

AG/SC/080

PRIVILEGES AND PROCEDURES COMMITTEE

(24th Meeting)

6th March 2014**PART A**

All members were present.

Deputy J.M. Maçon, Chairman
 Senator S.C. Ferguson
 Senator B.I. Le Marquand (not present for item Nos. A7, A8, A9, B3, B4, B5 and B6)
 Connétable L. Norman of St. Clement
 Deputy J.A. Martin
 Deputy M. Tadier
 Deputy J.H. Young (not present for part of item No. A2)

In attendance -

Deputy R.C. Duhamel, Minister for Planning and Environment (item No. A2 only)
 A. Scate, Chief Executive, Department of the Environment (item No. A2 only)
 L. Hart, Assistant Greffier of the States (item Nos. A2 and A3)
 Senator I.J. Gorst, Chief Minister (item No. B1 only)
 Deputy T.A. Vallois (item No. B1 only)
 T. Walker (item No. B1 only)
 K. Tremellen-Frost (item No. B1 only)
 M.N. de la Haye, Greffier of the States
 A.H. Harris, Deputy Greffier of the States
 A.C. Goodyear, Clerk to the Privileges and Procedures Committee
 H. Bisson, States Greffe

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

- Minutes. A1. The Minutes of the meetings of 4th February 2014 (Part A only) and 6th February 2014 (Part A and Part B), having been previously circulated, were taken as read and were confirmed.
- Complaints Board: complaint by Mr. D. Manning against a decision of the Minister for Planning and Environment. 1386/2/1/2 (316)
- A2. The Committee, with reference to its Minute No. A4 of 6th February 2014, welcomed Deputy R.C. Duhamel, Minister for Planning and Environment and the Chief Executive, Department of the Environment, Mr. A. Scate, in connexion with correspondence received from Ms. C. Vibert, Deputy Chairman of the Complaints Panel, regarding the findings of the States of Jersey Complaints Board in respect of an appeal against a decision of the Minister concerning an enforcement issue. Deputy J.H. Young declared an interest in relation to this item and was not present for the consideration of matters relating to the complaint by Mr. D. Manning.
- The Committee recalled that the Board's findings had been presented in the form of a Report (R.144/2013 refers) and that the Minister for Planning and Environment had responded on 18th December 2013 (R.157/2013 refers). The Committee had subsequently received correspondence from the Panel in which it

considered that its findings had been insufficiently considered (R.15/2014 refers). The Panel had asked the Privileges and Procedures Committee to consider what action it might wish to take should Ministers continue to ignore its findings, being as this would have the potential to undermine the Panel's role.

The Minister advised that it had initially been thought that the Complaints Board had recommended that special provision should be made for the applicant to make a further application, and for consent to be granted, however, this was now understood not to have been the case. It would be possible for the applicant to make an application in any event, so no special case would need to be made. Consent would only be granted if there was merit in the application, in accordance with Planning laws and policy. In this instance, it had been agreed that any such application would be dealt with on a fees waived basis. With regard to the request of the Board that the Planning Department should offer guidance in respect of Article 40 of the Planning and Building (Jersey) Law 2002, whereby the Minister may serve an enforcement notice where it appeared to the Minister that there had been a breach of development controls during the previous eight years, the Department considered that this would not be appropriate given its role as regulator. Any such guidance would effectively constitute advice as to how to avoid enforcement action after committing a breach of development controls.

Discussions relating to the complaint by Mr. Manning having been concluded, Deputy Young returned to the meeting. Those present discussed the policies and procedures in place within the department for dealing with matters raised by the Complaints Panel. It was noted that Complaints Panel hearings regarding planning matters were usually attended by a member of the planning appeals team. The department considered that the Complaints Board was responsible for reviewing administrative decisions and it was not expected that this would include planning merits or law. The department did not think it appropriate for the Complaints Board to be considering matters of legal vices and did not consider it useful to be working in a process that might not provide a remedy. It was noted that the planning merits appeals system was due to be introduced in 2015 and that this would assist those persons who did not wish to pursue appeals through the Royal Court.

Those present heard from the Assistant Greffier of the States, Mrs. L. Hart who acts as Executive Officer to the Complaints Board. It was noted that departments were provided with a period of time to review the body of a report by the Board prior to its publication and that it may be of assistance for the Board's findings to also be forwarded to the Department at that time. It was within the Board's remit to be concerned with matters of law in accordance with Article 9(2) of the Administrative Decisions (Review) (Jersey) Law 1982, which provided that, where a Board was of the opinion that the decision, act or omission which was the subject matter of the complaint was (a) was contrary to law or (c) was based wholly or partly on a mistake of law or fact, the Board was able to request that Minister, department or person reconsider the matter.

The Chief Executive Officer, Department of the Environment, expressed the view that the remedy to complaints should be clear, simple and accessible and that the expectation should be that, by going through the process a remedy should become available. The process that had been followed in this case had resulted in no outcome other than the allocation of time and expenses and the airing of issues. The department considered that, if a decision was wrong, the outcome of the complaints process should serve to inform departmental practice. The Executive Officer to the Board advised that complainants were made aware that the Board would not be able to change a decision by a department, but that the review would ascertain whether procedures had been followed by the department.

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It was noted that the Complaints Board would attend the Committee's next meeting on 10th April 2014 and that matters arising could be discussed at that juncture.

The Minister and the Chief Executive, having been thanked for their attendance, accordingly withdrew from the meeting.

Proposed
appointment of
an
Ombudsman.
1386/2(91)

A3. The Committee considered a report in connexion with the proposal to appoint an ombudsman to hear and determine complaints of maladministration by Departments of the States of Jersey. Members recalled that the Machinery of Government Sub-Committee had recommended that this should be implemented in advance of, or at the same time as, recommendations relating to collective responsibility for the executive.

It was recalled that it was proposed that greater authority be vested in the Executive arm of the States and this had been considered to be acceptable by the Sub-Committee provided the appropriate checks and balances existed. The Sub-Committee had considered that part of the Clothier report which was devoted to the call to create an Ombudsman. Extracts of that part of the report concluded that:

"...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 the Sub-Committee had acknowledged that the existing administrative appeals system had been improved in 2006, it was considered that the case for implementing the original Clothier recommendation remained compelling and in the public interest. The Committee's attention was drawn to comments made during an in-Committee debate held on 9th October 2013. It also noted details of the current procedure for dealing with complaints of maladministration by Department of the States of Jersey via the Complaints Board.

The Committee considered that Islanders tended to approach their States member if they had a concern regarding an administrative decision and a number of States members enjoyed undertaking such work on behalf of Islanders. The Committee discussed whether Islanders were aware of the current process and whether the system was utilised effectively. It was considered that States members served as intermediaries between Department and individuals, while the Complaints Panel served a different function. The forthcoming introduction of a Financial Services Ombudsman was noted and it was further noted that the local government and parliamentary commissioners in the United Kingdom could not make decisions

that were binding upon departments. The Committee considered whether a ‘real time’ resolution was needed. It was considered that an Ombudsman would not serve to replace, but would be in addition to, current departmental complaints procedures. It was noted that any review of the current position would need to include consideration of whether an alternative approach, such as the introduction of an Ombudsman, would be cost effective, given that, in 2013 a total of 4 complaints had been brought to the stage of a hearing by the Complaints Board.

It was noted that the Complaints Board would attend the Committee’s next meeting on 10th April 2014 and it was agreed that the matter should be discussed further at that time.

Financial
Report 2013.
1240/25(8)

A4. The Committee received the States Assembly financial report for the 2013 year end.

The Committee welcomed Mrs. D. Abbot-McGuire, Finance and Administration Manager, States Greffe.

It was noted that the total expenditure for 2013 had been £4,954,885 against a total budget of £5,270,611. With regard to the 2013 budget for members’ facilities, a carry forward had been requested in respect of the upgrade to the audio in the States Chamber as the work had been postponed by the Department of Electronics until 2014. The impact of the new States-wide print contract would be expected to be realised in the 2014 accounts. It was agreed that income and expenditure in respect of the print section would be included in future accounts to be provided to the Committee. The £161,567 under-spend in respect of the Scrutiny budget for 2013 was noted.

Having been thanked for her attendance by the Chairman, the Finance and Administration Manager accordingly withdrew from the meeting.

Referenda:
revised
procedures
(P.153/2013).
1417/1(4)

A5. The Committee, with reference to its Minute No. A3 of 16th January 2014, recalled that, on 22nd January 2014, the States had adopted the proposition of Deputy R.G. Le Hérisier entitled: “Referenda: revised procedures” (P.153/2013 refers).

In so doing, the States had asked the Committee to review the current provisions of the Referendum (Jersey) Law 2002 and to bring forward proposals, with appropriate amendments to the Law if necessary, to define more clearly the conditions that may be applied to the holding of any future referendum. In this regard, the Committee noted e-mail correspondence received by the Chairman on 6th February 2014 from a Mr. M. Godel entitled “Referendum”, which proposed that questions be raised on an individual’s tax return in order to gauge public opinion.

The Committee, having considered the matter, agreed that it would review, as a Committee, the current procedures in the Referendum (Jersey) Law 2002, including voter turnout. The Greffier of the States was requested to take the necessary action.

Code of
Practice on
Public Access
to Official
Information:
annual report
for 2013.

A6. The Committee received the Code of Practice on Public Access to Official Information Annual Report for 2013.

The Committee noted that 42 requests had been received during 2013, up from 30 requests in 2012. The Committee noted the content of the report and recognised that the Freedom of Information (Jersey) Law 2011 would supersede the requirement for the Code upon its coming into force in January 2015. The

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955/1(12) Committee agreed to present the report to the States and the Committee Clerk was requested to take the necessary action.

States sessions
2014.
1240/2(83)

A7. The Committee noted the dates that had been fixed for the holding of meetings of the States in 2014 and considered whether an additional date should be included during July 2014.

The Committee agreed that the Chairman should propose that an additional States sitting and continuation days be scheduled for the 8th, 9th and 10th July 2014. The Greffier of the States was requested to take the necessary action.

Machinery of
Government
Review:
Cornwall
County
Council
governance
model.
465/1(182)

A8. The Committee, with reference to its Minute No. A3 of 6th February 2014, received e-mail correspondence dated 28th February 2014 from Deputy J.H. Young in connexion with the governance model recently adopted by Cornwall County Council.

The Committee recalled that it had considered the model at its previous meeting and had requested the Machinery of Government Steering Group to give consideration to the matter. The Steering Group had done so and had noted that the Cornwall review had been taken account of by the Machinery of Government Sub-Committee as part of its work programme. Given that the Steering Group had been asked to take forward the final recommendations of the Machinery of Government Sub-Committee, it did not feel that it was in a position to give further consideration to the Cornwall model. Deputy Young considered that the Committee should visit Cornwall Council to discuss their governance model and its function in practice. Deputy M. Tadier proposed that the visit could include a visit to Westminster to meet the Speaker in connexion with the proposition of Connétable A.S. Crowcroft entitled 'Elected Speaker of the States' (P.160/2014 refers).

The Committee, having considered the matter, agreed that it would arrange a visit to Cornwall Council, and that the Chief Minister, Senator I.J. Gorst, and the President of the Chairmen's Committee, Deputy T.A. Vallois, should be invited to attend. The Committee Clerk was requested to take the necessary action.

Composition
and Election of
the States
Assembly –
reform
proposals:
referendum.
465/1(195)

A9. The Committee, with reference to its Minute No. A2 of 6th February 2014, received the draft Referendum (Amendment) (Jersey) Law 201-.

The Committee recalled that, on 15th November 2013, the States had adopted paragraph (e) of its proposition entitled, 'Composition of the States Assembly: Interim reform for 2014 and referendum for further reform' (P.116/2013 refers) and paragraph (e) of the proposition of Deputy A.K.F. Green of St. Helier entitled, 'Composition and election of the States Assembly: reform – proposal 4' (P.117/2013 refers), and had requested that a referendum be held on the same day as elections for members of the States. The Committee noted that, at present, Article 2 of the Referendum (Jersey) Law 2002 stated that a person could vote in a referendum if his or her name was on the electoral register by midday on the day that was 21 days before the referendum day. This contrasted with the position under the Public Elections (Jersey) Law 2002, whereby the register was closed at noon on the day before a nomination meeting. This resulted in separate registers being used for the public election and the referendum, with a small number of people being entitled to vote in one and not in the other. The amending Law would address the mismatch between the two laws by introducing a new enabling power that would permit the Referendum Act for a referendum held on the same day as ordinary elections for Senators or Deputies to provide that those entitled to vote in the public elections would also be entitled to vote in the referendum, and to allow a single register to be used. The Committee noted legal advice that had been received in respect of the compliance of the draft legislation with the provisions of

the European Convention on Human Rights.

The Committee, having considered the draft, agreed to lodge the draft Referendum (Amendment) (Jersey) Law 201- *au Greffe* for debate by the States. The Committee Clerk was requested to take the necessary action.

States
members'
facilities:
lighting.
1240/9/1(137)

A10. The Committee, with reference to its Minute No. A8 of 16th January 2014, recalled the request of Senator S.C. Ferguson that Property Holdings be requested to review the current lighting provision in the States Building.

It was noted that Property Holdings was in the course of replacing the current lighting provision in the States Building with L.E.D. (Light Emitting Diode) lighting.