

STATES OF JERSEY



ISSUES SURROUNDING THE REVIEW OF FINANCIAL MANAGEMENT OF OPERATION RECTANGLE (S.R.16/2011) – RESPONSE OF THE MINISTER FOR HOME AFFAIRS

**Presented to the States on 6th January 2012
by the Minister for Home Affairs**

STATES GREFFE

**ISSUES SURROUNDING THE REVIEW OF FINANCIAL MANAGEMENT
OF OPERATION RECTANGLE (S.R.16/2011) – RESPONSE OF THE
MINISTER FOR HOME AFFAIRS**

Ministerial Response to: S.R.16/2011

Ministerial Response required by: 28th December 2011

Review title: Issues surrounding the review of financial management of Operation Rectangle

Scrutiny Panel: Education and Home Affairs Scrutiny Panel

Introduction

Because this is my formal response to the Scrutiny Review S.R.16/2011, it is relevant for me to record that I had cause to question the membership of the sub-panel. It was my contention that the chairman had pre-judged the outcome of the sub-panel's work in comments he had made previously in report and proposition P.116/2011 and in a letter to me. I also expressed concern over the balance of the Sub-Panel because 3 out of 4 members had been critical of my handling of the related disciplinary proceedings. Notwithstanding my stance on these matters, I nevertheless made the point to the chairman that I, and my staff, would co-operate fully with the review. I should also record that the auditors, BDO Alto, gave every assistance to the sub-panel and in fact incurred considerable expense in preparing the required submissions.

Findings

1.	To examine the instructions under which BDO Alto Limited was engaged to review the financial management of Operation Rectangle and their methods for gathering evidence for this review.	
1.1	Under the Public Finances (Jersey) Law 2005 the Chief Officer of Home Affairs is legally responsible for the expenditure of the States of Jersey Police. All concerned now agree that the decision to place accountability for the States of Jersey Police budget with the Home Affairs Accounting Officer was a mistake. This arrangement made it unnecessarily difficult for the Chief Officer of Home Affairs to ensure effective oversight of expenditure on Operation Rectangle which was an event of unprecedented complexity.	Agreed. Arrangements are being made to enable the Police Chief to become an Accounting Officer with effect from January 2012. The draft States of Jersey Police Force Law 201- contains a provision which will formalise this arrangement.

1.2	The terms of reference for the review of financial management during Operation Rectangle were drawn too narrowly. They directed BDO Alto to focus solely on the internal Police arrangements and the use of resources.	It is agreed that the wording of the terms of reference could have made it clearer that my intention was always that the review should include looking at the role of the Accounting Officer and the Home Affairs Department. Nevertheless, section 3 of the Review does deal with this issue. The whole purpose of the BDO Review was to scrutinise the amount and type of expenditure to examine whether it represented the efficient and effective use of resources. The BDO report was commissioned to provide the Minister and the Accounting Officer with an assurance that resources had been used efficiently and effectively.
1.3	As a result, the review conducted by BDO Alto promoted a perception that the high levels of expenditure in the investigation were caused by a lack of management control by senior police officers whereas there was in fact a much broader failure by States systems to provide adequate and timely monitoring of the way financial resources were being used, which has not been acknowledged or examined.	This was not merely a perception but a fact borne out by the Wiltshire Police Finance Report (see paragraph 5.2.38 7 of the 'Particulars' section of the Wiltshire Police Finance Report (page 97). In my view, the Scrutiny Sub-Panel's report has failed to give sufficient weight to the Wiltshire Police Finance Report.
1.4	The examination of governance arrangements in section 3 of the BDO Alto report is incomplete as it does not take into account evidence from Mr. Power, the Chief Officer of Police at the time.	The Wiltshire Police Finance Report does take into account Mr. Power's evidence. The examination of governance arrangements in the BDO Review needs to be read alongside paragraphs 1.1 to 1.15 of the Wiltshire Police Finance Report. The conclusions drawn are consistent.
1.5	An opportunity to include a more strategic examination of how Jersey runs and funds policing and lines of accountability, both professionally and politically, was missed.	No. These matters have been examined thoroughly and new provisions incorporated into the new States of Jersey Police Force Law 201- which was lodged in November 2011 for debate by the States in early 2012. The most relevant of these are the Police Authority and Accounting Officer provisions.
1.6	The appointment of a Finance Manager seems to have fallen between two stools. BDO Alto review	If the Scrutiny Sub-Panel had researched the relevant source document – the Guidance on Major

	<p>did not examine why Home Affairs did not appoint a finance manager at an early stage to work closely with the Police.</p>	<p>Incident Room Standardised Administrative Procedures (MIRSAP) 2005 – they would have ascertained where the responsibility lies for appointing a Finance Manager for a major incident, namely with the Police force. The guidance is produced on behalf of the Association of Chief Police Officers by the National Centre for Policing Excellence and provides the Police with clear information and guidance on the above procedures.</p> <p>Section 1.2.1 states that ‘the Senior Investigation Officer (SIO) has responsibility for the investigation of the crime. This includes ensuring, in liaison with other senior officers as necessary, that an incident room with appropriate resources is set up.’</p> <p>Section 1.5 sets out the role of the Finance Manager: ‘This role coordinates all administration and financial issues regarding staff, vehicles, accommodation, refreshments and equipment thereby relieving the SIO and Office Manager of all administrative matters not connected with the investigation itself.</p> <p>The guidance goes on to say that the Finance Manager should be appointed immediately and is key in the setting up of a major enquiry.</p>
1.7	<p>The Minister for Home Affairs should have ensured that the BDO Alto review fully examined the implications of the flawed structure for monitoring and challenge.</p>	<p>No. This finding results from the failure of the Scrutiny Sub-Panel to properly consider and give due weight to the Wiltshire Police Finance Report.</p>
1.8	<p>Operation Rectangle had significant unbudgeted consequences for the States of Jersey as a whole. However, it is not clear whether the senior management in the States had any established procedures for identifying and managing the risk. This aspect was not examined by BDO Alto as it was outside their terms of reference.</p>	<p>The Chief Minister’s Department has been consulted on this finding. That Department now maintains a Strategic Risk Register which links into departmental risk registers with the object of identifying key risks early. This includes an escalation process where immediate action is required to treat or mitigate these risks. The potential impact of the Pandemic Flu outbreak in 2010 is a clear example of</p>

		how a major Strategic Risk to the Island was escalated quickly to the Chief Minister's department and an appropriate senior management team was convened from across the States to provide strategic management of the risk.
1.9	The review of an issue as highly sensitive as the Police use of resources in Operation Rectangle should not have been commissioned and overseen by the States department which had responsibility for the Police budget.	The BDO Review was a review specifically commissioned to provide the Minister and The Accounting Officer with an assurance that resources had been used efficiently and effectively. The primary investigation into the management and supervision of the HCAE by the Chief Officer of Police was carried out by the Wiltshire Police and their findings published in their Finance Report. The BDO Review was not unlike any similar audit commissioned by the Department, in consultation with the Chief Internal Auditor, into other areas of its business.
1.10	A completely independent body should have commissioned this review in order to provide a more transparent, comprehensive and rigorous challenge to the financial monitoring arrangements in place between the Home Affairs Department and the States of Jersey Police.	The comment at paragraph 1.4 applies. In my view, the Sub-Panel's review could have benefited from greater reference back to the Wiltshire Police Finance Report which was a report prepared by a "completely independent body".
1.11	In the highly charged atmosphere about the Historic Child Abuse Enquiry and the way it was handled it was inevitable that narrowly drawn terms of reference and the way the report focussed on specific expenditure decisions and less on wider issues of governance and control would be seen by some as less than objective and a deliberate attempt to discredit the HCAE.	The suggestion that there was a deliberate attempt to discredit the Historical Child Abuse Enquiry is very strongly denied. Not only is this incorrect but also there is a complete absence of cogent evidence to support this. At all times, the HCAE was treated very seriously by both the States of Jersey Police and myself. At no time did any relevant party wish to discredit the enquiry. However, the Wiltshire reports indicate that there were very serious failings on the part of the most senior officers.
2.	To clarify the connection between the BDO Alto review and the review separately commissioned by	

	the Acting Chief Officer of Police	
2.1	Mr. Kellett was originally employed by the States of Jersey Police to undertake an internal review, commissioned by Mr. Warcup, relating to the overall conduct of the HCA investigation by the police.	This was not known by me but is apparent from the evidence.
2.2	Mr. Kellett, however, was not made aware of this intended task and was given separate instructions which required him to work closely with the BDO Alto review on the use of financial resources. These different instructions were given by Mr. Gradwell and had not been seen or authorised by Mr. Warcup.	This was not known by me but is apparent from the evidence.
2.3	<p>Mr. Gradwell's instructions to Mr. Kellett caused confusion about the police consultant's role. Mr. Warcup initially praised Mr. Kellett's work but subsequently decided that it was inappropriate for him to be working on a joint review with BDO Alto on the grounds that it was inappropriate for anyone working for the States of Jersey Police to be investigating matters which were connected to the disciplinary enquiry being conducted by Wiltshire Constabulary.</p> <p>The long delay in bringing the Wiltshire disciplinary enquiry to a conclusion had important consequences for the BDO Alto review as it led to Mr. Warcup's decision to prevent Mr. Kellett from interviewing Mr. Harper regarding his expenditure decisions during the course of the BDO Alto review.</p>	This was not known by me but is apparent from the evidence.
2.4	Despite the significant limitation imposed on the BDO Alto review by his decision, Mr. Warcup did not convey his concerns to the Minister for Home Affairs. The Minister was therefore unable to resolve the problem.	Agreed.
2.5	Due to Mr. Gradwell's widely known negative views on the management of Operation Rectangle by his	It is relevant to record that Mr. Gradwell's credentials in relation to the management of major incidents

	predecessor it was not appropriate for him to be directing the police consultant's work on the financial review. This undermined the independence of the BDO Alto review.	were impeccable to the extent that he could take an objective view of the management of Operation Rectangle. There was therefore no reason, at the time, to anticipate a difficulty. I accept that Mr. Gradwell's subsequent behaviour gives rise to a serious risk that the outcome of the BDO Alto Report may have been influenced by Mr. Gradwell's view.
3.	To identify the reasons why the Senior Investigating Officer for Operation Rectangle was not interviewed during the review and was not given the opportunity to respond to the report's findings	
3.1	It is self evident, and all parties agree, that BDO Alto should have interviewed the key witness so that his evidence could have been included and evaluated in their report. Natural justice requires no less.	Although BDO Alto were aware of Mr. Harper's position on a number of issues, it was implicit in the terms of reference that key witnesses should be interviewed. If the difficulties in relation to this had been brought to my attention then I would have ensured that this occurred.
3.2	The failure to provide Mr. Harper with the opportunity to respond to the findings of the BDO Alto review was also, in our view, a significant error and inevitably undermines the credibility and fairness of that review.	I accept that the failure weakens the strength of some conclusions. However, some conclusions were independently confirmed by the Wiltshire Police Finance Report and, in other cases, the position of Mr. Harper was known and it is unlikely that the response of Mr. Harper would have led to a different conclusion.
3.3	Given that it was surely obvious that not to interview the Senior Investigating Officer in Operation Rectangle would leave the review open to criticism of being fundamentally flawed, BDO Alto should have brought this problem to the attention of the Home Affairs and insisted that some solution be found.	The BDO Review was carried out by professional auditors and based upon documentary evidence. The factual findings in relation to expenditure are accurate. The BDO Review makes it quite clear that the content had not been discussed with the former SIO. I refer back to my comments on 3.1.
3.4	No one involved in the review brought to the Minister's notice the fact that there were apparent obstacles in the way of interviewing Lenny Harper.	Agreed, and I have already commented on that.

3.5	The terms of engagement for BDO Alto should have made clear that their review would be subject to public scrutiny.	It was clear to BDO at an early stage that their report would be placed in the public domain.
4.	To clarify the liaison between the review of financial management and the Wiltshire Police Investigation, in particular the references in the BDO Alto report to the Senior Investigating Officer's statements to Wiltshire Police	
4.1	BDO Alto stated that the references to Mr. Harper's statement to Wiltshire were included in their report in order to add some support to Mr. Harper's approach to certain financial issues.	Agreed.
4.2	The 3 references briefly made in the BDO Alto report actually concern contentious issues which deserved a much fuller explanation of Mr. Harper's position.	See comment to finding 3.3. Where opinions were expressed by the SIO, such as the relevance of Home Office procedures to Jersey, then an explanation of his view would have been helpful.
4.3	In our view, the justification given for referring to Mr. Harper's statement in fact supports the argument that he should have been contacted to establish his point of view across the whole review of financial resources.	I have already commented on that.
5.	To investigate how details of the review into the financial management of Operation Rectangle came to be published in a national newspaper in October 2009	
5.1	The evidence we have received points to Mr. Gradwell as the person responsible for leaking information from draft sections of the work which Mr. Kellett had prepared for the BDO Alto review.	Agreed.
5.2	Neither BDO Alto nor Mr. Kellett were responsible for the leak of information to the Mail on Sunday.	The Department was confident from the outset that no leaks had been made by Home Affairs Department staff or those carrying out the BDO Review.
5.3	Mr. Gradwell's action in releasing prematurely to the media draft sections of an uncompleted report	Agreed.

	would have been a serious disciplinary matter for the Police. However, no action could be taken against him by the States of Jersey Police as Mr. Gradwell had completed his secondment and left the Island.	
5.5	Mr. Gradwell's reasons for taking such an unprofessional step are not clear to us as he refused to participate in the Scrutiny review.	Agreed. Mr Gradwell did explain his behaviour in a telephone call to me in late 2009 or early 2010, but this was not included in my evidence as I was not asked about this.
6.	Media coverage	
6.1	The emphasis on alleged misuse of taxpayers' money in instances of media reporting risks implanting the impression in the public mind that the entire expenditure on Operation Rectangle was badly managed.	When I made a press statement in relation to the Wiltshire and BDO Reports regarding the Historical Child Abuse Enquiry, I read out a detailed and balanced statement before answering questions on details. I was not able to control the reporting of this. Some of the reporting was fair and balanced but some was unbalanced and sensational to the extent of wrongly giving the impression that the entire expenditure on Operation Rectangle had been mismanaged.
6.2	In our hearing with him on 25th August 2011, the Minister was sympathetic to our concerns about the way negative messages about Mr. Power and Mr. Harper had been spun in the media and he offered to make a joint statement to this effect with the Sub-Panel. We believe that this would be a positive step.	The Minister has followed through on this offer, e.g.: Radio Jersey interview on the 15th November 2011 with the Minister and the Sub-Panel Chairman. In addition to this, I now offer the following further statement (see Appendix)
6.3	Our primary concern about the premature leaking of details of the review of financial management relates to issues of fairness in the way these leaks are reported in the media without an adequate opportunity for an alternative perspective to be considered.	Agreed.

6.4	It is essential that the Chairmen's Committee give serious consideration to establishing a Scrutiny Panel which could undertake a review which will look specifically at the kind of issues we have identified in this report.	This is not within my remit as Minister for Home Affairs.
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Recommendations

R.1	<p>The Council of Ministers should report to the States on whether it believes that its procedures for the identification and management of major financial risks are adequate. If they think they are adequate, they should explain why, in the light of 2 successive failures¹ when major unprecedented risks were not well managed. If they think they are not, how they have made the procedures fit for purpose.</p>	<p>The Minister for Treasury and Resources has accepted the view that the fact that the Chief of Police was not an accounting officer may have contributed to difficulties in managing the financial aspects of Operation Rectangle. He will therefore appoint the Chief of Police as accounting officer with effect from 1st January 2012. However, he regards this as an isolated and exceptional example of the accounting officer arrangement not working effectively.</p> <p>When the new Public Finances Law came into effect in 2006 the previous General Reserve was no longer available to fund unforeseen expenditure. From 2006 such unforeseen and large items have been brought in an open and transparent manner to the States' attention via a request for additional funding under Article 11(8) of the Public Finances (Jersey) Law 2005. Any such expenditure approved has then been separately managed by the Treasury with any unspent funds not required for that explicit purpose being returned to the consolidated fund by ministerial decision. Recent examples of such returns happening include funding allocated for pandemic flu, Williamson and Social Security costs.</p> <p>The Council of Ministers regards the 2 examples quoted by the sub-panel as</p>
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¹ The negotiating of a major contract with a French company with regard to the construction of the incinerator, and the running of a major crime investigation into historic child abuse, and possibly child homicide.

		<p>being particular and not evidence of a systematic weakness in the identification and management of financial risks. The Historic Child Abuse Enquiry was largely unforeseeable but the Article 11(8) approach outlined above allowed this cost to be managed. The EfW matter had a number of contributory causes which have been well documented but this was not an unidentified risk, rather one where the mitigation process was unsatisfactorily managed. Aside from isolated Article 11(8) requests to the States all other capital and revenue expenditure has been contained within States-approved limits and is managed by a combination of accounting officer vigilance and regular reporting on income and expenditure to the Council of Ministers, where any corrective action can be discussed and agreed. The Council of Ministers therefore has confidence in its assurance framework.</p> <p>Notwithstanding the basic soundness of the processes described above a number of improvements have been made that include –</p> <ul style="list-style-type: none"> • Improved quarterly revenue and capital reporting to the Corporate Management Board and Council of Ministers – any potential difficulties are identified and discussed on an “early warning” basis. • Identification of major spending pressures towards year end for the forthcoming year to the Council of Ministers. These are then discussed and funding agreed if appropriate. If funding is not available departments will be expected to manage within existing approved expenditure limits. • The availability of Central Reserves/Contingency to meet any genuinely unplanned pressures. These have been approved by the States. An outline of a transparent process for managing this
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		<p>expenditure will be published in January 2012.</p> <ul style="list-style-type: none"> • Six-monthly reports to the States showing all approvals made for changes to States-agreed spending and income by the Minister for Treasury and Resources under his Finance Law delegations. This ensures States Members are made aware of any changes in use of funding they have approved. • A strengthening of the Audit process and the Audit Committee. This is now more focussed and has more independent members.
R.2	<p>Reviews of exceptional matters of public interest such as Operation Rectangle should be commissioned, their Terms of Reference set, and supervised in a completely transparent and independent way. The Council of Ministers must report to the States on how this is to be achieved.</p>	<p>The Home Affairs Department's objective was to commission an audit into the efficient and effective use of resources. The Council of Ministers believes that it is possible for a Department to set Terms of Reference and supervise in a transparent and independent way. However, in future, it commits to considering such matters as part of its regular review of financial performance and, either jointly or through the Minister for Treasury and Resources, commissioning internal or external reviews where it feels this would be appropriate. It does not consider that a report to the States would be of any benefit as each case must be treated on its own merit</p> <p>For any other exceptional and large occurrences which are likely to result in significant additional expenditure the Council of Ministers commits to considering financial arrangements early in such a process. At the same time the Council of Ministers is concerned that the accounting officer concept is not weakened and that legal responsibilities cannot be avoided by the Council of Ministers or Minister for Treasury and Resources taking over such responsibilities. The accounting officer for a department committing expenditure remains legally accountable for that expenditure.</p>

R.3	The Chairman's Committee should establish broadly-based Scrutiny Panel to undertake a review to examine issues relating to the media coverage which we have raised in our report.	This is a matter for the Chairman's Committee.
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Conclusion

The findings of this report are a mixture of accurate statements and inaccurate or only partially accurate statements. Insufficient weight was given to the independent and well-researched Wiltshire Police Finance Report. However, because of the exaggerated nature of some of the press reporting in this area I have produced a press statement in order to seek to correct the exaggerated criticism of both Mr. Power and Mr. Harper.

APPENDIX

Press Release from the Minister for Home Affairs in relation to the financial management of the Historical Child Abuse Enquiry

During the Review that was recently conducted in relation to the BDO Alto report into financial management of the part of the Historical Child Abuse Enquiry which related to Haut De La Garenne, I was reminded of the exaggerated nature of some of the reporting in this area and agreed, in fairness to Mr Power and Mr Harper, to make a press statement to seek to correct the worst exaggerations.

These exaggerations included allegations that most of the cost of the Historical Child Abuse Enquiry was wasted and that digging should never have started at Haut De La Garenne. Some of the reported criticism of the Historical Child Abuse Enquiry has wrongly led some people to the conclusion that, in some way, the whole enquiry had been discredited.

The definitive reports in this area are the two reports of the Wiltshire Police. Those reports conclude amongst other things:

- 1) That the Historical Child Abuse Enquiry was appropriately managed in its early stages.
- 2) That issues of serious concern did arise in relation to the financial management and other aspects of the investigation in relation to Haut De La Garenne.
- 3) That the decision to start digging at Haut De La Garenne was not so clearly wrong as to give rise to a disciplinary issue.

In my press conference in July 2010, I indicated my view that, once a piece of material had been wrongly identified by an anthropologist as being part of a child's skull, it was reasonable that the digging at and around Haut De La Garenne should continue, but that once the forensic experts indicated that the item was not human skull, the reason for continued digging ceased.

I also now wish to affirm and confirm that the Historical Child Abuse Enquiry was much wider than the Haut De La Garenne investigation, and that this enquiry led to a significant number of successful prosecutions as well as to the discovery of significant other allegations of physical and sexual abuse which did not, for a variety of reasons, lead to successful prosecutions.

The Enquiry continued until 2010 and I am satisfied that the Police investigations were fully and properly concluded in relation to the various allegations of abuse which were made.

Ian Le Marquand
Minister for Home Affairs

January 2012