

STATES OF JERSEY



TRANSCRIPTS OF '*IN CAMERA*' DEBATES: RELEASE TO THE JERSEY INDEPENDENT CARE INQUIRY (P.155/2015) – AMENDMENT

Lodged au Greffe on 12th January 2016
by the Privileges and Procedures Committee

STATES GREFFE

TRANSCRIPTS OF 'IN CAMERA' DEBATES: RELEASE TO THE JERSEY
INDEPENDENT CARE INQUIRY (P.155/2015) – AMENDMENT

PAGE 2, PARAGRAPH (a) –

After the words “in accordance with the Inquiry’s protocols”, in each of sub-paragraphs (a)(i) to (v), insert the words “and made public by the States Assembly at the same time”.

PRIVILEGES AND PROCEDURES COMMITTEE

REPORT

PPC is bringing this amendment as it considers that an important point of principle is engaged in relation to the transcripts of *in camera* debates.

PPC was first alerted to an issue relating to the release of a transcript of an *in camera* debate to the Independent Jersey Care Inquiry by the Greffier of the States on 10th December 2015.

The Greffier notified PPC that he had received a request directly from the Independent Jersey Care Inquiry (IJCI) on 1st December 2015 seeking the release of the transcript(s) of the *in camera* discussion regarding the suspension of Graham Power referred to in the Hansard transcript of the States sitting on 2nd December 2008. Although the Greffier was conscious that the IJCI was established by the States to conduct a wide-ranging inquiry, it was also apparent to him that he had no authority to release the transcript as requested. Although Standing Orders require a transcript to be made of all States proceedings, Standing Order 160(4) provides that: “*A transcript of any part of a meeting conducted in camera shall not be made public, unless the States decide otherwise*”. It should also be noted that Article 36 of the States of Jersey Law 2005 (which is referred to in Deputy Higgins’ proposition) is in the following terms –

- “(1) Subject to this Part and standing orders, no member of the States or officer of the States and no person employed to take minutes before the States or any committee or panel established under standing orders shall give evidence elsewhere –
 - (a) in respect of the contents of such minutes or the contents of any document laid before any of those bodies; or
 - (b) in respect of any proceedings or examinations held before any of those bodies, without the prior consent of the body concerned.”.

The Greffier, having sought appropriate advice, had therefore written to the IJCI on 7th December 2015 explaining that it would be necessary for the States Assembly as a whole to agree to release the transcript.

Late on Wednesday 9th December 2015 it was brought to the Greffier’s attention by Legal Advisers from the Law Officers’ Department that, the following morning, the IJCI intended to hear evidence from Deputy M.R. Higgins of St. Helier, and that Deputy Higgins had appended to his statement of evidence a version of the transcript that had been published on a blog site in 2012. As a result it was clear that the IJCI would subsequently post this material on the IJCI website after the evidence had been heard. The Greffier considered that this was inappropriate and asked that the IJCI be notified that the version of transcript appended to Deputy Higgins’ statement should not be published but this request was, late on Wednesday 9th December, rejected by the Inquiry.

In the light of this refusal, Mr. Oliver Glasgow, an English barrister assisting H.M. Attorney General in relation to the work of the IJCI, was instructed by the Greffier and by H.M. Attorney General as *Partie Publique* on behalf of the States Assembly, to make an application to the IJCI that morning requesting that the hearing with Deputy Higgins be adjourned. The Greffier was aware that this last-minute postponement would be frustrating for Deputy Higgins, but considered that an important point of principle

was involved and there was therefore no alternative but to make the application. The purpose of the adjournment was to give time for a proposition to be lodged requesting the States to consider whether the transcript should be officially released. This would ensure that the privileges of the Assembly were not infringed and that, if the release was agreed by the Assembly, the IJCI would be given access to the official and accurate text of the transcript.

It should be recalled that the version available on a blog site was created from handwritten notes taken by Deputy Higgins after he came into the States Greffe to read it, and it appears that a typed-up version of those notes was subsequently leaked to a blogger after copies had been distributed by Deputy Higgins during the *in camera* debate on 26th June 2012. The official Hansard has never been released or leaked. (For the avoidance of doubt, it should be stressed that there was no evidence found by PPC in 2012 that Deputy Higgins himself was responsible for the leak of a copy of the document given out during the *in camera* debate.)

The application by Mr. Glasgow on 10th December 2015 was granted, and the hearing with Deputy Higgins was adjourned to allow time for a proposition to be lodged.

By the time PPC met on Monday 14th December 2015 to consider this matter, Deputy Higgins' proposition (P.155/2015) had already been approved for lodging and PPC therefore had to consider whether or not it should be amended.

As drafted, Deputy Higgins' proposition asks the States to agree that the relevant transcripts should be released to the IJCI 'in accordance with the Inquiry's protocols'. Although there are certain limited circumstances in which the Inquiry will redact or not publish evidence given to it, the IJCI has made it clear that, quite understandably, it intends to act openly and transparently and publish on its website all evidence received. As a result, it seems inevitable that the transcripts would be made publicly available by the IJCI in due course once they had been given to the Inquiry.

PPC considers that it would be wrong in principle for these *in camera* transcripts to be made public by the IJCI if they were not also made available by the States Assembly. Consequently, PPC considered 2 possible ways to amend Deputy Higgins' proposition.

PPC initially considered whether it would be preferable to suggest that the transcripts should only be released to the IJCI on condition that they were not subsequently published by the Inquiry. There were strong arguments in favour of this approach. All of the proceedings covered by these transcripts, whether debates or Statements, were conducted *in camera* because of the requirements of the Police Force (Jersey) Law 1974. When members spoke in those proceedings they had a legitimate expectation that their words would not subsequently be made public, and to override that expectation several years later is a significant step for the Assembly to take and could set a dangerous precedent. If the Assembly were to take routine decisions to make the transcripts of *in camera* debates public, it would clearly undermine the entire concept of *in camera* debates. This could then directly interfere with members' privilege of freedom of speech, as members might be unwilling to speak freely when the Assembly was meeting *in camera* for fear that their words might be published at a later date.

Although PPC considered the above arguments carefully it decided, on balance, that there were stronger arguments in favour of making the transcripts public in this specific case. The States Assembly has established the IJCI and charged it with a difficult but

extremely important task. Whether or not the contents of the transcripts are relevant to the IJCI's Terms of Reference, it would be unfortunate, in PPC's view, for the Assembly to do anything to frustrate the Inquiry it has set up. Nevertheless, a matter of principle, PPC considers that the Assembly should remain in control of its own transcripts, and it would be wrong for the IJCI to publish the transcripts if the Assembly itself does not have them available on its own website alongside all other Hansard. Therefore this amendment adds words to enable the transcripts to be made public, as well as releasing them to the IJCI.

Financial and manpower implications

There are no financial or manpower implications arising from this proposition. The transcripts are already available and online publication would have no additional cost.