

STATES OF JERSEY



COMMITTEE OF INQUIRY: HISTORICAL CHILD ABUSE (P.118/2012) – AMENDMENT (P.118/2012 Amd.) – SECOND AMENDMENT

**Lodged au Greffe on 26th February 2013
by Deputy M. Tadier of St. Brelade**

STATES GREFFE

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After the words “(as set out in Appendix 1 to the Report on the amendment of the Council of Ministers dated 5th February 2013)” insert the words –

“except that in the Terms of Reference, in paragraph 13, for the words from “shall be examined by an independent expert” through to “all the circumstances” substitute the words “may be examined in a manner to be determined by the Committee”.

DEPUTY M. TADIER OF ST. BRELADE

REPORT

Of all the amendments, this seems to be the only one still causing me and the stakeholders I have been working with problems.

The wording in the first part of paragraph 13 of the Terms of Reference agrees that, as part of its remit, the Committee of Inquiry will look at the actions of the States of Jersey Police and prosecuting authorities with regard to the way files were submitted from one to the other, and then to establish whether the prosecutions were conducted in a professional (including impartial) manner and whether the process was free from undue interference, whether political or otherwise. This is very much the *what*. As in the other (currently) 15 terms of reference we are charging the Committee to establish the facts and report back to us.

In none of the other terms of reference do we tell the Committee of Inquiry, who will be professionals with, one would imagine, a degree of experience in conducting such inquiries, how exactly they should conduct this work.

I have engaged in much contact with relevant stakeholders, including the political originators of the Committee of Inquiry, representatives of the Jersey Care Leavers and other interested parties. We are all concerned that the current wording for this part of the term is *too prescriptive*. It is simply unnecessary that we as an Assembly should be setting out the exact and only mechanism by which we will allow the Committee of Inquiry to examine prosecution files. For example, we know that the Inquiry will necessarily have to be chaired by someone who is independent – he or she will also likely have had extensive legal training. It would seem that in the first instance, the Chairman may wish to look at the files him/herself. As a professional and independent person, it does not appear to me that this should be a problem. However, it is not clear whether those files would be able to be seen by the Chairman under the current wording, or if they would be sent off straight away to the *independent expert*.

The offer of outside, independent legal advice is not a problem *per se*, indeed it may be desirable, but it should be something that is available to the professional team that will make up the Committee. We were thus disappointed that our very simple suggestion to amend ‘shall’ to ‘may’ – i.e. that ‘those files *may* be examined by an independent expert or experts.’ – was not accepted, which would have put the discretion very much back where it belonged – with the Committee members.

It should also be noted that there were concerns raised from some stakeholders who noted that the advice being given to Ministers on the process for looking at prosecution files, was coming from the same department whose decisions would be subject to scrutiny from the Committee of Inquiry. Whilst there is no suggestion of impropriety, we do know that perception is important, given that in Jersey the State Prosecutor is also the Legal Adviser to the Council of Ministers. We feel, therefore, that this is another compelling reason that the Committee of Inquiry be given the flexibility to act in a manner of its choosing, without apparent undue limitation.

Financial and manpower implications

There are no additional financial or manpower implications as a result of this amendment.