# STATES OF JERSEY

# MACHINERY OF GOVERNMENT REVIEW SUB-COMMITTEE: FINAL REPORT

**Presented to the States on 9th September 2013**
**by the Privileges and Procedures Committee**

**STATES GREFFE**

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## EXECUTIVE SUMMARY

We believe that our machinery of government in Jersey should uphold certain key principles. These are – in no particular order of importance –

- accountability,
- sound corporate governance
- objectivity,
- prudence, and
- transparency.

The systems and processes we have in place now do not, in our view, align well with these core principles. Addressing that lack of alignment will, we believe, improve public confidence in the States and, quite possibly, bring about greater voter engagement.

There remains a pressing need to address blurred lines of accountability and a prevailing silo mentality. Lines of communication across the States must be improved and the relationship between the executive and the Civil Service needs rebalancing. Further changes are required to maintain inclusive government and utilize the talents and expertise of States Members whilst clarifying the parts that executive and non-executive Members play in government.

We have endeavoured to devise a coherent single package of measures to bring about the necessary improvements in short order. Our task has been a challenging one. There remain some fundamental differences of perspective between those who favour a pure ministerial system and those who would prefer to see either the restoration of committee government or the development of a hybrid system.

There are essentially 2 options available given the balance of opinion we have detected. The States can move closer to the model proposed by the Clothier Panel and give that model sufficient time to demonstrate that it can deliver the remedies envisaged in December 2000. Alternatively, they may choose to pursue a ministerial/ committee hybrid, perhaps of the kind proposed in P.120/2010, or by blending some executive/non-executive roles as per the system in place in the Isle of Man.

In our view, the hybrid model is the more viable option. The States Assembly would continue to be responsible for the direction and oversight of government on behalf of the Public and be accountable to the Public for all States business. The executive function would still be delegated to the Council of Ministers, who will have a clear reporting line to the States through the Chief Minister. Monitoring of the executive will be enhanced by complementing the existing Scrutiny function with Non-Executive Members (NEMs), who will provide real-time oversight of matters arising within departments. Importantly, the executive would remain in the minority and would be subject to structured scrutiny by a clear majority of States Members that would not be holders of any positions within the executive. Members' skills and abilities will necessarily be utilized to the full if these functions are to be fulfilled.

## RECOMMENDATIONS

### (i) Final Report Recommendations

**1.** The period between election day and the election of a Chief Minister Designate should be shortened by one week.

**2.** Newly elected/re-elected Members should benefit from a formal mechanism through which they might express an interest in serving in a particular executive or non-executive capacity, supported by a brief rationale for wishing to pursue those particular roles.

**3.** Standing Order 115 should be amended to require that written statements setting out a vision for a strategic policy and the manner in which a candidate proposes to discharge their duties as Chief Minister should be published not less than 5 working days before the meeting at which the Chief Minister Designate is to be elected.

**4.** Standing Order 116(5) should be amended to allow up to one hour of questioning of each candidate for the office of Chief Minister.

**5.** The size of the executive should continue to be constrained in accordance with the Troy rule.

**6.** The Chief Minister should be empowered to change ministerial portfolios and determine the optimum number of Ministerial appointments once he or she has been elected as Chief Minister Designate.

**7.** A Chief Minister Designate should continue to be required to secure the endorsement of the States Assembly for his or her ministerial team.

**8.** Only the Chief Minister Designate should be able to nominate candidates for Ministerial positions.

**9.** The timescale outlined at Standing Order 112 should be amended to require that the Chief Minister Designate nominate his or her preferred slate of Ministers to the States within 5 working days.

**10.** The States should vote for or against the list of proposed Ministers on an individual basis.

**11.** The Chief Minister Designate should be able to propose a maximum of 3 Ministerial teams.

**12.** The Council of Ministers should be bound by collective responsibility.

**13.** Assistant Ministers should also be bound by collective responsibility in respect of any matters falling directly within the ministerial portfolios to which they are attached.

**14.** The precise terms and limitations of collective responsibility should be specified within the Code of Conduct for Ministers, which should be adopted

at the very first meeting of each new Council and, subsequently, be presented to the States as a report in the 'R.' series.

**15.** The Council of Ministers should be invested with sufficient powers to direct individual departments if necessary.

**16.** The title 'Junior Minister' should henceforth be substituted for that of 'Assistant Minister.'

**17.** The States of Jersey Law 2005 should be amended to make Junior Ministers the default port of call for an executive decision whenever the Minister is out of the Island or is otherwise indisposed.

**18.** One Junior Minister should by default represent their department at the Council of Ministers whenever the Minister is out of the Island or is otherwise indisposed.

**19.** Junior Ministers should have identical rights of access to information to those of their Minister.

**20.** The members of the Public Accounts Committee who are not States Members should be selected for recommendation to the States Assembly through a recruitment process overseen by the Jersey Appointments Commission.

**21.** Following a resignation or dismissal, the Chief Minister alone should be able to propose a new Minister. He or she would require the endorsement of the States for that appointment.

**22.** A Chief Minister should be entitled to 3 attempts to appoint a new Minister.

**23.** The Chief Minister should require the prior endorsement of the States for any reshuffling of Ministers between existing portfolios.

**24.** The period for development of the draft Strategic Plan cited in Article 18(2)(e) of the States of Jersey Law 2005 should be reduced to a maximum of 60 days.

**25.** NEMs should be appointed to provide advice and other assistance to each Minister.

**26.** NEMs should be appointed by the States on the recommendation of the Chief Minister.

**27.** NEMs should only be selected from members of the Assembly who are actively available to participate in scrutiny reviews.

**28.** PPC should consider establishing procedures to define and ensure that NEMs are 'actively' available to participate in scrutiny reviews (such procedures to be implemented at the same time as NEMs are created).

**29.** NEMs should be permitted to serve on scrutiny committees but not the SMC, and not in respect of any ministerial portfolio for which they act as a NEM.

**30.** NEMs should have full and unfettered access to information held by, and the officers working within, the States departments falling within the relevant Minister's portfolio.

**31.** PPC should consider bringing an amendment to the Code of Conduct for Elected Members to take account of the creation of NEMs.

**32.** There should be a Scrutiny Management Committee (SMC) consisting of 5 non-executive States Members elected by the States, together with the Chair of the Public Accounts Committee.

**33.** Only non-executive States Members should be permitted to cast votes during the election of the SMC or for a replacement member of the SMC.

**34**. Dismissal and replacement of individual members of the SMC should be a matter determined by the States following debate on a no confidence proposition, to be lodged by a member of the non-executive only.

**35.** There should be scheduled opportunities for new Members to visit States departments and meet senior management teams.

**36.** Any questions regarding the responsibility for cross-cutting review topics should be resolved by the Scrutiny Management Committee.

**37.** The Code of Practice for Scrutiny and the PAC would need to be reviewed to take account of the changes we recommend.

**38.** Any non-executive States Member not already serving on the SMC should be able to volunteer to serve on a scrutiny committee established by the SMC to conduct a topic review.

**39.** Scrutiny committees formed to conduct a review of a particular issue should be comprised of between 3 and 5 non-executive members.

**40.** Membership of scrutiny committees should be approved by the SMC.

**41.** Terms of reference for individual scrutiny committees should be approved by the member of the SMC with oversight responsibility for that topic area.

**42.** A scrutiny committee constituted to conduct a particular topic review will be authorised to approve its own final report for presentation to the States.

**43.** Responsibility for conducting legislative scrutiny should remain with the established Scrutiny function.

**44**. The Council of Ministers should ensure that all Ministers are obtaining appropriate input from the Law Draftsman's Office on significant pieces of draft legislation prior to lodging.

**45.** Junior Ministers should not be permitted to serve on Scrutiny.

**46.** The structure and resourcing of the Scrutiny Office should be reviewed with a view to enhancing internal research capacity and enabling easier access to specialist external advice.

**47.** An Ombudsman should be appointed to hear and determine complaints of maladministration by Departments. This recommendation should be implemented either in advance of, or at the same time as the recommendations concerning greater authority for the Executive.

**48.** An additional research resource should be made available to non-executive States Members to assist them with the development of draft policy proposals.

**49.** A public register of Chief Officers' interests should be accessible on www.gov.je and this register should be displayed alongside copies of the respective codes of conduct applicable to both Chief Officers and other public servants.

**(ii) Interim Report Recommendations**

**1.** Advisory or oversight groups that are intended to progress the development or revision of policy falling within the remit of 2 or more Ministers should be constituted by the Council of Ministers, with a commensurate decision being recorded in the Part A (open) minutes of the Council wherever possible.

**2.** A decision of an individual Minister to form an advisory or oversight group to assist with the development or revision of policy within his or her remit should –

(a) be recorded by way of a formal and public Ministerial Decision; and

(b) that Ministerial Decision should record at least the outline terms of reference, the membership and anticipated duration of each group and, where relevant, the budget allocated to the group to complete its work.

**3.** The Council of Ministers should be required to publish, and to keep updated, a collated list of all advisory and oversight groups formed to progress the development or revision of policy.

**4.** PPC should lodge *'au Greffe'* an amendment to the States of Jersey Law 2005 that, if adopted, would empower the Chief Minister to dismiss a Minister.

**5.** The Council of Ministers should have as a standing item on its agendas a documented summary update on the work programmes of each individual Minister.

**6.** Minority government must be retained in the ongoing absence of political parties and irrespective of the outcome of the forthcoming referendum on the constitution of the States Assembly.

**7.** The Chairmen's Committee should be invited to consider the Electoral Commission's subsidiary recommendation on legislative scrutiny and report its views to the PPC.

## CHAIRMAN'S FOREWORD

*'An effective democracy requires not just an executive but the balance of a strong assembly which hold the executive to account and scrutinises its actions as well as contributing to the formation of policy.'* – Report of the Review Panel on the Machinery of Government in Jersey ('Clothier'), 2000

Discussions surrounding improvements to the Machinery of Government are not a recent thing. Whilst *Clothier* is nowadays largely associated with Electoral Reform, in the mind of the public, his report also made a series of recommendations regarding the internal workings of the States Assembly, some of which were either ignored, amended or not fully implemented. It is perhaps no surprise, then, that over 7 years down the line, the same questions relating to accountability and efficiency are still being raised.

Political opinion on our sub-committee was in many ways a microcosm of that which we know also exists in the States Assembly. These are explained in more in the *executive summary* at the beginning of our report. As such, we are under no illusion that not all of the recommendations will find favour with all members.

The States Chamber currently counts 51 Elected States Members and there are no doubt 51 corresponding 'solutions' to the machinery of government – all slightly or very different from the others.

It has been our experience, during our interviews with a total of 48 States Members and Senior Departmental Officers, that the vast majority believe the current system is sub-optimal.

As a result, our methodology was to identify key principles which we think can be universally, or near-universally, accepted and to work from there.

### The elephants in the room

Whilst some lament the absence of the *inclusiveness* of the old committee system, others simply accept that the price a devolution of power from States Assembly to the Executive (Ministers, and their CEOs) is the price worth paying for the added *efficiency* of the Ministerial system. With this in mind, I envisage that the one of main themes of future debate will surround *collective responsibility*, the ability of the Chief Minister to 'hire and fire' and the question of just how much power, if any, the Assembly should cede to whoever becomes Chief Minister. These have certainly been considerable pre-occupations for the sub-committee.

Another consideration is the absence of formal Party Politics in the Island. It is clear that our work would have been much simpler, were it for the pre-existence of Parties. In their absence, mechanisms such as the selection of Chief Minister, Ministers, mandate, accountability and even the ability of the public to influence policy remain even more critical.

Members can rest assured that a considerable amount of discussion, deliberation and work have gone into the various drafts that have resulted in this final report. We hope it will provide the basis for constructive discussions, which we will seek to put to an in committee debate at the earliest opportunity.

Finally, I would like to thank all those who engaged with the process of this report. They include: the members of the public that made submissions; States Members; Civil Servants; the Sub-Committee Members for their often painstaking work and input, and finally, but foremost, our Clerk who has worked tirelessly on this task, with other competing pressures.

## 1. DEFINING THE PROBLEM

Throughout the Sub-Committee's review of the machinery of government there have been 2 points of consistency. The first point, on which practically everyone appears to agree, is that the existing system is sub-optimal and warrants rather more than mere tinkering at the margins. The second is the lack of consensus on how the system might be improved. Even within the Sub-Committee, there are areas which have not gained unanimous approval. We are of the view that the same is likely to be the case for any proposals brought directly to the Assembly for consideration. We are therefore recommending that members should have the opportunity to consider the details (and options) within our report in the form of an in-committee debate which can then inform the final outcome of our deliberations.

Our interim report (R.39/2013) served to highlight –

(a) the need to improve the availability of information regarding the various advisory and oversight groups involved in policy development;

(b) a consensus of opinion among Members that the Chief Minister should be granted the power to dismiss a Minister but that the endorsement of the Assembly should be required for Ministerial appointments;

(c) the case for ensuring that the Council of Ministers receives regular documented summary updates on the work programmes of individual Ministers;

(d) the need for the executive to remain in the minority; and

(e) the scope for the Chairmen's Committee to consider the Electoral Commission's subsidiary recommendation on legislative scrutiny and report its views to the PPC.

We stand by the recommendations in that report and we are grateful to note that the responses of the Chief Minister and the Chairmen's Committee have, in the main, been firmly supportive.

In this final report we propose what we believe to be a cohesive reform package that delivers against broadly the same key principles we cited in R.39/2013. These principles are – in no particular order of importance –

- accountability,
- sound corporate governance,
- objectivity,
- prudence, and
- transparency.

Implementing a system that aligns well with each of our key principles would, we believe, enhance public confidence in the States significantly. A consequent increase in voter engagement could conceivably follow.

Our work has been informed by our desktop study of the functions performed by other comparable democratic governments, by our series of one-to-one interviews with some 48 States Members and senior officers and by several iterations of internal and external consultation.

Having tested our current system against the above key principles, we consider that it falls short in a number of respects. Our interim report summarises our provisional assessment of the problem in the following terms –

(1) blurred lines of accountability, and

(2) a prevailing silo mentality.

We suggested that the following additional issues could also be a factor –

(3) insufficient inclusivity,

(4) insufficient use of States Members' talents and expertise,

(5) ineffective lines of communication, and

(6) a Civil Service that potentially wields too much power.

Having given the matter further thought, we conclude that (1), (2), (3) and (5) are largely the root of the problem.

**Accountability**

Shortcomings in accountability and corporate governance have been explored at some length in successive Public Accounts Committee (PAC) reports, including the PAC's 4th report of 2011. It is precisely because existing structures, roles and responsibilities are unclear that there is not always a shared view on where the buck stops. For example, the Assembly and the Council of Ministers might feel justified in looking to each other when considering why more time is needed to hit the £65 million savings target set for the Comprehensive Spending Review.

**The silo mentality**

Some States Members have also told us of their concern that there is ultimately nothing short of the 'nuclear' vote of no confidence to deter an individual Minister intent on exercising their corporation sole status independently of their executive colleagues. We recognise the problem. The risk of silo thinking that comes with corporation sole status can be mitigated by making those Ministers accountable to the States through the Chief Minister. Additional powers for the Chief Minister, the application of collective responsibility and our proposal for supplementary oversight by non-executive States Members will mitigate the risk.

**Inclusivity**

Inclusivity is a rather more challenging issue to bottom out. Arriving at a single definition is difficult because a discussion of inclusivity tends to draw out fundamental differences of perspective between those who favour a pure

ministerial system and those who would prefer to see either the restoration of committee government or the development of a hybrid. It highlights also the difficulty in progressing from 51 individual election manifestos to a cohesive government strategy for a 3–4 year term and, arguably, an imbalance in the resources available to executive and non-executive members. As a starting point, we conclude that when Members are calling for inclusive government they are expressing a collective desire to see the executive, scrutiny and the States Assembly as legislature working effectively and in relative harmony to achieve consistently good outcomes for the benefit of the public. Those who cite a lack of inclusivity are, quite simply, concerned that the system is falling short of this ideal. We contend that a modification of the oversight arrangement proposed in P.120/2010 will help address this issue.

**Communication**

Turning to lines of communication, we comment in our interim report on the scope to improve the transparency of the policy development process by publishing more information about the various ministerial advisory and oversight groups that now exist. We acknowledge also that the Council of Ministers is proceeding with implementation of the Freedom of Information (Jersey) Law 2011 by January 2015. This process should result in more government information being shared with the public. The feedback we have received does, however, indicate that more needs to be done to improve information flows between the executive and non-executive branches of government.

Whereas we are clear that the above 4 issues all need addressing directly, we now conclude that use of Members' talents and expertise and the potential power of the Civil Service are perhaps better described as symptoms rather than problems in their own right.

**Members' talents and expertise**

The range of work conducted by all 3 branches of government is, we believe, sufficiently challenging and diverse as to provide ample opportunities for all Members to contribute. If some cannot, then the blockages preventing Members from undertaking that work must be removed. Our research indicates that information flows are one blocking factor and that executive and non-executive resourcing may be another. Both are discussed in more detail later in this report. A solution for the latter can be achieved through better utilisation of existing resources, rather than by calling for more public expenditure.

**The Civil Service**

If the potential excess power of the Civil Service is being cited by some, it is perhaps because Ministers may be turning to senior civil servants for policy advice with some frequency in the absence of other sources. Where this happens, it may well be a function of Ministers' relative isolation from other States Members now that they occupy offices within their respective departments. The absence of party-based policy support structures and specialist advice that politicians in some other jurisdictions enjoy may be compounding factors. One of the benefits of the old committee system was that it required various different combinations of States Members to mix and

> work constructively with each other on a regular basis. Furthermore, committee decisions were independently minuted and were available to all States Members. That ceased on the move to ministerial government. There are those who feel that opportunities for constructive political discussion and cross-pollination of ideas are less common under ministerial government than before and that something must be done to improve the position. We have some sympathy with this view.

The States have little appetite for a direct return to the committee system. This leaves 2 options for reform. The States can move closer to the model proposed by the Clothier Panel and allow sufficient time to demonstrate that the Clothier model really can deliver the improvements envisaged 13 years ago. Alternatively, the States may implement a hybrid system, perhaps by blending some executive/non-executive roles as the Isle of Man does, or by refining in some other way the proposals set out in P.120/2010. Having tested both against our key principles, we conclude on balance that the hybrid model is the stronger of the 2 because it provides a more constructive blend of inclusivity, whilst at the same time allowing for improved clarity as to where the power of decision actually lies. A hybrid option is, therefore, the option we commend to the States.

We should place on record that several of our number remain concerned that the strengths of ministerial government or variants thereof may always be outweighed by a number of weaknesses. There is a view that ministerial government needs political parties to function properly, but that our Island's population may simply be too small to allow for the development of stable parties. Some Members are given to wonder whether the States were too quick to discount the various refinements to the long-standing committee system that were made in its final years. We are satisfied, for now, that those calling for a return to the committee system remain in the minority. Nevertheless, should it become readily apparent within the next decade that our ministerial system is fundamentally flawed in the Jersey context and/or cannot function without the emergence of credible political parties, we consider that the States should surely give the most serious consideration to the reintroduction of a committee system of government, albeit one with further suitable refinements made to reflect the modern age.

The recommendations that follow will not undermine the ultimate responsibility of the States Assembly for the direction and oversight of government on behalf of the Public. To quote the Clothier Report –

> *'the States Assembly is or should be the power unit which drives the Island's government and is therefore its most important component. Over and above its primary functions as a national assembly it will have other functions which are internationally recognised. These include:–*
>
> * *Making laws;*
>
> * *The determination in debate of major internal and external policies;*
>
> * *The consideration in debate of the management of those essential services which every government must provide;*

* *The public airing of apparent serious failings in the provision of essential services, such as health and education;*

* *The determination of an annual budget and the estimates of expenditure.'*

Although the executive function has been delegated to the Council of Ministers, there would be a clear and definitive reporting line to the States through the Chief Minister. Importantly, we are proposing that the executive remain in the minority and be subject to structured scrutiny by a clear majority of States Members that are not holders of positions within the executive. The requisite governance framework must, of course, be put in place, and this must extend beyond the straightforward clarification of roles and responsibilities that we are proposing. In our view, a key part of this framework will involve the creation of a new non-executive oversight role for Members to perform. The existence of this new role will strengthen corporate governance and aid inclusivity. We believe that Members' skills and abilities will be utilized to the full if this new function and the others across government are to be fulfilled.

The success of our proposals hinges on the States accepting nothing less than sound administration from both the executive and scrutiny functions, backed by the culture of openness and transparency that the new Freedom of Information Law promises. Existing standards of administration are demonstrably not high enough. This statement is made in the light of the findings noted in various reports of the PAC, the Comptroller and Auditor General and the States of Jersey Complaints Panel. It also reflects comments received during our interviews from both politicians and civil servants. Public expectations of standards that should be adhered to, both here and in other jurisdictions, are rising. The States should expect those higher standards to be achieved.

Our specific recommendations for reform are outlined in detail in the following chapters and in a broadly chronological manner, starting with the number of Members to be returned following a public election.

## 2. HOW MANY MEMBERS?

This question has been debated almost constantly by stakeholders during the course of our review. There are essentially 2 schools of thought. One believes that the preferred number of States Members should be determined first and that the machinery of government should then be designed in order to make best use of that number of Members. The other believes that the optimum machinery should be determined first, following which one can determine the minimum number of States Members needed to make the system work.

We are mindful that the Electoral Commission made the running on this issue on 2012, when it first indicated that a 42 Member Assembly would form part of its recommendations. The Commission's rationale was, we believe, based on 2 facts in particular. First, the majority of submissions made to the Commission called for fewer States Members. Secondly, the Commission was advised by Dr. Alan Renwick of the University of Reading that while the existing States Assembly was '*not notably large in international comparison... a reduction in its size to somewhere between 30 and 50 would not make it unusually small.'*

We have, perhaps unsurprisingly, identified a split among those who feel that a 42 Member Assembly would be viable and those who are concerned that even the 49 Member Assembly that will be delivered by default in 2014 risks leaving Members with too much to do to cover the full range of political duties that the Public will expect them to carry out. Consequently, we have endeavoured to come up with a model that would function under both eventualities; however, we judge that our proposals would achieve optimum efficiency with a minimum of 46 States Members.

## 3. THE PERIOD IMMEDIATELY FOLLOWING AN ELECTION

We start with the assumption that our electoral system will continue to leave the task of selecting a Chief Minister to the States Assembly. As long as that remains the case, we believe that it will be difficult to cut short the period between election day and the appointment of a Chief Minister. However, it seems reasonable to argue that Members voted out of office in a public election should not be in a position to take any significant decisions affecting the public once the votes have been counted.

There is another angle to consider. Several newly elected or re-elected candidates may have declared their intention to stand or may be considering standing for the office of Chief Minister. Those candidates will have well-formed policy proposals that they might wish to test the viability of before they make their case for appointment to a position that will, if our other recommendations are implemented, become fundamentally more significant than it is now. Given the absence of political parties and independent 'think-tanks' in Jersey, an obvious place for candidates to go to for such advice is the policy and research division within the Chief Minister's Department. This advisory process may take a little time, especially if there are more than one or 2 candidates for the position. It may also be resource-intensive, to the extent that the Chief Minister's Department might need to call upon additional specialist resources from other States departments for a finite period.

Advice from one of our 3 Chief Ministers indicates that prospective candidates might not need 4 weeks to conclude their preparations (the period of time available to candidates in 2011). Of course every Chief Minister to date has been a member of the executive for the previous 3 year term. If Jersey were to have a newly elected candidate for Chief Minister, as was the case in Guernsey during 2012, it is possible that such a candidate might benefit from having a little longer to prepare. We therefore propose a compromise solution.

**Recommendation 1.** The period between election day and the election of a Chief Minister Designate should be shortened by one week.

We are mindful also that newer Members may need time, not only to determine which roles they would like to put themselves forward for, but also to determine who they might wish to support for election to the various other executive and non-executive roles.

In line with the spirit of inclusivity and consensus government, there is a need for some structure to be applied to the process of role allocation. We propose a mechanism, to be administered by the States Greffe, whereby Members would indicate their preferences by having their names added to lists supplied on request to those wishing to run for Chief Minister and who are considering the make-up of their future Council, or for the chairs of a particular committee to do likewise. Our understanding is that a broadly similar system was operated by the States Greffe prior to the commencement of ministerial government and was thought to be helpful. Although the function is now performed to some extent by the Chief Minister's Department, this appears to be relatively informal and covers executive positions only.

**Recommendation 2.** Newly elected/re-elected Members should benefit from a formal mechanism through which they might express an interest in serving in a particular executive or non-executive capacity, supported by a brief rationale for wishing to pursue those particular roles.

Separate measures could be implemented to limit the scope of executive decision-making during this transition period.

## 4. ELECTION OF A CHIEF MINISTER

The existing 2 day period within which States Members can assess the policy statements of the candidates for Chief Minister is simply insufficient. Newly elected Members are likely to need rather longer to consider matters arising from the published statements and to research potential implications before they arrive at the States Assembly to ask questions and cast their vote. This notice period is likely to become more important if our subsequent recommendations regarding the process for devising a Strategic Plan are adopted. Our proposals would cause candidates' statements to become even more politically significant than they are now.

**Recommendation 3.** Standing Order 115 should be amended to require that written statements setting out a vision for a strategic policy and the manner in which a candidate proposes to discharge their duties as Chief Minister should be published not less than 5 working days before the meeting at which the Chief Minister Designate is to be elected.

Notice of policy statements aside, our feedback indicates that Members find the substantive process for electing a Chief Minister broadly satisfactory as it now is. We therefore have only one further recommendation to make in this regard. On the basis that we are elevating the importance of the election of a Chief Minister, we consider that the period of questioning for each candidate needs to be a little longer than it currently is.

**Recommendation 4.** Standing Order 116(5) should be amended to allow up to one hour of questioning of each candidate for the office of Chief Minister.

We have considered whether candidates for Chief Minister should be required during the election campaign to declare their intention to stand. Our conclusion is that it might be counter-productive to do so, insofar as it would prevent Members from persuading an eminently suitable candidate from standing who had hitherto not considered the position. Election candidates with a clear intention to pursue the highest office may nevertheless feel duty-bound to make those intentions known to the electorate during the election campaign.

Then there is the question of whether a candidate for Chief Minister should be required to disclose the Members he or she proposes to appoint to particular ministerial offices. Such a disclosure might help Members by indicating at an early stage the political direction that the candidate is likely to pursue. It might also be regarded as an unhelpful constraint on candidates that might, for genuine reasons, have yet to finalise their thinking. We have declined to recommend a requirement for disclosure because we are concerned that the constraint argument is important.

## 5. THE SIZE OF THE EXECUTIVE

Following the election of a Chief Minister, perhaps the next question to consider is the relative sizes of the teams to carry out the executive and non-executive functions.

The concept of a minority executive can be traced back to Clothier's recommendation 13. This recommendation was then repeated in the principal machinery of government reform proposition of 2001 (P.122/2001 refers), which was in turn amended successfully by the then Deputy P.N. Troy of St. Brelade. Deputy Troy's amendment called for the margin by which the non-executive would be in the majority to be at least 10% of the total membership of the States, with any resulting fraction of one being regarded as one. The 10% margin survived through to the commencement of ministerial government in December 2005 and quickly became known as the 'Troy rule.'

There are Members in both the executive and the non-executive that believe the voting patterns within the States demonstrate the absence of a need for the Troy rule. We are nevertheless clear that these Members remain in the minority. Our view, which aligns with the majority, is that the Troy rule strikes a considered balance between the Clothier Panel's preference for minority government and the respective resourcing requirements of the executive and scrutiny given the diverse range of political issues facing a modern government.

**Recommendation 5.** The size of the executive should continue to be constrained in accordance with the Troy rule.

Our position on this matter has hardened since our interim report was published, albeit that we are not unanimous in our view. Feedback from members of Scrutiny in particular has left us in little doubt that, given the prevailing pressure to reduce the size of the Assembly, a straightforward minority executive would leave too few Members available for scrutiny duties, for the Planning Applications Panel and for the various other tasks that Members are called upon to perform.

We are aware from our discussions with the Chief Minister's Department that consideration has been given to classifying Assistant Ministers as members of the executive in certain circumstances only – perhaps on the occasions when they would be bound by collective responsibility in the manner we propose below. In this regard, our view is that an Assistant Minister could not practically perform both an executive and a scrutiny function concurrently and that the scope for conflicts of interest would simply be too great.

Notwithstanding the above, we are relatively relaxed on the question of the precise structure the executive should take. The existing rigidity of the size of the Council, the allocation of ministerial portfolios and the ratio of Ministers to what are currently known as Assistant Ministers are each elements of the executive framework that we envisage successive Chief Ministers might want to adjust. We consider it logical to grant the Chief Minister that power and for him or her to be able to exercise it once appointed by the States to that office. As such, we can foresee a Chief Minister Designate coming to the States with a list of proposed Ministers that differs in number, and with different portfolios, to that of his or her predecessor.

**Recommendation 6.** The Chief Minister should be empowered to change ministerial portfolios and determine the optimum number of Ministerial appointments once he or she has been elected as Chief Minister Designate.

## 6. ELECTION OF THE COUNCIL OF MINISTERS

Merging 51 independently devised election manifestos into a Strategic Plan for a 3 or 4 year term of office is always going to present something of a challenge. It is perhaps during the election of a Chief Minister and a Council of Ministers that States Members begin to calculate in earnest how many of their election pledges are likely to be delivered by the executive. Under the current system, the States choose the Chief Minister and then interview and select the members of his or her ministerial team. Then, over the next 4 months, they review and, potentially, amend the political direction the Council of Ministers propose to take, before adopting the Strategic Plan, as per Article 18(2)(e) of the States of Jersey Law 2005.

Some of those we consulted believe that the above arrangement has already caused the States to cede too much control to a minority of Members. Others believe that the process of electing a Chief Minister designate – on the basis of various oral and documented political pledges and following questioning thereon – should already have given the States the means to set a clear political direction for the new term of office. The latter argue that the executive and scrutiny functions, and the Assembly as a whole, having chosen the Chief Minister, should then be getting on with their respective jobs. For the States, that would mean delegating sufficient authority to let the Chief Minister designate pick his or her team and devise the strategy to deliver the vision the States voted for. We see both points of view.

There is inevitably a weighing-up of political visions, team management skills, personal reputations and certain other factors when the States choose the Chief Minister designate. What is important, however, is that the contest is rigorous and that it sets an outline political direction for that term of office. This was arguably the case on 14th November 2011, when the present Chief Minister was elected. A review of the Chief Minister's speech on the day reveals an emphasis on getting people back to work, reform of government and the public sector, and other key priorities that were subsequently expanded upon in what became the Strategic Plan 2012. In short, the outline political vision was set. With a Chief Minister appointed to lead the States to that destination, it is arguably anomalous to give the States the primary role in picking the team the Chief Minister works with to complete the journey.

To be clear, we are not suggesting that the States should have no direct part to play in selecting the Council of Ministers as we believe is the case in the Isle of Man system. To claim that selection of a Council of Ministers is all about devising the best team to deliver, and not about what is to be delivered, would be to oversimplify our political dynamics. The States need to have the final say but, in recommending that they retain a veto over the Chief Minister's preferred team of Ministers, we think the States should be obliged to consider carefully whether any dissatisfaction with one or more of the proposed Ministerial candidates is worth the risk of losing its first choice for the top job.

**Recommendation 7.** A Chief Minister Designate should continue to be required to secure the endorsement of the States Assembly for his or her ministerial team.

**Recommendation 8.** Only the Chief Minister Designate should be able to nominate candidates for Ministerial positions.

In making the above recommendation, we note that there is not unanimity within the Panel on this matter, and indeed we suspect that it may well be a matter of some discussion by Members of the Assembly in the proposed in-committee debate. Whilst this remains the recommendation of the Panel, we would welcome views of Members, for example, as to whether the status quo should remain as regards the appointment of Ministers, and the ability for the Assembly to continue to be able to nominate its own candidates from the floor of the Assembly.

Those who have experienced this whole process at first hand have indicated to us that 2 working days is too short a period for a Chief Minister Designate to devise a Council of Ministers. A significant extension of this period would, however, extend the period within which decisions would be made by the outgoing Chief Minister and Ministers. By the time they stand for election, candidates for Chief Minister will have had the benefit of the list produced in accordance with our recommendation 2. Moreover, they will have had the benefit of 3 weeks between the public elections and the election process for Chief Minister, during which they could consider their preferred 'cabinet.' Our preference, therefore, would be for a modest extension of this period.

**Recommendation 9.** The timescale outlined at Standing Order 112 should be amended to require that the Chief Minister Designate nominate his or her preferred slate of Ministers to the States within 5 working days.

The Chief Minister should explain his preferred choice of Ministers by way of a written proposal, to be published by the Greffier of the States at the point of nomination. The proposal should name the preferred candidates and summarise the rationale underpinning the Chief Minister Designate's choices. This written proposal may be deemed sufficient to negate the need for questioning of individual candidates, although we have stopped short of making a recommendation in this regard.

We envisage that the States would reconvene 2 working days after the list of Ministerial nominees is published. The States would vote for or against each nominee individually and the results of the ballot would be made public once the votes had been cast in respect of all nominees. The Council of Ministers would not be constituted unless all nominees were to be accepted by the States. In the event of a negative vote, the series of individual votes outlined above would allow the Chief Minister Designate to identify which of his or her ministerial portfolios was proving to be controversial.

**Recommendation 10.** The States should vote for or against the list of proposed Ministers on an individual basis.

A negative vote would prompt the Chief Minister to return to the Assembly at 09.30 hrs the following day with an alternative list, albeit that we would not wish to prevent the Chief Minister from returning to the States within a shorter period.

Rejection of a third Ministerial team would trigger the dismissal of the Chief Minister Designate and a new election for Chief Minister, in which the dismissed Chief Minister Designate would be excluded from standing. This position would concentrate the collective mind of the Assembly in that at the point of the 3rd election of a slate,

Members would be required to weigh very carefully any relevant concerns regarding one or more prospective Ministers against the perceived benefit of maintaining their first choice of Chief Minister.

**Recommendation 11.** The Chief Minister Designate should be able to propose a maximum of 3 Ministerial teams.

Appointing a team of Ministers in this way will be broadly in accordance with both the original Clothier recommendation and the Standing Orders as they were originally envisaged when the States of Jersey Law 2005 was lodged *'au Greffe.'* It would not be unreasonable to expect the resulting Council of Ministers to operate more collaboratively as a result and, subject to the making of certain other changes we have in mind, to be more clearly accountable to the States Assembly through the Chief Minister.

## 7. COLLECTIVE RESPONSIBILITY

We have several measures in mind to improve accountability in the States. Enhancing the Chief Minister's appointment powers is one. Collective responsibility is another. Still more recommendations are made later in this report.

First we should reaffirm what we mean by collective responsibility. We mean that, following any full and frank discussions at the Council table that may from time to time be necessary, all members of the Council should speak and vote together in the States, save in situations where the Chief Minister and the Council themselves agree to make an exception. Maintaining the effectiveness of those full and frank discussions at the Council table that will be needed to arrive at the right decision will, in turn, require that the Chief Minister and his or her team maintain the requisite degree of confidentiality.

**Recommendation 12.** The Council of Ministers should be bound by collective responsibility.

At present, Assistant Ministers tend not to be regular attendees at Council of Ministers meetings or to have sight of all the papers and briefings that Council members receive. For that reason, it does not seem right to propose that collective responsibility should always apply to all Assistant Ministers just because they play an executive role. They cannot reasonably be bound by a decision to which they are not a direct party.

Notwithstanding the above, collective responsibility could and, we believe, should bind Assistant Ministers (or any successor post) in respect of matters falling directly within the remit of their respective departments. As an example, we consider that existing Assistant Ministers for Economic Development should be bound in respect of a new draft licensing Law that his or her Minister lodged '*au Greffe'* with the prior endorsement of the Council of Ministers.

**Recommendation 13.** Assistant Ministers should also be bound by collective responsibility in respect of any matters falling directly within the ministerial portfolios to which they are attached.

Once again, this is not a unanimous view of the Panel. There are thoughts that again, the status quo should prevail, and that Assistant Ministers should not be bound overtly by collective responsibility, even to their Minister. Again, we would ask Members to consider this matter in advance of the in-committee debate.

The obvious place to define the scope and limitations of collective responsibility is in the Code of Conduct for Ministers. In this regard we note that, whereas the UK Prime Minister has their cabinet adopt such a code of conduct in precise terms and very early in the life of the government, successive Councils of Ministers have relied on the original Code of 2006 (R.14/2006 refers). This is despite both the Council of 2008 and 2011 having indicated, in their own minutes, that the 2006 Code was not quite fit for purpose. We observe also that paragraph 2.5 of the PAC's first report of 2012 ('Compromise Agreements: Following up the investigations of the Comptroller and Auditor General') includes an almost identical key finding.

Our recommendation below is made primarily in the hope that future Councils will acknowledge the importance of such a document, both in terms of acknowledging public expectation and making the rules of engagement clear for all members of the executive.

**Recommendation 14.** The precise terms and limitations of collective responsibility should be specified within the Code of Conduct for Ministers, which should be adopted at the very first meeting of each new Council and, subsequently, be presented to the States as a report in the 'R.' series.

Such an arrangement would align well with the requirement for sound, disciplined government with a clear direction and clear accountability to the States for its performance. The obligation to sign up to the Code of Conduct promptly would also concentrate the minds of those Members contemplating whether to pursue an executive role given the platform on which they stood for election.

We recall that Clothier saw a need for the Council to have the power to direct departments if such direction became necessary. This seems to us to be a sensible addition to the powers of a Council bound by collective responsibility. Any such direction would need to be clearly defined by way of deadlines and targets so as to enable the Council to monitor compliance.

**Recommendation 15.** The Council of Ministers should be invested with sufficient powers to direct individual departments if necessary.

Before we move away from the subject of collective responsibility, it would perhaps be appropriate to reference Recommendation 5 in our interim report, which cites a need for a standing item on Council of Ministers agendas that would provide a summary update on the work programmes of individual Ministers. We stand by this recommendation and note that such a summary update need only be noted briefly before Ministers move onto the pressing agenda items of the day.

## 8. ASSISTANT MINISTERS

P.122/2001 envisaged that the role of Assistant Ministers would be to –

- provide advice and assistance to a Minister in relation to his/her executive work;
- assist the Minister by, for example, taking the lead under her or his direction in a given area of work. This could include acting under delegated authority;
- deputise for the Minister in her or his absence.

This seems to us to be an entirely sensible description of the duties an Assistant Minister should be performing and, were those the roles being performed by all Assistant Ministers today, this chapter would have been brief. What is clear, however, is that while a very small number of Assistant Ministers have a remit that is arguably equivalent to that of a Minister, relatively few Assistant Ministers are being permitted to perform all 3 roles. In one or 2 cases, the remit given has been minimal.

In highlighting the above, we are not identifying a new problem. The first review of the ministerial system was conducted by the Privileges and Procedures Committee in 2007. Paragraph 4.3.2 of the resulting report (R.105/2007), outlines the Committee's conclusions regarding the role of Assistant Ministers in the following terms –

> *'…despite certain steps taken by Ministers during the last 18 months, the rôle of Assistant Ministers is unclear, varied and there is great uncertainty among States members (including some Assistant Ministers themselves) about the exact purpose and function of the position.'*

Some Assistant Ministers cited a lack of access to information and involvement in departmental decision-making, which in turn made it difficult for them to stand in for their Minister during a period of absence. While some were given significant political remits within their departmental portfolios and substantial delegated responsibilities to match, others had no delegated responsibility at all and appeared to feel underutilized. Given that these very same issues have been drawn to our attention in 2013, we believe some significant changes are called for. These changes fall within 2 categories. Firstly, we propose some changes designed to ensure that the existing Assistant Minister positions are performing the 3 roles. Secondly, and in a subsequent chapter, we propose an additional oversight mechanism to complement the 'advise and assist' role Assistant Ministers are, to varying extents, performing.

Our first specific proposal concerning Assistant Ministers is that they be renamed 'Junior Ministers'. The existing name seems to have developed rather negative connotations to the extent that we see merit in dispensing with it. There does not, however, seem to be any need to alter the process by which Junior Ministers are appointed, other than to note that their appointment should formally oblige them to adopt the Code of Conduct for Ministers as approved by the Council.

Once again, we anticipate that some Members would prefer the States to be given some form of power of endorsement/veto (on a Minister by Minister basis) over the appointment of a Junior Minister, particularly if they are given delegated decision-making authority. If, as we hope, our final report becomes the subject of a prompt in-

committee debate, this may be a topic for discussion. For now, we note that whilst the rejection of a nomination for the post for Junior Minister might be unfortunate, it should not prove catastrophic for the Minister/Chief Minister in the event of rejection.

**Recommendation 16.** The title 'Junior Minister' should henceforth be substituted for that of 'Assistant Minister.'

Once appointed, the role of Junior Minister should be consistent across ministerial portfolios and become a rather more important position than, in some cases, it currently is. The role should provide up-and-coming Members with the opportunity to shadow a more experienced colleague and learn the ropes, just as succession planning is expected to work in the Civil Service. Junior Ministers should be the default port of call for an executive decision and to represent their department at the Council of Ministers table whenever the Minister is out of the Island or otherwise indisposed. The present position, which is largely defined by Articles 27 and 28 of the States of Jersey Law 2005, seems to be unnecessarily complex and restrictive. It could ultimately leave a relevant ministerial portfolio unrepresented at the Council of Ministers when a major new cross-cutting policy is to be discussed.

**Recommendation 17.** The States of Jersey Law 2005 should be amended to make Junior Ministers the default port of call for an executive decision whenever the Minister is out of the Island or is otherwise indisposed.

**Recommendation 18.** One Junior Minister should by default represent their department at the Council of Ministers whenever the Minister is out of the Island or is otherwise indisposed.

Junior Ministers should as a matter of course be given specific areas of delegated responsibility. Irrespective of whether these delegations concern areas of defined political responsibility or authority to exercise certain legislative powers, we maintain that each delegation should be codified in a Ministerial Decision and be reported to the States. They should also have rights of access to all information available to their Minister. Without it, they cannot properly perform all 3 of their duties as per P.122/2001.

**Recommendation 19.** Junior Ministers should have identical rights of access to information to those of their Minister.

The above recommendations are intended to promote consistency and political resilience at the departmental level.

## 9. THE PRIVILEGES AND PROCEDURES COMMITTEE

We see a need for the PPC to continue largely as it is, both in terms of its constitution and terms of reference. If there is one element of PPC's terms of reference that might need reviewing, it is Standing Order 128(a), which charges the Committee –

> *'to keep under review the composition, the practices and the procedures of the States as Jersey's legislature and bring forward for approval by the States amendments to the Law and standing orders as considered appropriate'*.

During the course of this review, the Sub-Committee has sensed a strong view among some in the executive that the Council of Ministers should take the lead on reforming the States of Jersey Law 2005. We invite PPC and the States as a whole to consider whether –

(a) the executive should be required to consult formally with the PPC before lodging any amendments to the States of Jersey Law 2005, or

(b) only PPC should be empowered to lodge an amendment to the States of Jersey Law 2005.

## 10. THE PUBLIC ACCOUNTS COMMITTEE

The Public Accounts Committee (PAC) has, in our view, been one of the notable successes of ministerial government. We have therefore resisted the temptation to tinker, save in one area. Accepting that existing and previous external members of the PAC have served the committee and the Island well, we think it would be right to safeguard the reputation of the PAC by recommending that the process of recruiting future members of the PAC who are not States Members be overseen by the expert Jersey Appointments Commission.

**Recommendation 20.** The members of the Public Accounts Committee who are not States Members should be selected for recommendation to the States Assembly through a recruitment process overseen by the Jersey Appointments Commission.

## 11. DISMISSAL AND RESHUFFLING OF MINISTERS

Our interim report has already made clear our view that the Chief Minister should be empowered to dismiss a Minister. This remains our position.

In terms of securing a replacement, it would seem appropriate to apply the same process as that which we recommend for the primary election of a Council of Ministers. This would mean that the Chief Minister alone could nominate a replacement Minister – complete with a requirement to summarise in advance and in writing why the nominee is the preferred choice – and that the Chief Minister would be afforded 3 attempts to secure the endorsement of the States. Should a third candidate be proposed and fail to be endorsed, the Chief Minister would fall, and the process of electing a new Chief Minister and Council of Ministers would commence. Again, our view is that that at the point of the 3rd election, Members would be required to weigh very carefully any relevant concerns regarding the nominated Minister against the perceived benefit of maintaining their first choice of Chief Minister.

It is perhaps worthy of note that giving the Chief Minister alone the right to nominate a new Minister might seem, at first glance, to take away the dismissed Minister's option of a 'day in court.' Under the existing arrangements, a dismissed Minister is not prevented from standing again and may choose to use their nomination as an opportunity to challenge publicly the reason for dismissal. Our view, however, is that a States decision to reinstate a dismissed Minister would be tantamount to a vote of no confidence in the Chief Minister. That no confidence motion is still open to the dismissed Minister if he or she feels seriously aggrieved. They need only to persuade 3 of their colleagues to sign a motion in accordance with Standing Order 22.

**Recommendation 21.** Following a resignation or dismissal, the Chief Minister alone should be able to propose a new Minister. He or she would require the endorsement of the States for that appointment.

**Recommendation 22.** A Chief Minister should be entitled to 3 attempts to appoint a new Minister.

There is then the question of reshuffling to consider. Our view is that our soon to be implemented 4 year terms are still short enough to make it difficult to derive a net benefit from a Ministerial reshuffle. The value a new Member could bring would inevitably be affected by their need to acclimatise to the new role in the limited time available before the next election. If an existing Minister underperforms, we note that the Chief Minister would have the power to dismiss that Minister and pursue a reappointment in accordance with our recommendations immediately above. If, however, a particular set of circumstances were to warrant the swapping around of existing Ministers with different skill-sets, that could also be achieved by the Chief Minister coming to the Assembly with a reshuffled list of Ministers for endorsement. That is the route we would recommend. In such circumstances, we would not expect the Chief Minister to fall if his or her revised list of Ministers was rejected. Neither would we propose that the Chief Minister be forced into 3 attempts to reconstitute their Council successfully.

**Recommendation 23.** The Chief Minister should require the prior endorsement of the States for any reshuffling of Ministers between existing portfolios.

## 12. THE STRATEGIC PLAN

The importance of the Strategic Plan in Jersey's system is difficult to understate given the Island's history of consensus politics, the absence of political parties and the related challenge facing an executive that would like to demonstrate a mandate from the electorate. Our difficulty, however, is that while there is a prevailing view that the existing Strategic Plan development process is far from perfect there is, again, no clearly preferred way forward.

At present, having allowed the Council of Ministers to draft a Strategic Plan for their term of office, the States then review it, amend it as they see fit and then adopt it. Whether this process causes the States to take ownership of the Strategic Plan is a moot point. If they do, then one might ask whether the role of the States is fundamentally any different to that which it performed before the advent of the ministerial system. Such a state of affairs would put the States in an interesting position whenever they sought to hold the Chief Minister or the Council of Ministers to account.

Some consider it counter-intuitive to elect a Chief Minister on the basis of a vision statement made in accordance with Standing Order 115 and the question and answer session that follows, only to require that Chief Minister to adopt a Strategic Plan several months later that takes a fundamentally different path. In the same vein, we would expect any Strategic Plan to broadly replicate and build upon the very same themes given priority in the Chief Minister's original pitch for election. As we acknowledge earlier in our report, the current Strategic Plan can clearly trace its lineage to Senator Gorst's stated priorities in November 2011.

Others consider that the States must have an opportunity to debate the Strategic Plan in order to afford Members a formal opportunity to let their constituents know that they disassociate themselves with all or a part of the strategic direction being proposed.

We consider that the States should require a detailed strategic policy statement in fairly short order. Given that any Strategic Plan to be followed by a Council of Ministers should reflect the key elements of the statement issued in accordance with Standing Order 115(1)(c) by the successful candidate for Chief Minister, we do not believe that a shortened timescale should present a particular problem. Any public consultation on the draft would nevertheless need to take account of the shortened development period.

**Recommendation 24.** The period for development of the draft Strategic Plan cited in Article 18(2)(e) of the States of Jersey Law 2005 should be reduced to a maximum of 60 days.

The next question to consider is whether the States should take ownership of a strategy that the executive should be accountable for delivering. There are essentially 3 choices that Members might wish to consider –

(1) the States continue to endorse the Strategic Plan and retain the power to amend it;

(2) the draft Strategic Plan becomes the subject of an in-committee debate before it is finalised by the Council of Ministers and presented to the States as an 'R'; or

(3) the executive is held accountable for its Strategic Plan, which should be adopted by the Council of Ministers and reported as an 'R'.

## 13. GOVERNANCE

If our recommendations are adopted, there will be a further concentration of authority in the hands of the Chief Minister and of the executive members of the Assembly.

To counter this, Clothier made various recommendations, including the introduction of an Ombudsman, and also mentioned Freedom of Information ("FOI"). FOI will only be implemented in 2015, some 14 years after the Clothier report. Other recommended checks and balances remain outstanding. It is crucial that if key proposals are adopted, robust governance must be implemented.

This cuts across a number of core principles such as accountability, transparency, sound corporate governance, etc. Public expectations surrounding ethical standards are more demanding now than ever before. The 'tone from the top' must support and encourage ethical standards and behaviour.

Ethics is about principles, values and beliefs which influence judgement and behaviour. It goes beyond obeying Laws, Rules and Regulations – it is about doing the right thing in the circumstances. Ethics is fundamental to establishing trust. The existence of trust is essential to business and society. It enhances the dependability of relationships, facilitates transactions and promotes the efficient allocation of resources.

Improving public trust must surely be an aim of every States Member.

Deciding what is the right thing to do can be challenging. We all face numerous personal, social and organisational pressures which influence our decisions and actions. Sometimes it is easy to assume that compliance with legislation, regulations and policies and procedures equates to doing the right thing. Unfortunately that will not always be the case.

By its nature, a compliance approach to decision-making cannot cover all types of situations and eventualities. Even when a specific circumstance is addressed by a rule, compliance is often with the letter of the rule, not its spirit.

Various organisations have identified certain 'threats' that could impact upon the decision-making process and need to be guarded against. These are all readily transposable to the world of the politician and civil servant and can fall into one or more of the following categories –

> Self-interest threat – the threat that a financial or other interest will inappropriately influence judgment or behaviour;
>
> Self-review threat – the threat that someone may not appropriately evaluate the results of a previous judgment made or service performed, particularly by colleagues close to them;
>
> Advocacy threat – the threat of promoting the interest of a particular company, constituent, or other individual to the extent that overall objectivity is compromised;

Familiarity threat – the threat (for example) that due to a long or close relationship with someone, a politician or civil servant will be too sympathetic to their interests rather than the wider public interest; and,

Intimidation threat – the threat that a politician or civil servant is deterred from acting objectively because of actual or perceived pressures, including attempts to exercise undue influence over the person making a decision.

It seems clear to us that to mitigate some of the threats, there is a requirement for greater transparency and better oversight than is presently the case. As an example, we do not believe that it is appropriate that decisions could be made that are known solely to the executive. However, one also has to ensure that the counter-arguments regarding confidentiality are addressed.

We therefore consider that there is a need for further checks and balances, and are recommending in the following chapters – (a) increasing the oversight ability of non-executive States members; (b) improving the flexibility and resources available to Scrutiny, and (c) improving the appeal options available to members of the public, and indeed other stakeholders.

We believe that our proposals as a whole preserve the integrity of Ministerial executive government, but significantly improve overall governance and oversight. It will therefore mitigate the risks we run of dysfunctional government through error, mistake and potentially (in the future) even worse.

## 14. NON-EXECUTIVE MEMBERS

In our first chapter 'Defining the Problem,' we discussed Ministers' relative isolation from other States Members and the relative lack of sources of political advice that Ministers can rely on to work through a problem. In the absence of party structures, specialist advisers and the like, one rather obvious source of political advice that the executive can draw upon is the non-executive. Tapping that source requires a mechanism to bridge the gap between the executive and non-executive, and one with sufficient controls in place at each end to guard against cross-contamination of roles.

To fix this difficulty, we propose the creation of the Non-Executive Member (NEM) role. The role of the NEM would be as follows –

(a) to provide preliminary advice and constructive challenge throughout the development of ministerial policy and the formulation of departmental initiatives;

(b) to act generally as a political sounding board or source of informal political advice on general matters pertaining to the department,

(c) to safeguard the public interest by providing real time oversight of matters arising within departments, including ministerial decisions; and,

(d) to carry out early monitoring of the performance of departmental management in meeting goals and objectives of the Minister.

**Recommendation 25.** NEMs should be appointed to provide advice and other assistance to each Minister.

An NEM would perform an entirely separate role from that of a Junior Minister. The latter would remain part of the executive and would be expected to fulfil each of the 3 roles as cited in P.122/2001. Whereas it would be possible for a Minister to delegate to his or her Junior Minister specific authority, a NEM would not be permitted to exercise any delegated authority at all.

NEMs would be appointed from the non-executive side of the States. Although our preference would be for all NEMs to be nominated by Chief Minister (following consultation with relevant Ministers) and appointed by the States, we acknowledge that a case could be made for appointments by the Chief Minister, by the States directly or, perhaps, by Scrutiny. If the Chief Minister is to make the nominations and if the States declines to accept 3 separate nominations, we would propose that nominations be permitted from the floor of the Assembly. In making such a recommendation, we again seek the views of the Assembly as to the preferred method of appointment. We anticipate that some Members would prefer to have the States nominate their own candidates from the floor of the Assembly.

**Recommendation 26.** NEMs should be appointed by the States on the recommendation of the Chief Minister.

On the question of how many NEMs there should be, we envisage a need for 2 per ministerial portfolio. If, for example, the States are to be comprised of 46 Members in future, there would be an executive of 20 and a non-executive of 26. Assuming that we retain 10 ministerial portfolios, there would be a need to fill 20 NEM positions. This is achievable, assuming that every Member with a role as an NEM also contributes to the Scrutiny function. Ensuring that the Scrutiny function continues to have access to sufficient resources whilst avoiding material conflicts of interest would require each NEM to undertake scrutiny work, and to do so in respect of a different ministerial portfolio. It is not inconceivable that PPC might need to devise a mechanism to ensure that Members do not prioritise NEM work over their scrutiny duties.

An Assembly of less than 46 Members would raise the question of whether some Ministers should be supported by only one NEM. If the size of the Assembly remains at 49, then there is greater flexibility in the numbers available for allocation.

**Recommendation 27.** NEMs should only be selected from members of the Assembly who are actively available to participate in scrutiny reviews.

**Recommendation 28.** PPC should consider establishing procedures to define and ensure that NEMs are 'actively' available to participate in scrutiny reviews (such procedures to be implemented at the same time as NEMs are created).

Any scenario in which Members carry out a dual role gives rise to the risk of conflicts of interest. To mitigate risk in this regard, we see a need to revise the Code of Practice for Scrutiny and the PAC to make it clear that NEMs could not serve on a scrutiny review covering a topic area within that of the Minister for whom they have oversight responsibility.

**Recommendation 29.** NEMs should be permitted to serve on scrutiny committees but not the SMC, and not in respect of any ministerial portfolio for which they act as a NEM.

The day-to-day duties of an NEM would involve frequent direct contact with the Minister, the Junior Minister and the States department/s that fall within the Minister's portfolio. NEMs would necessarily be given full and real-time access to all the information relating to policy and operations that the relevant States departments hold, albeit that some of that information will be available on a confidential basis only. That information access would extend to include advance notice of every formal Ministerial Decision before it is made. Proportionate engagement with officers would also be permitted. We envisage the same level of access as received by the Minister and Junior Minister of the department.

**Recommendation 30.** NEMs should have full and unfettered access to information held by, and the officers working within, the States departments falling within the relevant Minister's portfolio.

Although a significant proportion of the work undertaken by NEMs would be undertaken informally, NEMs would meet with the Minister and Junior Minister on at

least a monthly basis. A written summary of such meetings and of action points arising would need to be created by the relevant executive department, and these would be approved at subsequent meetings. In addition, NEMs should be able to request separate meetings with the Minister on any particular item of interest.

We envisage that, from time to time, NEMs will identify matters of political concern. These might include –

(a) a decision due to be made or policy advanced which does not seem to be in the public interest;

(b) operational matters arising which are deemed problematic; and,

(c) policy/operational issues that are not being addressed.

In the first instance, the NEM will be expected to raise any concerns with the Minister and Chief Officer directly. Should the concern be raised at a formal meeting and not be addressed to the satisfaction of the NEM, there will be options open to the NEM, including approaching the Comptroller and Auditor General, as appropriate.

Given that the NEM decides where public interest issues/problematic operational or policy matters arise, there might conceivably be a need for a proportionate mechanism to dismiss an NEM that might abuse their position. Although we consider that such mechanisms would be for the PPC to propose, we envisage that the relevant Minister would seek to raise any concerns with the Chief Minister and PPC in the first instance. Indeed, there may well be a need to amend the existing Code of Conduct for Elected Members to take account of this new role.

**Recommendation 31.** PPC should consider bringing an amendment to the Code of Conduct for Elected Members to take account of the creation of NEMs.

It is worthwhile just noting how the relationship between NEMs and Scrutiny will work. Whilst there may be a perceived potential for overlap between the work of NEMs and Scrutiny; in practice, however, each will have a materially different role. Whereas NEMs will work directly with Ministers and Junior Ministers to provide a broader political perspective and, critically, real-time oversight of all Ministerial Decisions prior to them being made, Scrutiny and the PAC will continue to carry out at arm's length the 3 primary activities of formal scrutiny as originally defined in P.122/2001, namely participation in the development of policy, the review of legislation, and the overall examination of the performance of government.

## 15. SCRUTINY

Feedback obtained during our programme of stakeholder interviews has led us to conclude that the output of the 5 Scrutiny Panels since the elections in 2011 has improved in both quantitative and qualitative terms. There are nevertheless 3 issues concerning the scrutiny function that are of principal concern to the Sub-Committee. These are –

(a) the flexibility of the scrutiny function,

(b) the resources available for scrutiny panels (by which we mean both States Members and the executive support they receive), and

(c) the ability of the scrutiny function to operate in real-time.

Taking flexibility first, the recommendations we have made so far will, if implemented, deliver an executive that can get up to speed more quickly, and with greater clarity of focus, than is the case at present. If the Chief Minister or his successor pursues the re-alignment of certain ministerial portfolios – and there are signs this might happen – then Scrutiny will be under pressure to keep pace.

We begin by recommending a more flexible oversight and management structure. Five States Members should be elected to what will become the Scrutiny Management Committee (SMC), with the Chairman of the PAC becoming the sixth member. These SMC members will have remits broadly identical to the existing Scrutiny Panels. Members of the executive will not be eligible to serve on the SMC and neither will anyone formally appointed to a NEM position. We further propose that only the non-executive States Members be permitted to cast votes during the election of the SMC. This may prove controversial, and there is not a unanimous opinion on the Sub-Committee regarding this matter. Accordingly, we again do wish to hear the views of States members on this matter during the in-committee debate.

**Recommendation 32.** There should be a Scrutiny Management Committee (SMC) consisting of 5 non-executive States Members elected by the States, together with the Chair of the Public Accounts Committee.

**Recommendation 33.** Only non-executive States Members should be permitted to cast votes during the election of the SMC or for a replacement member of the SMC.

For the avoidance of doubt, the above 5 persons will be the only persons elected by the States to a particular roles within Scrutiny – albeit that the States will continue to appoint a PAC Chairman and PAC members, with the majority coming from among its number. The process by which other non-executive States Members will join topic-based reviews is explained below.

**Recommendation 34**. Dismissal and replacement of individual members of the SMC should be a matter determined by the States following debate on a no confidence proposition, to be lodged by a member of the non-executive only.

It stands to reason that if the States appoints the members of the SMC, it needs to be able to hold them to account. We therefore recommend that it be possible for any member of the non-executive to lodge a proposition calling for the dismissal of a member of the SMC, save that such a proposition would need to be counter-signed by another 3 States Members in the same way as a no confidence motion would be lodged in accordance with Standing Order 22.

While the Council of Ministers is busy preparing the Strategic Plan, the SMC will be preparing the ground for scrutiny to function effectively. It may commission briefings from all executive States departments on their functions, priorities and on the legislation and policies to which those departments adhere. These briefings should be open to all non-executive Members and should, we think, be supplemented with scheduled opportunities for new Members to visit States departments and meet senior management teams. Additional sessions will need to be arranged to educate new Members on scrutiny techniques and, perhaps to provide refresher training for those who have been re-elected. Our expectation is that Members will want to take full advantage of these sessions.

**Recommendation 35.** There should be scheduled opportunities for new Members to visit States departments and meet senior management teams early in the life of a new States.

Accepting that the Council of Ministers might consider it appropriate to consult non-executive Members independently and in detail regarding the content of its forthcoming Strategic Plan, we envisage that the role Scrutiny performs can be determined once a decision is taken on the matters we raise in chapter 12.

Once the Strategic Plan is presented to the States by the Council of Ministers, together with a supplementary outline work programme for at least the coming 12 months, the SMC would utilise both to inform development of its own scrutiny work programme. Where review topics do not fall solely and directly within the remit of one SMC member, the SMC will allocate responsibility for oversight of the topic review. The work programme will be presented to the States, will synchronise with that of the Council and will be kept under monthly review by the SMC. It will be necessary for the SMC to leave scope for a number of reviews to be launched unilaterally or for matters to be referred by the States Assembly from time to time.

**Recommendation 36.** Any questions regarding the responsibility for cross-cutting review topics should be resolved by the Scrutiny Management Committee.

On top of its overarching responsibility for the work programme and responsibility for allocating cross-cutting reviews, the SMC will oversee financial management of scrutiny activity and be the upholder of a suitably redrafted Code of Practice for Scrutiny and the PAC.

**Recommendation 37.** The Code of Practice for Scrutiny and the PAC would need to be reviewed to take account of the changes we recommend.

SMC members will not be conducting reviews in isolation. The part of the scrutiny work programme for which they are responsible will have been developed in consultation with other non-executive members, as well as with due regard to any views expressed by the public. During that process, SMC members will doubtless have developed a clear idea as to which non-executive Members are interested in particular fields. We anticipate that they will be mindful of this knowledge when selecting members to join a scrutiny committee formed to look at a particular issue. As is generally the case now, we believe each scrutiny committee should have between 3 and 5 Members, so as to provide appropriate resource and a balance of political without becoming unwieldy. In this regard, we recommend that the SMC be given an additional oversight role regarding the membership of scrutiny committees formed to review a particular topic, and that this role be defined in the revised Code of Practice for Scrutiny and the PAC. The SMC should ensure that a broad range of non-executive States Members are being employed at any one time.

If the members of the SMC were to be tempted to define the scrutiny work programme unilaterally, we suspect that they might find themselves short of the Members they would need to form the necessary committees.

**Recommendation 38.** Any non-executive States Member not already serving on the SMC should be able to volunteer to serve on a scrutiny committee established by the SMC to conduct a topic review.

**Recommendation 39.** Scrutiny committees formed to conduct a review of a particular issue should be comprised of between 3 and 5 non-executive members.

**Recommendation 40.** Membership of scrutiny committees should be approved by the SMC.

SMC members may wish to appoint themselves as Chair of the scrutiny committees formed to carry out reviews within their remit. We envisage, however, that they should have the flexibility to appoint another non-executive States Member to chair certain reviews.

Initial outline planning of many scrutiny reviews will have been conducted in advance as part of the SMC's forward planning process. With these matters already addressed, it seems right to us that the detailed terms of reference for a scrutiny committee's review be approved by the SMC member with oversight responsibility. The decision to approve and present the final report of a scrutiny committee will, however, be taken by unanimous or majority decision of that scrutiny committee.

**Recommendation 41.** Terms of reference for individual scrutiny committees should be approved by the member of the SMC with oversight responsibility for that topic area.

**Recommendation 42.** A scrutiny committee constituted to conduct a particular topic review will be authorised to approve its own final report for presentation to the States.

In our interim report, we recommended that the Chairmen's Committee consider the Electoral Commission's subsidiary recommendation on legislative scrutiny and report its views to the PPC. The Chairmen's Committee has gone further and considered the substantive question asked by the Electoral Commission. It concludes that a second chamber would be disproportionately expensive and that a dedicated legislative scrutiny committee is unnecessary. Better policy planning on the part of the executive and, in particular, adherence to the Green and White Paper consultation process, will, in the opinion of the Chairmen's Committee, allow the Scrutiny function to build into its forward work programme adequate time to conduct legislative scrutiny. We accept that view.

**Recommendation 43.** Responsibility for conducting legislative scrutiny should remain with the established Scrutiny function.

On a related matter, we were reminded during the course of our interview process that, under the old committee system, a member of the Law Draftsman's Office would go through, with a committee, on a line-by-line basis, any significant draft Law or Regulations that the Committee was considering lodging. This process ensured that the politicians were fully briefed on the implications of the Law being drafted and were able to consider whether it met their policy objectives. Committee members were also able to question any particular aspects of the draft legislation at that time. It has been suggested to us that an equivalent process happens rather less frequently under the Ministerial system. If these briefings are now tending to occur at officer-to-officer level, then the Minister is being briefed at third-hand, and the system could conceivably be more heavily dependent on Scrutiny than is perhaps appropriate. We invite the Council of Ministers to review the position and satisfy itself that all Ministers are applying a consistent and thorough approach to draft legislation.

**Recommendation 44.** The Council of Ministers should ensure that all Ministers are obtaining appropriate input from the Law Draftsman's Office on significant pieces of draft legislation prior to lodging.

We are mindful that the following recommendation may appear somewhat curious given that it seeks only to maintain the status quo. We nevertheless feel that this is matter is too important to leave buried in the main body of our report. To allow Assistant Ministers to serve on Scrutiny would be to contravene the finding at the very heart of the Clothier report of December 2000 –

> '*good government calls for an assembly in which there is a division between those who exercise executive power and those who are in government but not in the executive*.'

Quite apart from the extensive scope for conflicts of interest to occur, the Sub-Committee concludes from Members' own feedback that Members with executive responsibilities would always be tempted to prioritise their executive work over scrutiny duties. The risk that Scrutiny would suffer as a result is, therefore, very real.

**Recommendation 45.** Assistant Ministers should not be permitted to serve on Scrutiny.

The output of the scrutiny function will be affected by the availability of States Members and of financial and officer resource. Assuming that the States does not become markedly smaller, and that the available non-executive Members all commit themselves to scrutiny duties, we believe that Scrutiny could further improve its output in qualitative and quantitative terms with some refinements to its support arrangements.

We envisage that each of the Scrutiny Management Committee members will need a permanent Scrutiny Officer to deal with the day-to-day management of scrutiny reviews. Scrutiny Officers' work will include preparation of agendas and minutes for the scrutiny committees carrying out individual reviews, securing of/liaison with specialist advisors, preparation of media releases, website management and so on. A supplementary internal research function may also be needed to assist with background preparation for scrutiny reviews, perhaps with more complex issues internal to the States that arise during the course of an individual review. We anticipate that the researchers will have a role to play in producing the briefs that will need to be given to the Retained External Specialist Advisor (RESA) service that we are convinced Scrutiny needs. The RESA service will provide specialist economic and legal advice to scrutiny committees on request, together with a financial analysis capacity. This latter capacity may in practice be of particular benefit to the PAC, but could conceivably be of significant use to scrutiny committees also. The establishment of a RESA service would be broadly consistent with the resource provision for UK Select Committees.

There will continue to be a senior manager for this modified scrutiny office, who will be the executive officer to the Scrutiny Management Committee.

**Recommendation 46.** The structure and resourcing of the Scrutiny Office should be reviewed with a view to enhancing internal research capacity and enabling easier access to specialist external advice.

## 16. AN OMBUDSMAN

As noted in a number of places in this report, greater authority is being proposed to be vested in the executive arm of the States, be it in the hands of the Chief Minister, or in the hands of the Chief Executive. However, as also stated, we consider this is acceptable provided the appropriate checks and balances exist or are put in place.

Parts of our deliberations have included some consideration of matters raised in the original Clothier report. One whole chapter of that report was devoted to the call to create an Ombudsman. Extracts of that chapter are as follows –

> *"…The argument in favour of an Ombudsman for Jersey is strengthened by the proposal to shift more of the administrative decision-making in the system to the Civil Service…*
>
> *… in any civilised state the citizen's complaint must be listened to, adjudicated upon and a remedy supplied if the complaint is well founded. It should be understood that an Ombudsman is concerned only with dilatory, incompetent or discourteous dealings with the citizens' affairs.*
>
> *…We recommend the institution of a proper Ombudsman to hear complaints of maladministration by Government Departments. This would be a matter of little difficulty and no great expense. The Ombudsman should be an independent person and endowed with powers to order the production of papers and files and to command the attendance of witnesses. If a finding is made in favour of the citizen, and the responsible Department does not volunteer to remedy the grievance, the power of compulsion should lie in the States, to whom the Ombudsman reports and whose officer he is…"*

Whilst we acknowledge that our existing administrative appeals system was improved in 2006, we consider that the case for implementing the original Clothier recommendation remains compelling. It would, in our view, be in the public interest to establish the office of ombudsman either before or at the same time that the recommended structural changes are made regarding the Executive.

**Recommendation 47.** An Ombudsman should be appointed to hear and determine complaints of maladministration by Departments. This recommendation should be implemented either in advance of, or at the same time as the recommendations concerning greater authority for the Executive.

## 17. THE PRIVATE MEMBER'S ROLE

It seems to be a source of frustration to some non-executive Members that they stand for election on the basis of a published manifesto and that, within a matter of weeks, their election pledges run the risk of being diluted or pushed entirely to one side by the strategic planning and medium term financial planning processes, both of which are heavily resourced. We consider it slightly perverse that the States guard so jealously the right of a Member to bring a private proposition, whilst restricting the resource available to backbenchers to give them a sporting chance of developing the election pledges they made as an independent candidate. Neither would we wish to do anything to encourage Members outside of the executive to make use of the resources available to Scrutiny for such purposes. Paragraph 5.8 of the Clothier report was clear that Members needed better facilities and, notwithstanding the improvements secured by the PPC since its inception and the very welcome research assistance provided by the States Greffe on an ad-hoc basis, we believe that backbenchers would benefit from more formal research assistance than they currently receive.

**Recommendation 48.** An additional research resource should be made available to non-executive States Members to assist them with the development of draft policy proposals.

## 18. THE CHIEF EXECUTIVE AND THE PUBLIC SERVICE

PAC's first report of 2012 highlights the 'double fracture' in reporting lines created when the States approved what became the States of Jersey Law 2005. Chief Officers were made accountable to the Minister of the relevant department. The Chief Minister was not able to direct or to dismiss Ministers, and indeed also lost control over the ability to nominate his/her own team. To quote P.A.C.1/2012, the fractured lines of responsibility *allowed* the Chief Minister of the day to do nothing in respect of problems identified in their report. The problem, which continues to exist, is perhaps best summarised in paragraph 7.6 of that same report –

> *"The fact that the Chief Minister has neither control over, nor responsibility for the actions of the individual Ministers in policy development and only performs a co-ordinating role for the Council of Ministers, points to a serious fracture in the political responsibility matrix."*

The PAC recommended that we '*resolve the fractured lines of responsibility'* at the level of Chief Minister and Chief Executive Officer. In our view, the recommendations we have made in previous chapters will resolve the significant fracture. The Chief Minister will have responsibility for his or her Ministers, and therefore will not be able to abdicate responsibility for, or failure to address, poor performance/behaviour. Giving the Council of Ministers the power to direct departments will deliver a clear line of responsibility from the political level down to the Civil Service.

Some may still call for the Chief Executive to be given greater authority over other Chief Officers. At present, these report to individual Ministers. With the power given to the Council of Ministers to direct departments, then there should no longer be any conflict in resolution of policy matters. Our view, albeit by majority, is that overall responsibility must rest with the Council of Ministers and politicians. Our preference, therefore, is to give the elected politician (namely the Chief Minister) the requisite responsibility, and therefore the accountability, for resolving any problems.

It may be that the States are minded to grant the Chief Executive more authority over Chief Officers – perhaps by stipulating that all Chief Officers of executive departments be issued with amended contracts to confirm their reporting line to the Chief Executive to the Council of Ministers and Head of the Public Service. In such circumstances, we would strongly recommend that no such change takes place until any incumbent in the position of Chief Executive has been subject to the full and proper process of appointment, as laid down in the guidelines issued by the Jersey Appointments Commission.

On the subject of Chief Officers and with reference to our chapter on governance (see chapter 13) we have considered whether, given the increase in delegated powers and responsibility given to the Civil Service, all Chief Officers should be subject to the same disclosure requirements as politicians. While we are aware that Chief Officers already submit an annual declaration of interests and that relevant notes are included in the States of Jersey Annual Report and Accounts, our view is that a public register of Chief Officer's interests should be accessible on www.gov.je and that this register should be displayed alongside copies of the respective code of conducts applicable to both Chief Officers and other public servants.

**Recommendation 49.** A public register of Chief Officers' interests should be accessible on www.gov.je and this register should be displayed alongside copies of the respective codes of conduct applicable to both Chief Officers and other public servants.

## 19. CONCLUSION

The recommendations made over the preceding chapters are, subject to the endorsement of the PPC, offered to the States as a complete package for reform. In this regard, our intention is to invite the PPC to pursue an early in-committee debate on the package and establish whether the recommendations are thought by the States to be worthy of implementation, either in part or in their entirety.

In closing, we would like to place on record our thanks to all those Members who contributed to this review and, in particular, to the various members of the public and those public servants that took time to give us their input.

**APPENDIX**

## CONSTITUTION

The Machinery of Government Review Sub-Committee was constituted on 8th February 2013 as follows –

Deputy M. Tadier of St. Brelade, Chairman
Senator A.J.H. Maclean
Connétable L. Norman of St. Clement
Deputy J.A.N. Le Fondré of St. Lawrence
Deputy T.A. Vallois of St. Saviour
Deputy G.C.L. Baudains of St. Clement
Deputy J.H. Young of St. Brelade.

Following the resignation of Connétable A.S. Crowcroft of St. Helier as Chairman of the Privileges and Procedures Committee on 16th July 2013; and the reconstitution of the PPC on 18th July under the chairmanship of Deputy J.M. Maçon of St. Saviour, the Machinery of Government Sub-Committee was reconstituted as follows –

Deputy M. Tadier of St. Brelade, Chairman
Connétable L. Norman of St. Clement
Deputy J.A.N. Le Fondré of St. Lawrence
Deputy T.A. Vallois of St. Saviour
Deputy G.C.L. Baudains of St. Clement
Deputy J.H. Young of St. Brelade.

Deputy T.A. Vallois of St. Saviour resigned from the Sub-Committee on 28th August 2013.

## TERMS OF REFERENCE

*AIM*

To undertake a diagnostic review of the machinery of government so as to identify any issues arising and to make recommendations for improvement.

*OBJECTIVES*

To analyse the machinery of government in Jersey.

To identify any problems with the current machinery of government.

To agree a series of findings and recommendations in respect of the machinery of government.

To present a report and recommendations to PPC.

*DELIVERABLES*

A report to PPC that sets out the Sub-Committee's findings in respect of the issues to be addressed. This report should define any problems with the current machinery of government and should also contain recommendations to resolve any identified problems with the current machinery of government.

*SCOPE*

Included

Consideration of the extent to which the current allocation of roles and responsibilities ensures that –

plans and policies are developed in the most effective manner to meet the needs of the Island and to ensure the delivery of unified solutions across all departments;

States members have the opportunity to be engaged in the process of government;

all parts of the States and related contracts and organisations are subject to appropriate accountability to States members and the public; including consideration of the effectiveness of Scrutiny in this role.

The review will therefore consider –

the roles of the Council of Ministers; the Chief Minister; Ministers and the States Employment Board;

the relationship between the ministerial structures and the Civil Service structures in relation to policy development, implementation and operational management;

the roles and responsibilities of the Chief Executive; Treasurer of the States; Chief Officers and the Corporate Management Board;

the roles and responsibilities of Assistant Ministers, including whether Ministers should also be allowed to be appointed as Assistant Ministers (and vice versa) and whether Assistant Ministers should be able to serve on Scrutiny Panels;

how each of the aforementioned parties should be held to account for performance in the most effective and transparent manner;

how Scrutiny and the Public Accounts Committee could most effectively hold the executive to account; and

whether current ministerial portfolios and departments remain appropriate, or whether there is an alternative structure which will deliver greater effectiveness and value for money.

Excluded

matters in relation to the efficient use of resources to achieve value for money;

the maintenance of standards of performance though financial management and forms of governance;

consideration of the accounting officer structure.