



**Office of the Comptroller and Auditor General**  
**Role and Operation of the States Employment Board**

**29 March 2019**



JERSEY AUDIT OFFICE



## **Role and Operation of the States Employment Board**

### **Introduction**

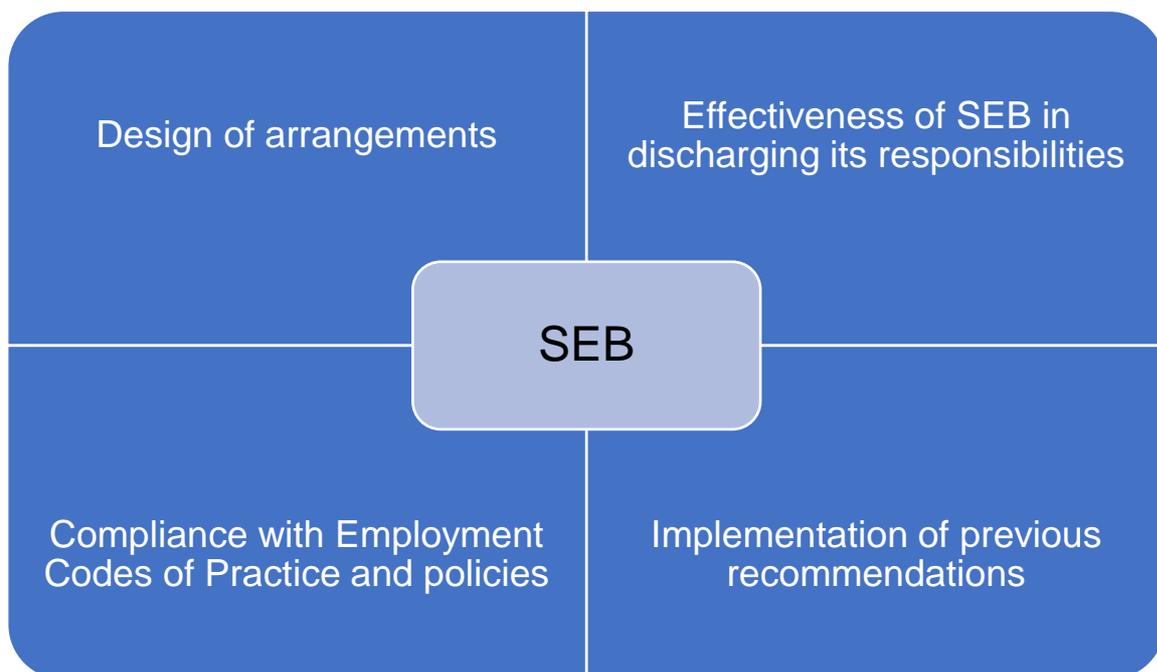
- 1.1 The Employment of States of Jersey Employees (Jersey) Law 2005 established the States Employment Board (SEB) as the statutory employer of all States employees. It is chaired by the Chief Minister, or their nominee, and comprises two Ministers or Assistant Ministers and two other members of the States Assembly.
- 1.2 SEB has wide-ranging functions as the employer of States of Jersey employees. It has a more limited role in relation to 13 specified senior posts in Non-Ministerial Departments, Crown Officers and police officers. Its functions include:
  - ensuring that the public service conducts itself with economy, efficiency, probity and effectiveness;
  - ensuring the health, safety and wellbeing of States employees;
  - issuing Codes of Practice on recruitment, training and development, appraisal, discipline, suspension and termination of employment with which Accountable Officers (for Ministerial Departments) and Accounting Officers (for Non-Ministerial Departments) have a duty to comply;
  - agreeing lists of senior positions where their appointment is subject to oversight by the Jersey Appointments Commission; and
  - preparing an annual report to the States Assembly.
- 1.3 SEB has a pivotal strategic role. Staff costs make up over 30% of States expenditure. Effective oversight of human resources is a critical component of the operation of the States. However, there has been no comprehensive review of the operation of SEB since its establishment.

### **Objectives and scope**

- 1.4 My review evaluates performance in four areas:
  - the effectiveness of the design of arrangements for appointment and employment of States of Jersey employees;
  - the effectiveness of SEB in discharging its functions;
  - the effectiveness of arrangements for securing compliance with the Employment Codes of Practice issued by SEB and supporting policies; and
  - the effectiveness of arrangements for monitoring progress in implementation of my previous recommendations on human resources management.

- 1.5 The review does not extend to:
- the arrangements for employment of persons who, by virtue of legislation, are not treated as States employees;
  - detailed consideration of the role of SEB in pay negotiations;
  - the merits of individual decisions of SEB;
  - detailed consideration of the work of the Jersey Appointments Commission (JAC); or
  - detailed consideration of the arrangements for the remuneration of States appointees who do not fall within the remit of SEB. I am, however, undertaking a separate piece of work considering the arrangements for the remuneration of Board members of Arm's Length Organisations.
- 1.6 The remainder of this report considers the four areas identified above (see Exhibit 1).

**Exhibit 1: Areas reviewed**



- 1.7 In undertaking my work I have:
- taken into account Audit Scotland's 'Best Value' People Management toolkit;
  - considered the States' policies on whistleblowing as a specific probe in evaluating how SEB discharges its responsibilities; and
  - sought and taken into account the advice of the Attorney General on specific matters relating to the interpretation of relevant legislation relating to SEB.

## Design of arrangements

2.1 Legislation establishes two separate bodies with responsibilities relating to employment matters (see Exhibit 2):

- SEB with a broad role as an employer; and
- the JAC with a narrower role in relation to recruitment.

### Exhibit 2: The functions of SEB and JAC

	SEB	JAC
<b>Key functions</b>	<ul style="list-style-type: none"> <li>• Employing all States employees</li> <li>• Ensuring that the public service conducts itself with economy, efficiency, probity and effectiveness</li> <li>• Ensuring health, safety and wellbeing of States employees</li> </ul>	<ul style="list-style-type: none"> <li>• Ensuring fair, efficient best practice recruitment</li> <li>• Ensuring recruitment on merit</li> <li>• Ensuring recruitment only in accordance with Employment Codes of Practice</li> </ul>
<b>Powers and duties</b>	<ul style="list-style-type: none"> <li>• Giving directions on negotiations with employee representatives</li> <li>• Issuing Employment Codes of Practice</li> </ul>	<ul style="list-style-type: none"> <li>• Advising on Employment Codes of Practice on recruitment</li> <li>• Issuing guidance for recruitment of States' appointees</li> <li>• Auditing recruitment practices</li> <li>• Supervising recruitment of senior States officers</li> </ul>
<b>Membership</b>	<p>Chief Minister (or another Minister appointed by them) as Chairman</p> <p>Two other Ministers or Assistant Ministers</p> <p>Two other members of the States Assembly</p>	<p>Chairman and up to five other commissioners with relevant experience in recruitment, management or other matters relevant to the Commission's work</p>

	SEB	JAC
<b>Scope</b>	States employees	States employees Employees of certain independent bodies States' appointees (including to independent bodies)
<b>Reports to</b>	States Assembly	States Employment Board

Source: *Employment of States of Jersey Employees (Jersey) Law 2005 and P.59/2011*

2.2 In this section I consider different aspects of the statutory arrangements in relation to the oversight of employment and appointment (see Exhibit 3).

**Exhibit 3: Design of arrangements: areas considered**



**SEB**

2.3 SEB is comprised of elected politicians who do not necessarily have previous experience of or expertise in oversight of human resources. It is essential that appropriate support and expertise is available. I therefore welcome the statutory provision for the appointment of one or two advisors to SEB with a right to attend meetings of and address SEB.

2.4 However, I am concerned that there are statutory provisions that may detract from the effectiveness of SEB:

- by statute SEB comprises only members of the States Assembly. The election cycle means that there is a risk that many of the five members will cease to serve on SEB at the same time, threatening an important element of knowledge and continuity in the activities of SEB. This risk materialised

in 2018 when, following the election, the entire membership of SEB changed. Provision for independent lay members with relevant skills and experience for executive boards is not unusual. Doing so in the context of SEB might strengthen its capacity and also reduce the risks of substantial changes in membership at the same time; and

- I am advised that the power to delegate a function of SEB to a member of SEB extends to delegation to a committee of SEB. However, legislation does not provide for how such a committee should be constituted and how it would make decisions. As discussed below, the workload of SEB is substantial. Although SEB established a Committee for Organisational Change it was advisory and no functions were delegated to it. Delegation of functions to committees, such as review of senior staff remuneration, can allow more effective working whilst preserving the debate, dialogue and collective decision making that is a strength of the current arrangements. However, clarity about the decision making arrangements of committees exercising delegated powers would be essential.

2.5 There are a number of strengths in the functions, duties and powers of SEB:

- wide incidental powers to do anything necessary to perform its functions meaning that it is genuinely empowered;
- a duty to issue Codes of Practice covering key areas – training and development, recruitment, appraisal, discipline, suspension and termination of employment – backed up by an accountability placed on both Accounting and Accountable Officers to comply with the Codes of Practice;
- a duty to review individual proposals for engagement of senior staff and their remuneration;
- a power to delegate powers and functions of SEB to the Chief Executive and for the Chief Executive, with the consent of SEB, to delegate those powers and functions to other people. The powers of delegation and onward delegation of functions have been used. However, I am concerned that some of the powers and functions of SEB are expressed in such wide terms that, when delegated onwards to officers, there is ambiguity as to the scope of their authority; and
- a requirement to prepare an Annual Report to the States Assembly on its work as a means of accountability for its work.

2.6 However, I have concerns that in many areas, the functions, powers and duties of SEB do not promote good management of States employees:

- SEB is given a task that it is not realistically in a position to perform. Ensuring ‘that the public service conducts itself with economy, efficiency, probity and effectiveness’ goes substantially beyond Human Resources (HR) oversight. In any event, the responsibility substantially overlaps with the statutory duties of the Chief Executive as Principal Accounting Officer to secure economic administration and efficient and effective use of resources. In practice there is no evidence of SEB identifying how to discharge this function or reporting on how it has done so;

- there is a duty to issue Employment Codes of Practice in specified areas and a discretion in other areas. However, this does not require SEB to issue a comprehensive set of Codes of Practice that reflect evolving best practice;
- the duty on SEB ends at the point of issuing Employment Codes of Practice. There is no duty to monitor or learn from their implementation in practice;
- SEB's role in relation to senior staff remuneration focusses on individual appointments rather than on development of overall principles for the remuneration of senior staff and their consistent application;
- in imposing a duty to prepare an Annual Report there is no requirement relating to content. It is therefore possible for an Annual Report to be prepared that does not focus on demonstrating how SEB has discharged its responsibilities; and
- the legislation does not address the mechanism for meeting the costs of SEB nor impose a duty to ensure that adequate resources are available for SEB to discharge its responsibilities.

## **JAC**

2.7 The JAC comprises individuals who:

- have expertise and experience of recruitment, senior management or other matters relevant to the JAC's work; and
- are not States members or employees.

2.8 The independence of the JAC reinforces its power. However, the existing statutory framework compromises that independence:

- the States Assembly may dismiss a Commissioner on any grounds it sees fit; and
- the States Assembly may direct the Commission to prepare a report on any matter.

2.9 In other legislation, the States Assembly has, in contrast, reinforced independence. For example, in the case of the Office of the Comptroller and Auditor General:

- the post-holder can only be removed by the States Assembly on specified grounds set out in legislation; and
- there is a statutory prohibition on any person directing the post-holder on how to carry out their functions.

2.10 There are demonstrable strengths in the functions, duties and powers of the JAC:

- there are clear arrangements for determining and communicating the bodies and individuals to which its specific powers apply;

- it has a duty to undertake audits of recruitment practices or ensure that they are undertaken. It is therefore concerned with reviewing implementation in practice as well as prescribing a framework. The audit process of itself promotes compliance and learning; and
- there are wide-ranging powers and duties to report to SEB.

2.11 However, there are areas where I believe that the functions, powers and duties of the JAC could be developed:

- in some cases there is a discretion whether to report to SEB. The JAC has a discretion to report where there has been non-compliance with an Employment Code of Practice on recruitment: that in my view is entirely appropriate as the significance and impact of non-compliance may vary significantly. However, it also has a discretion to report to SEB where there has been any impropriety in a recruitment process. In my view impropriety is by nature a matter of significant concern and I am surprised that there is not a duty to report such impropriety to SEB; and
- the legislation does not address the mechanism for meeting the costs of the JAC nor impose a duty to ensure that adequate resources are available for the JAC to discharge its responsibilities. Currently resources to support the JAC are provided by a senior HR professional. Given the JAC's role in the oversight of an element of HR activities, that creates a conflict of interest.

### ***Gaps and ambiguities in arrangements***

2.12 Since SEB and the JAC were formed there have been significant changes in the structures of the States including the creation of further States owned companies, such as the Ports of Jersey. The States have also been affected by wider developments in the nature of 'employment' which involve greater use of interim and agency staff.

2.13 These developments highlight some gaps or ambiguities in arrangements. Although I have not undertaken a comprehensive review, I have identified areas that stand out as not clearly addressed, or not addressed at all, in the current statutory arrangements:

- **oversight of interim staff.** The scope of SEB's responsibilities relates to 'States employees', that is those working under 'contracts of employment' with SEB. Similarly, the remit of the JAC includes 'States employees'. I understand that whether or not a particular contract is a contract of employment must be determined in each case on the facts. Determining whether individuals are or are not working under 'contracts of employment' is of increased importance in the modern workplace with increased use of temporary, agency and contract staff to provide the skills and experience that the States need. It is important that there is oversight of all such contracts. I understand that one mechanism would be the extension of the term 'States employees' by Order as provided for in the relevant legislation;

- **oversight of the employment practices of States owned companies and Arm's Length Organisations (ALOs).** SEB's remit is, other than in respect of issuing a Code of Practice on recruitment, limited to the core States, comprising Ministerial and Non-Ministerial Departments. However, the States have a legitimate interest in satisfying themselves that ALOs comply with legal requirements and best practice. Similarly, neither SEB nor the JAC has oversight of the remuneration of staff in States owned companies and ALOs even though the States have a legitimate interest in satisfying itself that such remuneration is justifiable; and
- **independent oversight of termination of employment.** The JAC provides independent oversight of appointments. However, securing fairness and demonstrating compliance with relevant Employment Codes of Practice, policies and guidance is as important, if not more important, in the case of termination of employment.

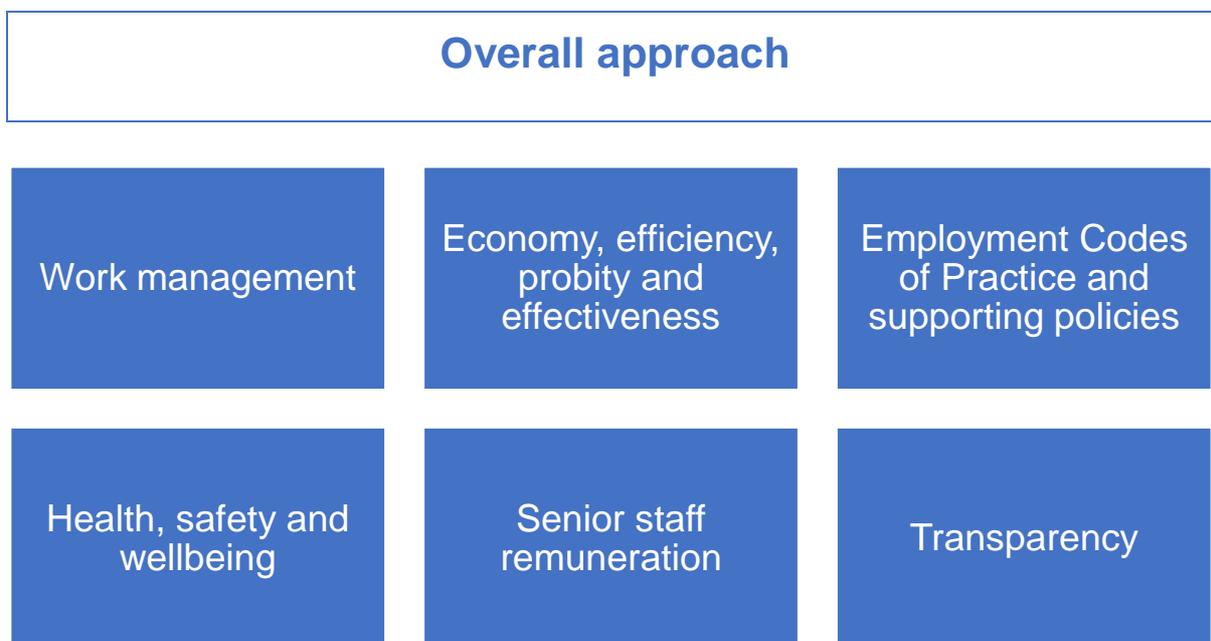
## **Recommendations**

- R1** In light of the findings of my review, fundamentally review the framework for the oversight of human resources of the States, including, in respect of both SEB and the JAC:
- scope;
  - functions;
  - membership; and
  - operation.
- R2** Pending any legislative changes, adopt working practices for SEB and the JAC that, in so far as possible, address the weaknesses in the framework identified in my report.

## Effectiveness of SEB in discharging its responsibilities

3.1 I have considered the effectiveness of SEB in discharging its statutory functions (see Exhibit 4).

### Exhibit 4: Effectiveness of SEB in discharging its functions – my consideration



#### **Overall approach**

- 3.2 The States have not established a 'People Strategy' within which SEB can undertake its statutory responsibilities. Such a strategy would include:
- the States' future requirements in terms of capacity, capability, leadership and critical roles;
  - the consequent skills, experience, knowledge and shape of the workforce needed to deliver the business;
  - how SEB intends to discharge its statutory duties;
  - the assumptions, values, beliefs and aspirations which guide SEB as an employer;
  - linkages to key strategic HR policies in areas such as workforce planning, talent management and training and development; and
  - the respective roles and responsibilities of SEB, the Principal Accounting Officer and the Council of Ministers.
- 3.3 Without the ability to establish how things fit strategically, SEB cannot:
- manage the way it works to best meet its statutory responsibilities;
  - be sure it focusses on the highest priority areas and SEB risks being drawn into a reactive rather than proactive approach;

- draw a line between what ‘is now’ and what ‘will be’ as a basis for evaluating a programme of change; and
- ensure that its approach is consistent and drives continuous improvement.

### ***Work management***

3.4 SEB meets regularly and comprehensive minutes are maintained of its meetings. However, I have identified elements of its operations that mean that it is not working as effectively as it could.

3.5 Firstly, there are weaknesses in how SEB meetings are administrated:

- papers are not always available in a timely manner to enable SEB members to properly consider their content ahead of meetings;
- there is no established template or agreed format for Board papers and no quality guidelines are in place;
- although minutes are comprehensive:
  - they do not adequately identify actions to be completed, and there is no separate action plan specifying:
    - who will undertake the action;
    - when and where it will be delivered; and
    - what is required as an output or outcome; and
  - they are not systematically agreed in a timely way to provide a basis for ‘matters arising’ and consideration of actions completed at subsequent meetings; and
- the minutes, agendas and papers are not provided to SEB as a ‘board pack’. It has been difficult for officers to put together sets of agendas, papers and relevant minutes for my review and there have been gaps in the papers provided.

3.6 Secondly, SEB’s work focusses more on operational rather than strategic activities (see Exhibit 5). Some of the operational activities, such as handling of pay negotiations and litigation, are important. However, I am concerned that:

- the time devoted to pay negotiations suggests disproportionate focus on this aspect of SEB’s work, particularly as the role of SEB is to give directions to officers rather than to conduct pay negotiations itself; and
- the time devoted to vital strategic activities, such as the development of comprehensive, fit for purpose HR policies, has historically been insufficient. However, I note and welcome the stronger focus on the important areas of policy development and monitoring compliance evident in 2018.

## Exhibit 5: Work of SEB 2015 to 2018: analysis of items considered

Area	2015	2016	2017	2018
<b>Terms and conditions</b>				
Pensions	25.0%	11.8%	3.8%	6.1%
Pay	18.2%	16.5%	11.5%	13.5%
Senior staff remuneration	10.2%	3.5%	13.1%	15.2%
Other	11.4%	11.8%	19.2%	2.2%
<b>Organisational change</b>				
Restructuring	8.0%	3.1%	3.1%	20.4%
Individual recruitment	4.5%	1.2%	3.1%	2.6%
Individual termination of employment	12.5%	15.3%	4.6%	4.8%
<b>Employment Codes of Practice and policies</b>				
Development	0.0%	5.9%	4.6%	8.3%
Compliance	0.0%	0.0%	0.8%	3.9%
<b>Health, Safety and Wellbeing</b>	0.0%	1.2%	4.6%	7.0%
<b>Individual investigations</b>	0.0%	5.9%	13.8%	2.0%
<b>Training and development</b>	0.0%	1.2%	0.0%	0.9%
<b>Annual Report</b>	3.4%	1.2%	2.3%	2.1%
<b>Other</b>	5.7%	17.6%	15.4%	11.3%

Source: JAO analysis

- 3.7 Thirdly, SEB does not receive and consider a clear statement of the anticipated benefits of each significant organisational change programme. This means that there are no measurable Key Performance Indicators and no processes to measure the success or otherwise of such initiatives.
- 3.8 Fourthly, SEB is not involved in the risk management process for HR related risks. For example, SEB did not receive reports on two 'amber' risks and associated mitigations included in the corporate risk register in 2017:
- a risk of failure to demonstrate compliance with Employment Codes of Practice; and

- a risk of failure to provide a safe and healthy working environment for staff, public and third parties and the associated risk of litigation.
- 3.9 In both cases the risks were subsequently removed from the corporate risk register for reasons that are unclear.
- 3.10 Fifthly, SEB has helpfully used a sub-committee to manage its workload more effectively. As explained above, the Committee's role was purely advisory. Given the extensive functions of SEB, some of which are in my view receiving inadequate focus, I believe that there is scope for further use of sub-committees, including delegation of functions to them, to maximise the effectiveness of SEB.
- 3.11 Finally, there are limited established arrangements for evaluating the skills and knowledge of SEB members and providing them with induction and ongoing training to assist them to discharge their functions. However, I welcome the steps recently taken in this area: in September 2018, the newly appointed SEB agreed to devote a portion of meetings to 'workshops' focussing on learning and development requirements, such as overall governance arrangements and specific Employment Codes of Practice.

### ***Economy, efficiency, probity and effectiveness***

- 3.12 As discussed above, SEB has a statutory duty to ensure that the public sector conducts itself with economy, efficiency, probity and effectiveness. My concerns about the breadth of this responsibility are reinforced by the fact that there is no evidence that SEB has sought to discharge this responsibility in a structured way.
- 3.13 There are key areas of oversight of human resources directly relevant to this duty, and of particular importance in a period of organisational and cultural change, that SEB does not systematically perform but in my view could reasonably be expected to undertake:
- **oversight of controls over the total numbers and grades of States employees.** Such 'establishment controls' are a key means of exercising control over the total number of States employees, including:
    - control over entering into commitments that extend beyond the end of the financial year; and
    - determining the existence of vacant posts for which it is appropriate to secure temporary cover.

However, such controls are not developed and consistently used within the States; and

- **oversight of the training and development of States employees.** Developing and delivering an effective system for identifying and addressing training and development needs is a key means for securing an efficient and effective public service. However, as highlighted in Exhibit 5 above, this has been a very small component of the work of SEB.

### ***Employment Codes of Practice and supporting policies and guidance***

3.14 Since 2015 one of the key roles of SEB is the issuing of Employment Codes of Practice, compliance with which is a legal requirement. In 2016, SEB issued Employment Codes of Practice covering:

- conduct;
- employee development;
- employee relations;
- equality and diversity;
- pay and reward;
- performance management;
- recruitment and selection;
- terms and conditions; and
- travel and expenditure.

3.15 The Employment Codes of Practice are supported by HR policies and guidance.

3.16 As outlined in Exhibit 6, I have considered the adequacy of the arrangements for Employment Codes of Practice, policies and guidance by:

- reviewing various aspects of the arrangements for the Codes, policies and guidance; and
- looking in more detail at the approach to whistleblowing.

## Exhibit 6: Employment Codes of Practice and supporting policies and guidance – my consideration



### *Principles for preparation*

3.17 The Employment Codes of Practice are short, generally a single page, and supported by HR policies and guidance. I welcome:

- the short, principles-based nature of the Codes and their availability via the States intranet; and
- SEB's recognition, prior to endorsement of the new Target Operating Model being introduced by the Chief Executive of the States, that the Target Operating Model served as a basis for developing employment policies. These included those relating to succession planning, leadership development, recruitment and redeployment, pay and reward and skills and talent development.

3.18 However:

- there is no overall statement – for example within a People Strategy – of what the States want to achieve as an employer that in turn drives the scope and nature of Employment Codes of Practice and supporting HR policies and guidance. This means that Codes, policies and guidance are developed in a vacuum; and
- there have been reviews of HR practices in specific areas. For example, in 2017 SEB commissioned a review of the States' approach to managing bullying and harassment. However, there is no commitment regularly to review Codes, policies and guidance in the light of experience and against best practice. As a result there is an increased risk that Codes, policies and guidance will not remain fit for purpose.

### *Approval*

3.19 Well managed organisations have clear arrangements for the approval of codes, policies and guidance that are consistently applied. However, the States' arrangements for approval of Employment Codes of Practice, policies and guidance are inconsistent:

- some HR policies are approved by SEB but SEB has delegated the power to approve Employment Codes of Practice to the Chief Executive; and
- there is no consistent arrangement for the approval of the HR policies and guidance that support the Employment Codes of Practice.

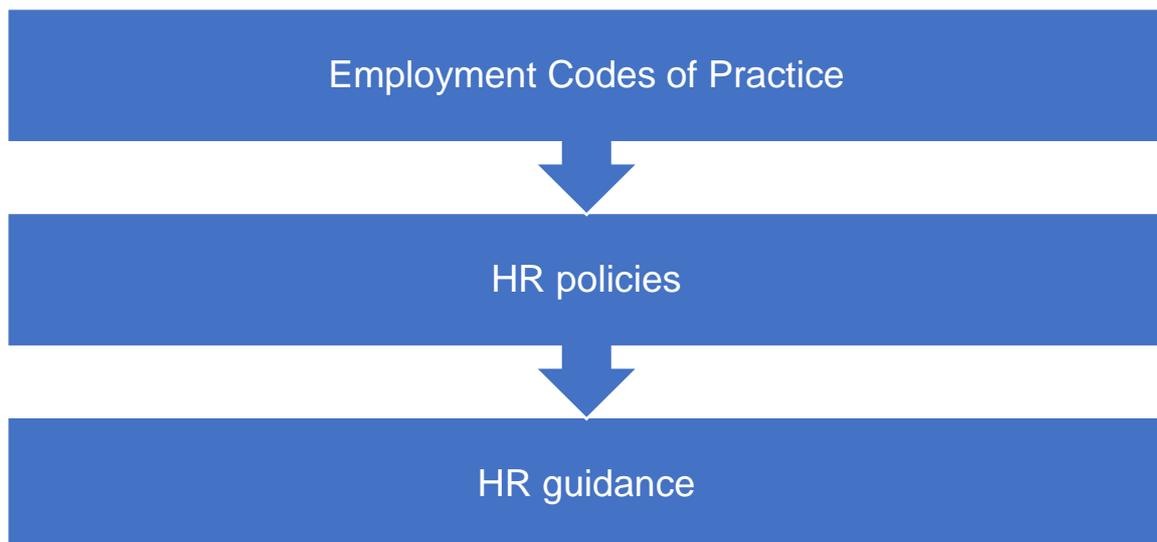
3.20 In my view, there should be transparent arrangements for approval of Employment Codes of Practice, policies and guidance with a consistent role for SEB in approving Employment Codes of Practice as the short, high level documents at the top of the pyramid.

### *Maintenance and review*

3.21 Best practice would involve:

- a clear 'map' from Employment Codes of Practice to supporting policies and guidance to facilitate their use (see Exhibit 7);
- effective systems for capturing and taking into account feedback on Employment Codes of Practice, policies and guidance; and
- effective engagement with staff in review and maintenance of Employment Codes of Practice, policies and guidance.

### **Exhibit 7: Employment Codes of Practice, policies and guidance – the hierarchy**



3.22 In practice this clarity is not present:

- there is no comprehensive 'map' of the relationship between Employment Codes of Practice and HR policies and guidance;
- there are ambiguities. In particular there has been insufficient clarity about the boundaries between the policies relating to serious concerns (whistleblowing), individual grievance and bullying and harassment. In turn there has been a lack of transparency, once an issue has been raised, about how decisions to handle it under one policy or another are made; and
- corporate policies are incomplete. For example, the operation of flexitime is detailed in departmental policies. The provisions of these policies vary meaning that there is inconsistent practice across the States in an area where corporate oversight is appropriate.

3.23 The States have recognised that insufficient resources have been committed to the maintenance of Employment Codes of Practice, policies and guidance. As part of the move to the Target Operating Model, two members of staff, one from Human Resources and one from the Law Officers' Department, have:

- considered the Employment Codes of Practice framework and made proposals for updating and rationalising this; and
- mapped existing policies and guidance to proposed Employment Codes of Practice, putting them in 'families' and reviewing them in light of existing and future requirements.

I welcome these developments.

3.24 Learning from the application of policies has been 'ad hoc'. There are instances where feedback has been received and reflected in subsequent versions of policies. For example, confusion about payments for bank holidays led to a change in the next version of the policy on maternity pay. However, there are no established arrangements for capturing such feedback and ensuring that it is taken into account in reviews of Employment Codes of Practice, policies and guidance.

3.25 Historically there has been an inconsistent approach to staff involvement in review and maintenance of Employment Codes of Practice, policies and guidance. As part of the review currently in progress, a 'core' staff group has been established to act as a sounding board.

### *Communication*

3.26 For Employment Codes of Practice, policies and guidance to be applied consistently they need to be communicated clearly to the managers applying them and the staff affected by them.

3.27 I am concerned that the Employment Codes of Practice, policies and guidance are not easily available to all managers and staff:

- although the Employment Codes of Practice, policies and guidance are on the States intranet, there are no automated links from one document to another;
- access is difficult for some groups of staff who have no access to the intranet;
- the use of separate intranets for three departments increases the risk that up to date versions of Employment Codes of Practice, policies and guidance are not consistently available;
- controls to ensure that up to date versions of documents are being used are not adequate. For example 'v1' of the flexible working policy was issued three times – in November 2013, December 2013 and July 2014;
- re-issued versions of policies rarely include a change log to record changes made. Such logs facilitate the use of revised policies by managers who have familiarised themselves with previous versions;
- titles and language used are inconsistent, increasing the risk of confusion. For example:
  - a number of policies refer to a 'Whistleblowing Policy' that was at that time a 'Serious Concerns' policy; and
  - the Flexible Working Policy refers to 'reduced hours' working but the associated guidance refers to 'part time' working.

3.28 These practical problems may have contributed to the conclusion of consultants reporting on the States' management of bullying and harassment that:

- 'there was not a high level of knowledge of [the States'] processes to inform and guide responses'; and
- 'parts of the organisation have little or no discernible understanding of [the States'] organisational or managerial values'.

#### *Oversight of department-specific policies and guidance*

3.29 There are some limited instances where policies and guidance applicable to particular departments or staff groups may be necessary. In such cases, it is important to ensure that such policies and guidance are necessary and that they sit appropriately within the corporate framework of Employment Codes of Practice, policies and guidance.

3.30 The Serious Concerns Policy recognised that some departments and professions may be governed by regulatory bodies or legislation that impose different requirements for reporting serious concerns. For example, health professionals may be subject to the professional standards issued by the General Medical Council or the Nursing and Midwifery Council.

3.31 Historically there was no mechanism to ensure:

- that policies and guidance are in place where needed; or

- that any such policies and guidance were appropriate and sit appropriately within the corporate framework of Employment Codes of Practice, policies and guidance.
- 3.32 In the context of the former Health and Social Services Department, no additional policies or guidance on how the States' Serious Concerns policy integrated with the requirements of professional standards were in place. There was no evidence that the need for such policies and guidance had been considered.
- 3.33 As discussed in paragraph 3.23 above, a review of Employment Codes of Practice, policies and guidance is currently in progress. In the context of the Serious Concerns Policy, as discussed in paragraph 3.42 below, a revised draft (now called a Whistleblowing Policy) has been issued. This makes more explicit reference to the potential for additional departmental policies, but does not provide an exhaustive list or provide links to such policies.

*Support in applying Employment Codes of Practice, policies and guidance*

- 3.34 Managers applying Employment Codes of Practice, policies and guidance require support in identifying the relevant Codes, policies and guidance, interpreting them and applying them, particularly in complex or sensitive circumstances.
- 3.35 In 2016 the States established the 'People Hub' offering face to face, email and telephone support during normal business hours to support managers and to improve consistency in applying Employment Codes of Practice, policies and guidance. As of August 2018, the People Hub comprised 27.8 Full Time Equivalent staff and was contacted about 350 times a day. However, there is no agreed 'role description' and consequent reporting requirement for the People Hub. This means that there is no established mechanism on which SEB might draw to understand compliance with Employment Codes of Practice, policies and guidance. Although a functional role description and Service Level Agreement for the People Hub have been developed, they have never been adopted and communicated.
- 3.36 The absence of such clarity has resulted in confusion over the role of the People Hub and a lack of accountability for different elements of HR processes. For example, in May 2018 the Interim HR Director for Health and Community Services noted that due to a 'blockage with the People Hub' over 400 cases of sickness absence were not being managed in compliance with the Code and policies. However, the People Hub views its role in managing sickness absence as logging information. The more probable reason for the backlog was a capacity constraint in Occupational Health. This meant that, instead of moving to either 'return to work' or a formal management of sickness absence, staff were being informally managed for up to six months at a total estimated cost of £7.2 million per annum, including staff cover costs of £4.2 million.
- 3.37 In practice, there have been difficulties in providing a consistently high quality of service (see Case study 1).

## Case study 1

There have been difficulties in securing the potential benefits of the 'People Hub':

- its staff do not have the expertise or experience required – it is routinely described as a 'call centre' staffed by those 'at the beginning of their HR careers';
- staff are transitory, there is a lot of turnover and so a body of expertise is not built;
- it deals predominantly with 'line management coaching', where, anecdotally, staff 'don't want to have to enforce the policies'. An example is special leave where a refusal might be considered difficult;
- there is a significant disparity between the number of calls taken and those logged. This results in limited identification of trends and little learning, in particular about where development of Employment Codes of Practice, policies and guidance would improve clarity, reduce queries and enhance compliance; and
- information collected is not used to target improvements to Employment Codes of Practice, policies and guidance. For example, the People Hub collects information on the time taken for the various parts of the recruitment pathway which could be used to identify blockages and delays but this information is not reported and has not been used effectively.

## *Whistleblowing*

- 3.38 Whistleblowing – the ability for employees to report certain types of wrongdoing that affect others – is an important safeguard to the delivery of economic, efficient and effective public services. It protects employees and promotes a healthy working culture.
- 3.39 The States recognised that whistleblowing arrangements were an important element of overall HR arrangements. One of the Employment Codes of Practice covers 'serious concerns' and this was supported by a serious concerns policy.
- 3.40 In 2017 SEB commissioned a States-wide review of bullying and harassment in the workplace following concerns expressed by individuals, trades union representatives and States Assembly members. The consultants engaged concluded that:
- there was 'the vaguest of awareness about the [Serious Concerns] policy'; and
  - the reported absence of any whistleblowing in the previous years was 'unconvincing and unlikely to be the case'.
- 3.41 The consultants engaged by SEB made wide-ranging recommendations to:
- relaunch and maintain an effective whistleblowing policy;
  - set up a new and dedicated whistleblowing line outside of regular reporting lines;

- draft and circulate new policies relating to bullying, grievance and whistleblowing – with proper relaunch and briefing arrangements and which outline clear and specific managerial responsibilities; and
- introduce a system of post-incident review in order to support organisational learning.

3.42 I am pleased to note that a revised policy, now called a Whistleblowing Policy, has been issued, reflecting the consultants’ findings and recommendations.

3.43 My own review identified that in many respects the Serious Concerns Policy did not comply with best practice but that most of the weaknesses had been addressed in the newly launched policy (see Exhibit 8).

### Exhibit 8: Serious Concerns/ Whistleblowing: the States’ previous and newly launched policies

Good practice	Serious Concerns Policy	Evaluation	Whistleblowing Policy
<p><b>Commitment, clarity and confidentiality: tone from the top</b></p> <p><b>Guidance should make clear that:</b></p> <ul style="list-style-type: none"> <li>• any concerns are welcomed and will be treated seriously;</li> <li>• employees will not be punished if the concern turns out to be untrue, as long as they had reasonable suspicion of wrongdoing; and</li> <li>• confidentiality will be respected – but also set out issues that could arise from employees reporting concerns who</li> </ul>	<p>The Serious Concerns Policy makes a commitment to fair treatment for whistleblowers and a protection from victimisation where concerns are raised in good faith.</p> <p>The Policy discourages but sets out options for, and implications of, raising a concern anonymously but does not set out a mechanism for doing so.</p> <p>There is no mention at all of whistleblowing as important to a healthy working culture.</p>	<p>The policy does not set out the crucial role played by whistleblowing in:</p> <ul style="list-style-type: none"> <li>• ensuring transparency;</li> <li>• providing a valuable early warning system; and</li> <li>• driving a wide range of improvements.</li> </ul>	<p>Addressed. The newly launched policy sets out:</p> <ul style="list-style-type: none"> <li>• a clear statement of the purpose of whistleblowing in the context of openness; and</li> <li>• the role of whistleblowing in securing improvement.</li> </ul>

Good practice	Serious Concerns Policy	Evaluation	Whistleblowing Policy
<p>wish to remain anonymous</p>			
<p><b>Structure</b></p> <p><b>Guidance should:</b></p> <ul style="list-style-type: none"> <li>• be easy to use;</li> <li>• define what whistleblowing is and what it is not</li> <li>• be comprehensive but concise; and</li> <li>• avoid irrelevant detail that might confuse readers.</li> </ul>	<p>The Serious Concerns Policy states its focus as:</p> <p><i>concerns raised by individuals under the Ministerial Code of Conduct, Code of Conduct for Elected Members, Anti-fraud and Corruption Policy and Reporting of Serious Concerns Policy</i></p> <p>This requires identification and review of other Codes and policies.</p> <p>Although the Serious Concerns Policy lists examples of the types of concerns which might be raised, and includes a flowchart of the process, it does not note the requirement that the concern is of 'public interest' for the policy to apply.</p> <p>The Policy makes clear that it does not apply to:</p> <ul style="list-style-type: none"> <li>○ those who work for the States through a contract for services on an interim, locum, self-employed, or agency basis; and</li> <li>○ voluntary staff or those on</li> </ul>	<p>Reference to other Codes and policies risks confusion, discourages use of the policy and increases the risk of inconsistent application.</p> <p>The inclusion of a flowchart is helpful, but it does not go as far as to set out the criteria for decisions at each stage. The chart simply shows that the first person to receive the concern makes a decision as to whether the whistleblowing policy is relevant.</p> <p>The exclusion of specific workers from the Policy without a clear alternative process for raising concerns, reduces the possibility that such workers will raise legitimate concerns.</p>	<p>Addressed:</p> <ul style="list-style-type: none"> <li>• the index aids navigation;</li> <li>• it sets out what whistleblowing is, when to use it and when (named) internal policies might apply;</li> <li>• importantly it includes clear statements about when the policy can be used and to whom it applies, extending the application of the policy to all workers and suppliers to the States.</li> </ul>

Good practice	Serious Concerns Policy	Evaluation	Whistleblowing Policy
	honorary contracts where there is no implied contract of employment.		
<p><b>Offering an alternative to line management</b></p> <p><b>Concerns may relate to behaviours of line managers, or employees may be unwilling to discuss concerns with immediate management.</b></p> <p><b>Alternative, suitable channels inside the organisation should be offered</b></p>	As well as immediate line managers, five other post-holders are designated to receive 'whistleblowing' concerns. Their contact details are given.	<p>Although alternatives are included, the suggested routes for reporting are to very senior staff or individuals. This could be a barrier to whistleblowers.</p> <p>There are particular risks to consider in the context of a small Island population, but the Policy does not recognise this by offering an 'off Island' option.</p>	Addressed. An important addition sets out the availability of a confidential, independent whistleblowing 'speak-up' line.
<p><b>Access to independent advice</b></p> <p><b>Employees may need advice where they feel unsure or unaware of how to raise a concern. Guidance should indicate where employees can seek advice</b></p>	The Policy identifies both internal and external parties from whom individuals can seek advice.	<p>The Policy does not highlight the benefits of seeking independent advice - an opportunity to get an independent perspective on their concerns, before they report anything formally - or explain the type of advice available from each source.</p> <p>The Policy does not advise employees of the potential breach of their legal duty of confidentiality in communicating confidential information that would not pass a public interest test.</p>	Addressed. The updated Policy refers to a new independent 24/7 employee assistance helpline and email service.

Good practice	Serious Concerns Policy	Evaluation	Whistleblowing Policy
<p><b>Whistleblowing to external bodies (prescribed persons)</b></p> <p><b>Guidance should make employees aware of how they can raise concerns outside the department, e.g. to an external auditor or regulator. This is an obligation for officials in certain circumstances, for example where there is evidence of criminal activity</b></p>	<p>The Policy refers to the potential for additional departmental guidance to reflect regulatory and statutory requirements. However, such guidance is not always available.</p>	<p>There is an increased risk of confusion and inconsistent practice.</p>	<p>Partially addressed. The updated policy refers to the potential for departmental guidelines to secure compliance with UK regulatory or statutory provisions. However, no exhaustive list of such guidelines or links to guidelines are provided.</p>
<p><b>Reassuring potential whistleblowers</b></p> <p><b>Guidance should make clear that it is an offence for management and staff to victimise employees thinking of making a complaint. Similarly, it should make clear that employees who deliberately raise malicious and unfounded grievances will be subject to disciplinary action</b></p>	<p>The Policy does include a statement of protection for whistleblowers acting in good faith.</p>	<p>The Policy does not clearly reassure potential whistleblowers that their information is valued and that they will not be treated adversely should they have the courage to raise their concerns</p>	<p>Addressed. The updated Policy uses plain language to reassure potential whistleblowers as long as they are acting in good faith.</p>
<p><b>Addressing concerns and providing feedback</b></p> <p><b>Whistleblowing policies should set out procedures for handling concerns. This</b></p>	<p>The Policy outlines the roles and responsibilities, and a flowchart is helpful in demonstrating the process. This includes that feedback will be:</p>	<p>Making it clear what the employee can expect to happen once the process begins is important.</p> <p>Done well, it both reassures and encourages employees in taking</p>	<p>Addressed. The policy makes clear how it will provide feedback to those raising concerns and that they will be made aware of the options available if they are dissatisfied</p>

Good practice	Serious Concerns Policy	Evaluation	Whistleblowing Policy
<p><b>should reassure employees that their concerns will be taken seriously and will ensure that instances of malpractice are identified and dealt with appropriately</b></p>	<ul style="list-style-type: none"> <li>• written; and</li> <li>• given within seven days</li> </ul> <p>The Policy does not though set out clearly the employees' rights.</p>	<p>what might be a difficult first step</p>	<p>with the response.</p>

Source: Adapted from National Audit Office, *Government whistleblowing policies – Main criteria to include (2014)*

- 3.44 The policy also demonstrates SEB's commitment to effective whistleblowing arrangements by providing for:
- a quarterly report on whistleblowing to SEB; and
  - immediately reporting of concerns of a highly serious nature to SEB.

**Health, safety and wellbeing**

3.45 SEB has a specific statutory responsibility to ensure the health, safety and wellbeing of States' employees. In its Health, Safety and Wellbeing Policy it states that it discharges this statutory responsibility by:

- reviewing the performance of the health and safety management system across the States; and
- holding the Chief Executive to account for the performance and results of the health and safety management system.

3.46 Health and safety has been an area of concern. In August 2017, SEB was fined in relation to the avoidable death in March 2016 of a resident of a States-run residential home. In May 2018, Health and Safety Improvement Notices were issued in relation to a site delivering adult mental health services.

3.47 Reflecting the concerns, the States commissioned the Health and Safety Service for a consortium of UK local authorities to undertake an independent review of health and safety within the States, including benchmarking best practice and identifying areas for improvement. The results of the review were received in October 2018. The review identified weaknesses in various aspects of health and safety management. It highlighted that the number of regulatory and administrative actions over the last six years is 'quite high' for a public organisation and does not support the vision of an organisation wishing to be recognised as an exemplar of health and safety performance.

3.48 In this section I consider the States' arrangements for health, safety and wellbeing in four areas (see Exhibit 9).

## Exhibit 9: Health, safety and wellbeing: my consideration



### *Employment Code of Practice and policies*

3.49 High performing organisations have appropriate, comprehensive codes and policies in place.

3.50 The States have an Employment Code of Practice that sets out the need for comprehensive arrangements to, for example:

- prevent work related injury or illness;
- safeguard the mental health of employees at work;
- ensure high standards of health and safety for non-employees who may be affected by the work activities undertaken by States' employees; and
- set achievable and quantifiable objectives for health, safety and wellbeing performance through continual improvement and by performance measurement and review.

3.51 However, in my view adequate arrangements are not in place to deliver the aspirations of the Code:

- the supporting Corporate Health, Safety and Wellbeing Policy was issued in January 2016 with a review date of February 2017. The policy was not reviewed by the due date and is currently being reviewed;
- there are significant weaknesses in the Policy:
  - it states that it must be read alongside a range of other codes, policies and guidance, specifying some but not all of these;
  - it includes aspirations rather than prescribing courses of action; and

- it does not cover all areas addressed in the Employment Code of Practice. For example, it makes no reference to safeguarding the mental health of employees.
- 3.52 In addition, the independent review of health and safety found that individual departments had different health and safety policies reflecting, in some cases, different approaches to health and safety management.

### *Roles and responsibilities*

- 3.53 Until 2017, a Corporate Health and Safety Advisor was in place whose role included:
- oversight of departmental health and safety advisors;
  - provision of health and safety advice for those departments that did not have their own dedicated health and safety advisor; and
  - corporate reporting.
- 3.54 After the post-holder left the States, the Human Resources Department has acted as 'co-ordinator' of all health and safety advisors and looked at options for integrating health and safety into wider 'wellbeing'.
- 3.55 The independent review of health and safety found that:
- the organisation of health and safety is disjointed;
  - it has not been possible to establish a clear budget for the whole health and safety service; and
  - senior manager health and safety competence is variable.
- 3.56 I also identified fragmented and inconsistent arrangements:
- there are different incident and accident reporting systems across departments;
  - departments work to different standards; and
  - there is no requirement for departments to escalate instances of non-compliance with legislative requirements or policy to a corporate level.

### *Monitoring performance*

- 3.57 Effective arrangements require not only establishment of a clear framework and allocation of responsibilities, but also monitoring of performance.
- 3.58 In my view the arrangements for monitoring performance are underdeveloped:
- the current Health, Safety and Wellbeing Policy has a commitment to setting achievable and quantifiable objectives and associated KPIs and sets out a process for doing so. However, there is no timetable for doing so and the objectives and KPIs have yet to be set; and
  - information held is inadequate to monitor performance corporately. For example:

- in January 2018 only three departments could report incident and accident data for 2017 and, even then, they were not using shared definitions and descriptions; and
  - in August 2018 the States received a Freedom of Information request asking for numbers of staff supported to return to work and numbers of staff who had resigned from a post due to illness. But this information was either not held or only held on personal files and significant time would be required to extract it.
- 3.59 In 2017, SEB gave consideration to a standing health and safety item on the agenda, including a quarterly update. However, such reporting is not planned to be introduced until the end of the first quarter of 2019. Without such reporting it is not clear how SEB has discharged the responsibilities of monitoring performance and holding the Chief Executive to account.

### *Risk management*

- 3.60 Risk management is at the heart of effective arrangements for health and safety.
- 3.61 In my view the approach to risk management in this area has not been adequate:
- As noted in paragraph 3.8 above, in 2017 health and safety was reflected as an ‘amber’ risk in the corporate risk register. In my view the recorded mitigation was inappropriate as:
    - two of the five mitigations recorded were not mitigations as they were not measures in place but future proposed actions; and
    - one of the mitigations was not in place as the Corporate Health and Safety Manager position was vacant; and
  - As noted above, the risk was removed from the corporate risk register without explanation.

### ***Senior staff remuneration***

- 3.62 P.59/2011 imposes a duty on SEB to review all pay proposals where the salary is likely to be over £100,000 per annum.
- 3.63 There are established arrangements for reporting on such proposals to SEB, using a standard proforma containing key information. However, in the case of three senior interim appointments to support the new Chief Executive reported to SEB in October 2017, the proforma was not used. Although the JAC was involved in the appointment process, its role did not extend to wider aspects of the decision to create the posts and the associated remuneration. Failure to use the proforma meant that structured information was not provided to SEB on:
- how the jobs had been evaluated;
  - the benefits to the organisation of creating the posts; and
  - how performance would be monitored.

## **Transparency**

- 3.64 Public confidence is enhanced by maximum transparency about the work of public bodies consistent with the protection of:
- personal information; and
  - information where there may be an adverse impact if the information was in the public domain.
- 3.65 I am concerned that there is unnecessary secrecy about the work of SEB:
- SEB's Annual Report is brief and does not present a fair, balanced and understandable assessment of its work. For example, in relation to the accidental death for which it was prosecuted and fined, there was merely a reference to 'endorsing action taken to prevent similar incidents' without setting out what that action was;
  - although SEB splits its business between items on open and closed agendas, very few items are considered on the open agendas. Even then, the minutes are not publicly available. I recognise that many of the reports received by SEB contain personal or otherwise sensitive information. That does not, however, mean that summaries of the discussions, excluding such information, cannot be made available; and
  - at the time of the appointment of the current Chief Executive, SEB did not decide to put the key terms and conditions of employment in the public domain. This is despite the significant public interest in the remuneration of senior staff and the fact that the States are committed to disclosing key elements of senior staff remuneration retrospectively in the Annual Report and Accounts. I note the recent decision of the Information Commissioner that, on balance, the Chief Executive's contract of employment should be disclosed, subject to redactions that relate to the Chief Executive as a private individual.

## **Recommendations**

- R3** Develop an overarching People Strategy that includes the States' future workforce requirements; the assumptions, values, beliefs and aspirations which guide SEB as an employer; how SEB plans to discharge its statutory duties; linkages to key strategic HR policies; and the respective roles of SEB, the Principal Accounting Officer and the Council of Ministers.
- R4** Refocus the balance of SEB's work to ensure that sufficient attention is given to all its statutory responsibilities.
- R5** Ensure that SEB receives and considers a statement of the benefits of each proposed significant organisation change initiative.
- R6** Actively involve SEB in the risk management process, including by review of the HR risks included in the corporate risk register, the adequacy of mitigation of those risks and the categorisation of those risks.

- R7** Consider the development of sub-committees of SEB to allow it to discharge its functions more effectively.
- R8** Develop and implement a training programme for SEB members, including induction training.
- R9** Introduce a structured approach to oversight by SEB of the adoption and implementation of establishment controls and staff training and development.
- R10** Establish a clear framework for the development, approval, communication, review and revision of Employment Codes of Practice and supporting HR policies and guidance.
- R11** Prioritise completion of the work to rationalise and map existing Employment Codes of Practice to supporting HR policies and guidance, ensuring that ambiguities are addressed.
- R12** Establish arrangements for effective corporate oversight of the need for and the content of supplementary departmental HR policies and guidance.
- R13** Ensure that a clear role description for the 'People Hub' is in place.
- R14** Monitor action to improve the effectiveness of the operation of the 'People Hub' taking into account the findings of this review.
- R15** Ensure that the Whistleblowing Policy fully reflects and references supplementary departmental policies.
- R16** Fundamentally review corporate arrangements for health, safety and wellbeing in light of the findings of this review and the independent review that reported in October 2018.
- R17** Ensure that the information requirement set out in the proforma for senior pay proposals is consistently available to SEB.
- R18** Enhance the transparency of SEB's activities, including:
- through an enhanced Annual Report;
  - by placing more information in the public domain about the matters that SEB has considered; and
  - proactively disclosing the key terms and conditions for senior staff appointments.

## **Effectiveness of arrangements for securing compliance with Employment Codes of Practice and supporting policies**

- 4.1 The issuing of Employment Codes of Practice is a key function of SEB. The Codes, supported by HR policies and guidance, are a means of ensuring that best practice in HR management is adopted consistently across the States.
- 4.2 There is no statutory duty on SEB to monitor compliance with the Employment Codes of Practice and supporting policies. But without such monitoring SEB cannot know that the Codes and supporting policies are being applied as intended. There has been a recognition of a need to monitor compliance but that recognition has not translated into concrete action:
- in January 2016 SEB asked a Human Resources Department working group to provide an assurance framework. Subsequently, in 2016 proposals for a Code of Practice Governance Board were set out, the objectives of which included providing 'a fully auditable trail on the effectiveness and compliance with the Codes of Practice, governance framework and controls'. However, this Board was never established; and
  - in 2018 SEB noted that it had previously requested a quarterly 'Human Resources Governance Report' but such reports were not prepared and included on SEB's agenda.
- 4.3 As indicated in paragraph 3.9, the risk of non-compliance was included in the corporate risk register and subsequently removed without explanation. In my view the risk was very real and appropriately included in the corporate risk register.
- 4.4 In September 2018 the newly formed SEB members met to reflect on their initial meetings. The Board concluded that it would:
- determine the principles by which the public sector workforce would be governed; and
  - monitor progress on the various Codes, policies and initiatives it implemented.
- 4.5 The Board specified standing items for the SEB agenda including compliance with Employment Codes of Practice. However, the approach to reporting, including relevant Key Performance Indicators (KPIs), has yet to be established.

## **Recommendation**

- R19** Give priority to finalising and implementing arrangements for monitoring compliance with the requirements of Employment Codes of Practice and supporting HR policies and guidance and routinely reporting the results of monitoring, including relevant KPIs, to SEB.

## **Effectiveness of arrangements for monitoring implementation of previous recommendations on HR management**

- 5.1 High performing organisations agree action in response to audit recommendations, assign responsibilities for implementation and monitor implementation of agreed actions.
- 5.2 I have previously made recommendations in relation to HR management, notably in my reviews:
- *Financial Management* (April 2015);
  - *Follow-up on the Utilisation of Compromise Agreements* (May 2016); and
  - *Use of consultants* (October 2016).
- 5.3 I am concerned that SEB does not routinely receive responses to the recommendations in my reports – or those from other external sources – that relate to its functions and does not monitor implementation of agreed recommendations. Nor is such monitoring of implementation routinely undertaken by officers in the HR Department.

### **Recommendation**

- R20** Routinely report external recommendations relating to HR management, agreed actions and progress on their implementation to SEB.

## Conclusion

- 6.1 Human resources are pivotal to the delivery of efficient, effective and accountable public services. SEB, as the statutory employer of States employees is at the apex of the HR arrangements of the States and has a vital strategic role.
- 6.2 In my view the current arrangements are not fit for purpose.
- 6.3 Firstly, there are significant weaknesses in the framework for the oversight of HR management. Those weaknesses relate to:
- the establishment and functions of SEB. For example, SEB is, on the one hand, given a function that is impossibly broad to perform but, on the other hand, given no duty to monitor the implementation of the Employment Codes of Practice that it issues;
  - the establishment and functions of the JAC. In particular, I am concerned that the statutory framework does not give sufficient protection to the independence of the JAC; and
  - ambiguities and gaps in the current arrangements. I have highlighted that certain interim positions might not be subject to oversight by SEB, the absence of oversight of most aspects of HR arrangements for States owned companies and Arm's Length Organisations and the absence of independent oversight of contentious termination of employment, including where a compromise agreement is reached.
- 6.4 Secondly, in many respects the arrangements for SEB to discharge its functions have been poor. In particular:
- SEB has not adopted an overarching People Strategy that includes the States' future workforce requirements; the assumptions, values, beliefs and aspirations which guide SEB as an employer; how SEB intends to discharge its statutory duties; linkages to key strategic HR policies; and the respective roles and responsibilities of SEB, the Principal Accounting Officer and the Council of Ministers;
  - SEB has focussed its work on some operational aspects of its responsibilities to the exclusion of some key strategic areas, such as monitoring the benefits secured by organisational change, controls over the staff establishment and staff training and development;
  - SEB has not focussed sufficiently on securing improvements in key areas. Although some work is now in hand, arrangements for development and maintenance of Employment Codes of Practice and supporting HR policies and guidance were underdeveloped. Arrangements for health, safety and wellbeing of employees have been fragmented and fall short of best practice; and
  - SEB is insufficiently transparent about its work.

- 6.5 Thirdly, SEB has not focussed sufficiently on monitoring of implementation. This is evident in:
- the absence of mechanisms to monitor compliance with Employment Codes of Practice and supporting HR policies and a recognised need for assurance mechanisms. However, an approach to monitoring is currently being developed; and
  - the absence of an active role in monitoring the implementation of my recommendations, as well as those from other external sources, relevant to human resources.
- 6.6 As a result, SEB has not been able to assure itself that the Employment Codes of Practice that it issued have been followed or that agreed changes have been implemented.
- 6.7 I recognise that SEB has initiated changes in how it works and that changes to human resources management are being made as part of the move to the new Target Operating Model. However, in my view, fundamental change is required so that SEB can demonstrate that it is exercising effective oversight of human resources across the States. Such change inevitably requires enhancement of the skills and resources to support SEB and the JAC in discharging their responsibilities.

## **Appendix 1: Summary of Recommendations**

### **Design of arrangements**

- R1** In light of the findings of my review, fundamentally review the framework for the oversight of human resources of the States, including, in respect of both SEB and the JAC:
- scope;
  - functions;
  - membership; and
  - operation.
- R2** Pending any legislative changes, adopt working practices for SEB and the JAC that, in so far as possible, address the weaknesses in the framework identified in my report.

### **Effectiveness of SEB in discharging its responsibilities**

- R3** Develop an overarching People Strategy that includes the States' future workforce requirements; the assumptions, values, beliefs and aspirations which guide SEB as an employer; how SEB plans to discharge its statutory duties; linkages to key strategic HR policies; and the respective roles of SEB, the Principal Accounting Officer and the Council of Ministers.
- R4** Refocus the balance of SEB's work to ensure that sufficient attention is given to all its statutory responsibilities.
- R5** Ensure that SEB receives and considers a statement of the benefits of each proposed significant organisation change initiative.
- R6** Actively involve SEB in the risk management process, including by review of the HR risks included in the corporate risk register, the adequacy of mitigation of those risks and the categorisation of those risks.
- R7** Consider the development of sub-committees of SEB to allow it to discharge its functions more effectively.
- R8** Develop and implement a training programme for SEB members, including induction training.
- R9** Introduce a structured approach to oversight by SEB of the adoption and implementation of establishment controls and staff training and development.
- R10** Establish a clear framework for the development, approval, communication, review and revision of Employment Codes of Practice and supporting HR policies and guidance.
- R11** Prioritise completion of the work to rationalise and map existing Employment Codes of Practice to supporting HR policies and guidance, ensuring that ambiguities are addressed.
- R12** Establish arrangements for effective corporate oversight of the need for and the content of supplementary departmental HR policies and guidance.

- R13** Ensure that a clear role description for the 'People Hub' is in place.
- R14** Monitor action to improve the effectiveness of the operation of the 'People Hub' taking into account the findings of this review.
- R15** Ensure that the Whistleblowing Policy fully reflects and references supplementary departmental policies.
- R16** Fundamentally review corporate arrangements for health, safety and wellbeing in light of the findings of this review and the independent review that reported in October 2018.
- R17** Ensure that the information requirement set out in the proforma for senior pay proposals is consistently available to SEB.
- R18** Enhance the transparency of SEB's activities, including:
- through an enhanced Annual Report;
  - by placing more information in the public domain about the matters that SEB has considered; and
  - proactively disclosing the key terms and conditions for senior staff appointments.

**Effectiveness of arrangements for securing compliance with Employment Codes of Practice and supporting policies**

- R19** Give priority to finalising and implementing arrangements for monitoring compliance with the requirements of Employment Codes of Practice and supporting HR policies and guidance and routinely reporting the results of monitoring, including relevant KPIs, to SEB.

**Effectiveness of arrangements for monitoring implementation of previous recommendations on HR management**

- R20** Routinely report external recommendations relating to HR management, agreed actions and progress on their implementation to SEB.



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