

PRIVILEGES AND PROCEDURES COMMITTEE

(6th Meeting)

23rd April 2004**PART A**

All members were present.

Deputy R.G. Le Hérisier
 Senator P.V.F. Le Claire
 Connétable D.F. Gray
 Deputy P.N. Troy
 Deputy C.J. Scott-Warren (for a time)
 Deputy J-A. Bridge
 Deputy J.A. Bernstein

In attendance -

M.N. de la Haye, Greffier of the States
 Mrs. A.H. Harris, Deputy Greffier of the States
 Mr. R.W. Whitehead, Principal Legal Advisor
 Mrs. S. Stoten, Committee Clerk

Note: The Minutes of this meeting comprise Part A only.

Minutes

A1. The minutes of the meetings held on 5th, 9th and 30th March 2004, having been previously circulated, were taken as read and were confirmed.

Code of Conduct
 of members,
 projet and report
 content and
 States debates -
 Deputy M.
 Dubras.
 1240/4(166)

A2. The Committee welcomed Deputy M.F. Dubras who had requested a meeting with the Committee to discuss the conduct of States members during States debates when presenting Projets or Rapports et Correspondance to the Assembly and to prevent more specifically, the use of individual Officers' names either verbally or in print. Both the President and the Connétable of St. Clement withdrew from the meeting having identified a conflict of interest.

The Vice President, whilst presiding over the meeting, informed the Committee and Deputy Dubras that the Committee had not sought legal or officer advice at that stage but that it was prepared to listen to the Deputy's arguments before considering the way forward.

The Committee noted that the recent debate on Jambart Lane and a proposition of the President (P.33/2004) where certain officer specific references had been made, had prompted Deputy Dubras to raise his concerns regarding Public Sector employee protection and regard. The Committee questioned Deputy Dubras' capacity at the meeting whilst recognising his membership of the Policy and Resources Committee, Chairmanship of the Human Resources (HR) Sub-Committee and a former President of the Environment and Public Services Committee. Deputy Dubras stated that he was attending the meeting as a private member and as the Chairman of the Human Resources Sub-Committee to share his views of what in his opinion had been breaches of accepted protocols and standards. He further confirmed that as a member of the Policy and Resources Committee he had broached the matter with the

President of the Committee although it had not been formally covered on an agenda. The Deputy observed that Standing Orders regarding members conduct did exist but were perhaps less comprehensive than necessary to prevent members veering away from normal standards of behaviour. Over the years he had noticed a dramatic change in the behaviour of States members towards employed and appointed officials of the States of Jersey. He believed that it was the role of Committees such as the Privileges and Procedures Committee to act as guardians of such protocols and to identify where visible gaps needed to be addressed. As Chairman of the Human Resources Sub-Committee, Deputy Dubras was of the opinion that he was obligated to act as a guardian of the well being and reputation of States employees, regardless of their pay group or status, as they were not protected by Parliamentary Privilege particularly during States debates where they did not have an opportunity to respond or defend matters of a slanderous or libellous nature.

Deputy Dubras requested that the Committee addressed the following –

- (a) that the Greffier apply strict rules to prevent personal references or criticism in reports submitted to the States;
- (b) that the Committee address the implementation of a complaints procedure for employees and officers where a gap in the draft Code of Conduct for States members existed to make provision for rebuttal should improper references to individuals be made;
- (c) to apply and make members aware of good practices and proper procedures which should be jointly governed by officers of Departments, potentially implemented jointly by the Policy and Resources Committee and the Privileges and Procedures Committee; and
- (d) that in the absence of a formal code of conduct and prior to the review of Standing Orders, a more disciplined approach by members on report and speech content be introduced by the Committee in the form of guidelines.

Deputy Dubras thanked the Committee for allowing him to attend its meeting at short notice and withdrew.

The Committee having considered Deputy Dubras' proposals recalled that as part of its review of Standing Orders the Deputy's concerns would be addressed. However, it agreed to consider the matter further at its next meeting.

States Building
room allocation:
amendment to the
Environment and
Public Services
Committee's
proposition
'Royal
Court/States
Building, Royal
Square, St.
Helier: Use and
allocation of
rooms.' (P.69/2004).
1060/5/1(27)

A3. The Committee, with reference to Act No. A11 of its meeting held on 5th March 2004, received and considered a draft amendment to the proposition of the Environment and Public Services Committee, 'Royal Court/States Building, Royal Square, St. Helier: Use and Allocation of Rooms' (P.69/2004) and specifically the relinquishment of a room within the members' area of the States Building to accommodate the Jurats' needs.

The Committee recalled that a letter from Deputy J-A Bridge had been sent to the President of the Environment and Public Services Committee dated 16th March 2004, requesting a trial period of at least six months from the 1st April 2004 to evaluate full usage of the States Building or at least the member's quiet room which had originally been identified as being suitable for the Jurats' needs. The Committee remained sensitive to the Jurats' difficulties, but asserted that a full review was required before releasing rooms currently identified as those used by States members, and to confirm that issues of security of information and proper facilities

for the Jurats could be addressed.

The Committee approved the amendment subject to minor typographical amendments and agreed it should be lodged as soon as possible. The Deputy Greffier of the States was requested to take the necessary action.

Code of Practice
on Public Access
to Official
Information –
annual report for
2003.
955(32)

A4. The Committee noted the annual 2003 report on the Code of Practice on Public Access to Official Information.

The Deputy Greffier of the States informed the Committee that some minor amendments were required, in relation to improvements to the Code of Practice and the Committee's future proposals, before it could be submitted to the States as a Rapport et Correspondence.

States (2)
Pub.Ed.

The Committee noted that the Code was in its third year of operation and that the annual report reflected statistics of the working of the Code within all States Committees and Sub-Committees. The Committee further noted that the introduction of the ministerial system of government had required the Code to be reviewed and improvements would be recommended shortly as detailed in the Committee's terms of reference.

The Committee approved the report subject to the minor alterations and requested the Deputy Greffier to arrange for the report to be presented to the States at the earliest opportunity.

Code of Practice
on Public Access
to Official
Information –
measures to
improve
implement-ation
draft report and
proposition.
955(32)

A5. The Committee, with reference to Act No. A3 of its meeting held on 22nd March 2004, recalled that it had agreed to amalgamate proposals from Deputy P.N. Troy's proposition 'Code of Practice on Public Access to Official Information: Register of Reports' (P.196/2003) with its own proposition "Code of Practice on Public Access to Official Information: measures to approve expenditure" P.164/2003.

The Committee noted that revisions to the Committee's proposals in P.164/2004 were contained in a draft proposition prepared by the Deputy Greffier of the States, specifically, the introduction of a register of reports or Information Asset Register on which the names of strategic and/or policy reports or reports deemed by a Department to be of public interest would be added. The Committee further noted that all unpublished third party reports or consultancy documents would also be made available to the public after a period of five years. The names of consultancy documents over an amount set from time to time by the Committee would also be forwarded to the States Greffe should the amendment be adopted.

States (2)
Pub.Ed.

The Committee agreed to incorporate the changes outlined in the draft proposition on amendments to the Code and noted that reports would only be added to 'the register' if created after the adoption of the amendments by the States as retrospective additions would require substantial finance and manpower implications. The Deputy Greffier was requested to arrange for the proposition to be lodged at the next States sitting scheduled on the 27th April 2004.

On a related matter, the Committee noted that the proposition of Deputy A. Breckon, 'Public right of access to information, financial and other records of the States of Jersey' (P.34/2003) was due to be debated at the next sitting and looked forward to the debate in relation to its own proposals for freedom of information and the Code of Practice on Public Access to Official Information.

'Travelling and Entertainment Costs – Provision of Information: comment on Senator Shenton's proposition (P.51/2004). 1240/11(87)

A6. The Committee considered the proposition lodged "au Greffe" by Senator R.J. Shenton, entitled 'Travelling and Entertainment Costs – Provision of Information' (P.51/2004) and whether it should submit a comment in response due to its indirect reference to access to information issues which fell within the Committee's remit.

The Committee noted that Senator Shenton's proposition recommended that all Departments and Committees submitted quarterly returns of all expenses on travelling and entertaining to the Finance and Economics Committee with full details pertaining to the exact amount and reasons for the expenditure.

States (2)
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The Committee further noted that Audit Commission responsibilities had now been transferred to the Public Accounts Committee (PAC) including monitoring policies relating to travel expenditure, and that the Corporate Supplies Department was also responsible for ensuring best value for the States. A circular confirming preferred suppliers was due to be distributed to all members and officers in the near future and in this regard the Committee was of the opinion that expenditure was scrutinised sufficiently, not least during the period of the Fundamental Spending Review. A review of travel subsistence, 'Entertainment and Hospitality within the States of Jersey' had been published by the then Audit Commission in December 1999 which highlighted that controls and authorisation procedures were inadequate. The Committee was of the opinion that the report's recommendations should be implemented and reviewed by the PAC before Senator Shenton's proposition was to be considered.

Whilst the Committee recognised Senator Shenton's motives in encouraging cost regulation and transparency of information, it agreed that the introduction of quarterly reports which challenged the efficiency of running a Department would present unnecessary financial and manpower implications and questioned its usefulness. The Committee further agreed that it was not responsible for implementing travel policy unlike the Public Accounts Committee although it was committed to cost effectiveness and cheaper options for business related travel. The Committee noted that amongst other information, the Public would have access to travel expenditure information under the revised Code of Practice on Public Access to Official Information and agreed that larger areas of expenditure required scrutiny. Although the Committee wished to proceed with a comment, it could neither support nor reject the Senator's Proposition and requested the Greffier of the States to draft a suitable comment highlighting the salient points of its discussions.

Simultaneous Electronic Voting – installation update. 1240/22(8)

A7. The Committee, with reference to Act No. A6 of its meeting held on 5th March 2004, received an oral update from the Greffier of the States in connexion with the installation of the Simultaneous Electronic Voting system.

The Greffier apprised the Committee that the voting buttons had since been installed and that the relevant amendment to Standing Orders was ready to be lodged. The Committee noted that members were due to receive a memorandum advising of the installation and subsequent brief training on how to use the system.

The Committee looked forward to the new system being fully operational and requested the Greffier to provide an update at its next meeting.

Public Petitions Committee – report by Deputy Greffier of the

A8. The Committee received and considered a report prepared by the Deputy Greffier of the States dated 22nd March 2004, relating to the establishment of a Public Petitions Committee and the review of the Standing Orders of the States of Jersey.

States.
1240/13(83)

The Committee noted that the report requested that consideration be given to the establishment of a system comparable to that of the Public Petitions Committee in the Scottish Parliament in order to engage the public in the political process and create a link between the electorate and policy making and/or review.

D.G.O.S.

The Committee agreed with the concept of a Public Petitions Committee and congratulated the Deputy Greffier on the research carried out to date whilst recognising there would be staffing implications should the Committee be established. The Committee requested the Deputy Greffier to continue her work as part of the review of Standing Orders.

Administrative
Appeals System –
proposals for
change.
1386/2(71)

A9. The Committee, with reference to Act No A2 of its meeting held on 30th January 2004, received and considered a revised draft consultation document on the future of the administrative appeals system prepared by the Sub-Committee, as previously constituted in conjunction with the Greffier of the States, and an attached overview report from the Greffier of the States.

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The Committee recalled that the Committee, as previously constituted had considered and approved the document at its meeting held on 30th January but that the matter had not progressed due to the resignation of the former President which had resulted in the Committee falling.

Having taken the comments of the former Committee and of the Administrative Appeals Panel, the revised document required the Committee's consideration and approval. The Committee noted that whilst a change of name of the Administrative Appeals Panel had been proposed by the former Committee, the 'States of Jersey Complaints Panel' was more appropriate than the 'States of Jersey Review Board' as originally proposed.

The Committee approved the draft consultation document and agreed that it should be presented to the States as a Rapport et Correspondence and circulated to the media with a press release, subject to minor typographical amendments. It was further agreed that the new name for the Administrative Appeals Panel be proposed as the 'States of Jersey Complaints Panel'.

The Greffier of the States was requested to take any necessary action in this regard. The Committee thanked and congratulated the Sub-Committee and the Greffier of the States for their work and looked forward to receiving feed back from all interested parties during the consultation period.

Draft States of
Jersey Law –
formal
consultation
approval from the
Department of
Constitutional
Affairs.
450/1(1)

A10. The Committee, with reference to Act No. A8 of its meeting held on 9th January 2004, noted a letter dated 11th April 2004 addressed to H.M. Attorney General from Mr. R Miles at the Department of Constitutional Affairs confirming formal consultation of the draft States of Jersey Law was complete.

The Committee recalled that the Committee, as previously constituted, had agreed that the draft Law should be distributed to all States members, Chief Officers and the media and that it should invite all States members to a seminar on 23rd January 2004. This seminar had been cancelled due to the imminent resignation of the former President and the Committee agreed that the seminar should be re-arranged for a lunch time where the President could brief all members on the Law and its implications.

The Committee recognised that as part of the work currently being undertaken by the

Special Committee on the Composition and Election of the States Assembly, certain aspects of the Law could potentially require change. The Special Committee would therefore need to consider its position at its next public meeting.

The Greffier of the States was requested to make the necessary arrangements whilst also responding to Senator F.H. Walker who had enquired about the postponed seminar.

States Members' Remuneration: increases for 2004 – Senator Shenton's amendment to Deputy Le Main's rescindment proposition (P.11/2004). 1240/3(74)

A11. The Committee, with reference to Act No. A5 of its meeting held on 22nd March 2004, recalled that it had presented its comments in response to the rescindment of States' members remuneration – increases for 2004, proposed by Deputy T.J. Le Main and an amendment by Senator J.A. Le Maistre.

The Committee noted that Senator R.J. Shenton had lodged a further amendment to proposition P.11/2004 proposing a 'freeze' of States members' remuneration at 2003 levels for years 2004 and 2005. Senator Shenton's proposition would further rescind the decision of the States that 2005 remuneration levels should be fixed in accordance with recommendations from an independent States Members Remuneration Review Body.

States (2) Pub.Ed.

The Committee agreed it could not support Senator Shenton's proposition as, if adopted, it would significantly reduce members' remuneration in real terms particularly those members who relied on remuneration and were not in a position to 'sacrifice' their income. The Committee was of the opinion that 2005 levels of remuneration for members should be recommended by the independent remuneration review body due to the difficult and sensitive nature of the decision.

Whilst aware that recruitment for the Body was well underway and that a proposition seeking the approval of the States to appoint a Chairman and members was ready to be lodged, the Committee agreed that its comment should reflect its determination to forge ahead with setting up the body.

The Greffier of the States was requested to present the comment and prepare the make ready the proposition on the States Members Remuneration Review Body for lodging once the debate had concluded.

Remuneration Review Body – recruitment of Chairman and members. 1240/3(73)

A12. The Committee received an oral update from the Remuneration Working Party on the recruitment progress for a Chairman and Members of the Remuneration Review Body.

The Committee noted that four prospective members had been interviewed informally and that one further candidate was yet to meet with the Working Party. The meetings to date had proved very promising and it was likely that the positions could be easily filled by all those interviewed to date.

The Committee Clerk was directed to arrange a meeting with the final candidate on his return to the Island at which point a decision would be made as to the full complement of the Body which would be documented in the proposition to be lodged by the Committee.

The Committee recognised that the forthcoming debates on the rescindment proposition of Deputy T.J. Le Main and subsequent amendment by Senator R.J. Shenton was due for debate at the next sitting and was of the opinion that its proposal to establish the Remuneration Review Body should be ready to lodge as soon as possible following the aforementioned debate.

Shadow Scrutiny overview role – Machinery of Government: Establishment of Scrutiny Panels and Public accounts Committee. (P.79/2003). 465/1(55)

A13. The Committee considered how it would undertake its overview role on the Shadow Scrutiny function in accordance with the guidelines set out in the proposition, ‘Machinery of Government: Establishment of Scrutiny Panels and Public Accounts Committee.’ (P.79/2003).

The Committee noted that since their inception, the Shadow Panels had sought the approval of the Committee on several occasions and that it would be useful to hold meetings with the Chairmen of all the Committees on a quarterly basis to maintain a general overview of the Scrutiny work programme.

The Committee agreed to hold quarterly meetings and directed the Committee Clerk to co-ordinate an appropriate timetable for the quarterly meetings with the Scrutiny Officers.

Scrutiny Panels and Furniture Expenditure – letter from Senator E.P Vibert. 1060/5/1/1(2)

A14. The Committee received and considered a letter from Senator E.P. Vibert, Chairman, Shadow Scrutiny Panel, dated 13th April 2004, in connexion with a report produced by the Assistant Greffier of the States relating to committed furniture expenditure for the Scrutiny meeting rooms in the States Building (known as Le Cappelain and Blampied Rooms).

The Committee noted the Panel’s request that its strongly held view that the sum of £52,000 set aside for furniture expenditure was excessive was formally recorded. The current furniture, whilst it needed to be durable and was in some cases, the Panel believed, ill designed.

The Committee noted the Panel’s concerns but recognised that in furnishing the rooms, a degree of expense was inevitable considering requirements for comfort, durability and appropriateness for its said use. A clear message of best value had been expressed to the Officers responsible for arranging the furniture although the Committee recalled that the former President alone, and not the full Committee, had given approval for the expenditure. The Committee agreed to follow up on the outstanding issue of artwork for the meeting rooms and agreed to consider the design of the room to make usage more practical.

On a related matter, the Committee noted that artwork for the Le Cappelain and Blampied Room was to be provided by the Jersey Heritage Trust originally free of charge but due to the harsh light environment paintings had to be copied representing a small cost. Deputy Bernstein was requested to look into the possibility of hanging Art students work in the States Building similar to that displayed at the Education, Sport and Culture Department.

The Committee Clerk was requested to investigate the status of Artwork for the Le Cappelain and Blampied Rooms and provide an update the Committee at its next meeting.

Working Party on the Organisation of States Business – minutes of meeting held on 29th March 2004 and recommendations. 1240/7/1(78)

A15. The Committee noted the minutes of the second meeting of the Working Party on the Organisation of States Business held on the 29th March 2004 and received and considered the Working Party’s report outlining its recommendations to be put forward to the Committee for approval and trial by the States.

The Committee noted the said documents, and a copy of the full report was attached to this Act and a summary of its recommendations is as follows -

- (a) to trial a new system of oral and written questions, whereby oral questions only would be addressed in the Assembly with each member being

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allowed to submit no more than two questions limited to a maximum of 60 words. The notice period for receiving oral questions via the States Greffe would be shortened to allow more topical questions to be asked, whilst the notice sheet for oral questions would be subject to a ballot determining the order of oral questions. Members would have by close of business on the day preceding the States meeting to request to the Bailiff that their question be given a higher priority. The use of supplementary questions would continue but would not be confined to an 'elucidation of the answer' as at present. Oral question time would be terminated after one hour if it was not already finished. Questions that remained unanswered would either fall away or the member would have the opportunity to resubmit the question for the next meeting subject to the oral question ballot, or the member could request for the question to be treated as a written question. Written questions would be submitted as an alternative if they required a significant amount of detailed information the answers would be distributed at the States sitting and the full text recorded in the States minutes;

- (b) to trial the use of a 'closure motion' which would allow the States to vote to end a debate and move to the proposer's summing up and a vote, the Closure could not be proposed unless at least one hour had passed;
- (c) to impose a deadline of two months in which all Committees would be required to present comments to the States on propositions referred to them which would assist in the planning of States business; and
- (d) to stipulate that all propositions should have a date fixed for debate within three months of being lodged and subsequently debated within a further three months, failure to do so would result in the proposition being deemed withdrawn.

The Committee considered the recommendations and agreed that the Working Party, having been commissioned by the Committee to propose improvements to the Organisation of States Business should take its recommendations forward without amendment by the Committee. The Committee approved the recommendations and agreed to lodge an appropriate report and proposition seeking the agreement of the States to the trial as soon as possible. Deputy Bridge and Senator Le Claire wished to record their dissent on the matter of closure, point (b) above and further dissented on the proposal outlined in point (a) that question time should be reduced to one hour.

The Committee anticipated objectives from some members to aspects of the proposals but looked forward to the debate. The Committee expressed its gratitude to the Working Party for its work to date.

The Greffier of the States was requested to make the necessary arrangements to ensure the proposals were lodged at the next States sitting.

Scrutiny Panel
Protocols and
Scope details.
502/1(17)

A16. The Committee received and considered the minutes of the Shadow Scrutiny Chairmen's Panel meeting held on 19th April 2004. The Committee noted that there was a particular area of disagreement between the two panels in the 'Draft Guidelines for Panel Members: Call for Evidence and Approach to Witnesses'

Scrutiny

The Committee considered a number of points. Firstly, that the guidelines would refer to all witnesses, not just politicians and civil servants, therefore the wording might need to be rephrased to clarify this, particularly in paragraph 4.3 which was at

issue. Secondly, during the shadow phase while privilege was not available to witnesses, private individuals would need to be warned, both in advance of providing written evidence, and at the beginning of all oral evidence sessions that their evidence would not be protected by privilege, and would also be made public. Witnesses would be asked to confirm in writing that they understood this before written evidence was given. A similar duty of care would be owed to employees and to States members. Finally, it should be made clear to witnesses that attendance at hearings during the shadow phase was voluntary, and that in the absence of legal powers to obtain documents, a Shadow Panel could not press for confidential papers. It would also be inappropriate to request from an officer or States member documents or evidence which would breach the confidentiality of a third party. The Committee was of the opinion that should a Shadow Panel wish to press for confidential documents/evidence from/about a third party during the shadow phase, then this should be referred to the Committee for consideration prior to requests being made.

The Committee was unclear what was meant by ‘private correspondence’ and considered that these words should be deleted.

The Committee agreed that paragraph 4.3 should be reworded as follows –

*“Information provided to Panels by the Executive will normally be in the form of memoranda, written replies to Panels’ questions and oral evidence from Ministers and officials. This may include the provision of all appropriate documents, which would include internal files, advice or working papers. If the Panels wish to press for such information, being relevant to their investigation, a formal request will be made to the minister/committee president. Where a panel requires access to confidential information **from/about third parties** during the shadow scrutiny phase, then the matter will be referred to the Privileges and Procedures Committee.”*

The Committee believed that the experience of attending an oral hearing might be daunting to witnesses, and requested reassurance that every witness would receive an outline of the procedures to be followed at that particular hearing. **It was agreed that an additional brief paragraph under section 5 to this effect would be helpful.**

On a related matter, the President informed the Committee that he had met informally with the Chairmen of the Scrutiny Panels, Senator E.P. Vibert and Deputy J.L. Dorey and the Shadow Chairmen of the Public Accounts Committee, Deputy S.C. Ferguson on 23rd March 2004 to discuss the progress of the Shadow Committees. The Committee noted the success of the meeting and looked forward to future meetings as part of its overview role of the Shadow Scrutiny functions.

Items for
information.

A17. The Committee noted the following matters for information –

- (a) a letter from Senator F.H. Walker regarding the House of Keys in the Isle of Man and its visitor booklet;
- (b) an e-mail notifying of the postponed ‘Future of Democracy’ Conference, Wilton Park.