

STATES OF JERSEY



PROCEDURES OF THE STATES: MISLEADING INFORMATION AND SELECTION OF SCRUTINY CHAIRMEN AND MEMBERS

Lodged au Greffe on 12th October 2011
by the Deputy of St. Mary

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

- (a) to request the Privileges and Procedures Committee to ensure that a review of the question of the accuracy of information provided to members is undertaken (with the review either being undertaken by the Privileges and Procedures Committee itself or by the Committee including this matter in any future review whose remit includes the procedures or running of the States) with the review to include also an assessment of the appropriate mechanisms that should be put in place to ensure that cases of members seriously misleading the Assembly, whether by providing false or misleading information or by withholding information which should not have been withheld, can be dealt with in an independent, appropriate, fair, and reasonably swift manner; and

- (b) to request the Privileges and Procedures Committee to ensure that a review of the method of appointment of the Chairmen and members of Scrutiny Panels and the Public Accounts Committee is undertaken (with the review either being undertaken by the Privileges and Procedures Committee itself or by the Committee including this matter in any future review whose remit includes the procedures or running of the States) with the review to consider whether it is appropriate that all States members are entitled to vote both for Ministers and for the Chairmen and members of Scrutiny Panels and the PAC.

DEPUTY OF ST. MARY

REPORT

Part (a) – misleading information

Introduction

1. I have sat in the States for 3 years now and I have been shocked at the number of times the Assembly has been misled by Ministers,¹ often on matters of the highest importance, sometimes on matters one could say were less important.
2. But that is not the point, is it? The evidence shows that certain politicians believe that misleading the States and the public is an acceptable political tactic. I deduce that they believe that it is acceptable, because that is what they do.
3. But (and I would hope that members agree on the principle) it is NOT acceptable.
4. The States is the highest authority in Jersey. It is therefore axiomatic that it should itself follow the highest standards of integrity. For example, how can we insist on the highest standards of governance within quangos, charities, financial services providers, if we do not ourselves follow the highest standards?
5. How can we command the respect of the public if we act dishonestly? How can we engage with them to find the best solutions to questions, if they are suspicious of us? I think the record of public consultation shows they (or those that continue to participate) are very forgiving, but that must not be used as an excuse for inaction.
6. I want to see an island where the relationship between people and government goes beyond respect to genuine warmth, an island where this political divisiveness is a thing of the past, where government departments act openly and transparently as their default position, where there is a true partnership between States and people. Good heavens we are an island of just over 90,000 souls, if we cannot do it, who can?
7. There are other reasons for taking action. The lack of integrity has very serious consequences – it is bad for our employee relations, it tips us towards the politicisation of our civil service, and it has divided and polarised the Assembly.
8. In the rest of this report I will give members step by step examples of the spin, misleading statements, and stonewalling surrounding the suspension of Graham Power, the hedging of the incinerator contract, tax and spending policy, and other matters. I shall point up also as I go along the consequences mentioned in the previous paragraph.

¹ Curiously, the disease does not appear to have reached the back benches. However the disease would be just as serious if it managed to spread there also, the remedy put forward in part (a) of this proposition would apply, of course, to ALL States members

9. I have no doubt members will have their views as to WHY this has gone on, and whether it has got worse under this present Council of Ministers. These are extremely important political questions for members, and the public, to reflect on. But I would caution against too great a focus on these aspects.
10. What this proposition is trying to do is offer members a way of lancing the boil and hopefully creating a better government by doing so. I did think of taking up some of these issues by lodging complaints – but under the present system the complaints go to none other than the Council of Ministers!
11. This is self-evidently absurd and I would hope that what emerges is some sort of independent complaints board which would first filter, and then investigate complaints about misleading information. I cannot really see how else this issue can be tackled and I describe this at Appendix 1.

Misleading the Assembly – case studies

12. In this section I will show how extensive the problem is. I will briefly summarise the most significant cases I have come across.
13. I would remind members, the issue is not the results of these debates, arguments or whatever. The issue is the single one of honesty and integrity. Can we allow behaviour such as that I will describe in these case studies, to continue?
14. These cases are –
 - **Failing to hedge the Euro – who was responsible?**
 - **True financial position regarding the EFW – not informing the States**
 - **‘Graham Power was “willing” to cooperate with the Napier review’**
 - **‘States spending went up 30% in 5 years’!**
 - **‘I will not increase GST’**
 - **population debate 2009 Strategic Plan – the vanishing of 2600 people**
 - **population – ‘who will have to leave first?’**
 - **population – spinning the views of the public**
 - **oral questions – time allowed in other jurisdictions.**

NOTE the single quote marks indicate rough quotations of the gist, double quote marks are always exact quotations. I will follow this convention throughout.

15. Members will notice that the majority of these cases are about the very biggest issues which face the States: the incinerator, the suspension of the Chief of our island police force, the debate around taxation and spending policy, GST, and population. You would be hard pressed to find a bigger set of issues – yet these are the very issues where these cases of misleading the States occur.

Case study 1 – Failing to hedge the Euro – who was responsible?

16. The official line has been to say that it was the Treasurer's fault. The trouble is, it wasn't. Or at the least the responsibility is shared (between TTS and the Treasury). A key part of the case "against" the Treasurer was that Senator T.A. Le Sueur, Minister for Treasury and Resources at the time, did not know that there was a problem with the Euro.
17. On July 3rd 2010 our present Chief Minister, Senator T.A. Le Sueur, then Minister for Treasury and Resources, told the Public Accounts Committee the following –

Senator B.E. Shenton:

When Senator Ozouf appeared before the panel he said that he was aware of the hedging problem within a few hours of taking office and that it was one of the most serious things he had to deal with. When did you first become aware that there was a problem with regard to the currency hedging issue?

Senator T.A. Le Sueur:

Some time early in December. (*my emphasis*) I cannot give you an exact date but certainly early in December.

Senator B.E. Shenton:

So it would be around about the time that Senator Ozouf was aware and not before that?

Senator T.A. Le Sueur:

Probably before because I was speaking to the Treasurer from time to time on a variety of things, so while equally Senator Ozouf would have been aware when he became Treasury Minister, I was aware probably slightly before he was Treasury Minister but I made him aware when he took over from me.²

18. However the statement about December is simply incorrect. Or, to be more precise, it is almost impossible to explain within the normal use of English. On Sunday, May 18th a senior official of the Treasury sent to his Minister a draft report and proposition for the funding of the plant, and he set out in the accompanying briefing paper the overall costs of the project.
19. **He also discusses in full the currency risks** ending with the words: "*The cost of the risk being c.£1.97 million now (the price of the option) and a worse case scenario being £6 to 7 million with no option in place for the entire period to 31 October 2008 (based on the Hewitt exchange rate advice).*"³
20. I reproduce the relevant paragraphs of the CAG's report at Appendix 2

Case study 2 – True financial position re the EfW – not informing the States

21. The above had clear financial implications for the cost of the project. Either the States must hedge the risk at an estimated cost of around £2 million, or

² PAC hearing transcript

³ CAG's Report ENERGY FROM WASTE PLANT - MANAGEMENT OF FOREIGN CURRENCY EXCHANGE RISKS, March 2009, paragraphs 101-103 (R.24/2009)

there was a risk of losing up to £7 million. But this information was withheld from the States.

22. Also withheld was the fact that by the time the States were debating the as yet unapproved EfW the cost had already increased, due to exchange rate movements, from the figure stated in the propositions of £106.36 million to £109.93 million, an increase of £3.57 million.⁴
23. As the CAG writes (paragraph 394): *Inevitably, the rate of exchange used in P.73/2008 was that which applied in May 2008 when the Proposition was lodged au Greffe. By 9 July 2008, the rate of exchange had changed.*
24. But no one said a word. The 2 Ministers kept silent on all these additional costs. They seem to have been operating on the basis of “don’t frighten the chickens.” We are talking about the biggest capital project the island has ever seen. There will be further projects of this size – let us get proper arrangements for transparency in first.
25. There are two points of great importance to be made about this case. The first is that the Assembly can be just as seriously misled by information being withheld, as by false or misleading information being given.
26. And the second is the implications for attracting and keeping our senior staff. The senior official who on Sunday, May 18th sent the briefing paper and draft report and proposition for funding the incinerator resigned 2 days after the debate was concluded.⁵ Members may draw their own conclusions.

Case study 3 – ‘Graham Power was “willing” to cooperate with the Napier review’

27. On 30th November 2010 our Chief Minister told the States: “The former Chief of Police confirmed to the Deputy Chief Executive in a letter dated 31st March 2010 that he would **fully participate** in the investigation (i.e. the Napier review).” (*Hansard, oral questions*)
28. What Graham Power actually wrote in that letter was: “For the **avoidance of any doubt whatsoever**, it is my firm wish to assist Mr. Napier with his review **provided that** I am able to do so with a clear understanding of my position.” And there are further caveats and conditions. By leaving out Mr. Power’s strong reservations, Senator T.A. Le Sueur inadvertently misled the States. (*all emphasis mine*)
29. This account of what Mr. Power, our former Chief of Police actually wrote was repeated again and again by our Chief Minister in both oral and written questions. Here for example is a Written answer on 29th March 2011:

⁴ See CAG op. cit. Paragraph 33

⁵ CAG, Paragraph 110

“1.8 THE DEPUTY OF ST. MARTIN OF THE CHIEF MINISTER REGARDING THE NAPIER TERMS OF REFERENCE:

Question

On 29th March 2010 the Deputy Chief Executive wrote to the former Police Chief Officer inviting him to participate in the Review of the Suspension process for the Chief Officer of the States of Jersey Police and included part (d) of the Terms of Reference, which was before it was later removed. Will the Chief Minister inform Members whether the Chief Police Officer was ever informed that part (d) had been removed, and if not why not?

Answer

The previous Chief Officer of Police was not informed that part (d) had been removed **as the Chief Officer agreed to fully participate in the review** (*my emphasis*) being undertaken by Mr. Napier.

The reason part (d) was originally inserted was to enable Mr. Napier to have access to the Chief Officer's version of events regarding the suspension process via the Affidavit, had the Chief Officer decided not to participate. The Affidavit was already in the public domain.”

30. It must have been important to maintain a line which in my judgement is plainly misleading to an impartial observer.
31. And indeed it was important. It was a cornerstone in the Chief Minister's argument that the whole *affaire* of the dropping or disappearance of part (d) of the Terms of Reference did not really matter that much. Why did it not matter? Because Mr. Power had agreed to cooperate fully etc.
32. Mr. Napier was told, or believed, that with the full participation of Mr. Power in the review the disappearance of part (d) was of no consequence. However, Mr. Power's agreement to cooperate was based on the assumption that part (d) WAS in the TOR, as that was what he had been told.
33. It is an unsavoury mess. And, of course, it has serious implications for our ability to attract and keep the best staff.

Case study 4 – ‘States spending went up 30% in 5 years’!

34. On 9th March 2010, our Minister for Treasury and Resources, Senator P.F.C. Ozouf, told the Assembly:

“No, I am afraid the Deputy is wrong and I would ask him to review the documents already in the public domain in relation to the Business Plan and Budget where there is a structural deficit which is expected on the latest information that we have from income which is going to be recurring. That is a function of the fact that States spending has risen above that of which the income ... **States spending has risen by 30 per cent over the last 5 years, 6.7 per cent in 2009, a further 6 per cent in 2010**” (*my emphasis*) (*Hansard, Oral questions without Notice*)

35. And thus is the myth of States spending rising seemingly “out-of-control” created. It is used politically, of course to help make the case for the cuts. And yet it is completely untrue. By playing fast and loose with the basic facts underlying any debate about public spending Senator P.F.C. Ozouf is debasing public debate, and putting his own political advantage above the public interest. Or maybe it was the Minister for Treasury and Resources carelessly accepting without due care and attention the C&AG’s figures.
36. So, why do I say it is completely wrong? I asked a Written Question which showed that of the increase of £146.9 million, £125.9 million, or 85.7% of the increase was non-discretionary.
37. Of the £146.9 million nearly half was due to inflation. Fancy that slipping the Treasury Minister’s mind! Roughly £11 million was for the transfer of welfare from the parishes to the centre; again, this is not new expenditure but transferred expenditure.
38. £13 million was transfers from capital to revenue for accounting purposes. It is astonishing that the Minister for Treasury and Resources can count that as an increase in expenditure! £8.5 million was for one-off costs such as pandemic flu and the ending of the Reciprocal health Agreement. I reproduce the Written Question and answer at Appendix 1.

Case study 5 – ‘I will not increase GST’

39. “I can give the Assembly a categoric assurance that I will not bring proposals to increase G.S.T.” – one of the more famous sentences of this States.
40. Yes, it is that hoary old chestnut again. The reason it comes up again and again, the reason it is remembered so vividly, is that it is so inconsistent with subsequent events that it does not just affect the credibility of the individual who said it, it drags down the reputation of politics as a whole, damages the standing of the States. Remember this was said in a hustings for the post of Minister for Treasury and Resources.
41. To write this section I went back to the original Hansard. What I saw there makes the later breaking of the pledge even more inexcusable.
42. Because the questioner included in her question the worsening economic situation. So the answer included that context. Here is the exchange in full:

2.1.2 Deputy D.J. De Sousa of St. Helier:

What guarantees can the Senator give that if the economy really does slow down, as expected, that he will not raise the rate of G.S.T.?

Senator P.F.C. Ozouf:

I can give the Assembly a categoric assurance that I will not bring proposals to increase G.S.T. We have created the Stabilisation Fund and this Assembly has agreed to put some £120 million to £140 million. That is the Fund that will enable us to take the economy through difficult times and I will have no hesitation in preparing scenarios for a downturn to keep Jersey people in jobs

and our economy thriving. Unlike most other jurisdictions, we have the wherewithal to do that. (Source: Hansard Thursday 11th December 2008)

Case study 6 – population debate 2009 Strategic Plan – the vanishing of 2600 people

43. The population figures presented by the CoM for the Strategic Plan debate in 2009 left out 2600 people. This was achieved by statistical sleight of hand.

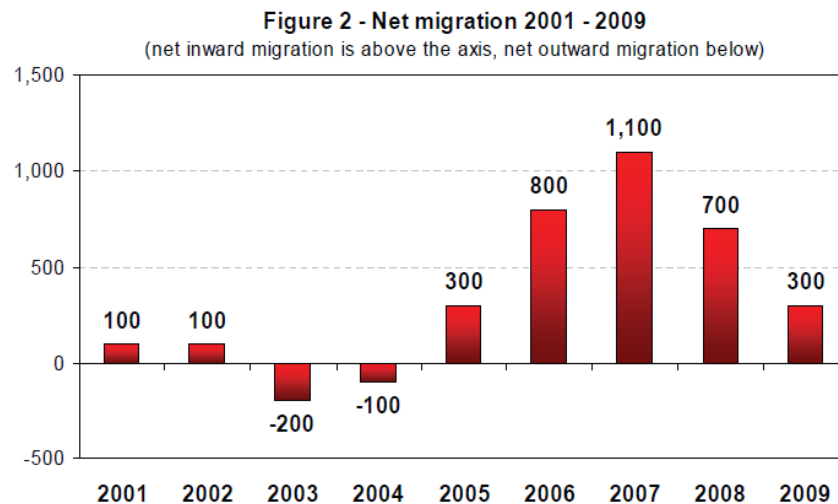
44. The document which underlay the CoM’s population projections was the “The Jersey Population Model 2009”. On page 1, paragraph 4 the Statistics Unit wrote:

“The baseline for the projections is the 2001 Jersey Census; the 2001 population structure is aged to year-end 2005 and scaled to the population estimate for that point in time”.

45. On page 3, paragraph 2, in the section on model assumptions, this is what the Statistics Unit said about inward migration:

“Central assumptions: - Start net inward migration in calendar year 2009;”

46. Eh voilà – the net inward migration of the 3 boom years of 2006, 2007 and 2008 has been disappeared! Here’s the chart showing how many people were airbrushed out of the debate. Remember too that this cohort of 2600, at a guess mostly younger people and economically active, will go on to have children, they will age, (some will of course leave again) and all these effects, which can be tracked in the model, were not. Because these people “did not exist”



Source: Resident Population of Jersey 2009, Stats Unit, June 2nd 2010

47. The Statistics Unit added a final paragraph to their report:

“Scale to year-end 2007

The central projections are based on the 2001 Census baseline and the estimated total population at year-end 2005. Nil net migration is assumed for the interim period from this latter point until net migration is assumed to start in calendar year 2009. The inclusion of more recent net migration estimates (that is for calendar years 2006 and 2007, which saw net inward migration of some 800 and 1,000 persons respectively) increases the starting level, and hence the central projections of total population, by almost 2,000 people.”

48. I would only add that a guestimate of the 2008 figures could and should have been made.
49. It is bad enough that in a matter of the utmost importance to the whole island, the policy we should follow on population, the figures were incorrect.
50. For some reason the Statistics Unit produced graph after graph of future projected population scenarios, and every single graph was simply wrong as 2600 people had been “vanished” The question has to be asked: what was the reason? The clearest possibility is that the independence of the Unit was compromised in this episode.
51. So this case points to a serious possibility that one of the most highly regarded parts of the government apparatus was subjected to political influence. That is how the politicisation of the civil service can happen and it is our duty I believe to see that it does not happen.

Case study 7 – population – ‘who will have to leave first?’

52. My Amendment to the Strategic Plan in 2009 sought to “Maintain the overall population of the Island at its present level.” In my brief report I mentioned the yawning gap between the COM’s policy and public opinion, alternative ways of meeting the challenge of the ageing population, pressure on our built-up area.
53. Critically in the financial statement I said:
- “In terms of implementing the necessary controls for zero growth in the population, the issues to be solved, the mechanisms to be put in place and the costs thereof would be virtually the same as for any other limit number for net inward migration.”
54. In their official Comments on my Amendment, the COM wrote:
- “The Council of Ministers believes that the Deputy’s proposal would be difficult, if not impossible, to implement.
- As the natural growth (i.e. more births than deaths) of the existing population over the short to medium term is on average 240 per annum, the population will continue to grow even without any additional inward migration.

Accordingly, a proposal to cap the population at current levels raises the issue of what policy would be required to make sure that enough people left the Island to cancel out this natural growth. **This also raises questions as to who would be asked to leave** (*my emphasis*), how this would be implemented and how achievable this would be in practical terms.”

55. This is demonstrably complete nonsense. No one would need to be “asked to leave” as the CoM suggest, the required adjustment to the numbers coming in and out all the time would be done, as I said in my report, using the same mechanisms as for any limit number, i.e. you adjust the tap for people coming in. The CoM would surely be aware of these issues?
56. The real point here, and why I include this in this report is that someone drafted what is plainly a misleading Comment for the CoM.
57. I clearly remember the resulting story in the JEP, which suggested that the silly Deputy from St. Mary was going to be forcing people to leave. This truly is gutter politics.
58. As an aside, I think the issue of the terms of service of our “civil servants” may need review in the light of this case and the previous one. Just who are they “working for” as things stand? I believe they should be protected from undue political influence of this type by being contractually obliged to work, so far as they can see it, in the interests of the public. But that is for another debate on another day.

Case study 8 – population – spinning the views of the public

59. I can do no better in explaining this case than to quote the Deputy of St. Mary speaking on 23rd September 2009:

“The second example, my last example, is Imagine Jersey 2035 which did such huge damage to the credibility of the Communications Unit and to our government. What they did there was they presented the message that the public supported the notion that the population had to increase. Unfortunately I do not have the actual press cutting with me. If I had I would read it out but the fact is that the 100 people who gathered in the Royal Yacht Hotel down by the Weighbridge had indicated that they agreed that no nil net migration was not correct and that limited net inward migration would be okay. The whole point about that is that nil net inward migration gives you a falling population. It gives you that crisis of going down to below 80,000 with the Chief Executive Officer shroud-waving and saying: “This will give us a deficit of 140 million.” People faced with that said they were quite happy to have limited net inward migration of plus 150 households and that would have given us a steady population. This was relayed to the public as the people who attended want more population. That is spin. It was not honest and it did a vast amount of damage.” (*Source Hansard September 23rd, 2009 3.1.5*)

Case study 9 – oral questions – time allowed in other jurisdictions

60. The Comments of the CoM to Deputy M. Tadier of St. Brelades’s proposition to increase the time for Oral Questions to unlimited included the following table:

Jurisdiction	Time Restriction
United Kingdom	Questions time – 1 hour Prime Minister’s questions – 30 minutes
Northern Ireland	1.5 hours
Scotland	General Question Time – 20 minutes First Minister’s Question Time – 30 minutes Themed Question Time – 40 minutes
Australia	Normally 1 hour, although the Prime Minister will terminate when s/he sees fit
Canada	45 minutes
New Zealand	Twelve principal oral questions are asked, with supplementary questions also given, but they must relate to the initial subject matter
India	1 hour
Japan	45 minutes
Hong Kong	No more than 20 questions

61. Deputy M. Tadier of St. Brelade checked some of these statements. In the UK time for questions is 4 hours a week, on a comparable basis we have one hour a week. In Australia the Prime Minister tried once, long ago, to guillotine Question Time and the ensuing row has ensured that no Prime Minister has ever terminated Question Time since, nor would they dare. The Canada figure of 45 minutes forgot to mention that it is every day, giving a total of 3 hours 45 minutes a week.
62. The point here is not whether these comparisons are relevant. The point is that in an official Comments from the CoM incorrect and / or misleading information was given out.

Discussion of the case studies

63. The main points to take away from the above cases are first, that the Assembly was misled, and not just once, but again and again. What the motives were in each case we can leave to one side for the purposes of this proposition.
64. The second point is that these cases all, with the exception of the last, concern matters of the utmost importance: the loss of millions because of the Euro and who was responsible, the final debate over the EfW and whether members were denied vital financial information, the suspension of Graham Power, GST, whether or not States spending is “out of control” and the debate over population policy.

65. The third point is that the consequences are severe: division and hostility in the House, cynicism leading eventually to apathy outside the House.
66. The fourth point concerns our senior civil service. Cases 2 and 3 had a direct impact on two of our top people. News gets around – are we sound employers to work for? But it is more insidious than that.
67. The fifth point is about the withholding of information. Only case 2 above is in this area, and it may not look as serious as the actual misleading of members directly by providing false information. But we should not forget how much damage and ill-feeling that this can cause, nor the fact that it can be argued that case 2 actually cost the island around £6 million net.
68. Three other cases of the withholding of information spring to mind: the arrival on members' desks, on the second day of the incinerator rescindment debate, on February 25th, of a document concerning the financials of the project which had been available for a full month; the SoJDC information about a contract or salary which again arrived in the Chamber on the day of the debate; and third the absolute refusal of the Minister for Treasury and Resources to come clean about the actual cost of the incinerator and the increases due to the “Euro fiasco,” and when those increases actually occurred.
69. And sixthly it seems to me that this⁶ is linked to another practice, namely ‘don’t speak to the one who knows most about it / the one who you are criticising.’ Again three examples: first, let us all talk about the “inadequacies” of the former Chief of Police, Graham Power, make arrangements to suspend him – all without once calling him in and saying, ‘so, what do you have to say?’
70. Second, conduct an inquiry into the value for money of a massive police investigation but do not interview the man responsible for that spend. And third, hold an inquiry into the “alleged pollution incident” at La Collette in April 2009, during construction of the new incinerator, again without formally interviewing the man who knew most about it, the man who blew the whistle, the man whose job it was to ensure that correct procedures were followed on the site.
71. I think it is clear that there is a pattern there, and a pattern which must be changed. But that, as they say, is a debate for another day.

Conclusion

72. It seems to me to be clear that misleading the States Assembly (which of course includes its committees, panels, etc.) is a serious matter, with serious consequences. And yet it has received far too little attention.
73. Part (a) of this proposition merely asks that the matter be looked into thoroughly and recommendations made about how to put right inaccuracies

⁶ I am happy if anyone can justify all 8 cases one by one and show that they are all “genuine innocent errors”

and how to arrange for some procedure whereby serious cases would be addressed. My Appendix 1 sets out the sort of issues that arise.

74. Who could possibly object to the States acquiring a new reputation for honest and straightforward dealing, a massive reduction in the suspicion and hostility currently present in the Chamber, and the better decisions which should flow from higher standards of accuracy all round?

Financial and manpower statement

75. As any action following on from the adoption of Part (a) of this proposition would either be carried out by PPC itself, or would be carried out within the framework of a review with a wider remit looking at the procedures or running of the States, there would be no additional financial and manpower implications for the States.

Part (b) – appointment of non-executive roles

76. It is absurd that the same majority which votes in the Ministers then proceeds to vote in the chairmen of the various Scrutiny Panels and of PAC, and of PPC.
77. The danger is clear – the majority votes in its team, which is fair enough, but then has complete control over those whose job it will then be to hold that executive team to account.
78. The flaw is blindingly obvious, and this part of the proposition simply seeks to have it looked at in the same way as for misleading/inaccurate information

Financial and manpower statement

79. As any action following on from the adoption of Part (b) of this proposition would either be carried out by PPC itself, or would be carried out within the framework of a review with a wider remit looking at the procedures or running of the States, there would be no additional financial and manpower implications for the States.

APPENDIX 1

The issues to be considered in any review, in my view, would include:

- 1 What criteria should be used to assess when an inaccuracy is important enough to be in need of correction, in what parts of States business it would be sensible to take issues of inaccuracy forward, how inaccuracies could be corrected, and how such corrections could be made part of the record of the States proceedings.
- 2 What criteria should be used to assess whether an allegation that the Assembly has been misled by a member is serious enough to merit investigation, what the procedures should be for calling for such investigations, what the arrangements should be for carrying out these initial assessments and any subsequent investigations, and what remedies and sanctions should be available in the case of a finding that the Assembly had been misled.
- 3 Whether new measures should be put in place to ensure that the provision of facts and evidence within the States is always done to the highest standards of accuracy and transparency possible.
- 4 What body should be called into existence to carry out the preliminary assessments, and the investigations. I would envisage a body similar to the Complaints Board whose members act voluntarily, whose reports seem always to be admirably clear and free from bias, and which appears to run perfectly satisfactorily. It would of course be vital for the body not to be made up of States members!

APPENDIX 2

Case study 2 – True financial position re the EFW – not informing the States

Additional information

Paragraphs 101 to 103 of the CAG's Report ENERGY FROM WASTE PLANT - MANAGEMENT OF FOREIGN CURRENCY EXCHANGE RISKS, March 2009,

Sunday, 18 May 2008

101. SIMT&R sent to T&R Minister a briefing paper asking the Minister to consider the draft proposition of the Minister for Transport and Technical Services to procure an Energy from Waste Plant and to agree a preferred funding solution for the plant and to lodge a report and proposition (which was attached in draft form).
102. The briefing paper summarised the overall costs of the project in the following way:

	<i>Capital cost (£ million)</i>
Enabling works	3.63
Engineering Procurement and Construction (EPC) Contract	93.35
Jersey Electricity Company (JEC) Connections	0.40
Decommissioning of the Bellozanne incinerator	2.08
Project Management (including incurred feasibility costs)	6.85
TOTAL COST	106.31

103. It also referred to the risk of currency exchange rate fluctuations in the following way:

“The Engineering Procurement and Construction (EPC) contract is subject to currency risk with exposure to the rate of exchange between the euro and sterling. The exposure relates to contract costs of €75.8 million or £59.5 million of the £93.35 million contract sum quoted above.

The exchange risk will be eliminated upon the signing of the contract at which time the Euro/Sterling rate will be deemed to freeze for the purposes of the contract payments. All contract payments will be made in sterling. The sensitivity analysis below indicates the extent of exposure to currency fluctuation.”

Exchange rate €/£ EPC Contract Cost Variance (from rate at bid)

1.27	(rate at bid receipt)	£93.35 million	n.a.
1.40		£87.9 million	-£5.5 million
1.15		£99.7 million	+£6.3 million

The Treasury has obtained an indicative quote for the purpose of the currency option that would eliminate the exposure to euro fluctuations between 16 May 2008 and 31 October (the date by which the contract must be signed). The option would cost £1.97 million. It should be noted however that this cost is based on buying the option now (before a States decision to proceed with the

scheme). As the exchange rate will fluctuate over the six week period to 1 July 2008 the cost of the option will also vary. To cover the period between 1 July 2008 and 31 October 2008 exactly as at 16 May 2008 would require a tailored contract. The cost of this has not been determined as it is not readily available in the markets. The tailored contract would in any event be of little use as the department would not purchase it prior to the approval of the scheme by the States. The cost would of course vary between now and that point in time. A “worst case scenario” has been sought from the Treasurer’s investment adviser Hewitt. Hewitt has indicated that is very unlikely the euro exchange rate would move below €1.10 to the _ in the period to 31 October 2008. This equates to an additional sterling cost of £6 to 7 million on the EPC contract.

In view of the risk detailed above, all of the £3.6 million unallocated balance in the fluctuations element of the States Capital Reserve Vote has been earmarked for this project. It is proposed that the currency risk be monitored up to the States approval of the scheme at which point a paper will be brought back to the Minister recommending how the risk should be managed between the approval date and the signing of the EPC contract. The earmarked £3.6 million is considered a reasonable sum from which to address the risk at that time. The cost of the risk being c.£1.97 million now (the price of the option) and a worse case scenario being £6 to 7 million with no option in place for the entire period to 31 October 2008 (based on the Hewitt exchange rate advice).”

APPENDIX 3

**WRITTEN QUESTION TO THE MINISTER FOR TREASURY AND
RESOURCES
BY THE DEPUTY OF ST. MARY
ANSWER TO BE TABLED ON TUESDAY 20th APRIL 2010**

Question

“In the interests of helping members understand better the trends in public expenditure over the recent past, will the Minister give members a complete and accurate breakdown of the oft-referred to “30% increase in public expenditure over the last 5 years” to show members and the public exactly what the increase is due to, including, but not restricted to, such factors as inflation and increases in pay, the Historic Child Abuse Inquiry, the flu pandemic and Williamson, and will he undertake to publicise this breakdown with the same prominence that he has given to the 30% increase claim?”

Answer

The increase in public expenditure over the last 5 years is broken down as follows:

£m	%	
42	10%	Pay awards as allocated in the Annual Business Plans
18	4%	Non-Pay inflation as allocated in the Annual Business Plans
42	10% ¹	Increases in the Social Security service provision made up of: <ul style="list-style-type: none"> • £10.8m transfer of Parish welfare to Social Security • £6.8m protection against GST • £8.2m uprating of benefits • £1.5m growth in residential care • £5.6m increase in cost of supplementation • £6.7m transitional relief • £2.4m economic downturn funding of Social Security
18	4% ¹	Annual Business Plan allocations made up of: <ul style="list-style-type: none"> • £9.5m Health and Social Services growth • £0.5m Privileges and Procedures growth • £1.8m Education demographic growth and social inclusion costs • £2m Overseas aid • £3.2m Home Affairs growth • £1m Housing rent rebate growth
4	1% ¹	Other service changes agreed in the Annual Business Plans, principally as a result of the Fundamental Spending Review and Strategic Plan funding, net of efficiency savings
13	3%	Transfer of capital budgets to revenue budgets
1.4	0.3%	Pandemic Flu costs ²
4.2	1%	HCAE costs (2009) ²
1.4	0.3%	Economic Stimulus funding ²
2.6	0.6%	Cessation of the Reciprocal Health Agreement ²
0.3	0.1%	Williamson report implementation ²
146.9	34.3%	

¹ 15% of the increase is due to changes in services.

- ² Additional one-off costs incurred in 2009 are included in the total increase. One-off costs in prior year do not contribute to the overall rise between 2004 and 2009.

This breakdown shows that the primary cause of increases in costs over the last five years is changes to services agreed by the Assembly in the Annual Business Plan (15% of the 34%). This is coupled with the fact that no contingencies are allocated, resulting in one-off expenditure of £12 million in 2009 alone. These increases in costs are unsustainable and I am committed to find a way to reduce the overall budget and introduce an allowance for contingencies, as part of the Comprehensive Spending Review which is currently in progress.

Notes on the analysis provided

1. The breakdown above is compiled principally from the Annual Business Plans for the years from 2004 to 2009. The actual expenditure for each line item may vary from the numbers outlined above due to issues such as timing differences between planned and actual spend. To review the previous 5 years to identify any variances would be extremely time consuming and would require involvement from departments. The above provides a breakdown that was achievable in the limited time available. Nonetheless the analysis does provide a clear and accurate assessment of how the significant increase in public spending over the past five years has been allocated.
2. The pay award increase for the period as allocated in the Annual Business Plans (and adjusting for the pay freeze in 2009) was £42 million. The increase in actual pay over the period was approximately £70 million. The difference is due to a number of issues such as changes in service provision (meaning that some additional staff costs are incurred in years over and above the annual pay award) and incremental increases in pay due to promotions over and above the pay award. Departments have consistently delivered their services at or below the budget set in the Annual Business Plan.
3. £13 million of the additional costs relates to transfers between capital and revenue expenditure. This means the costs are now recorded in revenue, as dictated by the appropriate accounting standards but the budget was originally allocated in capital so there has been a commensurate reduction in the cost of capital projects.

I would just add for members' information 2 charts which have crossed the desk of the Minister for Treasury and Resources recently – both are from the Annual Report of the FPP which he holds in such high regard, and rightly so. The first shows the rate of inflation each year for the last decade. I suspect that the Minister is aware of these figures?

And the second is from the same document and shows that the rate of increase in public spending is totally different from the “30% in 5 years” claim made by the Minister.

Figure 1.17

Inflation in Jersey

Annual % change

Source: States of Jersey Statistics Unit

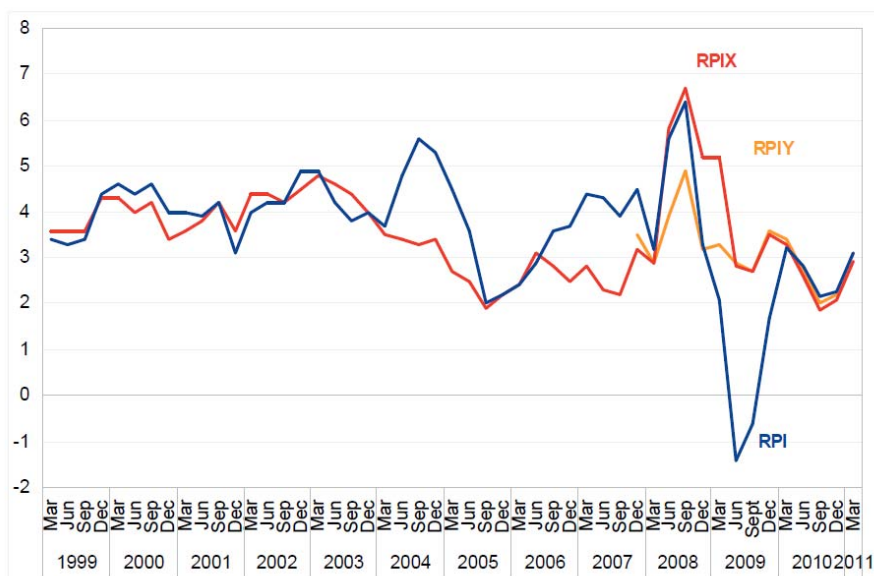
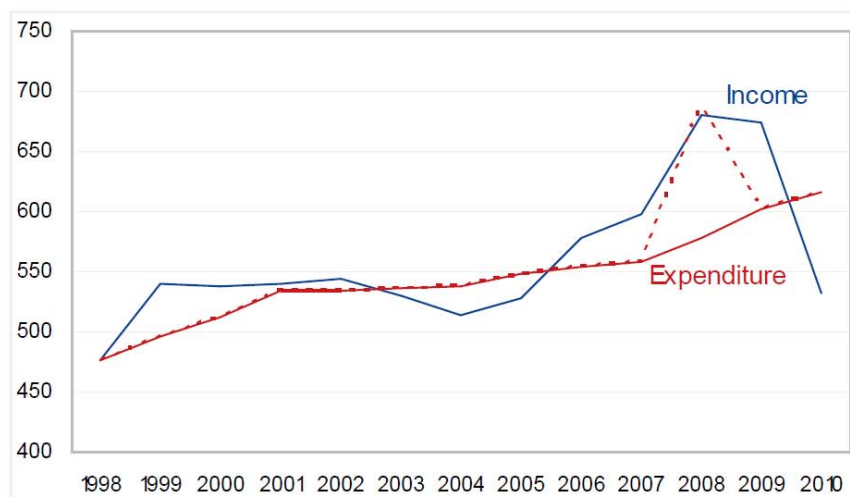


Figure 2.3

Real income and expenditure

£m , 2009 prices

Source: States of Jersey Treasury



Note: Expenditure is net revenue expenditure (excluding capital/servicing depreciation) plus capital allocations. Broken red line includes EfW expenditure (as allocated). Solid red line excludes it.

The text accompanying this second chart states: “Figure 2.3 shows States’ income and expenditure between 1998 and 2010. Between 2001 and 2007 expenditure increased by less than 1% a year in real terms, while income exhibited cyclical fluctuations. Since 2007 expenditure has grown more rapidly, even excluding Energy from Waste, rising at around 3.3% a year in real terms between 2007 and 2010.”

So, not very near to 30% in 5 years then.