

**JERSEY HERITAGE TRUST**

**FINANCIAL REVIEW**

**OCTOBER 2009**

*Jersey Heritage Trust  
Report of the Comptroller & Auditor General  
October 2009*

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**SECTION ONE - INTRODUCTION**

1. This paper is the outcome of a review of the financial condition, governance arrangements and financial management of Jersey Heritage Trust (JHT or the Trust).
2. The review was undertaken at the request of the Minister for Education, Sport and Culture (the Minister) and the Chief Officer of the Department for Education, Sport and Culture (DfESC or the Department) in the light of public concern over the financial condition of JHT and suggestions that the Trust may be obliged to terminate certain of its principal activities. The terms of reference for the review are set out in Appendix One to this paper.
3. In the course of the review, I concluded that the financial problems confronting the JHT are urgent. I also concluded that it would be in the interests of JHT itself, its staff and of the States of Jersey for my review to be completed as soon as possible. Thus, with the agreement of the DfESC and of the JHT, I sought to complete the review and publish this report as quickly as possible. As a result, I have not examined all of the detailed matters which I might have examined had it seemed appropriate to take more time.
4. The review consisted of :
  - (1) a detailed examination of the accounting records and accounts of the JHT, together with records of the meeting of the trustees;
  - (2) examination of the relevant papers held by the DfESC;
  - (3) discussions of the Trust's affairs with the senior management of the JHT, trustees of the JHT and senior officers of the DfESC; and
  - (4) discussions with other interested parties who expressed an interest to contribute to the review.
5. In my review I have been assisted by a report prepared in April 2009 by Opinion Leader who were commissioned by the Trust in 2008 to conduct research to explore the public value of the Trust "to support Jersey Heritage's efforts to secure additional funding". The

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research explored how to ensure that Jersey Heritage is as relevant and engaging as possible for residents. The principal finding was that:

*“As the pace of change on Jersey increases, Jersey Heritage’s role as both a guardian and interpreter of history is perceived to be increasingly important. Key perceived strengths of Jersey Heritage include its generally positive reputation, its ability to bring history alive, its expertise, its support of tourism and its excellent staff.”<sup>1</sup>*

6. In the course of this report, I will refer to relevant findings of the Opinion Leader report.
7. The names of all of the people to whom I have spoken in the course of this review are set out in Appendix Two to this paper. I am grateful to all of them for the assistance they have afforded me in the conduct of this review.
8. The findings which I have reached are set out in the following sections of this paper as follows:
  - (1) Section Three – background to the JHT.
  - (2) Section Four – what is the current financial condition of JHT?
  - (3) Section Five – how has the current financial condition arisen?
  - (4) Section Six – how much financial support is required?
  - (5) Section Seven – how should financial support be provided?
9. But first, in Section Two of this report, I will set out a summary of my conclusions.

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<sup>1</sup> Paragraph 2.2, page 9 of the report.

**SECTION TWO - SUMMARY OF CONCLUSIONS**

10. My recommendations can be summarised in the following way:

**What level of activity does the States wish to support?**

11. In the end, this is a political question which must be answered by the States Assembly.

12. Subject to this, the financial support which the Trust will require in future is likely to include a number of elements:

- (1) the means to repay its overdraft;
- (2) an annual operating grant;
- (3) an annual maintenance grant; and
- (4) financial assistance to permit investment in the Trust's sites.

13. It is not my place to suggest what level of activity the States should support. I recommend that the States should decide what level of activity they wish to support, in the light of a rational assessment of the money that will be necessary under each of the heads I have listed above to make that activity sustainable.

14. It is unlikely, however, that the level of annual grant that the Trust has received in recent years will be sufficient to sustain the existing activities even if the overdraft is repaid. This seems clear because, even whilst spending beyond its annual grant and incurring deficits, the Trust has not been able to refresh its visitor offerings at all sites.

**How should financial support be provided?**

15. In my view, the Department should make the provision of financial support conditional upon the Trust agreeing to make suitable arrangements in respect of each of these subjects.<sup>2</sup>

- (1) the means for the Trust to repay its overdraft;
- (2) support for the Trust or for its activities;
- (3) management of non-core activities;
- (4) management of commercial activities;
- (5) governance arrangements;
- (6) stakeholder relationships; and
- (7) financial planning.

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<sup>2</sup> In making these suggestions, I have assumed that the Department will decide that the Trust should continue as an independent body separate from the Department. Such a decision would depend upon the Department's confidence that it can institute sufficient controls and exercise sufficient influence to ensure that it does not again find itself in a position of being a quasi-guarantor for the Trust. If the Department is not confident of this outcome, it might be preferable for the Department to take control of the Trust to avoid being unable to manage the Trust's risks.



### SECTION THREE - BACKGROUND

#### Commencement and constitution

16. The JHT was founded in 1981 as an independent, not for profit organisation.

17. The purpose of the Trust is set out in its constitution<sup>3</sup> in the following way:

- “3.1 Jersey’s heritage is special. The purpose of the Jersey Heritage Trust is to care for it, promote wide access to it, act as advocates on its behalf and bring imagination to telling its stories so as to inspire people to create a better Island for everyone.*
- 3.2 In order to accomplish this, the Jersey Heritage Trust shall, in addition to any other method that may seem appropriate to it from time to time;*
  - 3.2.1 collect, document and preserve unique collections of artefacts, works of art, archival material, specimens and information relating to the history, culture and environment of the Bailiwick of Jersey. These collections define the Island, hold the evidence for its historical development and act as the community’s memory;*
  - 3.2.2 make these collections widely accessible and promote learning through museums, galleries, the archive centre, exhibitions and events in a range of venues, publications and the Internet;*
  - 3.2.3 acquire, maintain, open and develop significant historic sites, museums and galleries, including Mont Orgueil, Hamptonne, La Hougue Bie, the Jersey Museum, No 9 Pier Road, the Jersey Archive Centre and the Sir Francis Cook Gallery;*
  - 3.2.4 provide comprehensive information, education and outreach services to a wide audience;*
  - 3.2.5 provide outstanding memorable and inspirational experiences for the visiting public;*
  - 3.2.6 work with other organisations in and outside the Island and in particular Société Jersiaise to deliver these aims;*
  - 3.2.7 promote an inclusive sense of belonging and pride in the Island, advance the cause of its heritage and support its cultural identity.”*

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<sup>3</sup> Registered with the Royal Court in 1983.

**Governance**

18. The JHT is governed by a board of trustees comprising:
- (1) A chairman nominated by the DfESC after consultation with the Jersey Heritage Trust and appointed by the States of Jersey.
  - (2) The president for the time being of the Société Jersiaise.
  - (3) A member for the time being of the States of Jersey who is committed to the objectives of the Trust and who has been nominated by the Minister for Education, Sport and Culture.
  - (4) A trustee appointed on the recommendation of the Société Jersiaise.
  - (5) No fewer than three and no more than seven further trustees appointed by the Trust for the skills, experience and influence they can bring.<sup>4</sup>
19. The current members of the Board of Trustees are:
- (1) Mr C Jones (Chairman).
  - (2) Mr P Le Brocq (Vice Chairman).
  - (3) Mr R Anthony (President of the Société Jersiaise).
  - (4) Mr G Crill.
  - (5) Connétable S Crowcroft.
  - (6) Mr B Gould.
  - (7) Mr P Nicolle.
  - (8) Mr J Voak.<sup>5</sup>

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<sup>4</sup> Clause 5 of the JHT constitution.

<sup>5</sup> As shown by the JHT's website.

## **Activities**

### *Introduction*

20. The Trust's principal activities include<sup>6</sup>:

- (1) The management of historic sites which either may be owned by the Trust itself or managed by it on behalf of other organisations such as the States of Jersey. A list of the sites managed by the Trust is set out in Appendix Three to this paper.
- (2) The management of collections for which it is responsible, including collections owned by the States of Jersey, the Société Jersiaise, the National Trust for Jersey, the Trust itself and private individuals. These collections include archaeological finds, historic and modern paintings, museum objects and the full range of archives including photographs, films and sound archives.
- (3) Raising the profile of Jersey's heritage both within the Island and overseas through its community learning programme and other activities.
- (4) Maintaining the States' register of historic buildings providing independent expert advice on the architectural and historical interest of buildings and sites and to make a case where they merit protection through the planning system.
- (5) Through partnership with the Tourism Development Fund and the Transport and Technical Services Department, refurbishing a number of States owned historic properties which are now made available for holiday accommodation, visits by community groups and corporate uses.

## **Funding**

21. The Trust's principal source of funding is its annual grant from the States of Jersey through the DfESC.<sup>7</sup>

22. In addition, the Trust receives funds from the following sources:

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<sup>6</sup> The description set out here is intentionally brief. Further information can be obtained from the Trust's website: [www.jerseyheritage.org](http://www.jerseyheritage.org).

<sup>7</sup> A summary of the Trust's income in recent years is set out in Appendix Four.

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- (1) Planning and Environment Department: an annual payment to finance the Trust's work in respect of historic buildings
  - (2) Membership subscriptions paid by members – the Trust is currently campaigning to increase size of the membership.
  - (3) Donations by corporate sponsors.
  - (4) Payments made for use of the Trust's sites: e.g. for weddings, corporate events and other private functions.
  - (5) Profits made from the Trust's trading activities.
  - (6) Private donations and legacies.
  - (7) Admission charges.
23. From time to time additional grants have been made to the Trust by the States for example to enable it to undertake the refurbishment of various sites such as the Forts and Towers which it manages and Mont Orgueil.

**SECTION FOUR - WHAT IS THE CURRENT FINANCIAL CONDITION OF JHT?**

**Continuing deficits**

24. In every year since 2003, the Trust has reported a deficit in its annual accounts.

25. To identify the deficits arising from the Trust's continuing activities, I have made certain adjustments to the published accounts, for example to remove the effect of material exceptional items such as the refurbishment of historic sites. These adjustments are set out in Appendix Four to this report. The adjusted deficits are as follows:

2004:	£63,000	(surplus)	(audited).
2005:	-£65,000	(deficit)	(audited).
2006:	-£180,000	(deficit)	(audited).
2007:	-£259,000	(deficit)	(audited).
2008:	-£502,000	(deficit)	(unaudited).
2009:	-£182,000	(deficit)	(budget).

26. There seems no reason to suppose that this series of deficits will cease unless material action is taken either to increase income or to reduce expenditure. It is expected that the deficit in 2009 will amount to approximately £190,000 after taking into account an exceptional grant of £200,000 from the DfESC.

**Causes of the deficits**

27. A number of factors have combined to produce this series of deficits:

- (1) The Trust's principal source of income is the annual grant received from DfESC. This has tended to increase each year by a percentage that matches the increase in the cost of living although in 2005 there was a higher increase which was intended to adjust the funding level. In practice, that increase has been lower

than the rate of annual inflation in earnings which has led to a squeeze on the Trust's resources. Moreover, this arrangement has not taken account of costs which the Trust is now expected to bear but for which there has been no adjustment of the grant. The most obvious example of this is the transfer of responsibility for property maintenance from the States to the Trust.

- (2) Tourism: there has been a decline in the numbers of visitors to the Trust's sites which must in some way reflect the gradual decline in the number of visitors to the Island.

#### **Financing the deficits**

28. This raises the question of how the Trust has been able to finance the deficits that it has incurred.
29. The first approach used by the Trust involved seeking to minimise the deficits both by increasing income and reducing costs. The efforts to do this are recorded in the Annual Reports as follows:
- (1) 2004: key staff vacancies left unfilled.
- (2) 2005: reductions in opening hours of Jersey Archive involving staff redundancies. Admissions prices increased.
- (3) 2006: salary reductions effected on replacement of leaving staff.
- (4) 2007: Admissions prices increased.
- (5) 2008: Admissions prices increased.
30. At the same time, the Trust has attempted to increase income from other sources including charges for use of the Trust's sites and sponsorship. In 2009, these efforts have included a campaign to increase the number of members and thus income from membership.
31. Secondly, the Trust used its own accumulated reserve. By the end of 2008, that reserve was exhausted and had become negative.

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32. Then, from time to time, the DfESC has provided small additional grants. For example, the Trust's Annual Report for 2004 records that:

*"In 2004, JHT received an above cost of living increase in its States' funding because, in addition to the usual automatic increase in grant that is linked to States' pay awards, ESC increased JHT's base level funding by £50,000. The increase was an interim measure whilst a more thorough review of JHT's annual grant was being undertaken."*

33. The outcome of this review was that the base funding for JHT (i.e. the grant received from the DfESC) was increased in 2005 from £1,584,000 to £1,808,000 per annum. The Annual Report for 2005 notes that even this increase was not sufficient to avoid cuts in services:

*"Cuts were made, with the written consent of DfESC, to reduce opening times at Jersey Archive (from five to three days per week) and the commissions/acquisitions fund was axed."*

34. A further exceptional grant of £200,000 was paid to JHT by DfESC early in 2009.

35. Thirdly, with the consent of the Minister, the Trust has transferred money from its restricted funds to assist in meeting general costs. This occurred in 2008 (cash transferred from the Ancient Monuments Fund<sup>8</sup> to meet maintenance and castle ferry costs). By the end of 2008, the Ancient Monuments Fund was completely exhausted.

36. Fourthly, the Trust has borrowed money by way of an unsecured bank overdraft. As at the end of 2008, the overdraft amounted to £600,000 and is expected to have risen to about £800,000 by the end of 2009 (unless material action is taken)<sup>9</sup>. Borrowing has of course worsened the expected deficits. Whereas in 2004, the Trust enjoyed the benefit of

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<sup>8</sup> Under agreements concerning the castles managed by the Trust, a proportion (23%) of the admissions income for the castles is to be transferred to the Fund to provide for their maintenance. The Fund has been used in the past to meet a part of the cost over-runs arising from the refurbishment of Mont Orgueil.

<sup>9</sup> In practice, at the beginning of 2009, the Trust used the grant which it received from the Department to pay down its overdraft. The figures shown in this report for the overdraft balance at the end of the year thus assume that the Trust's bank is prepared to extend a facility to the Trust and that operations continue to the end of the year as originally planned.

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investment income (£47,000 in 2004), that has now disappeared and, instead, the Trust is incurring interest charges on its increasing overdraft.

37. The effect is that without reorganisation and reconsideration of its services, the Trust does not have any prospect of repaying that overdraft. Indeed, without such reorganisation and reconsideration, there is no prospect of repaying the overdraft.
38. In short, the financial condition of the Trust is unsatisfactory.



**SECTION FIVE - HOW HAS THE CURRENT FINANCIAL CONDITION ARISEN?**

**Introduction**

39. In this section of the report I will review a number of factors which appear to have contributed to the Trust's current unsatisfactory financial condition:
- (1) low visitor attendances;
  - (2) lack of corrective action;
  - (3) a lack of commercial management;
  - (4) governance arrangements;
  - (5) procrastination by the Department; and
  - (6) a dysfunctional relationship between the Trust and the Department.

**Low visitor attendances**

40. There is no doubt that by comparison with attendances at the Trust's sites in the 1980s, the current level is significantly lower.
41. As a consequence, income from admissions and other income generated by visitors is significantly lower.
42. It is tempting to suppose that this decline in the number of attendances which has occurred over many years can be explained completely by the decline in the number of visitors coming to the Island and the average length of time for which they stay in the Island.<sup>10</sup>
43. However, it is evident that this cannot be a complete explanation for the decline in the number of attendances at the Trust's sites because the number of attendances also seems to be responsive to other factors such as the organisation of special events. For example,

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<sup>10</sup> These trends are evident from the statistics published by the States' Statistics Unit and which can be found in the annual publication: 'Jersey in Figures'.

the exhibition 'Marilyn' at Jersey Museum during 2009 appears to have contributed to an increase in the number of attendances at the museum.<sup>11</sup> In other words, there must also be a relationship between the number of attendances at the Trust's sites and their comparative attraction to visitors.

44. There seem to be a number of other factors that have probably contributed to the comparatively low level of attendances at a number of the Trust's sites.

45. Firstly, some sites do not have the range of visitor facilities that might attract more visitors. For example:

(1) Hamptonne

Although Hamptonne is described as a 'Country Life Museum', in fact the site has no museum accommodation which can be used for displays and interpretation of artefacts. When the site was first acquired and developed for its current use, the Société Jersiaise proposed to raise funds to permit the development of such accommodation, but the fund-raising effort was not successful and the accommodation was not created.

(2) La Hougue Bie

There is no play facility for young children so that the site is likely to have limited appeal to families. Indeed there are signs at the site discouraging play.

(3) Maritime Museum

There is no space for special displays or exhibitions to be mounted. Nor is there space for a refreshment facility or café. It has been explained to me that there is a neighbouring facility but the fact remains that any parent considering a family visit would be given the impression that the Museum has limited facilities.

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<sup>11</sup> The Trust's quarterly activity report published in September 2009 reports that: 'Jersey Museum shows an increase in visitor numbers and income and is currently 48% up on 2008'. It also reports that: '... figures announced by Jersey Tourism show that visitors to Jersey are down by 9%'.

46. Secondly, in recent years at least, the Trust has not had sufficient income to refurbish or re-mount the existing displays or exhibitions with the result that they become tired and dated. Experience of other visitor attractions appears to suggest that regular refreshment of displays is necessary to maintain visitor interest. For example:

(1) Hamptonne

I understand that the displays at this site have not been refreshed since the site first opened.

(2) Maritime Museum

When the museum was first opened, it was intended that displays would be refreshed by regular re-interpretation. In practice, this has not happened.

(3) Elizabeth Castle

The displays at the Castle have not been refreshed for many years.

47. These weaknesses in the Trust's offering to visitors can easily lead to a vicious spiral of consequences. As the number of tourist-visitors had declined gradually, so the Trust has gradually become more dependent upon visits made by the Island's population. As the standing exhibitions age, so they are less likely to attract visits by people who have already seen them. As visitor numbers fall, so the viability of some facilities may suffer, encouraging further decline. For example, visitor numbers at Hamptonne are now at a level which will not support a successful cafe facility, and the cafe has closed. This in turn must have meant that Hamptonne is a less attractive site to family visitors.

48. It has been suggested to me that considerations of this type should not be of concern to organisations such as the Trust whose main function should be to conserve the Island's heritage. However, this seems unrealistic. Visitor income is likely to continue to be a major source of income for the Trust, and for this source of income to continue, the Trust should realise (as I acknowledge its board and some of its senior staff do realise) that it is in

competition with other attractions.<sup>12</sup> To succeed, the Trust requires a hard-nosed determination to provide the facilities that visitors have come to expect.<sup>13</sup>

#### **Lack of corrective action**

49. The implications of the long term decline in visitor attendances must have been obvious to the management of the Trust. It is therefore appropriate to ask whether the management have taken timely corrective action to deal with those implications. The answer appears to be that it has not proved possible for the management to take appropriate corrective action.<sup>14</sup>
50. There are two principal areas in which corrective action might have been taken: refreshment of the offering to visitors and reduction in the Trust's operating costs.

#### *Refreshment of the visitor offering*

51. Two types of constraint have limited the Trust's ability to maintain its visitor offering: limitations on its freedom to develop sites and shortage of money.
52. The experience of Hamptonne provides an example of the constraints upon the Trust's freedom of action. In this instance, some corrective action has indeed been taken. To counteract the decline in visitor attendances, the Trust has organised special events (such as the Cider Festival). These have been successful and have proved that visitors can be attracted. However, such events have not helped the viability of the site on a day to day

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<sup>12</sup> I make this point because on a number of occasions during this review, supporters of the Trust have said to me that they do not accept that the Trust is in competition or that it is in business. This approach seems to me unrealistic.

<sup>13</sup> I note that comments made in the Opinion Leader report are relevant: "... value for money rather than cost is a barrier to some, as it is felt sites do not offer enough entertainment for the whole day nor do they change frequently enough to encourage repeat visits.

<sup>14</sup> I note that the Trust's disinclination to take corrective action is consistent with a comment made in the Opinion Leader report to which I have referred: "Some participants feel that Jersey Heritage is slow to change and could respond more quickly to changes, however there is acknowledgement that this is key challenge given the pace of change in Jersey, particularly considering resources are limited. Being slow to change means different things to different audiences; for example, for opinion formers this relates to internal business skills that allow for flexibility to anticipate and adapt a problem, and more broadly across the sample it is about ensuring that fixed and temporary exhibitions change frequently enough to encourage repeat visits."

basis and have not generated sufficient income to match the annual cost of running the site.

53. Recognising that further innovation was necessary, the Trust investigated the possibility of providing self-catering visitor accommodation within the site to generate a steady income. When this possibility was raised, it appeared unattractive to the National Trust for Jersey and the Société Jersiaise which originally financed the acquisition of the site and for whom the site is managed by the Trust. I understand that both of these organisations thought at the time that the development of self-catering accommodation would be inconsistent with the purposes for which the site was purchased and preserved.
54. In this case, external reactions prevented the Trust implementing its proposals.
55. In other cases, development has been frustrated by a lack of money as in the case of Elizabeth Castle.
56. Another example is provided by the difficulty of arranging exhibitions at Jersey Museum. During 2009, the Museum has been able to stage a special exhibition, 'Marilyn', which has proved successful in attracting visitors. This exhibition was possible because it was based on a private collection formed by an Island resident. It is not normally easy or economical for the Museum to attract exhibitions that are not based in the Island.

*Financial constraints*

57. In these circumstances, one might have expected that the Trust would have been especially careful to ensure that its operating costs are carefully controlled, firstly to maximise the resources available to refresh the attractions of the sites and its exhibitions to visitors and secondly to ensure that its costs are as appropriate as possible to the limited income available.
58. In practice, the Trust's budgeting and cost control practices are more consistent with an organisation that attempts to spend the money that it expects to be available than with an organisation that attempts to ensure that its costs are appropriate and controlled:

- (1) costs are not analysed by activity and compared with the income for that activity to ensure that they are justified by the success of the activity (e.g. I have found no evidence of questioning of the level of costs incurred at Hamptonne in spite of the disappointing level of visitor attendances. Similarly, there does not appear to have been effective questioning of the level of costs incurred in managing 'Heritage Holiday Lets').
- (2) alternative ways of working do not appear to have been assessed rigorously (e.g. I have found no evidence of assessment of the cost effectiveness of employing in-house design and marketing resources compared with the employment of external resources).
- (3) overhead costs do not appear to be rigorously controlled.

#### **Lack of successful commercial management**

59. In addition, in certain instances, the Trust appears not to manage its commercial activities successfully.
60. The operation of the Elizabeth Castle ferry provides an example of this.
61. The circumstances in which the Trust assumed responsibility for the operation of the Elizabeth Castle ferry were described in a report laid before the States and do not need to be described again here.<sup>15</sup>
62. That report suggests that during 2007, when the management of the ferry service by the previous operators, Pure Adventure (Jersey) Limited, was proving unsatisfactory, the Trust did not take sufficient care to preserve the Trust's commercial interests. In particular, it suggests that the Trust failed to preserve its right to claim that the operator's poor performance had so breached the terms of the contract that it had repudiated the contract. As a result of this failure, when an agreement was reached by which the Trust took over management of the ferry and the operator withdrew, the Trust was obliged to make a

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<sup>15</sup> 'Amphibious vessels: purchase for use on the west Park to Elizabeth Castle route – briefing report' presented to the States on 8 July 2008 by the Minister for Education Sport and Culture: RC72/2008.

payment to the operator (of the order of £120,000) for the benefit that the operator would have enjoyed had the contract continued. The relevant sections of the report are reproduced in Appendix Five to this report.

63. In other words, the Trust's management of these commercial transactions was unsatisfactory.

### **Governance arrangements**

64. One might have expected that these weaknesses in general and financial management would have been identified and, ideally, corrected by the trustees as a part of their normal oversight of the Trust's activities. The fact that this does not appear to have happened may suggest that the Trust's governance arrangements are not entirely satisfactory.

65. On closer examination, this indeed appears to have been the case. My examination of the minutes of the trustees' meetings and the papers<sup>16</sup> which were circulated to the trustees indicates that:

- (1) Annual budgets appear to have been approved by trustees on the basis of summary information provided rather than on the basis of a detailed analysis of detailed business plans (which may be conducted either by the trustees generally or by a sub-committee).
- (2) Interim management accounts showing the Trust's performance against budget have not normally been circulated to Trustees. Indeed. As far as I have been able to establish, the Trust does not prepare time profiles for its budgets<sup>17</sup> so that it is difficult to assess levels of spending in mid-year.
- (3) Annual management accounts showing detailed financial performance against budget have not been shown to the Trustees. The only accounts circulated to trustees are the accounts intended for publication which (in accordance with normal practice) do not include detailed records of expenditure. The effect is that

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<sup>16</sup> A detailed note of the outcome of my review is set out in Appendix Six to this report.

<sup>17</sup> i.e. profiles showing how spending will occur on a monthly basis so that expenditure can be compared with budget at any point in a year.

the trustees have not regularly seen detailed analyses of the trust's expenditure overall and, because they are not prepared, detailed analyses of expenditure analysed by the Trust's activities.

- (4) There has not been an effective audit committee at any point during the last ten years. In years before 2005, there was a Governance Committee whose formal terms of reference included what would normally have been the responsibilities of an audit committee. The minutes of that committee do not record that a detailed examination of the trust's accounts ever took place. Since 2005, when that committee ceased to exist, there has been no committee with such responsibilities.<sup>18</sup>
- (5) In mid 2008 a detailed code of governance practice was adopted by the trustees but has not been fully implemented. In particular, that code of practice provided for the appointment of an audit committee which has so far not yet been appointed. Further, that code of practice provided for the appointment of an independent financial adviser who has also not been appointed.

66. When I raised these matters with Trustees, two responses were offered to explain the attitude generally adopted by the trustees:

- (1) The trustees expect that their normal deliberations will concentrate upon the Trust's responsibility for conserving the Island's heritage rather than upon detailed matters of management and finance; and
- (2) That it would be inappropriate for the trustees to become unduly concerned with detailed matters of management which should be the concern of the Trust's full time management. In other words, the trustees should function more as non-executive members of a supervisory board, delegating the day to day management of the Trust's affairs to its full time management.

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<sup>18</sup> Some trustees have told me that, in the absence of an audit committee, the Trust's accounts were adequately reviewed by meetings involving all of the trustees. I have not been able to find minutes suggesting that the trustees have subjected the accounts to the form of examination that one would have expected of an audit committee.



67. In normal circumstances, it would be reasonable and appropriate for trustees to function in this way. However, the series of annual deficits with the resulting decline in the Trust's reserves suggest that the Trust's circumstances have not been normal for some time. In these circumstances, one would expect that the trustees would insist that the Trust should operate within the resources that could reasonably be expected to be available.

#### **Procrastination by the Department**

68. In 2008, the trustees prepared a plan to end the series of deficits and produce an annual surplus at a level which would permit the repayment of the Trust's overdraft within a reasonable period, assuming that no additional grant would be made available by the Department. The plan developed by the Trust envisaged not the reduction of costs at the Trust's most expensive sites but the closure of at least two of the Trust's sites. When this plan was shared privately with the Department, the Minister's<sup>19</sup> reaction was to urge that no action should be taken before the beginning of 2009. The consequence of this delay was to lengthen the period for which the Trust continued to operate at a deficit, building up its overdraft. In other words, the Trust's financial condition continued to worsen.

#### **Dysfunctional relationship between the Trust and the Department**

69. One further matter should be mentioned.

70. The Department's approach to its relationship with the Trust has assumed that the Trust is an organisation independent of the States and that the grants paid to the Trust represent the limit of the Department's financial obligation to the Trust for any single period.

71. In contrast, as I have explained, the Trustees appear to have assumed that the States would eventually be obliged to ensure that the Trust could meet its financial liabilities. The result has been that an overdraft has been accumulated largely by incurring operating deficits.

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<sup>19</sup> i.e. the former Minister, former Senator Vibert.

72. To place the Trust on a satisfactory financial footing, that overdraft will have to be repaid. If the Department were to provide the means by which the overdraft can be repaid (either by way of a single grant immediately or by way of significantly increased grants over a period), it will, in effect, be meeting the cost of the Trust spending more than its grant in past years.
73. The actions of the Trust will thus have placed the Department in the position almost of a guarantor of liabilities over whose assumption it appears to have had little influence. If that position is to be avoided in future, it will require the Department to adopt a more directive and possibly interventionist role than in the past; however unwelcome constraints on its independence may be to the Trust and its trustees.

## **SECTION SIX - HOW MUCH FINANCIAL SUPPORT IS REQUIRED?**

### **Introduction**

74. In this Section of the report, I will review the extent of the financial support which is required by the Trust to enable it to continue in operation. An answer to this question depends upon a prior issue: what level of activity does the States wish to support.

### **What level of activity does the States wish to support?**

75. In the end, this is a political question which must be answered by the States Assembly.

76. In the past, the question has been answered implicitly rather than explicitly. In other words, the Trust has received a grant which, in large part, has not been tied to particular activities. Rather, the grant has, in effect, been a general support for the organisation.

77. As a consequence, the Trust has applied the grant in whatever way it thought best and the Department has not had material influence over the way in which and the effectiveness with which the grant has been spent. In addition, the activities of the Trust have developed not according to a plan but as opportunities presented themselves.

78. The greater the clarity that the States can achieve in specifying the activities which they wish to support and the objectives which the Trust is intended to meet, the greater is the chance that the Trust may be able to satisfy the expectations of the States.

### **Principal elements of financial support**

79. Subject to this, the financial support which the Trust will require in future is likely to include a number of elements:

- (1) the means to repay its overdraft;
- (2) an annual operating grant;
- (3) an annual maintenance grant; and
- (4) financial assistance to permit investment in the Trust's sites.

80. I will describe each of these elements below although, as will be seen, I am not able to indicate the precise amount of money that will be needed for each of these elements. That will in due course require careful assessment by the Trust and the Department.

### **Overdraft**

81. By the end of 2009, the Trust's overdraft is likely to amount to between £800,000 and £900,000<sup>20</sup>. There is little likelihood that the Trust will be able to repay this overdraft from the results of its various activities as they are currently organised. If the Trust is to repay the overdraft out of its current level of income it will need to re-consider its current operating costs. Although some reductions in costs could be made without reducing the level of the Trust's activities, the likelihood is that to reduce costs sufficiently to repay the overdraft (and to avoid its recurrence) the Trust will be obliged to reduce its activities.
82. The extent and nature of the necessary reduction in activities will depend upon the extent of the continuing support that the States are willing to provide.
83. Assuming that the States decide that the existing sites should continue to be accessible to the public, the burden represented by the overdraft must be removed from the Trust.

### **Annual operating grant**

84. There is no likelihood that the Trust could continue its operations without an annual operating grant. Some of the Trust's activities such as the maintenance of an archive service and the support of community learning are undertaken purely for public benefit and cannot be expected to generate income that will cover their costs.
85. The precise amount of the annual operating grant that should be made available to the Trust depends firstly upon a decision by the States about the extent of activity which they wish to support.
86. It will also depend upon a number other factors:

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<sup>20</sup> Assuming that the Trust's bank extends the necessary facility and that operations continue as originally planned.

- (1) effective cost control; and
- (2) realisation of commercial opportunities.

87. As far as cost control is concerned, a decision by the States to support an organisation or its activities should not be taken to imply that the States will support that organisation irrespective of the effectiveness of its management. Indeed, there is no reason why the States should support an organisation which is not careful about avoiding deficits.

88. In the Trust's case, deficit control is partly a matter of avoiding excess expenditure; it is also a question of maximising income.

89. As I have already indicated in this report, there is reason to be concerned that the Trust has not been as careful in its financial management as it might have been.

90. As far as the realisation of commercial opportunities is concerned, the Trust should be encouraged to take advantage of all commercial opportunities which are consistent with the Trust's responsibilities to safeguard the heritage sites within its care.

91. Assessment of the possible financial effects of re-considering the management of the Trust's sites and realisation of commercial opportunities was not within the scope of this review and will probably require the Department and the Trust to commission specialist assistance.

92. Moreover, in view of the dysfunctional nature of the current relationship between the Trust and the Department, even when the level of the annual grant has been assessed, the way in which it is provided to the Trust will have to be re-considered. I will deal with these subjects in the next section of this report.

#### **Annual maintenance grant**

93. In addition to the annual operating grant, the Trust will need resources to meet the cost of maintaining the sites in its care.

94. In the past, an attempt has been made to allocate a portion of admission receipts to create a fund out of which maintenance costs could be met. In practice, the fund built up in this way has been used to meet annual operating deficits. Since maintaining heritage sites is expensive (and somewhat unpredictable) it would be wise to plan on the basis that such maintenance funds should be re-established.

**Site investment**

95. It is evident that all of the Trust's sites will from time to time need extensive refurbishment. It is also evident that certain sites will need investment in the short term if their potential to become successful visitor attractions is to be realised.

96. As examples of this, I understand that:

- (1) Elizabeth Castle requires significant investment to realise its potential as a visitor attraction and will in due course require major refurbishment; and
- (2) Hamptonne, if it remains open to the public, would probably require investment to create museum accommodation and attractive catering facilities.

97. Finally, the present Elizabeth Castle ferry is expensive to operate and consideration will have to be given to a more permanent solution to the problems of arranging access to the Castle.

**Recommendations**

98. It is not my place or my purpose to recommend that the States should undertake to provide financial support under all of these heads for all of the Trust's current activities.

99. Rather, I recommend that the States should decide what level of activity they wish to support, in the light of a rational assessment of the money that will be necessary under each of the heads I have listed above to make that activity sustainable.

100. It is unlikely, however, that the level of annual grant that the Trust has received in recent years will be sufficient to sustain the existing activities even if the overdraft is repaid.

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This seems clear because, even whilst spending beyond its annual grant and incurring deficits, the Trust has not been able to refresh its visitor offerings at all sites.

## **SECTION SEVEN - HOW SHOULD FINANCIAL SUPPORT BE PROVIDED?**

### **Introduction**

101. In Section Six of this report, I dealt with the question of how much financial support might be required by the Trust and suggested that this would depend upon a decision by the States on the level of activity that they wish to support and an analysis of the extent of the financial support that will be required to enable the Trust to manage that level of activity sustainably.
102. In that Section, I suggested that the way in which financial support is provided is important and in this section of the report will deal with that issue and the following subjects in particular:
- (1) financial support agreement;
  - (2) support for the Trust or for its activities;
  - (3) management of non-core activities;
  - (4) management of commercial activities;
  - (5) governance arrangements;
  - (6) stakeholder relationships; and
  - (7) financial planning.
103. In my view, the Department should make the provision of financial support conditional upon the Trust agreeing to make suitable arrangements in respect of each of these subjects.<sup>21</sup>

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<sup>21</sup> In making these suggestions, I have assumed that the Department will decide that the Trust should continue as an independent body separate from the Department. Such a decision would depend upon the Department's confidence that it can institute sufficient controls and exercise sufficient influence to ensure that it does not again find itself in a position of being a quasi-guarantor for the Trust. If the Department is not confident of this outcome, it might be preferable for the Department to take control of the Trust to avoid being unable to manage the Trust's risks.



**Financial support agreement**

104. At present, the relationship between the Department and the Trust is subject to a partnership agreement which is not specific in terms of the objectives for which financial support is provided to the Trust or the conditions attaching to the support.
105. In my view, that agreement should be replaced with a support agreement which should:
- (1) specify the objectives for which financial support is being provided to the Trust;
  - (2) specify the conditions attached to that support;
  - (3) set out the way in which the Trust has agreed that its performance in meeting the specified objectives should be measured; and
  - (4) set out the arrangements that have been agreed for the Trust's performance to be monitored by the Department.
106. Consideration should be given to making this agreement public and the form in which this should be done.

**Support for the Trust or its activities**

107. In my view, the Department should consider providing financial support for a number of identified activities to be undertaken by the Trust rather than for the Trust itself. There are two reasons for proposing this approach.
108. Firstly, it would oblige the Trust to demonstrate that the costs of running the specified activity (and thus the costs to be supported by the Department) have been properly estimated and properly incurred. This would involve the Trust in agreeing the basis on which the costs of each of its activities are to be computed and, in particular, in justifying the level of its central administration costs and the extent to which they can be attributed to individual activities.
109. Secondly, it would provide the Trust with some freedom to use the funds which it can raise separately from the States for whatever purposes, including campaigning, that it

believes are appropriate. Naturally, one would expect that the Trust would only be allowed to use this freedom to involve itself in other activities which did not conflict with the activities it undertakes with States' funding.

110. But in addition to these two factors, such a basis for funding would reflect the underlying fact that there is no logical necessity for the States to rely upon the Trust to manage all of the current activities on behalf of the States. In practice, it may be convenient for the States to employ the Trust as sub-contractor to manage the sites which are currently entrusted to it. Indeed, there may be benefit in the sites all being under common management. But this is a matter of practical convenience rather than logical necessity. However unwelcome, the Department could choose to manage some activities itself (e.g. Jersey Archive) or find other operators.
111. It might be appropriate to fund the Trust as an organisation (rather than the Trust's individual activities) if it were to be seen as a part of the States, subject to all of the disciplines that one would expect to be applied in the management of public affairs. As an organisation independent of the States, a different approach appears advisable.

#### **Non-core activities**

112. The Trust undertakes a number of activities that are 'non-core' in the sense that they are not central to its principal purpose of safeguarding, interpreting and providing access to the Island's heritage. Such activities include the management of various forts and towers on behalf of the States and the Historic Building Service.
113. Consideration should be given to removing from the Trust the burden of managing such non-core activities.
114. In some cases, the burden may not be substantial and there may be material advantage to be gained from the Trust's accommodating the activity. This may, for example, be the case in regard to the Historic Building Service which is limited in scale and may benefit from being close to those responsible for maintaining the Trust's sites.

115. In the case of the forts and towers, marketing and letting the properties is a straightforward commercial activity which the Trust may not be best fitted to manage.

#### **Commercial activities**

116. At present, all of the Trust's activities are undertaken by the Trust through the Trust itself. Consideration should be given to transferring all of the commercial activities of the Trust to specially incorporated companies created for the purpose. This would follow the normal practice for such activities adopted by heritage and museum organisations (and charities) on the mainland. Commercial activities should ideally be commercially managed and this may best be achieved by appointing small boards of appropriate people with skills appropriate to the management of commercial activities.

117. The activities which it may be appropriate to locate within one or more subsidiaries companies owned by the Trust would include: retail companies, events hire, catering, the letting of property (such as the flat at Elizabeth Castle), and the management of the castle ferries.

#### **Governance arrangements**

118. The governance arrangements of the Trust should be clearly based upon the standards to be expected of public organisations throughout the Island. To a certain extent this has already been recognised by the Trust in basing its 'code of practice' (which was adopted by the Trustees in mid 2008) upon the standards which have been promulgated for application within all public sector bodies on the mainland.

119. Unfortunately, although the Trustees adopted a code of practice, in a number of important respects it has not yet been put into effect.<sup>22</sup> Acceptance of a code based on best practice for public bodies on the mainland is pointless if it then falls into desuetude. This is

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<sup>22</sup> The delay in implementation has been justified to me on the grounds that it was unlikely that people would wish to be involved in the Trust's affairs until such time as its financial problems had been resolved. Oddly, that seems precisely the moment at which the Trust would benefit from independent financial advice (through the appointment of an independent financial adviser) and the services of an effective audit committee. In other words, the explanation seems a justification for urgency in implementing the new code of practice rather than delay.

not an academic matter since the Trust's failings in this regard have contributed towards its weak financial management.

120. Financial support should only be advanced to the Trust on condition that it adheres to the proper standards of governance; and in particular that it:

- (1) either ensures that the Trustees include people with sufficient appropriate experience of financial management or appoints an independent financial adviser (as envisaged by the code of practice adopted by the Trustees).
- (2) appoints an Audit and Risk Committee whose members should largely consist of Trustees with terms of reference consistent with those adopted by cognate public bodies on the mainland (the current proposed terms of reference are not consistent with this standard).
- (3) arranges that the Trust's external auditors should report privately to the Trust and to the Department annually that the conditions stipulated by the Department in its agreement for the provision of financial support (including requirements in respect of governance) have been properly honoured by the Trust.
- (4) includes in its annual report information on and analysis of its performance by reference to the agreed measures specified in the financial support agreement with the Department.

#### **Relationships with stakeholders**

121. It became evident in the course of this review that the Trust's relationships with its principal stakeholders (i.e. the Department, the Société Jersiaise and the National Trust) are somewhat not ideal.

122. As far as the Trust's relationship with the Department is concerned, I have set out in this report a number of proposals for ways in which the relationship could be placed on a sounder footing.

123. As far as concerns the Trust's relationship with the Société Jersiaise and the National Trust, it is unfortunate that the relationships with these bodies are unsatisfactory and that they have been made more difficult by the JHT's recent membership campaign.<sup>23</sup>

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<sup>23</sup> I note that the Opinion Leader report to which I have referred also makes a similar observation: “. . . disconnect is apparent from the wider heritage community and many feel the organisation could work in a more joined up way with other heritage organisations as they are all perceived to be facing similar challenges. This view is held particularly strongly among the opinion formers in the heritage community.”

**APPENDIX ONE - TERMS OF REFERENCE OF THE REVIEW**

1. This review is commissioned in accordance with the powers of the Comptroller & Auditor General (C&AG) as set out in the Public Finance Jersey Law 2005 (with particular reference to the C&AG's powers in respect of organisations receiving financial support from the States) to take place in the light of:
  - (1) public concern over the financial condition of Jersey Heritage Trust (JHT) as demonstrated by
  - (2) the urgent requests made by JHT for an increase in the grants made available by the Department of Education Sport and Culture;
  - (3) the suggestions made by JHT that in the event that its grant is not increased substantially it would be necessary to terminate certain of its activities; and
  - (4) the importance to the States of ensuring that the governance arrangements and financial management of JHT should be of the highest quality to ensure both that the Island's heritage assets are properly maintained and that any financial support made available to JHT by the States is effective.
  
2. The purpose of the review is to examine:
  - (1) the current financial condition of JHT and the factors which have led to the development of that condition;
  - (2) the governance arrangements within JHT with particular regard to financial matters;
  - (3) the management of the financial affairs of JHT; and
  - (4) any other matters that seem relevant to the issues raised in (1) to (3) above.
  
3. The review will lead to a report which will be published in accordance with the C&AG's normal practice.

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**APPENDIX TWO - PEOPLE WHO CONTRIBUTED TO THE REVIEW**

Alluto, Charles	Chief Executive, National Trust
Anthony, Rowland	President of the Société Jersiaise and Trustee
Backhurst, Marie-Louise	Former President of the Société Jersiaise
Carter, Jon	Director of the Trust
Danby, Nick	Finance Director of the Trust
De Veulle, John	Former Chairman of the Trust
Crill, Geoffrey	Trustee
Greenwood, David	Assistant Director of the Department
Jones, Clive	Chairman of the JHT
Lemasney, Kevin	Economic Development Department
Lissenden, Mrs Sue	Member of the public
Lundy, Mario	Director of the Department
McLoughlin, Rod	Culture Co-ordinator of the Department
Robinson, Peter	Finance Director of the Department
Voak, J	Trustee

**APPENDIX THREE - SITES MANAGED BY THE JHT**

- (1) Mont Orgueil Castle – by Deed of Gift of usufruct from the States of Jersey
- (2) Elizabeth Castle – by Deed of Gift of usufruct from the States of Jersey
- (3) Jersey Museum – owned through Deed of Gift from the States of Jersey
- (4) No 9 Pier Road – by Deed of Gift of the usufruct from the Société Jersiaise
- (5) Maritime Museum and Occupation Tapestry Gallery – occupied under a Lease at Will from Jersey Harbours (property of the States of Jersey).
- (6) La Hougue Bie – management agreement with Société Jersiaise (the owners of the site).
- (7) Hamptonne – owned by the National Trust for Jersey. Management agreement with the Société Jersiaise
- (8) Jersey Archive – occupied under a Lease at Will from the States of Jersey
- (9) Sir Francis Cook Gallery – occupied by Deed of Gift to the Jersey Heritage Trust by Lady Cook
- (10) Fort Regent Signal Station – management agreement *for operation only* with the States of Jersey

*Forts and Towers*

- (11) Grosnez Castle – management agreement with Rozel Estates
- (12) Le Hocq Tower – 25 year lease from the Parish of St Clement
- (13) Barge Aground – management agreement with the States of Jersey
- (14) Fort Leicester – management agreement with the States of Jersey
- (15) MP2 “Radio Tower” – management agreement with the States of Jersey



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- (16) L'Etacquerel Fort – management agreement with the States of Jersey
- (17) La Crête Fort – management agreement with the States of Jersey
- (18) Seymour Tower – management agreement with the States of Jersey
- (19) Tour Carrée – management agreement with the States of Jersey (pending)
- (20) Lewis Tower – management agreement with the States of Jersey  
(pending)
- (21) Archirondel Tower – management agreement with the States of Jersey  
(pending)

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**APPENDIX FOUR - SUMMARY OF FINANCIAL STATEMENTS**

Income and Expenditure accounts

£'000	2009 <i>Budget</i>	2008 <i>Unaudited</i>	2007 <i>Audited</i>	2006 <i>Audited</i>	2005 <i>Audited</i>	2004 <i>Audited</i>
<b>INCOMING RESOURCES</b>						
States' grants						
ESC	2,018	1,971	1,888	1,856	1,808	1,584
Other	59	138	61	467	270	50
Admissions	1,135	1,048	933	823	700	699
Trading income	334	334	298	211	193	165
Bank interest	5	26	42	52	106	141
Sponsorship	124	97	90	99	171	161
Fees and charges	50	58	65	34	41	117
Other	134					
	3,859	3,672	3,377	3,542	3,289	2,917
<b>OUTGOING RESOURCES</b>						
Sites & collections	1,798	2,062	1,740	1,930	1,332	1,387
Visitor services	999	828	679	631	632	531
Jersey Archive	450	508	500	456	413	408
Hist. Building Service	56	71	60	63	51	
Other public programmes				149	269	
Societe grant	41	41	41	41	41	41
Management & admin	656	664	616	452	616	487
Other	241					
	4,241	4,174	3,636	3,722	3,354	2,854
<b>NET INCOMING RESOURCES</b>	-382	-502	-259	-180	-65	63
<b>SPECIAL ESC GRANT</b>	200					
<b>NET INCOMING RESOURCES</b>	-182	-502	-259	-180	-65	63
<i>States grants as % of income</i>						
	56.1	57.4	57.7	65.6	63.2	56.0

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Balance sheets (as published)

<i>£'000</i>									
				2008	2007	2006	2005	2004	
PROPERTY				9,273	9,324	9,376	9,427	9,527	
OTHER FIXED ASSETS				486	155	208	366	553	
				<u>9,759</u>	<u>9,479</u>	<u>9,584</u>	<u>9,793</u>	<u>10,080</u>	
CURRENT ASSETS									
Stock				20	19	0	9	10	
Debtors				113	34	64	57	83	
Bank balances				-601	83	186	1,281	2,341	
				<u>-468</u>	<u>136</u>	<u>250</u>	<u>1,347</u>	<u>2,434</u>	
CREDITORS (<1 year)									
Creditors				-275	-188	-196	-251	-346	
NET CURRENT ASSETS				<u>-743</u>	<u>-52</u>	<u>54</u>	<u>1,096</u>	<u>2,088</u>	
CREDITORS (>1 YEAR)									
Loan payable				-275	-303	-330	-358	-385	
Pension liability				-1,704	-1,586	-1,511	-1,537	-1,440	
				<u>-1,979</u>	<u>-1,889</u>	<u>-1,841</u>	<u>-1,895</u>	<u>-1,825</u>	
NET ASSETS				<u>7,037</u>	<u>7,538</u>	<u>7,797</u>	<u>8,994</u>	<u>10,343</u>	
INCOME FUNDS					-115	18	629	601	
HERITAGE FUNDS					7,653	7,779	8,365	9,742	
					<u>7,538</u>	<u>7,797</u>	<u>8,994</u>	<u>10,343</u>	

**APPENDIX FIVE - ELIZABETH CASTLE FERRY**

App 5-1 These notes set out the evidence concerning the Trust's management of its relationship with the former operator of the Elizabeth Castle ferry in the period leading to the Trust's assumption of responsibility for the ferry.

App 5-2 The evidence comes from the report presented to the States on 8 July 2008 by the Minister for Education, Sport & Culture on the purchase of amphibious vessels for the Elizabeth Castle ferry. As the Trust itself acknowledged, its objective during 2007 was to manage its agreement with Pure Adventure Jersey Limited (then the operator of Elizabeth Castle ferry), to protect Jersey Heritage's commercial interests<sup>24</sup>.

App 5-3 The report includes an e-mail dated 3 January 2008 from Matthew Thompson<sup>25</sup>, a partner in Ogier, lawyers, which notes two points during 2007 when the Trust acted in a way that did not preserve its commercial rights.

App 5-4 Firstly, in August 2007:

*"While the terms of the original agreement dated 21 December 2006 required Pure Adventure to provide two vessels throughout the season, which they clearly did not do, it is clear from the correspondence provided that you agreed a variation to that certainly to 1 August 2007. In my view therefore, you would not be able to complain on the basis of a repudiatory breach prior to 1 August."*

App 5-5 In other words, the Trust agreed to a variation in the original agreement and by doing so without preserving its rights under that agreement the Trust denied itself the right subsequently to claim that the operator's conduct had in effect repudiated the agreement.

App 5-6 Further, later in 2007:

*"While the letters of 21 November and 14 December do say that JHT considers that Pure Adventure are in fundamental breach of contract, the letter of 21 November is an open letter focussing on how the service should be operational next year and the 14 December letter notes the agreement has not been terminated but instead makes*

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<sup>24</sup> See page 18 of RC72/2008.

<sup>25</sup> See Appendix 10 of RC72/2008.

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*proposals for acquiring the vessels and performing the service itself for the following year.*

*I have set out the above because it is, putting it at its lowest, far from certain that JHT would successfully argue a repudiatory breach as at today's date.*

*I think a Court could therefore conclude that whilst Pure Adventure were in breach, the approach taken by Jersey Heritage Trust was to find alternative solutions to address the breach".*

App 5-7 The e-mail continues:

*". . . it should be remembered that in relation to the contract, the obligation to perform only during this season which runs from 1 April to 31 October or such other dates as JHT may reasonably determine. The question for the Courts would be whether Pure Adventure were in repudiatory breach for the season to 31 October 2007 and whether that was a breach that JHT had accepted. In my view there is a real risk that the Court would say that while there was a breach JHT had not accepted that breach but was rather trying to continue with the contract."*

App 5-8 The consequence was that the advice given was that the Trust would not be able to avoid making a payment to the operators in respect of the loss of the contract.