

PRIVILEGES AND PROCEDURES COMMITTEE

(24th Meeting)

19th June 2009PART A

All members were present, with the exception of Senator B.I. Le Marquand, from whom apologies had been received.

Connétable J Gallichan of St Mary, Chairman
 Deputy J.B. Fox
 Deputy J.A. Martin
 Deputy C.H. Egré, Vice Chairman
 Deputy M. Tadier
 Deputy M.R. Higgins

In attendance -

M.N. de la Haye, Greffier of the States
 Mrs. A.H. Harris, Deputy Greffier of the States
 I. Clarkson, Acting 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 meetings held on 1st May (Parts A and B), 8th May (Part B only), 15th May (Parts A and B), 22nd May (Part A only), 26th May (Part A only), 1st June (Part A only) and 2nd June 2009 (Part A only), having been circulated previously, were taken as read and were confirmed.
- Matters arising. A2. The Committee noted the following matters arising from the Minutes of its meetings held on 1st May (Parts A and B), 8th May (Part B only), 15th May (Parts A and B), 22nd May (Part A only), 26th May (Part A only), 1st June (Part A only) and 2nd June 2009 (Part A only) –
- (a) **Protocol in respect of visual / aural footage of Scrutiny meetings** (Minute No. A4 of 15th May 2009) – the Committee was advised that the Chairmen’s Committee was preparing to lodge ‘au Greffe’ a report and proposition to amend the Code of Practice for Scrutiny Panels and the Public Accounts Committee to clarify that recording and publication of such footage by members of the public would not ordinarily be permitted; and
 - (b) **Support for States members** (Minute No. A 5 of 15th May 2009) – the Committee noted that action would be taken to address a series of issues affecting facilities within the States Building, including the provision of a radio feed from the States Chamber to Interview Rooms 1 and 3 and the checking of emergency radios sited in protected areas for the benefit of wheelchair users.
- Draft Freedom of Information A3. The Committee, with reference to its Minutes Nos. A4 of 5th June 2009 and A2 of 12th June 2009, recalled that it had agreed to meet with representatives of the

(Jersey) Law
200-:
consultation with
Jersey Financial
Services
Commission.
670/1(8)

Jersey Financial Services Commission to discuss the ongoing development of the draft Freedom of Information (Jersey) Law 200-.

The Committee received Mr. J. Harris, Director General and A. Le Brun, Director - International and Policy, Jersey Financial Services Commission (JFSC).

The Director General informed the Committee that the JFSC endorsed the concept of free movement of information. Although it had identified certain concerns regarding the practical operation of such legislation, these were limited to the following areas only –

- (a) the extent to which an inappropriately wide broad requirement to release information held by the JFSC might prejudice the Commission's ability to carry out its statutory functions;
- (b) the anticipated resourcing implications; and
- (c) the anticipated need for a transitional period to allow the JFSC to review and refine its administrative processes in order to comply with the new Law.

Regarding (a) above, the Committee was advised that JFSC staff were constantly required to form judgements in respect of both policy development and specific ongoing investigations, some of which could be particularly complex. Concern was expressed that the list of exemptions proposed in the last publicly circulated draft Freedom of Information (Jersey) Law 200- would not provide the JFSC with the authority to classify genuinely sensitive material as exempt. The Committee was invited to note that the United Kingdom Freedom of Information Act 2000 provided qualified exemptions that would, if replicated in Jersey, strike an appropriate balance between the need for transparency and the need for regulators to fulfil their statutory functions.

The Committee acknowledged that it was already considering extending the existing draft qualified exemption concerning 'policy in the course of development' to include bodies regulated by statute. It also advised of its intention to consider the addition of a further qualified exemption to ensure that 'legitimate regulatory activity established by statute' would not be unduly inhibited.

On the matter of resourcing implications, the Committee was invited to note that the JFSC expected to receive a significant number of relatively complex information requests, on account of the nature of its statutory functions. The reported experience of the United Kingdom Financial Services Authority following the coming into force of the Freedom of Information Act 2000 was cited as evidence to suggest that the JFSC could expect to receive dozens of such requests each year. Although it was anticipated that the JFSC would be able to manage the resourcing implications, it suggested that due consideration be given to the fact that the JFSC's operational budget was funded through licence fees charged to regulated financial services businesses. It was further suggested that all affected public bodies, including the JFSC, should be consulted at a suitable juncture regarding appropriate fee levels.

Turning to the matter of transitional periods, the Committee was reminded that the JFSC had hitherto not been required to comply with either the Public Records (Jersey) Law 2002 or the existing Code of Practice on Public Access to Official Information. A transitional period of up to 2 years was suggested as a proportionate period of time to allow the Commission to review its internal administrative procedures. The JFSC suggested that the Committee consider whether it might be

appropriate to propose that the Public Records (Jersey) Law 2002 be amended so as to obligate the JFSC to meet certain requirements in respect of information management.

The Committee, having noted the views expressed by the Director General and the Director – International and Policy, invited the JFSC to submit a response to its forthcoming green paper on the draft Law and, in particular, to make relevant comparisons with the United Kingdom Freedom of Information Act from a JFSC perspective.

Mr. Harris and Mr. Le Brun withdrew from the meeting, having been thanked by the Committee for their attendance.

The Committee resolved to reflect on the points raised when consider a draft green paper on the draft Freedom of Information (Jersey) Law 200- at a dedicated meeting during the course of the coming month. In this regard it agreed that the draft green paper should –

- (i) highlight the Committee’s proposed schedule for implementation of the Law;
- (ii) include viable options for an appeal mechanism and acknowledge that the Committee’s provisional preference was for the constitution of an appeals tribunal; and,
- (iii) be submitted to Mr. M. Frankel, Director, Campaign for Freedom of Information, for comment prior to publication.

The Deputy Greffier of the States was authorized to take the necessary action.

States of Jersey
Complaints
Board: letter from
Deputy F.J. Hill
of St. Martin.
1386/6/1(1)

A4. The Committee considered correspondence, dated 2nd June 2009, from Deputy F.J. Hill of St. Martin concerning the operation of a States of Jersey Complaints Board hearing.

The Committee noted that the Deputy of St. Martin had expressed concern regarding –

- (a) acoustics at the various venues used for Complaints Board hearings;
- (b) a previous decision of the Board to prohibit filming of its proceedings; and,
- (c) a previous decision of the Board to decline to consider human rights matters raised as part of a complaint submitted to it.

Having considered the detail of the specific issues raised, the Committee concluded that any acoustic difficulties affecting particular venues could probably be resolved by adopting a more flexible approach to the standard room layout for such hearings. Several members nevertheless recalled that the acoustics and ventilation of certain venues used by States appointed bodies for hearings and other meetings had proved to be less than acceptable.

On the matter of filming, the Committee recalled that, in accordance with Article 5(3) of the Administrative Decisions (Review) (Jersey) Law 1982, as amended, the Complaints Panel was responsible by law for determining its own rules and procedures. It was acknowledged that, in some cases, all parties concerned might wish to consent to public filming of proceedings; however, the Committee was also

invited to note that certain complainants might be less inclined to pursue genuine complaints if video footage of proceedings was taken.

Regarding the consideration of human rights issues, the Committee accepted that such issues could, in certain circumstances, be legitimately considered by the Board.

Having recalled that an independently monitored recruitment process to identify several new members of the States of Jersey Complaints Panel was underway, the Committee agreed that it should seek to meet with the Panel to discuss the issues raised by the Deputy of St. Martin once the Panel was fully reconstituted.

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

States Assembly
Cash Limit for
2010.
422/10/1(80)

A5. The Committee considered a report, dated 16th June 2009 and prepared by the Greffier of the States, concerning the States Assembly cash limit for 2010.

It was reported that the Treasury and Resources Departments had requested that all States funded bodies accept pro rata reductions in their annual cash limit for 2010 in order to ensure that the overall expenditure of the States remained within the limits fixed by the States Assembly in the Annual Business Plan 2009. This would equate to a £42,500 reduction in the budget of the States Assembly. It was further reported that the Minister for Treasury and Resources was seeking, where possible, to implement savings identified by the Comptroller and Auditor General in his 2008 Review of States Expenditure. In this regard the Committee recalled that in 2008 the Committee as previously constituted had rejected a proposal to reduce the budget for Scrutiny by £100,000 per annum, as proposed by the Comptroller and Auditor General.

The Committee recalled that it retained full political responsibility for recommending an appropriate budget for the States Assembly. It nevertheless acknowledged that the States Assembly budget had been underspent by approximately £300,000 each year since the advent of Ministerial government. There was also good reason to expect that a similar or even greater surplus would be realized at the end of 2009. Each annual surplus had been largely attributable to lower than anticipated rates of spend by the Scrutiny function.

The Committee was advised that the views of the Chairmen's Committee had been sought regarding the viability of operating with a reduced budget. In this regard the Committee considered a memorandum summarizing views expressed by some members of the Chairmen's Committee. It observed that the Chairmen's Committee had not reached agreement on the matter.

Several Members expressed the view that Scrutiny Panels were refining their work processes to the extent that their productivity could be expected to increase further in the coming months. It was submitted that the increased productivity would result in a greater call on the Scrutiny budget. Concern was also expressed that the £100,000 might simply be redistributed by the Minister for Treasury and Resources and be spent by other departments that had yet to implement sufficient efficiency savings, although it was understood certain departments had already signalled that the delivery of core services within the limitations of their existing budgets was becoming increasingly difficult.

There followed a discussion concerning the relative merits of using the predicted Scrutiny surplus to improve States Members' facilities. Several Members contended that the research facilities available to States Members in a private capacity were distinctly limited, particularly when compared with the executive support available to

Ministers, Assistant Ministers and, to a lesser extent, Scrutiny Panels. Ultimately the Committee recognized that progression of such a project would be difficult in the absence of a fully costed proposal.

The Committee endorsed the recommendation that a total reduction in the States Assembly budget for 2010 of £142,500 be put to the States for approval as part of the Annual Business Plan 2010.

Deputy Deputy M. Tadier and Deputy M.R. Higgins both requested that their dissent from the Committee decision be recorded.

Operation Blast.
561/1(41)

A6. The Committee considered the statement delivered on 16th June 2009 in the States Assembly by the Minister for Home Affairs in connexion with Operation Blast.

The Committee noted that Deputy P.J. Rondel of St. John had already lodged 'au Greffe' a report and proposition calling for the constitution of a Committee of Inquiry into the circumstances surrounding Operation Blast (Projet No. P.102/2009 refers). It further noted that Deputy M.R. Higgins and the Deputy of St. John were engaged in the drafting of a more extensive report and proposition that, if approved, would supersede P.102/2009.

The Committee expressed serious concern at the revelation that the States of Jersey Police had set up files containing sections on every elected member of the States of Jersey and which did not appear to relate to any actual police investigation; however, and having reviewed its terms of reference, the Committee formed the view that it would be premature for it to consider taking substantive action until the outcome of the investigation already being overseen by the Minister for Home Affairs was known. Information already made available regarding Operation Blast did not give rise to the question of a potential breach of parliamentary privilege, although the implications for States members would need to be considered at an appropriate juncture.

The Committee agreed –

- (a) that the Chairman should write to all States Members summarizing its views, and**
- (b) that the Committee should continue to monitor developments closely.**

The Acting Committee Clerk was authorized to take the necessary action.

Senator B.I. Le Marquand, Minister for Home Affairs, was not present for this item.

States Assembly:
forthcoming
business.
1240/22/1(49)

A7. The Committee recalled that on 17th June 2009 the States Assembly had requested that the Committee review the substantial list of Projets listed for debate on 13th July 2009 and determine whether any might be deferred to the first meeting after the summer recess.

The Committee considered that deferring its own report and proposition entitled, 'Composition and Election of the States: revised structure' (P.72/2009) to the 8th September 2009 would not compromise the Committee's provisional timetable for implementation. It also concluded that States Members would benefit from having additional time to consider the changes proposed and to lodge any amendments they considered might be necessary.

The Committee resolved to recommend that P.72/2009 be taken as the first item of public business on 8th September 2009.