter with the Senior HR Manager (ESC). She told me that the delay in completing the report was in part due to the fact that she had periods of annual leave and illness and in

part due to the fact that she had to contend with the commitments of the people from whom she took the statements, a fact upon which she comments in paragraph 1.5 of her report. In addition, of course, she had her full-time job to do, as well as having other ongoing investigations to complete. I have to say that the time taken to complete this report causes me concern.

74. At this juncture, it is appropriate to consider further the relevant provisions of the Bullying and Harassment Policy. Paragraph 9.2 sets out the role of the Manager/Team Leader and the sub-paragraphs which follow use the term “you”, i.e. the Manager/Team Leader. Paragraph 9.2.4 says that once the person asked to undertake the investigation has completed it, “you must review the information and decide whether the complaint is substantiated. You then need to reach a conclusion about any action that should be taken.” The sub-paragraph then states that the Manager should give a copy of the report (excluding the witness statements) to the person who made the complaint and, after discussing it with them, should give a copy of the report to the alleged harasser. Paragraph 9.2.6 states that if the Manager concludes that the complaint is not confirmed as bullying or harassment, “then you will need to meet your employee and explain to them that you are not able to proceed with their formal complaint”. In that case, the Manager should explain to the employee that he/she has the right of appeal by using the grievance procedure. Appendix B, paragraph 9.1 emphasises that the person conducting the investigation is not to make a recommendation about further action and that the Manager who commissioned it should make the decision whether to uphold the complaint or not.
75. My conclusions in relation to the question whether the Senior HR Manager (ESC)’s investigation complied with the Bullying and Harassment Policy are set out at paragraph 91.

(d) The treatment of Mr. Bellwood during his employment, and the termination of his employment

76. The first issue relates to the management of Mr. Bellwood as a probationary employee. I have commented that no formal meeting to consider his performance took place until 27 October 2006, almost halfway through the probationary period. Bearing in mind that it would be necessary to give him the notice to which he was contractually entitled by the end of December 2006 – if his contract was not to be renewed – the first formal appraisal meeting seems to me to have taken place rather late during his probationary period. Apart from this matter, I have already considered much of what falls under this heading in the context of the investigations which took place in response to

Mr. Bellwood's serious concerns letter. It seems to me that the remaining issues which require a conclusion are:

- (1) whether sufficient steps were taken to appraise and manage his performance during his probation;
- (2) whether the actions taken by the Residential Secure Manager during Mr. Bellwood's absence on leave during December 2006 can be said to amount to a breach of the duty of trust and confidence; and
- (3) whether in all the circumstances the dismissal of Mr. Bellwood would be considered as both unfair under the Employment (Jersey) Law 2003, and in breach of contract.

My conclusions on these matters are set out at paragraph 98.

IV CONCLUSIONS

77. In this section I shall set out specific conclusions in relation to the issues which I have identified in the previous section of this Report. I shall then go on to give some general conclusions arising from the specific issues of this case.

(a) Specific conclusions

(i) *The nature of Mr. Bellwood's contract*

78. Clause 6.1 of his contract stated that the appointment was “subject to the successful completion of a 6 month probationary period, or such longer period as the Employer may require”. At the time when his probationary period expired, 31 January 2007, Mr. Bellwood was on gardening leave. Although there were intimations that the Residential Secure Manager was considering extending his probation or not confirming it, I have seen no document formally informing him either that his appointment was not to be confirmed or that his probationary period was to be extended. It is understandable that this was not done. The Service Coordinator – Childrens Executive and the Residential Secure Manager were the people to make the relevant decision but the Service Coordinator – Childrens Executive was still conducting his investigation. The Residential Secure Manager was the subject of an investigation under the Bullying and Harassment Policy.

79. **My conclusions are as follows:**

- (1) **At the end of his probationary period (31 January 2007), in the absence of any indication to the contrary, Mr. Bellwood's employment with the States Employment Board became permanent.**
- (2) **The consequence of his employment becoming permanent was that, because he was a Grade 6 employee, he became entitled to three months' notice.**
- (3) **A further consequence of his employment lasting beyond 31 January 2007 was that by the time he was given notice of dismissal he had sufficient length of service to become entitled to the right not to be unfairly dismissed by virtue of Article 73(1) of the Employment (Jersey) Law 2003.**

(ii) *The investigation carried out under the Serious Concerns Policy*

80. I mentioned – at paragraphs 46 and 50 – that Mr. Bellwood expressed reservations about the Service Coordinator – Childrens Executive's role in the investigation process. I have also mentioned that the Service Coordinator – Childrens Executive himself expressed his reservations

to me about being involved in the investigation, albeit that this was with the benefit of hindsight.

81. One consequence of the Service Coordinator – Childrens Executive’s involvement in the investigation process was that he was not in a position to manage Mr. Bellwood. In view of the fact that the Residential Secure Manager could not do so as he was being investigated under the Bullying and Harassment Policy, there was nobody left. The Directorate Manager – Social Services had numerous dealings with Mr. Bellwood during this period, as I have outlined earlier in this Report, but it was not obvious that she should take on this role. To an extent, as I have mentioned, the Senior HR Manager (ESC) was placed in the position of having to take managerial decisions in relation to him, despite the fact that she was not his manager. The vacuum thus left seems to me to expose the difficulties inherent in a structure such as that involved in the Children’s Executive, which is tripartite and contains representatives from three separate Ministries. Had the Service Coordinator – Childrens Executive been available to do so, he would have been the appropriate person to deal with and manage Mr. Bellwood during this time. It would have fallen to him to discuss the outcomes of investigations undertaken at his (Mr. Bellwood’s) request. In the event, he was in effect disabled from this role.
82. In paragraph 53 I have set out what happened once the two reports had been completed. They were presented to the Chief Executives of the three ministries on 29 March. The Serious Concerns Policy does not expressly set out how the outcome of an investigation is to be dealt with, though it talks about the employee receiving information about the outcomes of any investigations. Nevertheless, bearing in mind that it is expressed as an employee-focussed policy (as evidenced by the statements of its Aims, which I mentioned in paragraph 41 above), it would have been within the spirit of the Policy that the employee who raised the concerns under it would have been the first to be given feedback. Thus, I would have expected that Mr. Bellwood would have been the first person to receive information about the outcomes of the investigations. As I have said, but for his effective disqualification from the role, the Service Coordinator – Childrens Executive should have been the person to discuss the outcome of the investigations, before they were discussed with anyone else.
83. A further cause of concern is the time taken for the outcome of the investigations undertaken by the Service Coordinator – Childrens Executive and the Manager, Intake and Assessment – Child Protection Team to be known and their reports to be presented. The Manager, Intake and Assessment – Child Protection Team’s was complete by the end of January, the Service Coordinator – Childrens Executive’s by early/mid March. Even had the Service Coordinator – Childrens Executive been in a position to inform Mr. Bellwood of the outcomes of

the investigations this would have taken place almost two months after Mr. Bellwood first raised his concerns. In fact, Mr. Bellwood did not in fact learn of the outcomes until early May, three months after he first raised his concerns. There have been suggestions that it was felt appropriate to notify him of the outcomes of the investigations under both Policies at the same time, no doubt because he raised his concerns in one letter. Bearing in mind, however, that the initial decision was that separate investigations should be carried out and bearing in mind that the Serious Concerns Policy and the Bullying and Harassment Policy are not inter-dependent, I can see no reason why the outcome of the investigations carried out under the former Policy should have been held back pending the outcome of the investigation under the latter.

84. The last point to note here is that the way the outcome of the investigations was handled meant that Mr. Bellwood was not in a position to take his concerns to a higher authority (as contemplated by the Policy) until after he had been given notice of dismissal. This he did in a letter to the Service Coordinator – Childrens Executive of 8 June 2007, when he said that he wished to appeal to the Minister for Health and Social Services (see paragraph 65 above).

85. **My conclusions are as follows:**

- (1) It was not appropriate in the circumstances to ask the Service Coordinator – Childrens Executive to undertake an investigation into the concerns raised by Mr. Bellwood since that had the effect of leaving a management vacuum in relation to Mr. Bellwood.**
- (2) The time taken to inform Mr. Bellwood of the outcomes of the investigations was too long.**
- (3) Mr. Bellwood should have been given feedback on the outcomes before anyone else, in view of the fact that he was the person who raised the concerns in the first place.**
- (4) Mr. Bellwood should have been given the opportunity of appealing against the outcome of the investigations under this Policy.**

(iii) The investigation carried out the Bullying and Harassment Policy

86. The first matter to consider here is the steps taken by the Senior HR Manager (ESC) at the start of her investigation. It will be recalled that on 16 January 2007 she referred him to the occupational health service, run by Capita Health Solutions; she also put Mr. Bellwood on what she called “gardening leave” (see paragraphs 56 and 57 above). As I have said, because there was in effect nobody who was in a position to take such managerial decisions in relation to him, she found herself placed in the position of having to take those steps herself. The referral form by which referrals are made to Capita states that it is to be completed by

the Personnel Department or Line Manager. Further, paragraph 9.2.3 of the Bullying and Harassment Policy suggests that “it may be appropriate ... to give a period of special paid leave to the ‘victim’.” This is part of Paragraph 9.2 which sets out the role of the Manager/Team Leader. The Senior HR Manager (ESC) should not have been placed in this position. Her role was to investigate Mr. Bellwood’s complaint under the Policy not act as his manager. The fact that she was placed in this position emphasises the vacuum upon which I have already commented and to which I return below.

87. The next matter to consider here is the time taken to conclude the investigation requested under this Policy. I have already expressed my concerns about this (at paragraph 60). In saying this I do not criticise the Senior HR Manager (ESC), who explained to me the constraints under which she was operating. Rather, I think that it raises questions as to the appropriateness of drafting in someone from another department who already has a full workload. I think it important to draw attention to the fact that the Policy lays emphasis on concluding the investigation within four weeks (see paragraphs 2.2 and 9.1.4 of the Policy). In fact, the investigation took four months.
88. There is also the question of the “off the record” statements. I have considered them in paragraphs 59 and 72 above. Appendix B, paragraph 5.3 of the Bullying and Harassment Policy deals with this situation (see paragraph 72) but, in my opinion, it is neither clear nor helpful. Employers are periodically confronted with a situation in which one or more employees are only prepared to make statements under conditions of anonymity. The problem – as the case-law of the Employment Appeal Tribunal and the Court of Appeal in the United Kingdom makes clear – is that such statements pose considerable problems in terms of reliability and that their efficacy is weakened by the fact that they are anonymous. In the case of the Senior HR Manager (ESC)’s investigation, she took advice from the Deputy Chief Executive who advised her that the information was to be ignored. It seems to me that, whilst Appendix B paragraph 5.3 is well-intentioned, it does not offer much help or guidance to someone in the Senior HR Manager (ESC)’s position. In the circumstances, the advice she was given was sound, in my opinion. Nevertheless, the problem remains that, if an investigation under the Policy is to be seen as effective, those who have knowledge of any acts or events which are relevant need to feel free to come forward. Yet they will – perfectly understandably – have a fear of repercussions whether the person against the complaint is made is their manager or their colleague. In my opinion, there is no clear answer to this conundrum, since there is a clear tension between protecting those who fear reprisals and the interests of investigating allegations of this sort fairly, so that the aspirations set out in the Policy can be met.

89. In addition, it is clear that, when the Senior HR Manager (ESC)'s report came to hand, there was nobody occupying the position of Manager/Team Leader (as contemplated by paragraph 9.2 of the Policy) who could take the actions contemplated by paragraph 9.2.4. In my view, therefore, the provisions of paragraph 9.2.4 were not complied with. The following points should be noted here:
- (1) Nobody appears to have been identified as the Manager/Team Leader to make the decisions and take the actions contemplated by paragraph 9.2.4. In view of the fact that the complaint was against the Residential Secure Manager, clearly he could not be the person.
 - (2) Since the Service Coordinator – Childrens Executive had himself conducted an investigation, he could not be the person either, despite being potentially the person to handle the steps consequent upon the completion of the Senior HR Manager (ESC)'s report.
 - (3) As far as I can see, no discussion took place as to who should take the steps contemplated by paragraphs 9.2.4 and 9.2.6. Instead of the Senior HR Manager (ESC) presenting her report to Mr. Bellwood's Manager, she presented it to a meeting of the group who had agreed to commission it.
 - (4) Nobody took the decision, acting as his manager, as to whether his complaint was substantiated; nobody discussed it with him or, for the matter of that, the Residential Secure Manager. The first he knew of the Senior HR Manager (ESC)'s report was when it was sent to him as an email attachment by the Chief Executive, Health and Social Services's PA on 10 May 2007;
 - (5) Bearing in mind that the whole tenor of the Bullying and Harassment Policy is about facilitating "a safe and dignified working environment" and that it stresses "the impact of the harassment on the individual and not the intention of the perpetrator" (see paragraph 4.2 of the Policy and paragraph 42 of this Report), the fact that nobody – *as a first stage in the process* – gave Mr. Bellwood a copy of the report and discussed it with him is a substantial omission and is not what is contemplated by paragraph 9.2.4.
90. One final point to note here is this. Because it took so long for the investigation to be completed, and because the decision was made soon after the Senior HR Manager (ESC)'s report had been presented to proceed to termination of Mr. Bellwood's employment, he was denied the right of appeal provided for in paragraph 9.2.6 of the Bullying and Harassment Policy. The "Manager/Team Leader" should have met him and explained to him that they were not able to proceed with his formal complaint. That person should also have explained that he had the right of appeal against that decision by using the grievance Procedure. This was not done. I appreciate that at a later date there were discussions

about Mr. Bellwood lodging appeals. But the point is that *at this stage* he should have been notified of the right of appeal and given the opportunity to exercise it.

91. **My conclusions are as follows:**

- (1) **The fact that the Senior HR Manager (ESC) found herself taking a managerial role in relation to Mr. Bellwood means that there was in effect a “managerial vacuum”, in other words that there was nobody to manage him during this time.**
- (2) **It was clearly appropriate that he should have been placed on some sort of “special leave”, as contemplated by the Bullying and Harassment Policy, but this period of leave should have been short.**
- (3) **Once the Senior HR Manager (ESC) had received the advice to ignore the “off the record” statements, they should have been deleted and all reference to them removed from her report.**
- (4) **The time taken by the investigation is in clear contravention of the timescales set out in the Policy.**
- (5) **Once the investigation had been completed Mr. Bellwood should have been given a copy of the report and it should have been discussed with him. This did not happen.**
- (6) **He was denied the right of appeal under this Policy.**

(iv) *The treatment of Mr. Bellwood during his employment and the termination of his employment*

92. I have commented on the fact that the first formal meeting (called a “supervision meeting”) to review Mr. Bellwood’s performance took place on 27 October 2006. As I have pointed out, the Residential Secure Manager and Mr. Bellwood both held differing views on what these meetings were designed to achieve and I have considered this meeting and the second meeting (which took place on 24 November) at paragraphs 30 – 32. The Residential Secure Manager has told me that informal meetings between them were extremely regular, but the first formal meeting only took place halfway through Mr. Bellwood’s probation, and only two months before notice of non-renewal of his contract would need to be given if the decision were made not to renew. It seems to me that steps should have been taken earlier than this to monitor his performance as a probationary employee.

93. One of the issues I set out at paragraph 76 above relates to the actions taken by the Residential Secure Manager during Mr. Bellwood’s absence on leave during December 2006 and the question whether those actions can be said to amount to a breach of the duty of trust and confidence. It will be recalled that during Mr. Bellwood’s absence on

leave from 16-28 December 2006 the Residential Secure Manager instituted a number of changes at Greenfields and that Mr. Bellwood found out about them on his return (see paragraph 36). It seems that the Residential Secure Manager had taken no steps to inform Mr. Bellwood of these changes and that Mr. Bellwood only discovered them on looking in the Communications Book and by talking to members of staff who were there at the time. I was unable to discover from the Residential Secure Manager how and when he intended to inform Mr. Bellwood. He may have intended to inform Mr. Bellwood at the meeting which took place later that morning. It is clear, however, that he did not.

94. In paragraph 76 I raise the issue as to whether the Residential Secure Manager's actions may be said to amount to a breach of the duty of trust and confidence. Bearing in mind that the Employment (Jersey) Law 2003 appears to be modelled on the law of the United Kingdom, I assume that the concept of the implied duty of trust and confidence has also been imported into Jersey law. Put briefly, the duty of trust and confidence has been variously expressed in the case-law of the United Kingdom as a duty to maintain the relationship of trust and confidence which should exist between employer and employee or as a duty not to behave intolerably and not in accordance with good industrial practice. There is a plethora of cases on this subject. The duty of trust and confidence has been of particular importance in the context of constructive dismissals. The Jersey law contains the notion of constructive dismissal in Article 62(1)(c), which repeats word for word section 95(1)(c) of the UK's Employment Rights Act 1996. Since Mr. Bellwood did not resign, there is no need to consider the question of constructive dismissal. Nevertheless, it is at least arguable that the Residential Secure Manager's actions amounted to a breach of the duty of trust and confidence.
95. Once the report prepared by the Senior HR Manager (ESC) had been considered (on 4 May), matters proceeded to a speedy conclusion. The Chief Executive, Health and Social Services sent a letter to Mr. Bellwood on 10 May summoning him to a meeting. That meeting eventually took place on 23 May 2007. At it he was given notice of dismissal. His employment ended on 22 June 2007.
96. At this point a number of observations fall to be made:
- (1) It seems to have been the general opinion that Mr. Bellwood remained a probationary employee and that, in effect, the management of him as an employee should go back to where it was when he raised the serious concerns on 2 January. In other words, it seems to have been the opinion that he should be managed as if the intervening time had not happened and that the mechanisms for not renewing his probation, which were

starting to be put into place at the beginning of 2007, should be resumed.

- (2) In fact, as I have already concluded, once the end of the probationary period had passed without any formal indication that his probation was either not to be renewed or was to be extended, he in effect became a permanent employee and became entitled to three months' notice of termination.
- (3) Had the investigation carried out by the Senior HR Manager (ESC) taken the time contemplated by the Bullying and Harassment Policy, he would have had the opportunity to appeal under that Policy. In the event, the conclusion of her investigation led almost immediately into the termination of his employment. Although the Chief Executive, Health and Social Services referred, in his letter of 17 May, to the right of appeal under the Bullying and Harassment Policy, in effect that right was denied him because of the way events turned out: see paragraphs 63 and 64 above.
- (4) It is clear from the Chief Executive, Health and Social Services's letters of 10 and 17 May that, although the intention was to discuss the outcomes of the investigations carried out under the Serious Concerns Policy and the Bullying and Harassment Policy, the results of those investigations had become linked with the performance issues upon which the letters also comment. This means, in my opinion, that the outcomes of investigations carried out under policies whose purpose is to protect employees effectively became part of the arsenal of arguments used to justify the termination of Mr. Bellwood's employment.
- (5) In my opinion, once the outcomes of the various investigations were known and acted upon (albeit that this all took much longer than it should have done), the reports resulting from the investigations should have been put to one side and should have played no part in the termination of Mr. Bellwood's employment. Had the investigations taken less time and had their outcomes been discussed with him at an earlier stage, the process of managing Mr. Bellwood could then have resumed. I appreciate that that would have taken somewhat longer and that it was felt that matters needed to be brought to a head. Nevertheless, in my opinion, it was unfortunate that the outcomes of the investigations became in effect enmeshed in the dismissal process.
- (6) So far as the meeting of 23 May itself and the letter of 30 May confirming the outcomes are concerned, I have already

commented on the fact that a document which had been abandoned by the Service Coordinator – Childrens Executive was referred to in that letter.

97. Bearing in mind that in the Joint Statement issued to the press after the conclusion of the employment tribunal proceedings the States Employment Board accepted that employment procedures had not been followed as closely as they should have been and that the first term of reference of this Inquiry invites me to inquire into all the circumstances surrounding the termination of Mr. Bellwood's employment with the States of Jersey, I do not think it possible to fulfil this undertaking without expressing a view as to the fairness or otherwise of his dismissal. Had my advice as Counsel been sought on this matter in advance of the proceedings, I would have advised that in my opinion the outcome was very likely to be that Mr. Bellwood's dismissal would in all the circumstances be considered unfair. It is clear to me, having investigated fully the circumstances of Mr. Bellwood's dismissal (including the matters which the States Employment Board planned to put before the tribunal) that the Board intended to make a case that it had good reason for dismissing him. Had it done so (which in the event it did not because the case was settled), it may well be that it would have discharged the burden placed upon it by Article 64(1) of the Employment (Jersey) Law 2003 of satisfying the tribunal as to the reason for Mr. Bellwood's dismissal. What, in my opinion, would have caused the dismissal to be deemed unfair was the failure to follow appropriate procedures. I say this taking account of the outcomes of the various reports, and of the fact that once the Senior HR Manager (ESC)'s report had been considered matters moved to a speedy conclusion without Mr. Bellwood being given the opportunity of appealing under either of the Policies.) I would also have advised, in the light of my experience as an employment tribunal Chairman in the United Kingdom, that, even if the Jersey Law contained an equivalent provision to that contained in the Employment Rights Act 1996, it would have been improbable that a reinstatement order would have been made in his favour, in view of the fact that there had clearly been a breakdown in the employment relationship. Further, since he was not given the amount of notice to which he became entitled once his contract became permanent, he was also dismissed in breach of contract.

98. **My conclusions are as follows:**

- (1) Formal steps to monitor Mr. Bellwood's performance should have been taken at an earlier stage in his probation.**
- (2) Although of themselves the actions taken by the Residential Secure Manager during the period of Mr. Bellwood's leave did not breach the duty of trust and confidence, they were**

actions which would have the effect of undermining Mr. Bellwood.

- (3) The dismissal of Mr. Bellwood was in breach of contract, because he was not given the notice to which he had become entitled.
- (4) In my opinion it is likely that the outcome of the Employment Tribunal proceedings would have been a decision that his dismissal was unfair but that, even if a power to order reinstatement had been given to the Jersey Employment Tribunal, it would have been unlikely to have exercised it.

(b) General conclusions

99. My general conclusions are as follows:

- (1) The fact that the probationary period for those starting employment with the States Employment Board is six months and is co-terminous with the qualifying period for the right not to be unfairly dismissed means that – as both the contractual provisions and the present state of the Law stand – at the end of the probationary period an employee acquires the right not to be unfairly dismissed. If such an employee is to be given the notice envisaged by the contract without acquiring the right not to be unfairly dismissed, such notice would have to be given more than one month before the end of the six-month period. That means that his or her manager would need to make a final assessment within the first 4½ months of the employee’s employment. If notice is given during the last month, the effective date of termination of the employment will be one month afterwards: see the Employment (Jersey) Law 2003, Article 63(1)(a). At the expiry of the notice the employee will be within the scope of the Law.
- (2) In the light of what I have said about the performance management of Mr. Bellwood during the course of his probation, it seems to me that there was a lack of guidance given to managers about the management of probationary employees.
- (3) The events I have considered and commented upon – in particular the investigations carried out by the Senior HR Manager (ESC), the Service Coordinator – Childrens Executive and the Manager, Intake and Assessment – Child

Protection Team – raise questions about the appropriateness of drafting in staff from other departments or Ministries to carry out investigations.

- (4) The problems caused by the “off the record” statements which the Senior HR Manager (ESC) obtained in the course of her investigation suggest that this aspect of the Policy, amongst others, warrants re-consideration.
- (5) The fact that there was what I have called a “managerial vacuum” caused by the fact that the Residential Secure Manager was being investigated under the Bullying and Harassment Policy and the Service Coordinator – Childrens Executive was carrying out an investigation under the Serious Concerns Policy suggests a certain lack of clarity in relation to the management of employees who fall within the ambit of the Children’s Executive, particularly in the kinds of circumstances I have been considering.
- (6) In the light of my remarks about the handling of the outcomes of the investigations there is a need for greater awareness and understanding as to how such outcomes should be dealt with.
- (7) Bearing in mind what I have said about the outcomes of the investigations becoming enmeshed in the dismissal process, there needs to be greater clarity about the purposes of the two Policies and the results of investigations carried out under them, and about the need to keep them separate from the processes and procedures leading up to the termination of an employee’s employment.
- (8) What I have said above, particularly in relation to the circumstances of Mr. Bellwood’s dismissal and the events leading up to it, suggests a lack of awareness of the impact of the Employment (Jersey) Law 2003. Bearing in mind that it came into effect on 1 July 2005 – and had thus only been in operation for some two years – it seems to me that insufficient attention was paid to its provisions, particularly Article 64(4) (whose wording is more or less identical to that of section 98(4) of the UK’s Employment Rights Act 1996. That provision stresses states that “the determination of the question whether the dismissal is fair or unfair (having regard to the reason show by the employer) shall (a) depend on whether in the circumstances ... the employer acted reasonably in treating it as a sufficient reason for dismissing the employee and (b) be determined in accordance with equity and the substantial merits of the case.” The case-law

in the United Kingdom relating to this question is voluminous. What it makes clear, however, is that the employer needs to go through a fair procedure when arriving at the decision to dismiss. In my opinion, the impact of the new legislation was insufficiently appreciated. This is understandable. When the original unfair dismissal legislation was introduced in the United Kingdom, it took some time to settle down and for employers to adapt to and appreciate its impact. I have no doubt that the same learning process needs to take place in Jersey. In my view, what happened in this particular case was a consequence of a lack of experience with the new legislation but I do not believe that any individual involved should be made a scapegoat for what was in effect a systemic failure. Needless to say, however, if lessons were not learnt as a result then that would undoubtedly be a serious failure.

V RECOMMENDATIONS

100. In the light of the findings of this Report and the conclusions I have reached I make the following recommendations:

- 1. I RECOMMEND that the operation of probationary contracts be reviewed and, in particular:**
 - (a) that consideration be given to the continued use of such contracts in view of the introduction of a qualifying period of employment under the Employment (Jersey) Law 2003 of the same length as the current probationary period;**
 - (b) if the use of such contracts is to be continued, that the length of the probationary period be reviewed and that the relevant clause in the employment contract be re-drafted so as to indicate clearly what is to happen to the contract at the end of the period;**
 - (c) that consideration be given to the provision of guidance to managers in relation to the handling of probationary employees and the management of their probation.**

2. **I RECOMMEND that the operation of the Serious Concerns Policy and the Bullying and Harassment Policy be reviewed and, in particular:**
 - (a) **that consideration be given to the choice of those asked to conduct investigations under those Policies;**
 - (b) **that consideration be given to the use of external advisers for such investigations;**
 - (c) **that there be greater emphasis on the observance of the time limits set out in the Bullying and Harassment Policy;**
 - (d) **that consideration be given to clarifying how the outcomes of investigations under the two Policies should be handled;**
 - (e) **that those parts of the Bullying and Harassment Policy relating to “off the record” statements be reviewed and that further consideration be given to dealing with such statements;**
 - (f) **that consideration be given to the introduction into the Serious Concerns Policy of time limits similar to those set out in the Bullying and Harassment Policy.**
3. **I RECOMMEND that, in the interests of consistency, consideration be given to the provision of further training for managers tasked with handling the outcome of investigations under the Policies and to the preparation of a manual to be made available for the use of present and future managers.**
4. **I RECOMMEND that further training be given to managers and senior managers so as to raise awareness of the impact of the Employment (Jersey) Law 2003 and the importance of the procedures used when considering the termination of an employee’s employment.**

**PROFESSOR R V UPEX
MA LLM ACI Arb FRSA
Barrister**

APPENDIX B**Recommendations agreed by the SEB at their meeting on 8 July 2008.**

The recommendations from Professor Upex can be found in paragraph 100 of his report. These are listed below along with the decisions taken by the SEB.

Recommendation 1 – Probationary periods

1. I RECOMMEND that the operation of probationary contracts be reviewed and, in particular:
 - (a) that consideration be given to the continued use of such contracts in view of the introduction of a qualifying period of employment under the Employment (Jersey) Law 2003 of the same length as the current probationary period;
 - (b) if the use of such contracts is to be continued, that the length of the probationary period be reviewed and that the relevant clause in the employment contract be re-drafted so as to indicate clearly what is to happen to the contract at the end of the period.
 - (c) that consideration be given to the provision of guidance to managers in relation to the handling of probationary employees and the management of their probation.

The States Employment Board accepted this recommendation by Professor Upex.

The Board AGREED that probationary periods should continue to be used but that greater emphasis must be placed by Managers on their proper administration to ensure that any decisions taken in respect of the confirmation or otherwise of a person's probationary appointment be made by no later than 4.5 months from the date of appointment.

The Board AGREED to ask the Department of Social Security to review that aspect of the current Employment Law governing the qualifying period for gaining employment rights and consider whether, in the light of Professor Upex's comments, this should be brought into line with that of the UK, i.e. 1 year rather than the current provision of 6 months.

Recommendation 2 – Operation of the serious Concerns Policy and the Bullying and Harassment Policies

2. I RECOMMEND that the operation of the Serious Concerns Policy and the Bullying and Harassment Policy be reviewed and, in particular:
- (a) that consideration be given to the choice of those asked to conduct investigations under those Policies;
 - (b) that consideration be given to the use of external advisers for such investigations;
 - (c) that there be greater emphasis on the observance of the time limits set out in the Bullying and Harassment Policy;

The States Employment Board accepted these recommendations by Professor Upex and REQUIRED the Director of Human Resources to research and quantify the resource requirement (i.e. amount and type) required to ensure that investigations under these policies can in the future be done proficiently and within the recommended time limits and report back to the next meeting of the Board.

- (d) that consideration be given to clarifying how the outcomes of investigations under the two Policies should be handled;

The States Employment Board accepted this recommendation by Professor Upex and REQUIRED the Director of Human Resources to consider the matter and issue further guidance to Managers.

- (e) that those parts of the Bullying and Harassment Policy relating to “off the record” statements be reviewed and that further consideration be given to dealing with such statements;

The States Employment Board accepted this recommendation by Professor Upex and REQUIRED the Director of Human Resources to further research the matter and issue clear guidance.

- (f) that consideration be given to the introduction into the Serious Concerns Policy of time limits similar to those set out in the Bullying and Harassment Policy.

The States Employment Board accepted this recommendation by Professor Upex and REQUIRED the Director of Human Resources to consider and consult upon this matter and amend the Policy accordingly.

Recommendation 3 – Training for managers investigating under these policies.

3. I RECOMMEND that, in the interests of consistency, consideration be given to the provision of further training for managers tasked with handling the outcome of investigations under the Policies and to the preparation of a manual to be made available for the use of present and future managers.

The States Employment Board accepted this recommendation by Professor Upex and, in the light of the outcomes to 2(a) and (c) above, REQUIRED the Director of Human Resources to –

- (a) include, in future Corporate training provision, appropriate training for managers in the proper administration of these policies and, to supplement this,**
- (b) produce and provide additional guidance for managers undertaking and managing such investigations**

Recommendation 4 – Training for managers in Employment Law

4. I RECOMMEND that further training be given to managers and senior managers so as to raise awareness of the impact of the Employment (Jersey) Law 2003 and the importance of the procedures used when considering the termination of an employee's employment.

The States Employment Board accepted this recommendation by Professor Upex and REQUIRED the Director of Human Resources to –

- (a) consider the most appropriate method of further raising Managers' awareness of the impact of the Employment (Jersey) Law 2003 and its effect on States employment policies and procedures;**
- (b) undertake further work to establish how the necessary knowledge and skills, required by the HR community in the States, can be made available.**