

PRIVILEGES AND PROCEDURES COMMITTEE

(27th Meeting)

10th April 2014PART A

All members were present, with the exception of Deputy J.A. Martin and Deputy M. Tadier, from whom apologies had been received.

Deputy J.M. Maçon, Chairman
 Senator S.C. Ferguson
 Senator B.I. Le Marquand
 Connétable L. Norman of St. Clement
 (not present for item Nos. A7 to A12 inclusive and B6 to B8 inclusive)
 Deputy J.H. Young

In attendance -

H.M. Attorney General (item Nos. B1 and B2 only)
 Connétable J.G. Gallichan of St. Mary (item No. B5 only)
 Mrs. S. de Gruchy, Secretary, Comité des Connétables (item No. B5 only)
 A.H. Harris, Deputy Greffier of the States
 L.M. Hart, Assistant Greffier of the States
 A.C. Goodyear, Clerk to the Privileges and Procedures Committee
 H. Bisson, States Greffe (for a time)

Note: The Minutes of this meeting comprise Part A and Part B.

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| Minutes | A1. The Minutes of the meeting of 6th March 2014 (Parts A and B), having been previously circulated, were taken as read and were confirmed. |
| States
Assembly
Annual Report
2013.
1240/25(8) | A2. The Committee received the 2013 States Assembly Annual Report.

Having noted and discussed the contents of the report, the Committee requested that the Greffier of the States arrange for the same to be presented to the States at the next available opportunity. |
| States of
Jersey
Complaints
Panel Report
2013.
1386/6/1(2) | A3. The Committee, with reference to its Minute No. A2 of 6th March 2014, considered the 2013 States of Jersey Complaints Panel Report. In this connexion the Committee welcomed the Chairman, Advocate R.J. Renouf, Mr. G. Marett, Ms C. Vibert and Mrs. C. Boscq-Scott, all of whom were members of the Complaints Panel.

The Committee noted that the above report provided an overview of the cases handled by the Panel in 2013 and the manner in which complaints had been dealt. The Committee recalled that there had previously been some discussion around the role of the Complaints Panel and a suggestion had been made that an ombudsman should be established to replace the Panel. The Committee was informed that the States of Jersey Complaints Panel (formerly the Administrative Appeals Panel), comprising independent members, had been in operation since 1997. The system enabled anyone who was aggrieved by any decision of a Minister or States Department to apply to the Greffier of the States with a request that the matter be |

reviewed by a Board of three people chosen from the Complaints Panel, which was appointed by the States.

In 2004 a Sub-Committee of the Privileges and Procedures Committee had reviewed the operation of the system and a report was subsequently presented to the States (R.C.20/2004 refers). The key recommendations contained within R.C.20/2004 included some amendments to the existing Administrative Decisions (Review) (Jersey) Law 1982, most notably that the Chairman should determine whether a complaint should be referred to a Board (this had formerly been the role of the Greffier of the States); the introduction of informal resolutions where appropriate; the publication of findings and the responses of Ministers; the publication of clear guidelines; greater publicity for the scheme and a change of name to the 'Complaints Panel'. The amendments to the Law were subsequently approved by the States on 14th February 2006. The revised Law came into force on 1st December 2006 and all of the recommendations were implemented by the Panel.

The present system, which relied on well respected, independent members of the community with a wide range of professional and personal backgrounds, had many advantages and the Jersey scheme met the strict criteria set out by the British and Irish Ombudsman Association, of which the Island was an Associate member. Complaints were generally directed to the Greffier in the first instance, with the Assistant Greffier and the Greffier's Personal Assistant dealing directly with complainants. Every effort was made to explain to a complainant that the Panel's remit was to consider whether the subject matter was dealt with in accordance with the policies and procedures of the relevant Department concerned; and that it was not the decision itself which was scrutinised but the way in which the decision was reached. Complainants were made aware of the potential timescale involved and the fact that the Panel was only able to make recommendations to a Minister as opposed to directing that a decision be changed. The Panel could only deal with complaints which fitted within the remit prescribed in the Administrative Decisions (Review) (Jersey) Law 1982.

Each complainant was required to submit written details of their complaint and the Department against which the complaint had been made was required to produce a brief resumé of their case. The submissions were then sent to the Chairman or Deputy Chairmen, if the former was conflicted in any way, and a decision was made as to whether the complaint justified further review. If appropriate, the Chairman might attempt an informal resolution, as had been the case on several occasions recently. If a hearing was convened, both the complainant and the Minister/Department were given the opportunity to make a presentation to the Board and respond to questions. A written report containing the findings was presented to the States and Ministers were expected to produce a formal response, usually within 30 days of the publication of the main Report.

The system had worked well but it was acknowledged that some of the concerns and criticisms expressed by States members in the past remained, namely –

- that the Panel had no 'teeth' and the findings could be ignored by Ministers and Departments. This could lead to frustration for both complainants and members of the Panel who might feel they had wasted their time; and,
- the perception that there was no clear 'follow-up' procedure when the findings of Boards were not implemented.

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The Committee was advised that the findings of public sector Ombudsmen in the United Kingdom were not binding. It was acknowledged that any complaints system was likely to be criticised by those who did not obtain the redress they were seeking. However, it was also recognised that it would be unreasonable to expect that the findings of a Complaints Panel should be made binding as this would effectively empower an independent, unelected body to override the decisions of democratically elected members.

The Committee was advised that the Complaints Panel had discussed ways in which the present system could be improved and had suggested establishing a website, separate from the gov.je website. This could be achieved without considerable outlay (estimated cost £6,000). The Panel also intended revising the existing information leaflet, which had last been updated by the Assistant Greffier when she became Executive Officer in 2010. It had been suggested that copies of the leaflet be displayed in the reception areas of all States Departments and a link to the Complaints Panel website could appear on all Departmental web pages. The Assistant Greffier had also identified a Professional Award in Ombudsman and Complaint Handling Practice, approved by the Ombudsman Association and run by the Consumer Insight Centre at St. Margaret's University, Scotland, which she considered could prove worthwhile for both her and her successor to complete in order to affirm that complaints in Jersey were handled to a professionally recognised standard by States Greffe staff.

It was recognised that the Committee might wish to give greater power to the Panel by amending the Administrative Decisions (Review) (Jersey) Law 1982, to direct that a Minister must stipulate in detail the reasons why he or she had decided to ignore the findings of the Board (setting out why the findings of the Board were considered to be flawed and the precise reasons why they had not been accepted). At present, Ministers were able to 'cherry pick' elements of the findings and were not required to respond to each specific element in detail. The Committee noted that this was especially pertinent in the respect of the responses of the Minister for Planning and Environment and the Minister for Social Security, published in 2013.

The Committee discussed the matter and concluded that the foreword to the 2013 States of Jersey Complaints Panel Report should be amended to include reference to the Panel's concerns regarding the responses of Ministers and Departments to the findings of the Boards held in 2013. The Committee was of the view that Ministers and Departments should recognise that the Panel's aim was to ensure that public services were administered in accordance with accepted policies and procedures. Complaints were only taken forward by the Panel once a Complainant had exhausted the internal complaints procedures available and it was therefore vital that Departments had a complaints procedure that was accessible and publicised, and that a register of complaints was maintained.

It was agreed that the revised foreword should be drafted and circulated, with a view to the report being presented to the States at the next available opportunity.

Draft States of
Jersey
(Amendment
No. 8) Law
201-
(P.33/2014).
450(16)

A4. The Committee, with reference to its Minute No. B1 of 6th March 2014 received the Draft States of Jersey (Amendment No. 8) Law 201- (P.33/2014), which had been lodged "au Greffe" by the Chief Minister on 18th March 2014.

The Committee recalled that an initial draft amendment to the States of Jersey Law had been prepared by the Machinery of Government Steering Group and members' attention was drawn to the differences between that amendment and P.33/2014.

The Committee, having considered the proposition, noted that it had been lodged

following a lengthy review of the machinery of government which had culminated in a proposed package of changes being put to the Privileges and Procedures Committee by the Machinery of Government Steering Group on 6th March 2014. The Committee recalled that it had not been in a position to take the proposed changes to the States at the time and that the Chief Minister had agreed to take the matter forward. The Chief Minister's proposition made some amendments to the draft that had been considered by the Committee in March. The process for the appointment of the Council of Ministers had been amended to provide that, if the Chief Minister proposed three slates for adoption by the States and all three were rejected, the Chief Minister would then appoint a Council of Ministers without seeking the approval of the States Assembly. In addition, an amendment had been proposed to Articles 48 and 49 of the Law which removed the prescribed Scrutiny Panel structure from the Law and instead required that provisions for the conduct of Scrutiny were set out in Standing Orders.

The Committee agreed that a comment should be drafted to apprise members of the background to the proposition, for presentation to the States in early course. The Committee Clerk was requested to take the necessary action.

Chief Minister
Election:
Island Wide
Vote
(P.45/2014).
465/1(198)

A5. The Committee received the report and proposition entitled "Chief Minister Election: Island Wide Vote" (P.45/2014) refers, which had been lodged "au Greffe" by Deputy S.Y. Mézec on 1st April 2014.

The Committee noted that the above proposition sought, among other things, the agreement of the States in principle for the approval of the Chief Minister through an Island-wide vote from candidates proposed by members of the States after each general election.

The Committee, having considered Deputy Mézec's proposition, noted that it proposed the introduction of a presidential democracy in place of the current parliamentary democracy. It was considered to raise a number of questions, including: what the position would be if the States only nominated one candidate for the role of Chief Minister; how a Chief Minister would be appointed if a vacancy arose in the office at a time when there was no pending general election; what the impact would be of the four-week hiatus between the general election and the election of the Chief Minister; what the impact would be upon the States if the member appointed as Chief Minister did not have the confidence of the majority of the Assembly; what the process would be for the dismissal of the Chief Minister; how the costs associated with the election for Chief Minister would be met and who would undertake the administration of the election; and whether holding an election four weeks after the general election would give rise to electoral fatigue and result in low turnout. The Committee noted that the report which accompanied the proposition also suggested that the Alternative Vote should be introduced for the election of the Chief Minister; however, the States had recently rejected a proposition to introduce the Alternative Vote (P.171/2014). If the proposition was adopted by the States, it was considered unlikely that the necessary legislative changes required could be drafted, adopted, sanctioned by the Privy Council and brought into force in advance of the October 2014 elections.

The Committee agreed that a draft comment should be prepared with regard to the aforementioned to include a draft timetable for the appointment of the Chief Minister should the proposition be adopted. The Committee Clerk was requested to take the necessary action.

Chief Minister
and Ministers

A6. The Committee received the report and proposition entitled "Chief Minister and Ministers for External Relations and Treasury and Resources: Island Wide

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for External
Relations and
Treasury and
Resources:
Island Wide
Mandate
(P.44/2014).
450/1(23)

Mandate” (P.44/2014), which had been lodged “au Greffe” by the Deputy of Grouville on 1st April 2014.

The Committee noted that the above proposition sought, among other things, States approval for candidates applying for the positions of Chief Minister and the Ministers for External Affairs and Treasury and Resources to hold the office of Senator and asked the Committee to bring forward the necessary legislative changes to facilitate the same.

The Committee, having considered the Deputy of Grouville’s proposition, was of the view that it served to re-open the debate regarding the composition and election of the States. It was noted that the Committee had already been charged by the States to bring forward a Referendum Act for the consideration of the States in relation to the future composition and election of the Assembly. The Committee also noted that it would be unlikely that the required legislation would be able to be drafted, debated by the States, sanctioned by the Privy Council and brought into force in advance of the October 2014 elections if the proposition was adopted by the States.

The Committee agreed that a draft comment should be prepared in respect of the proposition, to be presented to the States in early course. The Committee Clerk was requested to take the necessary action.

Snow Hill car
park: parking
for States
members,
Jurats and Law
Officers
(P.43/2014).
1060/136/3
(26)

A7. The Committee considered a draft comment which had prepared in response to a report and proposition entitled “Snow Hill car park: parking for States members, Jurats and Law Officers” (P.43/2014), which had been lodged “au Greffe” by Deputy E.J. Noel on 1st April 2014.

The Committee noted that the above proposition sought, among other things, to cease the provision of free car parking for States members, Jurats and Law Officers at Snow Hill car park with immediate effect so that, upon completion of the flood alleviation scheme in the car park, the spaces could be freed up for use by members of the public.

The Committee, having considered Deputy Noel’s proposition, considered that the current car parking provisions afforded to States Members should be reviewed in their entirety and proposals brought forward in relation to alternative areas that could be utilised instead of Snow Hill. The view was expressed that any proposals for change should provide for members with a permanent or temporary disability. The Committee queried whether Deputy Noel had consulted with any of the users of Snow Hill car park before lodging the proposition.

It was agreed that a comment should be drafted in respect of the proposition. The Committee Clerk was requested to take the necessary action.

Scrutiny of
propositions
lodged by non-
executive
members.
424/2(86)

A8. The Committee noted the contents of electronic correspondence dated 4th February 2014, which had been received from Connétable J.M. Refault of St. Peter in connexion with the scrutiny of propositions lodged by non-executive members.

The Committee noted the view of the Connétable that the States debate of the proposition entitled “Public Elections: introduction of STV and AV” (P.171/2013 refers) had identified “a fault” in the system in that propositions lodged by non-executive members were not scrutinised prior to debate. The Connétable had invited the Committee to consider this matter.

The Committee recalled that a scrutiny panel could review issues and matters of

public importance in relation to the topics assigned to it and could also review draft legislation. The Committee's attention was drawn to the relevant Standing Orders of the States of Jersey (Nos. 72, 79, 135 and 136). In particular, it was noted that Standing Order No. 79 permitted any member of the States to propose, without notice, the suspension of a debate on any proposition for the purposes of scrutiny. The Committee also had regard to the terms of reference of a scrutiny panel (Standing Order No. 136 refers). It was further noted that, should a proposition such as P.171/2013 be adopted, the Assembly would be required to consider the subsequent legislation, which would also be able to be subject to scrutiny.

The Committee, having considered the above matter, took the view that sufficient provision already existed for the scrutiny of propositions. It recognised that it was the responsibility of all members of the States Assembly to consider propositions prior to debate. The Committee noted that the Connétable's correspondence had been referred to the Chairmen's Committee for consideration and members were advised that the Chairmen's Committee shared the view of the Privileges and Procedures Committee.

The Committee Clerk was directed to prepare a letter for the Chairman's signature to the Connétable outlining the Committee's views.

States' members facilities: use by external parties.
465/1(187)

A9. The Committee considered a report dated 10th April 2014 in connexion with the use of States members' facilities by external parties.

The Committee recalled that R.112/2007 "States members' facilities in the States Building: conditions of use" specified the conditions of use for members' areas and facilities in the States Building. The report stated that: "the facilities must only be used for purposes directly related to members' individual political duties. They must not be used at any time for meetings of outside organisations such as interest groups, charities or political lobbying groups/parties where it would be inappropriate for public money to be used to support the activities." The Committee noted that the Connetéble of St. Mary had contacted the Greffier of the States advising that it was understood that the Jersey Human Rights Group had met in the States Building. The organisation's website described the Group as a lobby group.

The Chairman advised that a request had been received from Deputy M. Tadier that the Committee defer consideration of the item until its next meeting. The matter was accordingly deferred.

Cornwall County Council: changes to governance.
465/1(197)

A10. The Committee considered email correspondence between the Committee Clerk and Ms. S. Vandike, Policy and Intelligence Advisor, Cornwall County Council, in connexion with a prospective visit to Cornwall discuss the effect of recent governance change and how this might inform the debate in Jersey.

The Committee noted that members and officers had been invited to visit Cornwall on 13th/14th May or the first week of June 2014. Meetings would be arranged with the Head of the Legal and Monitoring Office and the Democratic Services Manager, both of whom had been involved in governance reviews. In addition it was proposed that meetings be held with various local Counsellors involved in the review.

The Committee noted that it would not be able to attend on the proposed dates as they coincided with meetings of the States. It was agreed that consideration should instead be given to holding a video conference. The Committee Clerk was requested to take the necessary action.

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10.04.14

Deputy
Greffier of the
States -
retirement.
1240 (164)

A11. The Chairman extended the thanks of the Committee to the Deputy Greffier of the States, Mrs. A.H. Harris, for her support and assistance and wished her well in her retirement from the post.

Date of next
meeting.

A12. The Committee noted that the next scheduled meetings would be held on 16th April (9.30 am) and 8th May 2014 (2.30 pm) ³/₄ in the Blampied Room, States Building.