

Report of the Jersey Electoral Authority to the Privileges and Procedures Committee of the States Assembly



December 2022

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Contents

Introduction	3
Glossary of terms	4
Nomination of candidates.....	5
Nomination form issues.....	5
Confirmation processes	6
Other matters	6
Voter engagement	8
Manifesto booklets - production	8
Manifesto booklets - delivery	9
Hustings	9
Other election communications	10
Campaigning period leading up to election day	11
Placement of election material.....	11
Other events	11
Postal and pre-poll voting.....	13
Resources and timetable	13
Security of postal voting	14
Election day and the immediate aftermath.....	15
Covid-19 / home visits	15
Access	15
“Doubtful” votes	16
Election recount.....	16
Other events	17
Electoral expenses	18
Declarations and audit.....	18
Understanding of the “regulated period”	19
Expenditure on websites.....	19
Allocation of political party expenses.....	19
Third party expenses and donations.....	20
Commonwealth election observers’ report.....	21
Role and performance of the JEA	22
Appointment and methods of working	22
Structure and constraints	22
Code of conduct.....	23
Resolution of disputes	23
Observation of elections.....	24

Introduction

This document is the report of the Jersey Electoral Authority to the Privileges and Procedures Committee of the States Assembly as required by Article 13B of the Elections (Jersey) Law 2002.

Jersey's most recent full public elections were held on 22 June 2022. They were the first elections to be held after a number of significant changes to electoral law, including the creation of the JEA itself, the abolition of Senators elected with an Island-wide mandate and the introduction of postal voting on demand.

The importance of the results of an election are not always matched by the importance afforded to ensuring good administration of the election is possible. Elections can be complex; due to their relative infrequency, "corporate memory" of good processes is likely to be lost between election cycles, and there can be a heavy dependency on voluntary resource which may not always be available in sufficient quantity.

A lack of time to understand and implement change also causes complexity. The JEA believes that if the States Assembly wishes to make changes to electoral law as a result of this report (or for other reasons) it should aim to do so in good time before the subsequent election is due. Should there be a desire to introduce fundamental changes (for example, electronic voting) work would need to start as soon as possible.

The purpose of this report is not to repeat statistical information about the election, which is available elsewhere. In accordance with the legal requirement to produce any recommendations "as to changes to the law and practice relating to elections" it aims to describe particular aspects of the 2022 elections process, and issues that arose, using a thematic approach. Necessarily this may mean that it may appear to take an overly critical view of what was overall a successful election.

In closing, I would like to thank my fellow JEA members for their work and support since their appointment.

John Everett

Chair, Jersey Electoral Authority
19 December 2022

JEA Membership: John Everett (Chair)
 Alex Hodnett (Ordinary member)
 Ellie Sharples (Ordinary member)
 Bev Corley (Parish representative member)
 Adam Clarke (Judicial Greffier, *ex officio* member)
 Lisa Hart (Greffier of the States, *ex officio* member)

Glossary of terms

Elections Law	Elections (Jersey) Law 2002
Expenses Law	Public Elections (Expenditure and Donations) (Jersey) Law 2014
IHE	Department for Infrastructure, Housing and the Environment
JEA	Jersey Electoral Authority
PPC	Privileges and Procedures Committee (of the States Assembly)
PPV	Pre-poll and postal voting

Nomination of candidates

The changes made to the Elections Law included a significant overhaul of provisions relating to nominations, resulting in a process with responsibilities held by both Parishes and centrally by the JEA. In practice, for the JEA this work was carried out by the Greffier of the States and her team.

Although there were perhaps bound to be some issues given this was the first time the revised process was used, **the JEA's view is that consideration should be given to simplifying the nominations process.**

Nomination form issues

The JEA had reviewed the previous nomination form against the requirements of the Elections Law and in response to issues that had previously occurred relating to party affiliation, and made appropriate revisions. Nevertheless it remains a long document, with the need to obtain the consent of a proposer and nine seconders.

Despite attempts to make the provisions clear, there were still at least ten candidates who did not complete the form in the correct order (i.e. proposer and seconders are supposed to sign only after the party affiliation section has been completed, including when the candidate is not standing on behalf of a political party). All such candidates were asked to remediate this situation by the nominations deadline by either submitting a fresh form or getting proposers and seconders to re-initial the existing form. All managed to do so, although at some degree of inconvenience to themselves and their nominators.

It was put to the JEA that imposing the original nominations deadline for this remediation was potentially contrary to the provision in the Elections Law allowing a later deadline for non-compliant forms¹, but this was at the discretion of the JEA and would have then resulted in uncertainty about the final nominations for a prolonged period. In fact **the JEA believes this provision of the Law should be reviewed**, as *in extremis* it would appear to allow an almost incomplete nomination form to be submitted by the nomination deadline, with the candidate taking the view that they would be afforded an extended period of time to then comply with the requirements, which should not be the case.

Several candidates initially, and others once they became aware of the provision of the Elections Law, opted on the form that their home addresses not be made public. In this case they were required to specify an alternative address, but many did not do so and the Greffier of the States was left with little choice other than to use Morier House as the alternate address. **The JEA believes that this is inappropriate and it should be considered whether the option to specify an alternate address should be limited to circumstances where there is genuine risk to the individual of the address being publicly available.**

In some cases candidates left spaces blank (where they felt a section of the form did not apply to them, e.g. criminal convictions) where a positive confirmation was actually required. **A digital version of (some elements of) the form would help ensure completion in this regard.**

¹ Article 17G(5).

Confirmation processes

As set out in the Elections Law, the JEA worked with the Parishes to validate the nomination forms. This included a checklist approach being used by the Greffier of the States. However, it is accepted that this process could have been smoother if there had been greater communication with the Parishes in advance to confirm task allocation. In addition **it would have helped the Parishes if final completed nomination forms had been provided to them**, so they were sure any issues had been dealt with.

Much of the work in this period (for the Parishes and candidates) related to the validation of proposers and seconders against the Parish electoral rolls, whether that be because of the difficulty in discerning handwriting or the need to match exact details against the rolls. Traditionally this requirement existed as a means of demonstrating the candidate had a reasonable degree of support to stand for election, but **the JEA questions its ongoing relevance given the administrative overhead caused. It could be considered whether the requirement could be cut back to simply a proposer and one seconder.** If there was concern that this would lead to a proliferation of inappropriate candidates, **consideration could be given to a modest deposit to stand for election, refundable if the candidate met a low minimum vote threshold.** Reducing the number of seconders would considerably streamline this part of the election administration.

Following the nominations period, the JEA received a small number of requests to review nomination forms (in particular, challenging the details of nominators and seconders). Any challenges made were followed up, but access to parts of original forms which contained non-public information was not granted.

A number of queries were received about the eligibility of candidates based on residence requirements. The JEA sought comment from the Law Officers' Department on the meaning of "ordinary residence" and followed up queries by asking for specific evidence of non-residence. As noted later in this report, the JEA does not consider itself as having detailed investigative powers.

In terms of the need to declare certain criminal convictions, the JEA notes that this process relies on the candidate's self-declaration (and the knowledge of the community in reacting to that declaration). **It could be considered to require candidates to provide a police check certificate with their nomination documents** which would provide some, albeit limited, third party assurance on this issue.

Other matters

The Elections Law contains a provision² which allows a 48 hour period beyond the close of nominations to be used to find additional candidates if there would be vacancies in a constituency as a result of not enough candidates being nominated. However, based on the nominations deadline, this would have covered a Saturday and Sunday causing issues for potential candidates as well as staff of the Parishes and the Greffier of the States in needing to be available/carry out processing. As recommended later in this report, **the election timetable needs re-considering to take full account of practicalities.**

² Article 171.

The JEA is required to publish a candidate announcement by a certain post-nomination deadline, which it chose to do by press release alongside candidate election materials on the vote.je website. It is accepted that the original statement contained a small number of errors which were corrected as soon as possible; the candidate website election material also suffered from some initial formatting issues which were also swiftly corrected.

Voter engagement

This section should be read in conjunction with the later section (“Role and performance of the JEA”), as it is the main area where the JEA had no statutory role, but inevitably became drawn into the work carried out (particularly by the Greffier of the States and her team). It does not set out to be a comprehensive description of all the outreach efforts that took place, many of which were of course by candidates; rather those issues relevant to the JEA are discussed.

Manifesto booklets - production

The statutory basis for these documents sits in the Expenses Law³, and the responsibility for the arrangements for their publication sits with the PPC, which appears inappropriate given that members of the Committee may well be election candidates. In reality, practice has been that the Greffier of the States has compiled manifesto booklets; but given the Law, when a substantive question arose early in the process about the description of non-party candidates in the booklets, the JEA put the question to the Committee. **The JEA recommends that responsibility for the production of these booklets is removed from PPC to avoid any accusations of potential conflict.**

A candidate’s nomination form must be accompanied by their photograph but it is not a requirement that the material for the manifesto booklet is submitted at the same time which can cause delays. **The JEA recommends the requirements for the manifesto booklet are fully integrated into the nominations process.**

Some candidate submissions contained typographical errors which created work in checking whether they should be amended. A number of candidates asked for minor changes to be made later in the process. **The JEA believes candidates should be asked to approve a final proof after which no further changes would be made** (albeit there would have to be a tight timescale for this). A template document could be prepared for use. Regrettably an incorrect telephone number was printed for one candidate in the manifesto booklet.

Some queries were raised as to whether it provided an unfair advantage for sitting members of the Assembly seeking re-election to publicise “gov.je” contact email addresses. **It should be considered whether this is allowed in future.**

With respect to the nomination announcement on the website (see “Nomination of Candidates” section) the JEA understands that consideration had been given to this being linked to an event where candidates gathered to generate publicity for the election. **This did not happen in 2022 but could be scheduled for future elections** - not only to create a greater “fanfare” at the start of the campaigning period, but also on a practical level to provide an opportunity for the candidates in each constituency to meet and determine how they wish to arrange their hustings events (see below) and to allow key messaging about the election process to be communicated in person by the JEA .

³ Article 17.

Manifesto booklets - delivery

The abolition of candidates with an Island-wide constituency meant manifesto booklets tailored to individual constituencies could be produced, saving paper and containing less irrelevant material for voters. However it also meant that Islanders needed to receive the correct manifesto booklets to be of any use.

Manifesto booklets were distributed to all households via Jersey Post at the end of May/beginning of June. Unfortunately there were a number of errors where incorrect booklets were delivered and the Greffier of the States' team worked with Jersey Post to try to rectify this. This included, within St. Helier, efforts being made to confirm which polling station voters needed to attend on election day.

Despite the booklets having been proof-read, one candidate was inadvertently identified as a member of a party rather than as an independent; understandably the candidate was very concerned by this. Upon identifying the error, the Greffier of the States contacted Jersey Post and were advised that 90% of the brochures had already been delivered in the constituency concerned, so a decision was made to produce and circulate a correction flyer, which was sent to all households in St. John, St. Lawrence and Trinity from 30 May. Islanders were also notified of this error via a press notice on vote.je and social media.

However it then transpired that, contrary to what had been originally reported, many of the booklets had not been delivered and those remaining had instead been destroyed by Jersey Post. Following discussions, an updated booklet was reprinted and distributed starting on 16 June, at the expense of Jersey Post. After polling day the JEA Chair and a member of the Greffier of the States' team met with Jersey Post at senior level to discuss the issues concerned, and Jersey Post carried out their own review of what had happened and have produced a review document with several recommendations for improvement which can be implemented for the next full elections.

Post codes, postal delivery rounds and electoral boundaries do not always coincide so there needs to be a particular focus on data quality around constituency boundaries, with Parishes, the company engaged to deliver manifesto booklets and the team of the Greffier of the States working closely together.

Hustings

Traditional in-person hustings continued to be held and, following a decision of the States Assembly, were filmed by vote.je. Queries were directed to the JEA concerning the chairing and editing of such hustings, neither of which fell within its responsibilities. The JEA did however publish advice that it would expect all relevant candidates to be able to attend events and that negative intentions should not be inferred where a candidate was unable to attend an event due to short notice/other commitments. Organisers of events sometimes sought to limit participants by requesting only one party candidate attended.

Candidates reported being overwhelmed with the number of individual organisations and sectors inviting them to participate in hustings events **and the JEA recommends it is considered whether some "official" events should be organised centrally to ensure a minimum level-playing field.**

Other election communications

In January, an A4 leaflet explaining how “Elections are Changing” was delivered to Island households. The leaflet included details of changes to the electoral system, the importance of voting, how to vote and information about standing for election. Printed copies and online versions were available in English, Jèrriais, Portuguese, Polish and French. Copies were available in key locations such as the Town Library, Citizens Advice, Parish Halls and also distributed via Caritas Jersey.

Unfortunately, as this was sent out before the JEA had met to determine key dates, some of the information was incorrect. The “Postal and pre-poll voting” section of this report refers to issues around the letters distributed by the Parishes to households in March. Given the changes to elections, clear communication was vital and **there could have been greater co-ordination on what was sent when**. As noted later in this report, **the JEA recommends the election timetable is reviewed and this should include consideration of when engagement with voters will take place** (both as required by Law or additional non-statutory communications).

The Island does not currently use polling cards, delivered to voters close to election day as a prompt. **The JEA recommends that as part of a communications review their introduction is considered. At the same time, the JEA believes it should be made an electoral offence for candidates to make campaigning material look like official election documentation.**

Campaigning period leading up to election day

This section describes a number of events (in no particular order) which took place before election day, which are not otherwise mentioned in the remainder of the report.

Placement of election material

The JEA Code of Conduct asked candidates to follow the guidelines produced by the IHE in terms of placement of election material. Unfortunately, an old version of the guidelines was incorrectly supplied to the JEA even though the IHE had already prepared a revised version. When the new version was finally circulated, some candidates who had already placed material on the basis of the previous guidelines were adversely affected.

Queries were also received about the placement of election material in the vicinity of polling stations. The Elections Law is clear that this is a matter for the relevant *Autorisé*, to whom such communications were passed.

Other events

One candidate chose to withdraw from the election before polling day; the Judicial Greffier assisted the individual in making their notification to the Royal Court and the Royal Court made appropriate orders for the election concerned.

In terms of ballot papers, election changes meant the content of ballot papers potentially differed from previously (for example with multi-parish ballot papers for Deputy elections and the “none of the candidates” option). The JEA provided some advice on the requirements (and offered to review ballot paper proofs) and **it should be considered whether centralised ordering of ballot papers would be more efficient for future elections.**

The JEA felt it necessary to issue a statement effectively reminding Parish and other public sector staff of the need to remain neutral in the election process, when operating Parish social media accounts, etc. A query was received concerning the strength of controls on government announcements during the election period. **The arrangements for the policing of any guidance issued for future elections should be considered**, as the current versions do not appear to envisage a role for the JEA despite its jurisdiction over (some) complaints⁴.

Queries were received over whether it was possible for groups of candidates to be formed outside of the structure of a registered political party (e.g. “Better Way”). The Elections Law does not preclude such alliances and they do not gain the advantage of being able to have the name of their group on the ballot paper for relevant candidates. **The JEA believes the Expenses Law should be reviewed to confirm no advantages accrue to such groups over registered political parties in terms of election spending.**

⁴ The “Guidance on government activity during the election period” issued on 4 April 2022, refers to Ministerial Code compliance procedures, “including reference to the Commissioner for Standards”.

A candidate commented that they had had difficulty in accessing electoral registers across the Parishes; access was provided using Microsoft Teams. **The JEA notes that provision is built into the Elections Law to provide for a central electronic register to be constructed and a decision on whether this is to be done should be made as soon as possible.**

Postal and pre-poll voting

While pre-poll voting has been a familiar feature of Jersey elections, these were the first polls in which postal voting was available on demand. The Judicial Greffier is charged with the responsibility for the administration of both these activities. Clearly, it was difficult to forecast the likely take up of postal voting given the wider access to it; equally, the JEA felt that this increased access meant a slight reduction to the pre-poll facility compared to the last public elections was justified.

In the event, some 1,500 votes were cast at pre-poll and some 2,700 by means of post. **The JEA believes that for reasons of cost, complexity, ballot security and access, it is worth re-consideration of what methods of voting should be available in future** – setting aside larger issues such as electronic voting, this should consider whether pre-poll and postal voting on demand are both necessary, together with the potential introduction of proxy voting as an additional/substitute method (noting that this would create additional administration).

Resources and timetable

In practice, the Judicial Greffier appointed, and delegated his powers to, a PPPV manager (who is a Greffier Substitute and a permanent senior member of the Judicial Greffe staff). The PPPV manager led a team of around 25 staff and secondees to populate the designated pre-poll location and undertake the voluminous administration involved in pre-poll and postal voting.

The decision was taken to set the window for those wishing to apply for postal voting to send in their applications forms (online) between 4 April and 1 June to allow a focused administrative project between those dates. However this did not occur, as despite the clear wording on the application forms and the communications available on vote.je, many voters submitted their application forms prematurely or contacted the Judicial Greffe to raise questions and seek additional copies of the form, after a single copy was included with the “Notice of Registered Voters” letters issued under the Elections Law in the first two weeks of March. While done with the best of intentions, this had a substantial impact upon election preparation and administration within the Judicial Greffe.

It proved difficult for the Judicial Greffe to build the project team necessary with the usual source (agencies) failing to provide the numbers required. Staff were seconded from other Government departments who in some cases recharged for the time of those employees, thereby increasing the anticipated costs of staffing the election work. The total cost of staffing the PPPV team was just under £50,000.

A greater number of postal votes creates a work bottleneck - for example, because no ballot papers can be sent out until the ballot papers themselves have been finalised and printed, which obviously cannot happen until after final validation of nominations. After the ballot papers become available, they need to be stamped before they can be sent out. On the timetable for these elections, this meant the PPPV team were not able to send ballot papers until the very end of May, which was running into the time when work needed to be carried out on pre-poll (and also some voters were starting to chase for their ballot papers, given that they needed time to complete and return them before election day). Ideally postal ballot papers should not be received by voters before manifesto booklets have been delivered.

It could be expected that the number of postal votes will increase in future elections, and these issues would then become even more challenging to good administration of the election. Notwithstanding the recommendation above about re-consideration of voting methods, for this and other reasons noted in this report, **the timetable for the whole elections should be fully reviewed to flag and resolve practical bottlenecks.**

Inevitably with a postal exercise, some ballot papers were received back after election day and so were not counted in the election. Some early publicity suggested the deadline for return of postal ballot papers was a few days earlier than the Elections Law allowed, but this was amended. Where more than one postal vote was requested by a household, some feedback was received that it was not clear which ballot paper was to be completed by which voter. Queries were also received about why it was possible to apply to postal vote for one type of candidate (Connétable/Deputy) rather than having to do so for both/neither. In the UK, requests to vote by post can be made until further notice (rather than election-by-election). **These matters should be considered before the next election.**

Security of postal voting

Compared to voting in person on election day, postal voting on demand provides greater accessibility but less security, not only because ballot papers are removed from a secure polling room environment but also because there is no “visibility” of who has actually filled in the ballot paper.

In terms of the latter issue, the postal voter returns a signed form (in a separate envelope) with their postal vote. Postal votes can be received up to and including election day itself and then need to be passed to the respective *Autorisé* for validation and inclusion in the poll. There is no facility at the moment to cross-reference the signature returned with the ballot paper to the signature on the form applying for the postal vote to see if they match (and if not, for appropriate action to be taken).

The JEA believes an earlier deadline could be set for the receipt of postal votes to allow for checking (a sample) of such signatures before election day. This could be done centrally or by each *Autorisé* (noting that the postal vote application forms are held centrally).

Election day and the immediate aftermath

This section sets out a number of events that took place on or around election day, or are linked to the process of voting, which are not otherwise mentioned in the remainder of the report.

Covid-19 / home visits

Unfortunately, election day and the period just before saw an increase in the number of individuals testing positive for Covid-19. This put stress on both the availability of election staff themselves, but also a material increase in the number of people who wanted to vote but also did not want to expose others to the virus. *Autorisés* used creative solutions such as allowing people to complete ballot papers in their cars, but the system of “on the day” home visits was stretched beyond anything it was designed to cope with, and despite the best efforts of staff of the Parishes and the Judicial Greffe, there were undoubtedly people who did not in the end get to vote. As noted earlier in the report, **the Elections Law does not currently allow proxy voting which would have provided another means for votes to be cast on behalf of those unable to attend the polling station.**

In terms of election staff/volunteers, potentially the JEA could play a role in terms of co-ordinating resource sharing across the Island to increase the resilience of the election. An exercise could also be conducted to consider what would happen if there was a severe disruptive physical event on election day.

With regard to home visits that took place before election day, an allegation was made by members of a political party that staff of the Judicial Greffier had not on occasion waited long enough at a dwelling before concluding no one was in and leaving. The accusation is denied, but it is noted that staff generally tried to visit on a number of occasions if workloads permitted. Feedback was received from some voters that they had not in fact wanted a home visit but they had signed up to request one under pressure from campaigners whom they wanted to cease interacting with.

Access

Members of the JEA visited almost all polling stations on election day and, without carrying out a formal audit, noted the presence of ramps and other devices to facilitate physical access.

The Elections Law requires that all ballot papers in a constituency election be identical (other than their counterfoil number). One voter highlighted that this caused difficulties for those with sight issues, as it seemingly prevents the creation of larger-print ballots. **This provision of the Law should be reconsidered, and all material about the election/electoral process should be available in large print, including that concerning applications for postal voting.**

High contrast ballot papers should be adopted as standard (for example, strong black print on a white/yellow background) to aid those with visual impairments. **In advance of the next elections it would be helpful for the JEA and others to meet with relevant organisations to fully understand the needs of all voters.**

A voter noted that they were disappointed not to be able to be accompanied into the voting booth by an individual of their choice (to help them vote) rather than a Parish official. This is a protection from improper influence being placed on voters when completing their ballot and so should be retained; however proxy voting would allow a trusted individual to cast a vote in these cases.

Issues around home visits are discussed above.

“Doubtful” votes

One voter contacted the Greffier of the States having turned up at their polling station and found that their name had already been marked on the register as having voted (at pre-poll). Having discovered that they could complete a ballot paper but that the vote would not be placed in the ballot box or counted, the voter was naturally upset and concerned that their right to have their opinion counted was being denied, through no fault of their own.

The JEA Chair discussed this issue with the voter concerned after election day. While the process is necessary for preventing fraudulent attempts at casting multiple votes, it does not seem helpful that these ballots are described in the Election Law as “doubtful votes”. In the UK such votes are referred to as “tendered ballots” and **this more neutral language should be considered for adoption.**

The importance of pre-poll and polling station staff marking the correct voter on the register should be emphasised in any training provided.

Election recount

Autorisés were asked to complete detailed results sheets (“Report and Reconciliation Forms”) as counts took place overnight. On later review of these sheets, in some cases there appeared to be some errors in the tabulation of numbers, cross-checks, etc.

In the case of the form for the St. Saviour Connétable election, the Judicial Greffier noted that a discrepancy between the recorded number of valid ballots and the number of votes cast for the two options for voters (the candidate and the “none of the candidates” option) was larger than the majority by which the candidate won the election. The Royal Court therefore ordered a recount to be held which was conducted by the Master of the Royal Court in July, which did not change the result. It was not alleged that there was any sort of electoral fraud involved.

Training was provided to the *Autorisés* on completion of the results forms but it is perhaps inevitable that some mistakes may be made late at night given the level of detail requested and the amount of other activity required on election day (including for example the validation of postal votes). Given the amount of work demanded of volunteers, **the JEA believes consideration should be given to holding election counts the day after the election rather than immediately after the close of poll, as long as election material can be appropriately secured overnight. The JEA recommends that the required level of detail in results forms is reviewed and that completed forms are scrutinised as soon as possible after the count is completed so that any errors can be addressed straightaway.**

Other events

A query was received from a voter who suggested that electors were being encouraged to only take ballot papers for one of the Connétable and Deputy elections in their constituency, rather than both. The requirement under the Elections Law is that the voter is asked which papers they want. **The JEA suggests this element of questioning is removed from the Law and all relevant papers are given automatically to each voter.**

Queries were received about the consistency of a secret ballot with ballot paper counterfoil numbers being marked on the register. *In extremis*, the electoral system works on the basis that a vote can be identified, but there are strict safeguards about the sealing of material immediately after the election count and its eventual destruction. Only the Royal Court can order the opening of the sealed material (as happened with the recount mentioned above). It must be remembered however that there are communities in Jersey who have lived in societies where ballot secrecy would not be so respected and the relationship between the state and the citizen was oppressive. **It could be considered whether confidence could be reinforced if the destruction of previous election material took place after public demonstration that the previous seals were still intact.**

It became clear on the morning of election day that the polling station “finder” on vote.je was giving incorrect results in a small number of cases. This was rectified as soon as possible, but was unfortunate when combined with the problems with manifesto booklets mentioned earlier in this report.

As usual, complaints were received that candidates had not removed all their election material in a timely fashion (despite this being a requirement of the Code of Conduct). **Consideration could be given to making non-removal (following notice) a matter subject to an administrative fine.**

Electoral expenses

The changes made to electoral law before these elections included duties under the Expenses Law being transferred to the JEA. As part of this, the JEA updated and published the various forms to be used by candidates under the Expenses Law.

Declarations and audit

All candidates submitted their election expense declarations on time⁵.

The JEA had given prior consideration to the extent of the audit it would carry out on expense declarations, noting that this was within the discretion of the JEA. This included discussions with the Comptroller & Auditor General who produced a highly comprehensive proposal, although the JEA concluded in the end that it would not be cost-effective given the relatively low spending limits in place.

Instead JEA members held several meetings to review declarations and supporting documentation. This included comparisons of candidates' claims, increased scrutiny where candidate's expenditure approached the spending limits and follow-up queries where further backing information (receipts, etc.) was felt necessary to properly review a declaration. In terms of political parties, the JEA also reviewed material allocating party expenses between candidates; in some cases party candidates also declared their own additional expenses.

Communications from the JEA could have been clearer about the approach to candidates supplying supporting expenditure documentation and in this context **the Expenses Law should be clarified to allow a general disclosure requirement to be imposed so candidates are aware of their responsibilities in advance.**

All candidates (and Treasurers of political parties) responded to the JEA's queries⁶ and the JEA was satisfied that the declarations were accurate. As required by the Expenses Law the declarations were published (on the vote.je website).

The JEA considered that one donation had been reported late, and as set out in the Expenses Law, passed this information to HM Attorney General. The JEA understands that the Attorney investigated the matter and does not intend to take further action.

Under the Expenses Law, there is the ability for candidates to make supplementary declarations in the case of error or omission, within a certain period of having discovered the issue. **The JEA recommends the Expenses Law is clarified to prevent this being an open-ended ability.**

⁵ One candidate, due to extreme medical circumstances, was unable to sign their declaration which was submitted on their behalf by their political party.

⁶ Candidates need to remember to carry on checking email addresses set up for the election after election day itself.

Understanding of the “regulated period”

Some confusion resulted from a mis-interpretation of the Expenses Law with respect to what expenses (timing-wise) counted against spending limits. The Expenses Law sets a regulated period covering the four months before election day; but the spending limits include the cost of material used for electioneering during the regulated period, no matter when it was incurred (not just costs incurred during the regulated period itself).

This prevents a candidate from incurring unlimited expenditure, say, five months before election day on material they intend to use to promote their candidacy nearer to the election, but also means records need to be kept of any such spending even though it is before the start of the regulated period.

Consideration could be given to simplifying this requirement to only control spending during the regulated period, if it was felt that it could not be abused by “early” spending, perhaps with an extension of the regulated period. It is notable at the moment that re-used goods (i.e. posters used at previous elections) are not counted against expenditure limits if they were declared at previous elections.

Expenditure on websites

Election posters and leaflets (with a limited life) remain a mainstay of campaigning. However the issue of accounting for expenditure on websites was raised with the JEA. Websites may well have a longer lifecycle (for ongoing communication with voters if a candidate is elected, for example) and also serve additional purposes other than to “promote or procure [a] candidate’s election” which is the test for whether something is an electoral expense (for example, pages on a website asking people to join a political party).

The issue that arose, then, was how much of the cost of a website should be counted towards expense limits. Having considered this matter, the JEA took a pragmatic approach (which it published) that a proportionate allocation of costs, specifically related to procuring the election of candidates, should be included – so long as it could reasonably be justified.

The JEA believes that it would be beneficial for work to be carried out between each full public election to review and update the methodology for calculating expenses as campaigning methods change.

Allocation of political party expenses

Expenses incurred by political parties were often divided equally between their candidates. It was put to the JEA that this system could be gamed by campaign spending effectively being focused on a hotly contested constituency but then being allocated equally across all of a party’s candidates (and so falling below each individual candidate’s expenditure limit).

The Expenses Law, as currently written, appears to envisage equal allocation as the default unless the candidates themselves prove to the JEA that the allocation should be unequal⁷, which in the above scenario would not be in their interests.

The JEA took advice on this matter from the Law Officers' Department and was prepared if necessary to challenge any default allocation where there was evidence that was not correct. In the event no such cases were found.

The JEA believes that further consideration should be given to clarifying the Expenses Law with regard to the allocation of expenses for "grouped" candidates, to ensure they do not have an advantage over those standing individually.

Third party expenses and donations

In addition to candidates, the Expenses Law attempts to control the election expenditure of "third parties", which are defined as a person or group (not candidates or acting with the consent of candidates) who incur expenditure to promote, procure or prejudice the election of a candidate. Such third parties need to file an expenditure declaration if their spending exceeds £600.

Clearly, expenditure was undertaken in some Parishes in support of "none of the candidates" campaigns for Connétable elections. However the JEA had no indication by whom the expenditure was incurred or the likely quantum, to consider if there had been a breach of the Expenses Law.

The JEA pro-actively contacted one third party (not related to the above campaigns) to draw their attention to the requirements of the Expenses Law and invite them to consider whether a declaration would be needed (again the JEA had no information about the quantum of expenditure and did not make a determination that the activity that had been undertaken definitely constituted declarable election expenses). The third party responded to the contact, and did not make a declaration. In fact no third party declarations were received.

It can immediately be seen that the declaration requirement is largely unenforceable, especially where third parties carry on their campaigning activity anonymously. **The JEA believes that a third party regime is necessary but recommends that thought is given to how these provisions can be made to work practically** (perhaps through some kind of registration process).

Finally, there is a question around whether the £600 threshold applies across all the elections held or in each individual poll (i.e. if the same third party decides to campaign for or against several different candidates across the Island). **This matter should be clarified.**

⁷ Article 3(7).

Commonwealth election observers' report

The Commonwealth Parliamentary Association sent an Election Observation Mission to the Island for the elections and published their final report in October, which contained fourteen recommendations. The JEA were questioned by the observers as part of their mission.

None of the recommendations were directed specifically and solely to the JEA and they are properly for politicians to consider. However most of them, if adopted, would affect the administration of elections to some extent and so **the JEA believes that if they are taken forward any practical aspects must be fully considered.** Some align with topics commented on elsewhere in this report.

Commentary specifically about the JEA in the report was mixed, noting that *“The JEA’s contribution to these elections was limited. The JEA was created late in the electoral cycle, which impeded its full functioning.”*

Role and performance of the JEA

Appointment and methods of working

As required by the Elections Law, the non-*ex officio* members of the JEA were appointed by the PPC at the beginning of February, following presentation of a report to the States Assembly in January. This was later than ideal for the individuals taking up their roles although the group had met on a “shadow” basis prior to their formal appointment to understand some immediate timetabling decisions that needed to be taken once appointment commenced.

Bev Corley was nominated to be the Parish representative member of the JEA.

It should be noted that the non-*ex officio* members were all appointed for four-year terms, which means their terms of office will expire simultaneously, close to the next full public elections. **It is recommended that future appointments are made on a staggered basis to avoid significant loss of corporate memory should no members seek, or be eligible for, re-appointment.**

The JEA adopted terms of reference and held meetings initially fortnightly, then weekly and as needed. Meetings were often held virtually via Microsoft Teams.

Structure and constraints

The non-*ex officio* members of the JEA volunteered for their roles in the interests of helping the Island. The positions are unremunerated. On reflection, all have felt that the time commitment required was greater than they had expected. The Greffier of the States, the Judicial Greffier and the Parish Representative all have their own full “day jobs” in addition to their JEA roles. **This is an important point which should be borne in mind in considering any changes (particularly those that would extend or increase the role of the JEA).**

The construction of the JEA is somewhat curious: is it intended to be an oversight body or an operational one? In terms of performing an oversight role, it is conflicted by having *ex officio* members involved in the delivery of election tasks and indeed by having an executive role itself in, for example, the nominations process. It could be suggested that, in corporate terms, it is similar to a board of directors of a company containing both executives and non-executives, but it is not clear that this model is effective for the role a body such as the JEA is intended to play (which might be expected to be more akin to shareholders taking a view on the success of a company’s operation by its board). **This is a key question that needs to be resolved as soon as possible.**

Unsurprisingly, given it was newly created, but also because of the structural issue highlighted above, there was a lack of understanding of the role of the JEA. This particularly manifested itself with the public in the limited scope of complaints the JEA was able to consider (see below) but more fundamentally, where for example the Judicial Greffier or the Greffier of the States (or their teams) were carrying out election related tasks, whether these were being carried on under the auspices of the JEA or not. More often than not, based on the JEA’s statutory responsibilities, the answer would be “not”, but this was a cause of potential difficulty. From the public point of view, once something is called the “Electoral Authority”, its limited scope for action in many areas was a source of surprise and frustration.

Much work on voter engagement was carried out by the Greffier of the States' staff, who naturally sought to ensure that this was in line with the JEA's wishes/expectations, even though such confirmation was not within our power to give. **It is important that the JEA's role in this particular aspect of the election process is clarified.**

More generally, the non-*ex officio* members of the JEA wish to express their concern that election administration activity be properly funded in terms of budget and personnel. This specific question is discussed earlier in respect of postal voting, but **a proper assessment needs to be undertaken of what is needed to run an election with the desired level of public engagement and provide for that**, not for the Greffiers to be having to run election activity "off the side of their desks" with all their other duties.

The role of the Parish representative is a crucial link between the JEA and the Parish electoral administrators. Like the Greffiers the Parish representative also has a day job, and the difficulty of consulting across the Parishes, sometimes on very short timescales, has been noted. Different parishes also have different perspectives on the election depending on which type of constituency they are part of. **The JEA and Parishes must work together effectively and to that end communication and representation may need to be strengthened.**

It is understood that the JEA is expected to seek to improve administration of elections over time. To do this would likely require JEA members to attend events and training relevant to election administration to understand best practice and emerging developments, and liaise with their counterparties in other jurisdictions, in order to understand how improvements in Jersey can be made in an appropriate and proportionate manner. **No budget for such work currently exists.**

The JEA has noted areas for improvement in this report, including in its own performance. Third parties have also made comment on the (administration of the) election. Ultimately it is for PPC and the States Assembly to judge the performance of the JEA and to make any changes to its constitution, remit and powers felt appropriate. As mentioned earlier, **ideally any such changes would be made significantly before the next full public elections.**

Code of conduct

The JEA produced its Code of Conduct, as required, early in the election process and candidates were required to indicate intended compliance as part of their nomination declaration.

Issues that arose where there were indications that the Code may not have been followed are covered immediately below (and in the "Campaigning period leading up to election day" section of this report).

Resolution of disputes

The scope of complaints that could be dealt with by the JEA were significantly limited by the Elections Law. Complaints had to be made by a candidate and could only be about another candidate or an individual carrying out election functions. The JEA received many enquiries which were ineligible for consideration under these terms but would be classed as "complaints" in the ordinary meaning of the word. Themes covered by these enquiries included election material (and its siting), use of social media and comments made at hustings.

The States Assembly chose not to use its power under the Elections Law to make (further) provision around the powers of the JEA or processes to be followed in respect of eligible complaints. In light of this, the JEA felt it necessary to take advice from the Law Officers' Department about what possible outcomes could result from consideration of a complaint; for example, *in extremis* could the JEA disqualify a candidate? **This matter remains to be clarified.**

On process, the JEA decided to adopt a transparent process whereby the substance of allegations and responses would be shared with the subject of the complaint and the complainant respectively. This also reflected the fact that the JEA does not consider itself to have any substantive investigatory powers over people and documentation.

As noted above, the JEA understood that there could be a conflict in its dispute resolution role if the party complained about was a JEA member themselves (or a member of their staff in the case of the Judicial Greffier or Greffier of the States). In the situation described in the "Voter engagement" section of this report about the incorrect party identification of the candidate, it was noted that the Greffier of the States could have effectively been the subject of a complaint and she recused herself from further discussions. In the event a formal complaint was not made.

The JEA decided to refer complaints about the siting of election material to the IHE to consider against its guidelines, and take appropriate action. The JEA understands that the approach adopted by the IHE was to remove material it considered caused a danger but not otherwise. **The JEA believes that the extent of planned enforcement activity should be clear from the guidelines**, as comments received made it clear those who had reported misplaced election material were disappointed when no action appeared to result.

The JEA did not uphold the one eligible complaint that it considered. This had several strands but focused on alleged inappropriate actions taken against a candidate in a Connétable election. As part of consideration of the eligibility of the complaint the JEA had to take advice from the Law Officers' Department about the extent of the scope of whether an individual could be considered to be "carrying out functions in connection with the election". Overall, on reflection the JEA believes it could have dealt with the complaint slightly more quickly than it did.

The JEA believes that its role in dealing with disputes needs to be re-considered. However, if this led to a desire to widen the scope of complaints that could be dealt with, full consideration would need to be given to the JEA's powers (both in terms of investigation and outcome), the creation of a formal process and appeals mechanism and its interaction with the role of the Royal Court and the "disputed election" provisions of the Law. Dealing properly with complaints is a time and resource heavy activity, and so the prospect of a considerable increase in the workload of the JEA would also need to be taken into the account, particularly given the ease of disagreements arising from the use of social media.

Observation of elections

Members of the JEA visited almost all polling stations on election day but chose not to attend any individual vote counts, instead meeting together at Morier House. The JEA Chair attended the recount of the election for Connétable of St. Saviour (see "Election day and the immediate aftermath" section).