

Annual Report

2016

1. Introduction

- 1.1 This is my third report as Chair of the Jersey Appointments Commission (JAC), covering the year from 1 January to 31 December 2016. The JAC was established in 2005 to oversee appointments within the scope of the States of Jersey and to ensure that appointments are made on the basis of merit and in line with best practice in recruitment. It sets appointment guidelines and audits practices for appointments to senior roles within the Public Service and independent bodies approved by the States.
- 1.2 In October 2014, a new team of Commissioners was asked to oversee senior appointments in the civil service and in autonomous and quasi-autonomous public bodies. Their role includes:
- development of the person specification criteria;
 - development of advertising and executive search strategy;
 - selection panel membership;
 - participation in long and short listing of candidates;
 - development of content of interview and assessment material;
 - participation in the appointment panel; and
 - voting on the final selection of candidate.
- 1.3 As the regulator however, I felt that it was inappropriate for Commissioners to be involved in the final selection and so, with the agreement of the Chief Minister and the States Employment Board (SEB), the Commissioner regulates by chairing the process throughout to oversee each step but does not vote in the final decision. There is an exception in the published guidelines for the recruitment of the Chief Executive Officer of the States of Jersey when the Commission Chair and two other Commissioners are actively engaged in the appointment process, overseen, by invitation, by the UK Civil Service Commission.
- 1.4 It has been a busy year during which we were involved in the oversight of fifteen appointment processes. Generally speaking, recruitment processes have been conducted well and the role of the Commissioner has been respected.
- 1.5 The Commission met on seven occasions throughout the year to discuss progress and issues which arise in the course of the role, once to plan its strategy going forward, once with representatives from the independent sector across Jersey, and separately with individual organisations concerned about their relationship with the Commission. Two Commissioners also met with me as part of the planning team for the recruitment of the States of Jersey's new Chief Executive Officer.

1.6 The Commissioners in post during 2016 were:

- Professor Ed Sallis OBE. Ed had already served as a Commissioner for two years and has held senior leadership roles in colleges in the UK, before moving to Jersey to become the Principal of Highlands College. Ed was reappointed during the year and his term of appointment extended.
- Richard Plaster. Richard has a background in HR and had previously been the Commercial and HR Director at Jersey Electricity Plc. He is currently a Director of Law at Work.
- Louise Read. Louise has an accountancy background and is currently a Director and Secretary to the Board of the Channel Islands Competition and Regulatory Authorities.
- Gailina Liew. Gailina is a barrister and solicitor, independent non-executive board director and former listed company executive. Gailina currently serves as Vice Chair of the Commission and also holds positions as Director of the Jersey Policy Forum, a non-executive Director of Digital Jersey and a Board Trustee of the Shelter Trust.

1.7 Administrative support was enhanced following an internal audit recommendation separating the role of secretarial support from executive support for the Commission, and the Commission has been well served by Mireille Newington and Jane Pollard, respectively, to whom go our thanks.

2. **General remarks**

2.1 **The Audit**

2.1.1 During early 2016 I commissioned a review of process from the internal audit team to assist the Commission in determining whether or not it was meeting its objectives. The 'Agreed Upon Procedures Review' has been extremely helpful in identifying areas for review and improvement.

2.1.2 A major concern focused on the lack of the Commission's involvement in recruitment to senior posts in Health and Social Services Department (HSSD), particularly for posts where the salary level indicated a level of seniority normally requiring Commission oversight. The Commission therefore called for a retrospective review of the files for all senior posts. We found that there had been recruitment for posts of significant seniority where the Commission should have been involved but where we had not been consulted. We also found that a number of roles had been contracted via a procurement process, outside the remit of the Commission. We were concerned by the length of time it took to produce the files and by the inadequate nature of some of the materials in them. For some interim posts, appointment procedures had not been shown to the Commission.

2.1.3 Other matters raised by the Audit team included the need for:

- Sanctions for non-compliance. The Commission is considering appropriate action and has already stated that it will publish the names of de-

partments where non-compliance has been an issue in forthcoming reports;

- Procedures for the recruitment/appointment of interns and special advisers. The Commission has confirmed that it will include in its new guidelines appropriately similar procedures for interns and special advisers;
- Guidance on succession planning. This is an issue for the States HR department and Commissioners will be working with that department to help develop and publish appropriate HR guidance on this issue for the States;
- Greater clarity and consistency from the States to specify which organisations fall within the Commission's oversight, the Commission's role being to regulate the recruitment of appropriate posts within those organisations. While the established role of the Commission is clear, the Commission will work with the Chief Minister and the SEB to ensure that the role is understood by the autonomous and semi autonomous public bodies and office holders, usually described as "Independent Bodies";
- Stricter adherence to the fourteen-day notice period to the Commission of any recruitment falling within its jurisdiction. The Commission will push back where the notice for a recruitment process is unduly short and require the process to begin again.

2.1.4 Auditors also commented on the lack of contemporaneous evidence on the interim appointment of the Treasurer of the States of Jersey in 2014 and the lack of a full set of files for all appointments. This point has been noted for future activity and available files have now been audited.

2.2 **Support for the Independent Sector (Autonomous and quasi-autonomous public bodies and office holders)**

2.2.1 We continued to help the Independent organisations and office holders in receipt of States' funds and the wholly owned bodies understand the Commission's oversight role. The procedures they need to follow to stay within the States of Jersey policy is new to some. The Commission invited representatives of independent bodies to a meeting on 28 June 2016. This was our second meeting with independent bodies, and it provided an opportunity to explain our purpose and remit, and to introduce an interim revision of the Commission's guidelines on which we were consulting. Written comments were invited and, wherever possible, areas of interest will be included in a pending further revision to the Commission's guidelines. At the meeting, we outlined the Commissioner's role and the help that independent organisations could expect from the HR business partner of their sponsor department within the States of Jersey.

2.2.2 The list of organisations subject to the direct involvement of the Commission is approved and published by the SEB. The current list was agreed by SEB at its meeting on 16 May 2016 and is attached to this report as Appendix 1.

2.2.3 The Commission's guidelines will be revised and published when the States of Jersey debate on the amendments to the States of Jersey Employees Law 2005 (amendment no 8) are debated and concluded.

2.2.4 Some independent bodies with whom we work, may from time to time out-source their HR management. In these circumstances, the role of the Commission remains the same in order to oversee and maintain the standard of the regulatory process.

2.3 **States Appointments.**

2.3.1 The planning process for the recruitment of the new Chief Executive Officer of the States of Jersey has commenced and is referred to in more detail below.

2.3.2 As will be seen below, three out of four senior appointments were unsuccessful in the first round. There is clearly a difficulty in attracting those with the skills and experience needed to deliver these important posts for Jersey. It may be that some consideration needs to be given to using a more diverse range of local and off-island recruitment firms to seek a broader pool of qualified candidates.

3. **Operations and Recruitment**

3.1 During 2016 the Commission was involved in fifteen key appointment processes:

Four in States Departments:

- Head of Service, External Relations
- Director of Financial Services. This post has been readvertised in 2017 as Chief Officer – Financial Services, Innovation and Digital.
- Operations Director, Community and Social Services, HSSD. This recruitment was ‘unsuccessful’ in 2016 and was readvertised in 2017.
- Director of the Criminal Division, Law Officers’ Department. This post was readvertised during September 2016.

Eleven processes in independent bodies:

- Chair and three Commissioners, Care Commission (concluded in 2017)
- Chair, Visit Jersey
- Chair of Channel Islands Competition and Regulatory Authorities (jointly with Guernsey)
- Chair of Comptroller and Auditor General Board
- Member of the Fiscal Policy Panel
- Chair of the Fiscal Policy Panel
- Data Protection Commissioner – Extension of appointment
- Director of Jersey Overseas Aid Commission
- Chief Executive, Sports Jersey (concluded in 2017)
- Chair, Police Complaints Authority
- Chair, Jersey Arts Trust.

3.2 The Commission gave a ‘by exception’ extension to the contract of the Data Protection Commissioner in 2015 to enable a proper process to begin with the establishment of a shadow Data Protection Board, jointly with Guernsey as this is a shared post. Progress has been slow, in part because of the need to clarify the management and accountabilities of the post holder, and the need to make decisions jointly with Guernsey counter-parts as part of wider project to update the Data Protection Laws in each island

- 3.3 The Commission has been consulted on the extension of the term of office for a range of posts including the Tourism Development Fund, the Criminal Injuries Compensation Board and the Chair of the Independent Safeguarding Board. In each case the Commission advised that the standard practice was not to exceed nine years.
- 3.4 During the year, planning began for the recruitment of the next Chief Executive Officer of the States of Jersey. We identified a search consultant and an external assessor. Because, for this appointment, the role of the Commission changes from regulator to being an active participant on the selection panel, the States of Jersey has engaged the Civil Service Commission in the UK to oversee the process.

4. Boards

- 4.1 During 2016, about sixty per cent of the work of Commissioners has been with the boards of independent bodies. The SEB took the decision in June 2016 that the Commission's remit should extend to those organisations wholly-owned by the States of Jersey. The SEB is also considering the Commission's role in relation to majority or substantially-owned organisations. We have been working with all concerned to identify how this can be translated into practice with consideration for the comments raised by independent bodies about the Commission's remit and involvement.
- 4.2 The most common query that the Commission receives from independent bodies is about the term office of board members and Non-Executive Directors, coupled with requests for incumbent individuals to rejoin committees for a further full term after a nominal break. In accordance with standard UK corporate governance best practice, the maximum length of appointment should not exceed nine years in total, including any period on a shadow board. We recognise that in an island community it may be more difficult to identify people with sufficient experience to take on honorary and unpaid roles, and we encourage boards to search for candidates from a broader range of backgrounds to become involved in these appointments.
- 4.3 A further concern is the lack of awareness of key senior staff of best practice in recruitment, sometimes suggesting that the retiring chair should be involved in appointing their successor or indeed that the CEO has a formal role in the selection of the chair to whom they will become accountable. Development work on fundamental governance principles could help the independent sector find it easier to better understand and conform to the expectations of public sector regulation, which is expected of them as recipients of significant funds from the public purse.

5. Exceptions and Acting-Up Positions

- 5.1 The Commission has not been asked to approve any exceptions to open recruitment during 2016, or to consider whether an acting position should be converted into a substantive appointment. However, the Commission is concerned about the length of some interim appointments, e.g. the Law Draftsman's team.

6. **Complaints**

- 6.1 One complaint was received during the year. This was about a process in which the Commission had not been not directly involved and which has now been resolved by the States of Jersey HR department.

7. **Issues of Concern**

- 7.1 In my 2015 Annual Report, I reported on the legislative changes which enabled the Commission to take a more regulatory role, and the need for the Commission to clarify its role in relation to States employees, independent bodies in receipt of States monies, and in roles exercising statutory powers or with significant public profile or interest. During 2016 we have been preparing for further legislative changes. However, progress has been slower than originally envisaged, and the contents of changes proposed in P.105/2016 have yet to be debated in the States Assembly. Once these matters have been debated by the Assembly, this will enable the Commission to issue the pending revision of its guidelines.¹

- 7.2 During 2016 I raised a number of concerns with SEB, which I had hoped would be the subject of some debate. This however was not the case and may have contributed to the lack of action taken on some of these important issues, which include:

- The inexperience of some panel members during recruitment procedure;
- The need to ensure the separation of the responsibilities of senior staff from appointments on boards;
- The expectation of extended lengths of service of board members, the delay in, and sometimes hurried nature of, recruitment procedures;
- Historical convention in appointments which does not match best practice;
- The need for better and more timely communication with the Commission on interim as well as permanent posts;

- 7.3 These matters continue to impede the recruitment process and have been added to by other concerns, outlined later in this report.

- 7.4 Of particular continuing concern are the following:

- The length of time between knowledge of a vacancy by the States and the start of a recruitment process. A particular example was the process for the replacement of the Director of Financial Services where no formal notification was given to the Commission for six months;
- The appointment of a close family member as an intern without open competition;
- The reluctance of some boards to follow best practice in their recruitment of new members, continuing to ask for exceptional extensions to mask a

¹ This was subsequently re-issued as P.11/2017 and debated on 28 March 2017

lack of planning and wanting to involve, inappropriately, their CEO or retiring Chair in the appointment of new Chairs;

- The continuing concern of some wholly owned independent bodies identified by the SEB, that they had no wish to be regulated by the Commission. Commission oversight is a policy requirement of their shareholder, the States of Jersey. Two such bodies have been included on the SEB approved list since their establishment but two others, established before the setting up of the Commission in 2005, found the new regulatory measures difficult to accept;
- The HR procedures for the independent sector have still not been published.

8. **Going forward, issues for development**

As well as these continuing concerns the Commission has identified:

- The need for the regulation of recruitment procedures in HSSD to be reiterated as within the remit of the JAC. Given concerns identified during 2016 the Commission will be involved in the appointment of senior roles over £75,000 (excluding clinical posts) until it is satisfied that HSSD has appropriate procedures in place;
- The need to consider how to attract a more diverse range of Candidates for States' posts and senior positions in the independent sector;
- The need for sign off procedures for Chief Officers to check that due process has been followed across their departments and in the organisations their department sponsors;
 - Independent bodies should include such confirmation as part of their grant assurance process;
 - Independent bodies not in receipt of grant funding (the wholly and majority owned) should have Commission oversight written into the corporate governance directions agreed with the States of Jersey;
 - Chief Officers / Accounting officers should confirm compliance as part of their annual sign off process.
- Greater clarity is needed on the role of the HR business partner in the sponsor department;
- Confused and not always consistent messages about policy and procedure for posts requiring licences for a search wider than the Island;
- The involvement of the Commission in the appointment of the Chair of any shadow Boards established by the States;
- Poor and late communication with the Commission when some senior staff are asked for progress reports on compliance;

- Work with the Bailiff and his team to secure a more appropriate way to oversee the appointment of tribunal members and chairs.

Rt Hon Dame Janet Paraskeva DBE
Chair, Jersey Appointments Commission

Dame Janet has been Chair of the JAC since September 2014. She was previously the First Civil Service Commissioner in the UK and has held a range of other senior posts including six years as Chief Executive of the Law Society of England and Wales.

Regulated Bodies

The States Employment Board determines which bodies are regulated by the Jersey Appointments Commission.

An independent body is likely to fall within the direct remit of the Commission if it meets at least one of the following criteria:

- It exercises statutory powers on behalf of the States of Jersey, or
- It receives government funding through its sponsoring Department of £250,000 per annum or more, or
- It has a significant public profile because of the nature of its responsibilities.

The list of these independent bodies will change from time to time but at present includes the following:

A. Organisations exercising statutory powers on behalf of the States and/or with a significant public profile

	Sponsoring Department
Andium Homes	Independent body
Data Protection Tribunal	Chief Minister's
Depositor's Compensation Scheme	Chief Minister's
Early Years and Childcare Partnership	Education
Financial Services Ombudsman	Economic Development, Tourism, Sport and Culture
Fiscal Policy Panel	Treasury and Resources
Income Support Medical Appeal Tribunal	Social Security
Jersey Childcare Trust	Education
Jersey Community Relations Trust	Community and Constitutional Affairs
Jersey Consumer Council	Social Security
Jersey Employment and Discrimination Tribunal	Social Security
Jersey Gambling Commission	Economic Development, Tourism, Sport and Culture
Jersey Health and Safety Council	Social Security
Jersey Innovation Fund	Economic Development, Tourism, Sport and Culture
Jersey Police Authority	Community and Constitutional Affairs
Jersey Police Complaints Authority	Community and Constitutional Affairs
Jersey Post Ltd	Independent Body
Jersey Safeguarding Partnership Board	Community and Constitutional Affairs
JT Group Ltd (Jersey Telecom)	Independent body
Office of the Comptroller and Auditor General	Chief Minister's
Office of the Information Commissioner	Chief Minister's
Ports of Jersey Ltd	Independent body
Public Employees Contributory Retirement Scheme/Jersey Teachers Superannuation Fund	Treasury and Resources
Skills Jersey	Education
Social Security Tribunal	Social Security

Social Security Medical Appeals Tribunal	Social Security
Sport Shadow Board (due to become Sport Jersey in 2016)	Economic Development, Tourism, Sport and Culture
States of Jersey Development Company	Independent body
Tourism Development Fund	Economic Development, Tourism, Sport and Culture
Visit Jersey	Economic Development, Tourism, Sport and Culture

B. Bodies receiving statutory funding of £250,000 or more per annum

	Sponsoring Department
Association of Jersey Charities	Economic Development, Tourism, Sport and Culture
Digital Jersey	Chief Minister's
Jersey Advisory and Conciliation Service	Social Security
Jersey Arts Centre	Economic Development, Tourism, Sport and Culture
Jersey Arts Trust	Economic Development, Tourism, Sport and Culture
Jersey Business Ltd	Economic Development, Tourism, Sport and Culture
Jersey Competition Regulatory Authority	Chief Minister's
Jersey Employment Trust	Social Security
Jersey Finance Ltd	Chief Minister's
Jersey Financial Services Commission	Chief Minister's
Jersey Heritage Trust	Economic Development, Tourism, Sport and Culture
Jersey Opera House	Economic Development, Tourism, Sport and Culture
Jersey Overseas Aid Commission	Chief Minister's
Royal Jersey Agricultural and Horticultural Society	Economic Development, Tourism, Sport and Culture