

PRIVILEGES AND PROCEDURES COMMITTEE

(58th Meeting)

13th April 2010

PART A

All members were present, with the exception of Deputy J.B. Fox, from whom apologies had been received, and Deputy M. Tadier.

Connétable J. Gallichan of St. Mary, Chairman
Senator B.I. Le Marquand
Deputy J.A. Martin
Deputy C.H. Egré
Deputy M.R. Higgins (not present for item No. B1)

In attendance -

M.N. de la Haye, Greffier of the States
Mrs. A.H. Harris, Deputy Greffier of the States
Miss A-C. Heuston, Clerk to the Privileges and Procedures Committee

Note: The Minutes of this meeting comprise Part A and Part B.

- Minutes. A1. The Minutes of the meeting of Tuesday 2nd March 2010 (Part A and Part B), having been previously circulated, were taken as read and were confirmed.
- Draft Freedom of Information (Jersey) Law 201-670/1(21) DGOS A2. The Committee, with reference to its Minute No. A2 of 30th March 2010, received correspondence from the Chief Minister, Senator T.A. Le Sueur, dated 7th April 2010, in connexion with the draft Freedom of Information (Jersey) Law 201-670/1(21). The Committee recalled that the Chairman, Deputy J.B. Fox, Deputy C.H. Egré and Deputy M.R. Higgins had attended a meeting of the Council of Ministers on 1st April 2010 to discuss the draft legislation. The Council had expressed concern that the costs of introducing the Law would be unaffordable at the present time. It was suggested that the lodging of the draft Law be deferred and an expert be appointed to undertake a review of costs, the review to be paid for jointly by the Council and the Committee. The Committee noted that the Chief Minister had reiterated this suggestion in his letter of 7th April 2010, in which he drew the Committee's attention to concerns raised by the Chief Minister's Department and others about the number of additional staff required to manage the Law once enacted. The Committee noted that it did not have funds readily available to meet half the cost of such a review and expressed reservations that meaningful figures would be provided. It was considered likely that the report would be prepared by a person unfamiliar with the workings of Jersey government, and would include a range of figures which would depend upon the number and complexity of applications, as well as the effectiveness of the classification, storage and retrieval systems in States' departments and other public authorities. There would therefore be a delay of at least 3 months to provide information which might not assist the debate. It was recognised that implementation of the proposed Law would fall to the Executive and that a delay in the implementation of the Law, once adopted, might be required to allow departments to budget, update their classification systems, and train staff. Implementation of the Law would be by 'coming into force' Acts, which could be staged to meet the requirements of departments, with the aim of completing the

implementation over a number of years. Having taking these points into account, alongside the fact that the Committee had been requested to develop a Freedom of Information Law by the States in 2005, it was **agreed** that the Committee should proceed to lodging as soon as practicable, and the Council could meanwhile continue with its research into costs.

The Chairman was **requested** to write to the Chief Minister in the above terms, to notify him of the Committee's position. It was **agreed** that the Committee would consider an updated version of the draft Freedom of Information (Jersey) Law 201- at its next meeting. It was also noted that the 6th Annual Freedom of Information Conference would take place in London on 18th and 19th May 2010. The Chairman and Deputy Higgins expressed an interest in attending with the Deputy Greffier of the States, who was **requested** to provide details and to make the necessary arrangements.

States members'
facilities.
1240/9/1(137)
L.D.
AGOS

A3. The Committee, with reference to its Minute No. A8 of 2nd March 2010, gave further consideration to the provision of facilities for States members.

The Committee visited the property known as 5 Library Place, St. Helier, and members were provided with a tour of the building by the Cultural Development Officer, Education, Sport and Culture, Mr. R. McLoughlin. Members also met the secretary to the Jersey Police Complaints Association, Ms. L. Moore. Having thanked Mr. McLoughlin and Ms. Moore for their time, the Committee returned to the States Building. The Committee discussed whether an investigation should be carried out into whether there was an appropriate use for 5 Library Place by States members. It was, however, agreed that the available space was not suitable. It was **agreed** that the Chairman should write to Mr. McLoughlin and Ms. Moore to thank them for their time, and to advise them of the Committee's decision.

The Committee Clerk was **requested** to take the necessary action.

States of Jersey
Complaints
Panel: annual
report 2009.
1386/6/1(1)

A4. The Committee, with reference to its Minute No A11 of 2nd March 2010, received the draft States of Jersey Complaints Panel: annual report 2009.

The Committee welcomed the Deputy Chairman, Advocate R. Renouf, and Panel member Mrs. C. Vibert. The apologies of the Chairman, Mrs. C. Canavan, were noted. The Committee noted that the Panel had held its Annual General Meeting on 7th April 2010, and proceed to discuss the following matters arising:

Dealing with conflicts of interest

It was noted that, on occasions, either the Chairman or the Deputy Chairmen could be conflicted and unable to adjudicate upon certain cases received. In order to provide an alternative arrangement for the consideration of applications or appeals for hearings in the case of conflicts of interest or absence, it was felt that a revised policy should be adopted. The Committee agreed that, whilst preferentially such cases should be reviewed by the Chairman and then both Deputy Chairmen, in these circumstances where a conflict arises it should be acceptable for the matter to be reviewed by one Deputy Chairman and a Panel member, and, on rare occasions, 2 Panel members. The Panel therefore proposed that the Committee progress an amendment to the Administrative Decisions (Review) (Jersey) Law 1982 to enable greater flexibility. The Committee accordingly **agreed**, and **requested** that an amendment be drafted.

No reasonable prospect of success

The Committee noted that there was no provision in the Law for an application for an appeal or hearing to be refused by the Panel on the grounds that there was 'no reasonable prospect of success'. Having discussed the merits of the inclusion of such a provision, it was **agreed** that Article 4 of the Administrative Decisions

(Review) (Jersey) Law 1982 should be amended to allow for refusal on the grounds that there was 'no reasonable prospect of the Board requesting the Minister to change his or her decision'.

Informal resolution

The Panel had agreed that in certain instances it could prove possible to resolve a situation without a hearing, and the Committee **endorsed** the process employed by the Panel in respect of adopting this approach where applicable.

Human rights

The Committee discussed the application of human rights considerations to the complaints process. It was noted that the process followed by the Board was human rights compliant, and, while the Board was alert to human rights issues and would seek advice where necessary, it was not its role to adjudicate upon human rights issues. It was **agreed** that research should be carried out to compare the process followed by the Complaints Board for dealing with human rights issues to that employed by ombudsmen in the United Kingdom.

Hearing venues

The Committee recalled that Deputy F.J. Hill of St. Martin had last year expressed concern regarding the acoustics at the various venues used to hold Complaints Board hearings (Minute No. A4 of the Committee's meeting of 19th June 2009 refers). The Committee discussed the matter with the Panel and it was agreed that the Panel would continue to endeavour to ensure that everyone present could hear the proceedings.

Media

It was noted that the Panel had been advised of the contents of the report of the Media Working Party and had agreed that the accredited media could film or take photographs at either the beginning or end of a hearing, with the chairman's permission, but not during the proceedings.

Having been thanked by the Chairman for their work throughout the year and for their attendance at the present meeting, Advocate Renouf and Mrs. Vibert withdrew from the meeting.

The Assistant Greffier of the States was **requested** to take the necessary action in respect of the aforementioned decisions.

Data handling.
1240/9/1(135)

A5. The Committee, with reference to its Minute No. B2 of 2nd March 2010 received a report, dated 26th March 2010 and prepared by the Greffier of the States, in connexion with guidelines for States members on the use of personal information in reports.

The Committee recalled that the Data Protection Commissioner had expressed concern regarding the inclusion of personal information in reports accompanying propositions. The Committee had agreed to issue guidelines on the matter and had requested the Greffier of the States to prepare a draft. The Committee considered the draft guidelines which had formerly been referred to both the Data Protection Commission and the Bailiff, as President of the States, for comment. The Committee noted that the freedom of speech given to members by parliamentary privilege was a fundamental right and that no civil or criminal proceedings could be instituted against any member in respect of anything he or she had written in a report accompanying a proposition. The Committee was nevertheless conscious that members had imposed certain restrictions on themselves concerning the matters that could and could not be included in speeches, through the rules set out in Standing Order 104, and that the former Bailiff had ruled under Standing Order 167(1) that the same restrictions should apply to the contents of reports. The Committee discussed a possible disparity in respect of the naming of members of the public in

reports versus the use of the title, rather than name, of civil servants. It was also noted that the proposed guidelines simply outlined the current position, and did not amend it in any way.

Having given this issue some initial thought, Deputy M.R. Higgins requested that the matter be deferred and brought back for consideration at the next Committee meeting. This was **agreed**, and the matter was deferred until 27th April 2010.

Code of Practice
on Public Access
to Official
Information:
Annual report for
2009.
670/1(24)

A6. The Committee received the draft Code of Practice on Public Access to Official Information: Annual Report for 2009.

The Committee noted that the report's findings were relevant to its discussions in connexion with the draft Freedom of Information (Jersey) Law 201-. It was noted that 12 requests which mentioned the Code had been received by departments in 2009, in comparison with 21 requests the previous year. The States of Jersey Complaints Board had also dealt with its first complaint in respect of a refusal to provide information. The Committee noted that many departments received numerous requests for information which did not mention the Code and were dealt with in the normal day-to-day running of the department. Requests were also routinely dealt with in accordance with the Data Protection (Jersey) Law 2005. It was difficult to measure effectively the number of requests for information being received when only those which made reference to the Code of Practice for Public Access to Information were being recorded. It was **agreed** that the format for gathering data in this respect should be re-examined so that, should the Code remain in place for any significant length of time prior to the implementation of freedom of information legislation, there would be an improved method of measuring the level of requests received.

The Committee accordingly approved the Code of Practice on Public Access to Official Information: Annual Report for 2009 and **requested** that it be presented to the States at the earliest opportunity.

The Greffier of the States was **requested** to take the necessary action.

Review of
Standing Orders
155 to 158.
1240/4(99)

A7. The Committee, with reference to its Minute No. B1 of 30th March 2010, received correspondence dated 6th April 2010 from Deputy F.J. Hill of St. Martin in connexion with its review of Standing Orders 155 to 158 of the Standing Orders of the States of Jersey.

The Deputy had been pleased to note that the Committee had decided to review Standing Orders in relation to the application of the Code of Conduct for Elected Members, and suggested that the Committee consider separating members' roles in respect of the provisions under Standing Order 156: 'Complaint about conduct of an elected member' and Standing Order 157: 'Investigation of breach of code of conduct'. The Deputy had also attached a copy of a statement which he had made at the Committee's meeting on 16th March 2010.

With regard to the Committee's review of Standing Orders 155 to 158, the Greffier of the States was **requested** to investigate the procedures followed in other jurisdictions for dealing with complaints against members of parliament and to report back to the Committee.

Review of States
appointments.
1240/6(55)

A8. The Committee, with reference to its Minute No. A5 of 16th March 2010, noted correspondence dated 23rd March 2010 from Senator A. Maclean, Minister for Economic Development.

The Senator had been pleased to note the Committee's decision to take forward an

amendment to the Banking Business (Depositors Compensation) (Jersey) Regulations 2009 in order to apply the revised procedure for appointments to the Board which administers the Depositor Compensation Scheme. The Senator asked to be kept informed in respect of the Committee's progress with regard to the amendment.

States Members' Remuneration Review Body recommendations for 2009 to 2011: pension scheme.
1240/3(85)
1240/3(73)

A9. The Committee, with reference to its Minute No. A2 of 2nd March 2010, received correspondence, dated 6th April 2010 from the Chairman of the States Members' Remuneration Review Body, Mr. J. Rogers, in connexion with the possible provision of a pension scheme for States members.

The Committee recalled that the Chairman had written to Mr. Rogers on 4th March 2010 to request that the Review Body consider the development of a pension scheme through which the States would make matched contributions to individual States members' private pensions schemes. The Review Body had met on 30th March 2010 and had agreed that it would be willing to reconvene to develop more detailed proposals on a pension scheme for States members. The Review Body was now looking to obtain expert advice to assist it in preparing its submission to the Committee. The Review Body had also discussed its membership following the resignation last year of the late Advocate C. Lakeman. It had been agreed that, as the Review Body was in the middle of its 3-year term of office, there was no need at present to appoint a replacement member. It was likely that the Review Body would have an on-going requirement to meet regularly to consider a variety of matters relating to the remuneration of States members, and it had accordingly been agreed that the Review Body should review its terms of reference later in the year. It was accepted that there should be a regular turnover of members over time; however, it was also considered that some continuity of membership may be preferable to the current replacement of the whole membership every 3 years.

It was **noted** that the Review Body would approach the Committee with a view to introducing new procedures from the end of its term of office in the autumn of 2011, at which point, recommendations would also have been made on the level of remuneration and expenses for 2011.

Senator S. Syvret: absence from the Island.
1240/9/2(61)
1240/9/2(63)
1240/9/2(64)

A10. The Committee, with reference to its Minute No. A1 of 18th February 2010, noted the ongoing absence from the Island of Senator S. Syvret.

It was noted that the Senator would have been resident outside the Island for 6 months on 19th April 2010. The Committee recalled that Article 8(2) of the States of Jersey Law 2005 provided that a Senator or Deputy would be automatically disqualified from office if he or she was not resident in Jersey for a period of more than 6 months. The Committee discussed the legal position in respect the process to be followed under Article 8(2) of the Law and noted that the Senator would be disqualified from office by the time the States met on 20th April 2010 if he did not return to take up residence in the Island again before that date.

The Committee was aware of comments made by the Senator that indicated his awareness of the consequences of his continued residence outside Jersey. Nevertheless, it was **agreed** that the Chairman should write to Senator Syvret to bring the matter formally to his attention. It was also **agreed** that, should Senator Syvret remain outside the Island beyond 19th April 2010, the Chairman should make a Statement during the States sitting on Tuesday 20th April 2010 to inform the Assembly of his disqualification. The Chairman was **requested** to advise the Senator accordingly.

Resignation of Deputy M.

A11. The Committee, with reference to its Minute No. A3 of 30th March 2010, received correspondence dated 30th March between Deputy M. Tadier and the

Tadier.
465/1(144)

Bailiff, Mr. M.C. Birt, in connexion with the Deputy's resignation from the Committee.

The Committee noted that, in accordance with Standing Order 129(3) of the Standing Orders of the States of Jersey, the Bailiff would notify the next meeting of the States of Deputy Tadier's resignation, which would take effect on 20th April 2010. The Committee **noted** the position.

Matters for
information.

A12. The Committee noted the following matters for information:

- (a) its on-going work programme;
- (b) the draft answer of the Chairman to a written question to be tabled on Tuesday 20th April 2010 by Senator B.E. Shenton regarding the total remuneration and expenses paid to States Members and the total value of parking, laptops and other support services in 2009.