

**PUBLIC EMPLOYEES CONTRIBUTORY RETIREMENT SCHEME**

**COMPOSITION OF THE COMMITTEE OF MANAGEMENT**

**SEPTEMBER 2009**

*Public Employees Contributory Retirement Scheme  
Composition of the Committee of Management  
Observations of the Comptroller & Auditor General  
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**Introduction**

1. In March 2008, I published three reports dealing with various aspects of the Public Employees Contributory Retirement Scheme (PECRS) and the Teachers' Superannuation Fund (TSF). One of those reports dealt in particular with the arrangements for governance of the two schemes and made recommendation concerning membership of the Committee of Management of PECRS.
2. I have recently been asked to consider a further matter to which I did not refer in the report published in March 2008.
3. The question put to me is whether in all the circumstances it is wise to appoint members of the States Assembly to serve as members of the Committee of Management of PECRS.
4. This brief paper sets out my response to that question.

**Conflicts of interest**

5. It is axiomatic that actual and potential conflicts of interest need to be carefully considered and correctly managed. This will lead those appointing members of a board or committee to consider whether potential candidates are sufficiently free of potential conflicts.
6. In some cases, a potential conflict of interest may be of such general impact that it would be inappropriate for a person to become a member of a board or committee. In other cases, a potential conflict may be more limited and, taking into account the contribution a candidate for appointment may bring to a board, may be managed effectively within the board.
7. Whatever steps are taken to ensure that new appointees are not subject to conflicts of interest, the possibility of conflicts of interest can never be completely eliminated so that it is necessary for a board or committee to adopt appropriate arrangements to identify and manage conflicts as they arise.

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**Appointment of members of the Committee of Management**

8. As far as PECRS is concerned, in my report dated March 2008, I described the arrangements for appointment of members of the Committee of Management in the following way:

*“A Committee of Management was . . . appointed in March 1990 by which time what had previously been the co-ordinating group had become the Public Employees’ Pension Scheme Joint Negotiating Group (JNG). JNG deals with all pension matters put forward by its constituent unions and staff associations or any individual scheme members. It also deals with issues referred to it by the Committee of Management or the States Employment Board, negotiating with representatives of the latter and forwarding items for consideration by the former.*

*Members of the JNG are appointed by the constituent bodies in accordance with their own rules and include those then elected by the JNG as employee nominees for membership of the Committee of Management. These nominees, together with employer nominees put forward by the Council of Ministers and Treasury and Resources Department are appointed by the States under the regulations to form the Committee of Management. Both the JNG and the Council of Ministers are totally unfettered in making nominations.”*

9. In practice, I understand that it has been the normal practice for the people nominated by the Council of Ministers and the Treasury and Resources Department as “employer” nominees to include two members of the States Assembly.<sup>1</sup>
10. Whether it is appropriate for members of the States Assembly to be nominated in this way as members of the Committee of Management must in large part depend upon whether the responsibilities of members of the States Assembly are in some way in conflict with responsibilities of members of the Committee of Management of PECRS.

**Status of the Committee of Management**

11. The status of the Committee of Management was covered by another report that I published in March 2008 which dealt with the status of the States’ two employee pension schemes. As far as the Committee of Management of PECRS is concerned, the report observed:

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<sup>1</sup> The current members of the Committee of Management (per the States Greffe website are: R Amy OBE, Chairman; Employer representatives: Senator BE Shenton, Deputy JAN Le Fondré, I Black, JS Clark, SM Patidar, MJ Pinel, J Rosser; Employee representatives: GA Birbeck, FA Greene JH Lees, JT Noel, W McPhee, MD Orbell, J Tadier.

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*“In the late 1990’s some question arose over the status of the Committee of Management. Whilst it was clear that the fund of PECRS was, and remains, a fund of the States, members of the Committee of Management were concerned about the status of the Committee and their obligations and liabilities of members of the Committee. Consequently, legal advice was sought from Olsen Backhurst Dorey, Advocates, legal advisers to PECRS.”*

*The eventual advice which was dated 22 May 1997 first considered what the Committee was not:*

*‘We propose to start by offering our advice as to what the Committee is not. We are of the opinion that the Committee is not a Committee of the States of Jersey, further, we are satisfied that it is not a sub-Committee of the States.’*

*The advice concluded in the following way:*

*‘Having established what the Committee is not, we must next ask what then is the legal status of the Committee? It is undoubtedly a Committee, but that is not a concept from which we derive any significant degree of comfort – the Oxford English Dictionary provides as much assistance on this score as we can . . .*

*We have reached the conclusion that, were the Royal Court ever to be the arbiter of the question of the Committee’s legal status, it would hold that the Committee is in effect a Board of Trustees. The Trust property is the pension fund and to the Trustee is the scheme and the regulations that regulate it. We reach that conclusion by default; the Committee cannot, in our view, be anything else. Interestingly, it is certainly our experience to date that the Committee approaches its duties on the basis that it carries a fiduciary responsibility. In our opinion that is an entirely correct stance to adopt.’*

*I understand that HM Attorney General subsequently concurred with this advice.*

12. Subsequently in that report, I recommended that the somewhat uncertain and anomalous status of the Committee of Management should be resolved by reconstituting PECRS as an independent trust. Thus far, no formal action has been taken to implement this recommendation.

### **Implication for members of the Committee of Management**

13. The implication of this analysis is that, with the support of the 1997 advice, members of the Committee of Management properly regard themselves as being in the position of trustees of PECRS.
14. As such, it is their obligation under trust law to ensure that the affairs of PECRS are managed in accordance with the terms of the Trust (i.e. the scheme and regulations) in the interests of the beneficiaries (i.e. the members of the scheme).

**Implication for members of the States Assembly**

15. This analysis of the responsibilities of members of the Committee of Management suggests that there may well be a conflict between the responsibilities of the members of the States Assembly and the duties of a member of the Committee of Management.
16. I presume that members of the States Assembly have a duty to oversee the affairs of the States and make decisions according to their view of the interests of the people of the Island at large. This includes oversight of the decisions made by the States as employer in managing their relationship with employees and also oversight of the costs of employing people.
17. Prime facie this responsibility will conflict with the duty of a member of the Committee of Management to act according to the terms of the Trust in the interests of the beneficiaries. Further, this conflict is direct and fundamental potentially affecting all of the business of the Committee of Management.

**Managing conflicts of interest**

18. Conflicts of interest matter because they can lead to distorted decisions. Even if they do not, they can undermine an organisation's effectiveness by creating the impression that decisions may be distorted. Although it is unlikely that all possibility of conflicts can be eliminated, it is important that they should be avoided wherever possible and that they should be managed effectively when they are recognised.
19. In the particular circumstances of the PECRS Committee of Management, it is apparent that members of the States Assembly who are nominated to serve as members would face a conflict between their duties as members of the Assembly and their duties as members of the Committee of Management.
20. In my view it would be wise to avoid creating that conflict. In other words, it would be wise to regard members of the Assembly as ineligible for nomination as members of the PECRS Committee of Management.