

States of Jersey
States Assembly



États de Jersey
Assemblée des États

Public Accounts Committee



Report on the Accounts of the States of Jersey for the year ended December 31st 2009 – Update

Presented to the States on 16th March 2011

P.A.C 4/2010 – addendum

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Chairman's Foreword

The conclusions of the Public Accounts Committee disseminated in our Report (P.A.C.4/2010) presented to the States on the 15th December 2010, were of such concern that further investigation of the problems was warranted.

Whilst accepting that any new form of Government will require time to evolve, our findings detailed in this update are extremely concerning.

The Ministerial System was supposed to result in more joined-up Government - in fact exactly the opposite has happened. Basic fundamental controls and checks and balances as recommended in Clothier were either removed or altered at implementation. Under the current system there is no possibility of a strong Executive; the Chief Minister's powers are limited, Ministers can operate with few controls, the Chief Executive has no power over Chief Officers to ensure collective implementation, and Departments are geared to operate in their own best interests rather than take collective responsibility for the good of the Island.

It is of little surprise therefore that spending has accelerated and the Government has lurched from one crisis to another during the past five years.

As a general rule they say that you can't blame the system. In this case the system is so fundamentally flawed that it is difficult to see how good government could be achieved under any political or public sector leadership.



Senator B.E. Shenton

Chairman, Public Accounts Committee

1. Rationale

- 1.1 The Public Accounts Committee has issued this supplementary document in light of the resignation of the Chief Executive of the States of Jersey and following the receipt of further information which highlights some extremely important issues.
- 1.2 The Public Accounts Committee (PAC) was extremely interested in the comments of the Chief Executive when he was asked who was charged with controlling the overall spending of the States of Jersey:

“The job description you have for me was put together in 2002 on the back of P.120 before the States had enacted the States of Jersey Law and the Public Finances (Jersey) Law, and there were some very specific changes made as those laws were enacted which undermined the ability of either the Chief Executive or the Council of Ministers to control or to be accountable for total spending in those terms. Under the States of Jersey Law the removal of collective responsibility from the Council of Ministers effectively made each Minister a corporation independently responsible for their own political functions. The Public Finances (Jersey) Law, with the creation of Accounting Officers, each accounting officer being solely and personally responsible for the proper and effective control and spending of the resources within their cash limit denied the ability of any one individual or any one body to have total overall control unless that body is the States.”¹

¹ Public hearing with the Chief Executive, 16th August 2010

2. Collective Responsibility

2.1 The PAC was interested in the specific changes regarding collective responsibility that were made prior to the introduction of Ministerial Government. We are indebted to the Greffier of the States for his assistance in clarifying the course of events.

2.2 The first Proposition 'Machinery of Government - structure of the Executive' P.171/2002 (see Appendix) contained an Appendix 2 that referred to collective responsibility. However there were concerns expressed by some Members at that time about the contents of Appendix 2 and a Part A Minute of the Policy and Resources Committee of 21st October 2002, which reads as follows:

A1. The (Policy and Resources) Committee, with reference to its Act No. B3 of 22nd August 2002, recalled that its report and Proposition "Machinery of Government: structure of the Executive" (P.171/2002 - lodged 'au Greffe' on 24th September 2002) had been discussed at an informal meeting of Members of the States which had been held on 18th October 2002.

2.3 The Policy and Resources Committee noted that the abovementioned discussion had centered almost exclusively around the issue of collective responsibility and whether the Committee should continue to retain "Appendix Two" (which included the proposals on collective responsibility) as part of the Projet. It was recognised that there had been general support amongst Members at the meeting for the principle of collective responsibility, although it had not been felt that the Committee needed to be prescriptive at this stage as to precisely how collective responsibility would operate. Senator Horsfall had indicated to the meeting that the Policy and Resources Committee would give further consideration to this matter at an early opportunity.

2.4 Having had regard to the views which had been expressed at the abovementioned meeting, and to subsequent discussion, the Committee agreed that it would be appropriate to withdraw P.171/2002 and to substitute a revised report and Proposition which, although similar to P.171/2002, would no longer contain Appendix Two, nor the references in the main report to "collective responsibility."

2.5 The Policy and Resources Committee, having considered a revised report and Proposition, approved the Projet, decided to lodge it 'au Greffe' on 22nd October

2002 and instructed the Greffier of the States to withdraw P.171/2002, which was to be replaced by the revised Projet.

- 2.6 As a result P.191/2002 was lodged (see Appendix) which does not contain the same prescriptive approach to collective responsibility. The most relevant paragraph in P.191 reads as follows:

“All Ministers will participate actively in the meetings of the Council of Ministers, which will work on the basis of consensual and collective decision-making. Ministers will need to decide upon the degree of collective responsibility under which they wish to operate, and also to agree on standards of conduct relevant to the particular demands that will be placed upon them. For example, one would assume that a Minister will be held accountable to the States for the work of his or her Department, and that a Minister will need to ensure that no conflict arises between his or her Ministerial position and his or her private financial interests. The actual rules or conventions relating to collective responsibility and the conduct of Ministers will be agreed and promulgated by the Council of Ministers once it has taken office.”

- 2.7 The matter was therefore left to the Council of Ministers and nothing more about collective responsibility was included in any of the legislation in the lead up to the introduction of Ministerial government.

- 2.8 The first Council of Ministers considered the issue briefly at its second meeting on 16th December 2005 and the Part A Minute of that discussion reads as follows:

A9. The Council considered whether a revised ‘Code of Conduct’ relating to Ministerial responsibilities should be adopted, which would build upon that which had been agreed by the States on 1st November 2005 (P.225/2005 refers).

The Council recalled that as part of its work on Standing Orders, the Privileges and Procedures Committee had drawn up a ‘Code of Conduct for Elected Members’ which set out rules for States Members relating to a range of issues.

The Council recollected that the possible introduction of a Ministerial code of conduct had been given detailed consideration in 2002, by the Policy and Resources Committee, when it was drafting its Report and Proposition on the ‘Machinery of Government: Structure of the Executive’ (P.191/2005). That Committee had taken

the view that particular demands would be placed upon Ministers in the exercise of their office, and it would be appropriate for separate guidelines to be developed. A draft document had subsequently been prepared which set out 'Guidance and Procedures for Ministers', and this had been included as an appendix to the first version of the report and Proposition on the 'Machinery of Government: Structure of the Executive', lodged 'au Greffe' on 24th September 2002 (P.171/2002). The appendix covered a range of issues relating to the conduct of Ministers, including private and outside interests, gifts and hospitality, and access to documents.

2.9 The 'Guidance and Procedures' document also included detailed guidance on collective responsibility, and emphasised the need for the Council of Ministers to work together on the basis of consensual and collective decision-making. The document proposed that there should be a limited number of exemptions from collective responsibility, in which Ministers would have the right in certain circumstances to speak against the policies of the Council of Ministers, such as matters of conscience.

2.10 Following publication of P.171/2002, concern had been expressed that the proposed rules on collective responsibility were too restrictive. In response to these concerns, the Policy and Resources Committee had decided to withdraw P.171/2002 and publish a revised report and Proposition under the same title (P.191/2002) which did not include the appendix on 'Guidance and Procedures for Ministers.' In relation to the conduct of Ministers, the revised report had made the following statement in relation to collective responsibility:

"The actual rules or conventions relating to collective responsibility and the conduct of Ministers will be agreed and promulgated by the Council of Ministers once it has taken office."

2.11 The Council recognised that the degree of guidance given in Standing Orders was of a fairly general nature and agreed that Ministers would require more specific guidance:

"Mindful that Ministers would be exercising a considerable degree of responsibility, and would be held directly accountable for their actions the Council agreed that it was important that there should be clear guidance on conduct, particularly in relation to personal business interests and the use of public position to further any interest other than that of the public. Senator T.J. Le Main wished for it to be recorded in the Minutes

that he strongly refuted allegations that he was a personal friend of a local property developer.”

2.12 The Council agreed that it was important that it was able to work collectively and that there was trust and confidence between Ministers. It would expect to consider matters in confidence, without its discussions being reported outside the Council until such time that agreement had been reached on the course of action to be taken.

2.13 The Council envisaged that it would be a forum for frank and open discussion, with the aim of reaching a consensus before taking a decision. It was accepted that there would be occasions when a Minister might wish to dissent from a decision, and in such circumstances the dissenting Member would be required to advise the Council and indicate how she or he intended to proceed. Other Members would be expected to support the Council's decision, and in the event that new evidence or thinking should lead them to change their views, they would be expected to discuss the matter with their colleagues before publicly changing their stance.

2.14 *Mindful of the foregoing, it was proposed that the Council of Ministers should adopt an extended version of the States Members' 'Code of Conduct' with specific references to Ministerial responsibilities. There were a number of areas which Council Members considered should be enhanced and enforced in order that Ministers were seen to be abiding by the highest of principles. The Council requested that a revised draft of the proposed Ministerial Code of Conduct be presented for its endorsement at a subsequent Meeting.*

2.15 The subsequent Code of Conduct for Ministers (see R.14/2006) agreed by the first Council (and ratified by the current Council of Ministers after its appointment in 2008) has the following section -

5. Working collectively

The Council of Ministers will work together on the basis of consensual and collective decision-making. The Council will therefore be able to discuss matters in confidence, without such discussions being publicly reported until such time that agreement has been reached on the course of action to be taken.

The Council of Ministers will be a forum for frank and open discussion, with the aim of reaching a consensus before taking a decision. There will, however, be occasions on which a Minister may wish to dissent from a decision, and in these circumstances the dissenting Member should make this clear to the Council and should indicate how she or he intends to proceed, e.g. to bring a Proposition to the States. Other Members would be expected to support the Council's decisions, and in the event that new evidence or thinking should lead them to change their views, they would be expected to discuss the matter with their colleagues before publicly changing their stance.

If a Minister, acting in her or his capacity as a Minister, should wish to make a decision or bring a Proposition to the Assembly on a matter that affects another Minister or Ministers, she or he should first discuss the matter with the Minister(s) concerned. If they are in agreement, the matter can then go forward. If there is disagreement, the matter should be forwarded to the Council of Ministers for discussion.

In their capacity as private Members, Ministers are free to bring a Proposition to the Assembly on any matter. If such a Proposition should concern another Minister's area of responsibility, she or he should inform the Minister concerned prior to lodging the Proposition.

2.16 Observation:

Collective responsibility is a long standing convention in the UK and works there largely due to the ability of the Prime Minister to 'hire and fire' Ministers - if a UK Minister doesn't toe the line he or she knows that dismissal could well follow. Unless the method of appointment and dismissal of Ministers was amended in Jersey it is difficult to see how the Chief Minister and the Council of Ministers could enforce the doctrine in Jersey - it would be difficult to force a Minister (particularly one who was appointed by the States against the Chief Minister's nominee) to be forced to accept collective responsibility for decisions of a Council of Ministers when he or she may have fundamental political differences with the Chief Minister and/or his or her Ministerial colleagues. The current authority of Ministers comes from their appointment by a majority of States Members and not through loyalty to the Chief Minister and other Ministers.

2.17 There were slight changes in relation to the Corporate Management Board and role of the Chief Executive to the Council of Ministers' role during the formulation of the Ministerial Government plans. The original 'Clothier' Proposition (P.122/2001) had the following references:

(viii) the Council of Ministers will be supported by a Chief Executive who will be the head of the civil service, which will be unified at senior level; and heads of Departments will form a management board under the leadership of the Chief Executive;

2.18 This was described as follows in the report:

6.21 The move from a Committee to a Ministerial system is obviously very significant, and there will need to be a change to the way in which support is provided from the civil service. It is proposed that each Minister will be supported by a civil service head of Department, and also that the heads of Department will form a management board under the leadership of a Chief Executive. Such a structure at official level will enable the Council of Ministers to receive the advice it may need in relation to corporate matters, resulting in the integrated delivery of public services.

2.19 In P.191/2002 (attached and referred to above) there was reference to the role of the Chief Executive and CMB as follows:

3.11 The Chief Minister's Department will be headed by the Chief Executive to the Council of Ministers and Head of the Public Service. In addition to ensuring that the Council receives proper administrative support, the Chief Executive will be the principal adviser to the Chief Minister and Council of Ministers. She or he will also chair a Corporate Management Board, as agreed by the States in its decision of 28th September 2001, comprising the heads of all the Departments of the executive. In this capacity, the Chief Executive will be ultimately accountable for the good management of the public service. She or he will lead and direct her or his colleagues insofar as necessary to ensure the efficient management and implementation of the Council of Ministers' functions, responsibilities and decisions.

2.20 During the debate on the draft States of Jersey Law 200- in 2004 the States adopted an amendment of Senator Syvret that inserted what is now Article 26(6) of the Law (highlighted in bold below):

26 Status of Minister

(1) *Each Minister shall be a corporation sole having –*

- (a) *subject to Article 29(2), perpetual succession;*
- (b) *an official seal, which shall be authenticated by the signature of the Minister or of any person authorized by the Minister to act in that behalf;*
- (c) *the power to –*
 - (i) *enter into agreements for any purpose of his or her office,*
 - (ii) *acquire, hold and dispose of movable property,*
 - (iii) *do any other thing which the Minister can do by virtue of his or her office, and*
 - (iv) *do anything reasonably necessary or expedient for or incidental to any of the matters referred to in the foregoing clauses.*

(2) *A Minister may, in the name of his or her office –*

- (a) *sue and be sued in any civil proceedings; and*
- (b) *be charged with an offence and defend criminal proceedings.*

(3) *The official seal of a Minister shall be judicially noticed.*

(4) *Every document purporting to be an instrument made or issued by a Minister and to be sealed with the Minister's official seal, authenticated in accordance with paragraph (1)(b), shall be –*

- (a) *received in evidence; and*
- (b) *deemed to be so made or issued without further proof, unless the contrary is shown.*

(5) *A certificate signed by the Minister that any instrument purporting to be made or issued by the Minister was so made or issued shall be conclusive evidence of that fact.*

(6) *The senior officer in any administration of the States for which a Minister is assigned responsibility shall be accountable to that Minister in respect of policy direction.*

(7) *In this Article –*

“Minister” includes the Chief Minister;

“officer” means a States’ employee within the meaning of the Employment of States of Jersey Employees (Jersey) Law 2005

2.21 In his accompanying report (P.124/2004 Amd(3)) Senator Syvret described the reasoning for the change as follows –

It is important that Members fully appreciate the fact that the move to Ministerial government means more than simply replacing committees with individuals; a change in both powers and accountabilities will take place. I refer Members to Article 25, Status of Minister, on page 37. I suggest that we should pay particular attention to paragraphs 1 to 5 of this Article. These paragraphs describe a dramatic range of powers, and of responsibilities that will lay with the individual Ministers. It is because of the existence of such powers that this amendment and amendments 17 and 28 are necessary. It was my original intention to include a more extensive form of words as a type of preamble to these three amendments but the words were deemed superfluous in an actual Article of law. Nevertheless I reproduce them here to illustrate the context of the amendments:

“In accordance with the powers, responsibilities and potential civil and criminal liability described in paragraphs 1 to 5,

In the light of such powers and responsibilities, the amendment makes it clear by law that a Minister has political policy authority over his or her Chief Officer. Ministers are to be civilly and criminally liable. Yet under the present proposals they do not have final authority over their Chief Officers; that lies with the Chief Executive to the Council of Ministers. This state of affairs is intolerable in that it leaves the Ministers with tremendous responsibilities, yet ultimately not the power. This situation also makes a mockery of the public who have a right to expect their elected representatives who carry high office, to actually have democratically accountable power over public Departments as opposed to such power residing with a non-elected civil servant. The amendment establishes that democratic policy authority resides with the Minister.”

2.22 **Observation:**

The amendment of Senator Syvret, which was accepted by the States, diminished the power of the Chief Executive. The resulting system, whereby Chief Officer accountability was transferred to the Minister rather than a co-ordinating Chief Executive has in effect increased the ‘silo’ mentality within the States, increased Ministerial power whilst reducing controls, and left the Chief Executive in a very difficult position.

In hindsight this was, in terms of implementing a strong management structure within the States, a severely deficient amendment and should be revised with some urgency.

- 2.23 It is perhaps worth noting that the inaccuracies within the Senator's covering Report, and the fact the Amendment was carried, gives the impression that many Members of the States Assembly did not have a full grasp of the changes that they were implementing. There appears to be a lack of understanding that a Minister is a Corporation Sole and not a human entity – the incumbent Minister is simply the holder of that role, the personification of the position, and does not hold personal liability for actions taken when legitimately fulfilling that position. The civil and criminal liability lies with the Corporation Sole, the entity, and not the individual. The person holding that role is not in danger of being sued personally, or suffering a jail sentence or fine, from legitimately carrying out his/her role. The Report, and Senator Syvret's Amendment, gives the impression that this basic concept was not fully grasped.
- 2.24 Another constraint on the Chief Executive's authority over other Chief Officers is the fact that each CEO is an Accounting Officer under the Public Finances (J) Law 2005 and therefore has personal responsibility for financial decisions relating to his or her Department - it would be difficult to reconcile that personal responsibility with getting directions from the Chief Executive or being expected to take collective decisions at CMB if those were felt to conflict with an individual CEO's duties as an Accounting Officer. However the same could be argued in connection with the relationship between the Accounting Officer and the Minister. Indeed there is a possibility that under the current system – with the weak Chief Executive structure and lack of controls over the actions of the Minister in terms of collective responsibility – that both the Chief Officer and the Accounting Officer could find themselves forced to take questionable actions by a strong willed or bullying Minister. Given the fact that the Chief Executive is an expert in his field, having achieved his role through structured promotion, and a Minister may be an inexperienced layman thrust into a position of power, this is an unacceptable structure.
- 2.25 It is interesting to note the following observations within the Clothier Report (2000). Paragraph 5.2 succinctly highlights the perception of the Clothier Panel in respect of the operation of the policy and administration functions of government. The complete paragraph is reproduced at the end of this section.

There are a number of interesting observations that have failed to come to pass.

“the political direction of each Department should be the responsibility of the Minister and one or two other Members”

There is no evidence that this has actually happened. The role of the Assistant Minister remains undefined and the Ministers have the power to act in almost a dictatorial manner. Indeed a regular complaint of Assistant Ministers is that they are not kept in touch with policy development and are not asked to attend Council of Ministers meetings. The reality is that the political direction is the sole responsibility of the Minister.

“policies for their Departments would be subject to approval of a Council of Ministers”

The reality is that only cross-Departmental policies need to go before the Council of Ministers and the flexibility of the Strategic Plan allows a Ministers a great deal of discretion in how the objectives of the plan are interpreted as Departmental policy.

“We recommend that the Council of Ministers should be invested with sufficient powers to be able to give directions to the individual Departments if that becomes necessary.”

There is no evidence that this power has ever been used (or actually exists).

“We would expect so compact an executive structure to have neither time nor inclination to become involved in details of administration.”

The reality is that many Ministers have 'moved-into' their Departments - taking over their own office space and support staff - and micro-manage the administration functions to a level far beyond the remit perceived by Clothier. Under the current system a Chief Officer would be faced with a stark choice - either accept the interference of the Minister or risk being 'replaced.'

2.26 **Recommendation:**

The role of the Chief Executive needs to be re-examined to ensure that checks and balances are improved – as a Chief Officer could look to the Chief Executive for support when necessary.

The basic concept – that Ministers should be responsible for Policy and Chief Officers responsible for implementation – cannot be achieved if individual Officers report to Ministers on implementation issues, and the Chief Executive has no sway over those Chief Officers' actions. In terms of implementation, there is currently no Captain at the Bridge. The system allows too much interference by Ministers in operational matters. Consideration should also be given to removing the conflict that arises from the fact that the Chief Executive also holds a Chief Officer role in respect of the Chief Minister's Department. The change to a 'pure' Chief Executive role – with no conflicts – should be examined.

3. Reaction from the Treasurer of the States

- 3.1 The Public Accounts Committee was interested to receive a submission from the States Treasurer, in the form of a response to our report on the States Accounts 2009 (P.A.C.4/2010). This response is included in the appendix to this report, and includes a breakdown of additional expenditure approved since the 2005 budget.
- 3.2 Whilst rejecting our recommendation that the terms and condition of senior civil servants should be reviewed (this is reaction to our concerns that the Chief Executive has insufficient powers to be anything more than an adviser/implanter), the Treasurer did confirm that the Public Finance Law would be revised in 2011 and that these changes will include proposals to clarify and strengthen lines of accountability and overall financial control of States spending.
- 3.3 **Recommendation:**
The Public Accounts Committee considers that there is an urgent need to make Ministerial Government System fit for purpose by updating the Public Finances Law.

4. Additional Spending Since 2005 Budget – a Breakdown

4.1 In a written question the Deputy of St Mary asked the Public Accounts Committee what the 'overspend' had actually been spent on. We would like to thank the Treasurer of the States for providing the following table that will assist his analysis.

Additional Expenditure Approved Since 2005 Budget	£'000	2009 £'000
2005 Budget		466,000
Additional Expenditure Approved in 2006 Budget Debate		14,000
Including:		
- Health - MRI Scanner and Other Funding Pressures	8,907	
- Social Security - Funding Pressures	3,437	
- Other Approved Expenditure	1,656	
2006 Budget		480,000
Additional Expenditure Approved in Strategic Plan/2007 Business Plan		26,750
Including:		
- Transfer of Parish Welfare from Parishes	10,000	
- New Initiatives	2,700	
- Emerging Pressures	3,000	
- Impact on Fiscal Changes	6,750	
- Other Approved Expenditure	4,300	
Strategic Plan 2006-2011		506,750
2007 Business Plan		506,750
Additional Expenditure Approved in 2008 Business Plan		18,431
Including:		
- Increased Pay and Benefit Provision	17,026	
- Social Security - Supplementation Adjustment	3,000	
- Other Approved Expenditure	(1,595)	
2008 Business Plan		525,181
Also Approved in 2008 Business Plan:		
Income Support Transitional Relief		5,600
2008 Business Plan Including Transitional Relief		530,781
2009 Business Plan		530,781
Amendments to 2009 Business Plan:		
International Relations, Emergency Planning, Social Policy Support, Chief Minister Support and Improving Resource Management		570
Tax Strategist		200
Early Years Education		552
Discrimination Law		250
Environmental Package and Energy Efficiency		1,000
Supplementation		4,500
Inclusive vocational day services and employment		529
Income Support Transitional Relief and Winter Fuel Allowance		2,320
Sustainable Travel & Transport and Recycling Initiatives		1,000
Law Officers - Staffing for restructuring and improved service levels		520
2009 Business Plan as amended		542,222
P138/2008 - Help those affected by higher food and fuel prices (Soc Sec)		3,400
2009 Budget		545,622

- 4.2 Much of the additional spending went to the Social Security Department following the transfer of the benefits system from the Parishes and the ongoing costs of supplementation. Of the identified “overspend” over £32,000,000 relates to the Social Security Department.
- 4.3 This appears to disprove a basic premise that centralisation results in cost savings. Indeed the desire to introduce a system more in line with that of the UK welfare state has proved extremely costly. Whilst the recession and the introduction of ‘zero-ten’ have been widely heralded as the cause of our financial woes – there is no doubt that the rising costs of the new welfare system based Social Security Department is a major drain on our limited resources.
- 4.4 The level of benefits is a political decision and the increased spending has been fully approved by the States Assembly. However the PAC wishes to put on record it’s opinion the escalation of costs in this area is unsustainable for what is a small Island economy.
- 4.5 If the economic outlook is such that, for example, levels of income support need to be modified in order to maintain economic viability, it is important that a system is in place whereby there is both leadership and action in the control of spending – however politically unpopular that may be.

5. Conclusion

5.1 The Public Accounts Committee welcomes the decision to update the Public Finances Law and shall monitor the progress concerning this. In terms of the structure of the States – both politically and operationally – we would concur with the view that both the Chief Minister’s and Chief Executives roles were diluted when Ministerial Government was introduced. These weaknesses should be reviewed and addressed.

5.2 On page 30 of our report on the Accounts 2009, the departing Chief Executive is quoted as saying:

“Jersey is a specific society and through the States has determined that it wishes to have a certain style of government and certain style of organisation and I interpret efficiency in that context, and that is how I interpret it.” “ At the end of the day, the Island has decided it wants a certain structure and that is what we deliver.”

5.3 This should be read in conjunction with the comments of the Chief executive on page 21 of the same Report;

The job description you have for me was put together in 2002 on the back of P.120 before the States had enacted the States of Jersey Law and the Public Finances (Jersey) Law, and there were some very specific changes made as those laws were enacted which undermined the ability of either the Chief Executive or the Council of Ministers to control or to be accountable for total spending in those terms. Under the States of Jersey Law the removal of collective responsibility from the Council of Ministers effectively made each Minister as a corporation independently responsible for their own political functions. The Public Finances (Jersey) Law, with the creation of accounting officers, each accounting officer being solely and personally responsible for the proper and effective control and spending of the resources within their cash limit denied the ability of any one individual or any one body to have total overall control unless that body is the States.

5.4 So it is not inconceivable that the Chief Executive when accepting the job believed that he would have more powers than those that were actually conveyed on him.

The States Assembly decided in its wisdom to reduce these powers and the Chief Executive operated within the parameters given to him – which on the face of it is not unreasonable.

- 5.5 Perhaps the original job description was, in fact, correct and it is the Ministerial system that has been designed incorrectly. Rather than re-design the job description to mirror the role as it currently is, the PAC recommends that consideration is given to amending the role in order to give the incumbent Chief Executive more power.
- 5.6 The public of Jersey probably look at the Chief Executive role in a similar vein to that of Managing Director or CEO. However as the interim Treasurer pointed out;
- 5.7 *“Well, the Chief Executive is in, again, an unusual position in Jersey because in strict terms the Chief Executive is only the Chief Officer to the Chief Minister’s Department, to the Chief Minister himself. So, as far as I am aware there is nothing in law that gives the Chief Executive direct authority over each chief officer. The Chief Officers are strictly reporting to the Ministers. But there are functions such as the States Employment Board that are, I think, a factor in the Chief Executive’s authority over the rest of the States functions. I think it is another area that Jersey could well give consideration to whether not only does the Treasurer have the right specified authority but does the Chief Executive.”*
- 5.8 In a letter to all States Members dated 18th February 2011 announcing the resignation of the current Chief Executive, the Chief Minister wrote:
“Mr Ogley came to Jersey in April 2003 to work as the Chief Executive responsible for all the functions of the Policy and Resources Committee. He was recruited to lead on the executive changes required to implement Ministerial Government and then to become the Chief Executive to the Council of Ministers and Head of the Paid Service. It was envisaged that following the Clothier reforms the States would become a Corporate entity and that the Chief Executive, answering to a unified Council of Ministers, would have responsibility for the whole organisation. Since 2003 the States has undergone fundamental reform of its political, officer and fiscal structures. However not all the changes envisaged were adopted by the States. Today the States is a significantly different organisation to the one that it planned to become.”

- 5.9 The PAC does not interpret the statement of the Chief Minister that – “the States is a significantly different organisation to the one it planned to become” – to be a positive one.
- 5.10 **The PAC believes that the deficiencies highlighted in this Report should be addressed as a matter of urgency. Certainly there should be a clear understanding of the tasks, powers and duties of the new Chief Executive prior to appointment. Furthermore if the position is to remain limited in overall power, as it is presently, it should be incumbent upon the executive to explain to the PAC why the position has been maintained in the current format and the highlighted deficiencies not addressed.**

Terms of Reference for P.A.C.4/2010

1. To review the States of Jersey Financial Report and Accounts 2009
2. In accordance with paragraph 132(1)(a)(i) of the Standing Orders of the States of Jersey, to receive a report from the Comptroller and Auditor General on the results of the audit of the Annual Financial Statement of the States, and to report to the States upon any significant issues arising.
3. To ensure that the issues identified in the Public Accounts Committee's Review of the 2008 States Accounts have been addressed.
4. To examine any further issues relating to the Financial Report and Accounts 2009 which the Committee considers relevant.

Committee Membership

The current Membership of the Public Accounts Committee (as at the date of the presentation of this report) comprises:

States Members

Senator B.E Shenton (Chairman)

Senator A. Breckon (Vice-Chairman)

Senator J. Perchard

Deputy J. Le Fondré

Independent Members

Mr A. Fearn

Mr M. Magee

Mr K. Keen

Officer Support: Mel Pardoe

Appendix

Treasury and Resources Department

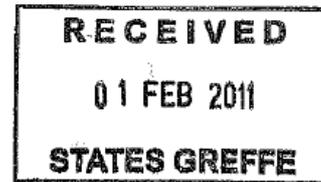
Treasurer of the States

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1st February 2011



Our Ref: LR/DB/11-004
Your Ref:

Dear Senator Shenton

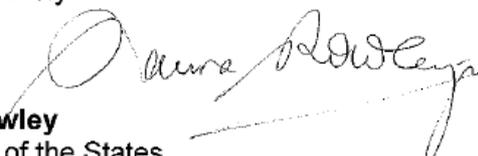
PAC Report on the 2009 Accounts

Please find attached a response to your Committee's recent report. This response incorporates both Treasury and the Chief Minister's Departments comments.

Since taking up my role as Treasurer I have taken the opportunity to read a wide range of reports, including the Comptroller and Auditor General's reports on financial management and the Public Finances Law. I found your Committee's recent report interesting and helpful in understanding some of the issues facing financial management in the States of Jersey.

I look forward to meeting with you and having the opportunity to discuss this and other matters, particularly the planned changes in the Finance Law that the department is currently planning.

Yours sincerely


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Treasurer of the States

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cc. Bill Ogleby – Chief Executive Officer, Chief Minister's Department

Ref	PAC Recommendation Ref	Accept / Reject	Comment
1	<p>4.12 The importance of financial forecasting cannot be under-estimated. A maximum deviation of 2% should be the goal and there should be an annual review of forecasting accuracy with a detailed analysis of circumstances where a 2% deviation is breached. This should be published by the Minister for Treasury & Resources.</p>	<p>Accept that significant deviations from budget and forecast should be challenged and explained as an integral part of financial management</p>	<p>The movement between £466m (expected level of 2009 expenditure reported in the 2005 budget) and £586m (2009 Business Plan) referred to in paragraph the table at 3.6 of the report, is the result of approvals proposed in Business Plans, amendments to Business Plans and other Propositions approved during 2005-2009. The attached table summarises these approved budget changes.</p> <div data-bbox="550 766 603 824" style="text-align: center;"> </div> <p style="text-align: center;">H: Additional Expenditure Approval</p> <p>Forecasting is an integral and essential element of effective financial management. The Treasury has recognised this for many years as evidenced by the department's published business plans which over recent years have prioritised improvements in forecasting across the Treasury and departments.</p> <p>It is important to distinguish between in year changes in forecast out-turn and changes to longer term projections. Accuracy of in year forecasting is already subject to continual review during the year with the Treasury challenging deviations from previous forecasts to ensure there is an understanding of issues driving changes in income and expenditure. This information is regularly reported to Chief Officers and the Council of Ministers.</p> <p>Longer term projections are reviewed regularly and updated projections published in the Annual Business Plan and Budget.</p>

2	<p>5.13 The responsibilities of the Treasurer remain unchanged, whether full time or temporary. It should be mandatory that the Accounts of the States of Jersey must be signed by the Treasurer. Next year's Accounts must be signed by the individual holding the post. N.B. the Public Accounts Committee has now been informed that it is understood that the new treasurer will sign the 2010 Accounts.</p>	Accept	As you have noted the Treasurer will be signing the 2010 accounts
3	<p>6.5 A Police Authority should be established as a matter of urgency. The lack of an accountable structure at Home Affairs is not sustainable.</p>	Accept	<p>The Minister for Home Affairs lodged P192/2010 on 21 December 2010 asking the States to approve certain principles that should apply to the establishment of a Police Authority and to the roles to be played by the Minister for Home Affairs, the Police Authority. This is a political matter.</p>
4	<p>6.6 The financial management structure within Home Affairs is seriously deficient and a cause of major concern. It is difficult to understand the lack of urgency to redress this unacceptable situation. Ultimate responsibility for ensuring necessary controls are in place lies with the Chief Executive, the Treasurer and the Minister for Treasury & Resources. In respect of this serious weakness, each must step up to the plate and ensure the current unacceptable position is rectified.</p>	Accept that there are weaknesses, but these will only be resolved when the Police Authority is established	<p>In the meantime, as the Accounting Officer commented on the PAC report on the 2008 Accounts, there is now in place a Memorandum of Understanding (MOU) between the two Chief Officers in relation to the 'Management of Finance and Exceptional Areas of Expenditure'. The MOU is an interim measure which gives a shared understanding of how to discharge financial management responsibilities under the current accounting officer framework. P192/2010 is likely to result in changes to the existing accounting officer arrangements whereby there are two accounting officers in Home Affairs. This is in line with the recommendations of the C&AG.</p>
5	<p>6.8 The Chief of Police should be an Accounting Officer. However, there must be a clear segregation of duties</p>	Accept. This will be subject to the States agreeing P192/2010	<p>Part (a) (8) of P192/2010 states that <i>'The Chief Officer shall have the command, direction and control of the</i></p>

	<p>between responsibilities as Accounting Officer and operational issues. Clearly, it would be wrong for the Public Accounts Committee or any other body to interfere with operational matters.</p>		<p><i>States of Jersey Police Force and each of its police officers and shall be the Accounting Officer in relation thereto.</i></p>
6	<p>7.6 The Financial Report and Accounts should clearly show the original approved budget.</p>	<p>Accept - see comment</p>	<p>The accounts do show the original approved budget; the original approved budget is the head of expenditure voted by the Assembly in the Business Plan debate; this is shown in the Treasurer's report and throughout the departmental pages to the accounts.</p> <p>The Treasurer's report also shows the annual percentage increase in spending. The Annual Business Plan shows the movement from one year's expenditure budget to the next.</p> <p>The costs relating to the HCAE within the HAD in 2009 were fully reimbursed from the Consolidated Fund (P83/2009 £2,305,515). The reason for the Department spending its revised budget 'exactly' (Para 7.1) was that the transfer in respect of Court and Case Costs (from underspends within the Social Security and Economic Development Departments) was for the Department's net year end position, rather than fully reimbursing Court and Case Costs. The actual underspend achieved by the Department was £311,951 (as detailed on page 39 of the Annex to the FR&A 2009). The amount received for Court and Case Costs was a 'balancing' figure rather than full reimbursement of costs.</p>
7	<p>7.14 118 requests for extra funding should not be made retrospectively. The States</p>	<p>Accept – see comment</p>	<p>In respect of the Article 11(8) request referred to, expenditure was being incurred against funds expected to be received from the Criminal offences</p>

	<p>Assembly should look to reject 118 requests where the funds have already been spent despite the consequences. Departments should look for authority before they spend money. The Financial Report & Accounts should clearly show the approved budget, any cross-ministerial transfers, and detailed actual spend as an appendix to the Accounts.</p>		<p>Confiscation Fund. Management of this particular issue has been reviewed and new processes are being implemented.</p> <p>The 2009 Financial Report and Accounts show the original approved budget (as per the Business Plan) and all subsequent approvals and inter-department transfers. These analyses can be seen in summary in the Treasurer's report and in detail at the beginning of the Annex to the Accounts and again on each departmental financial analysis.</p>
8	<p>8.3 The Chief Executive's job description is out of date and requires updating. The Public Accounts Committee would expect the Chief Executive to be a driver of change in this respect where weaknesses have been identified. The Public Accounts Committee is disappointed that known weaknesses in the Public Finances Law have failed to be addressed.</p>	Accept	<p>The Chief Executive Officer's job description is currently being updated.</p> <p>The Public Finances Law is currently being reviewed and proposed revisions will be brought forward to the States for debate. This will include proposals to clarify and strengthen lines of accountability and overall financial control of States spending, but will have regard to States decisions and the structure of Ministerial Government.</p>
9	<p>8.9 Lines of accountability should be codified, with the Chief Executive having direct authority over the Chief Officers. This may require a change to the Public Finances (Jersey) Law 2005.</p>	See comment	<p>This is an extremely complex issue, which goes beyond the bounds of accountability, which includes:</p> <ul style="list-style-type: none"> - operation of the Public Finances Law - setting of Cash Limits - relationship of Ministers, as corporation sole, to the Council of Ministers - relationship of the Chief Officer, as accounting officer, to the Minister <p>and requires a thorough review to determine whether it is possible to create a truly corporate structure without interfering with the democratic powers of the States.</p>
10	<p>21.9 If lines of accountability are unclear, then changes need to be made in order that they become clear. Lines of accountability need to be defined beyond question. Chief Officers have to accept</p>	Accept – see also 9 above and 24 below	

	<p>their responsibility to ensure their departments are run efficiently. If areas of the States can be run more efficiently in the private sector then it is the duty of the Chief Officer and Corporate Management Board to identify this.</p>			
11	<p>9.6 A Chief Officers advice should be routinely and formally placed on the public record, in particular when the Minister does not follow the advice.</p>	<p>This is already in place (see comment)</p>	<p>Chief Officer advice is already a matter of public record inasmuch as formal Ministerial Decisions are signed by the Minister, after quality assurance by the Chief Officer and the department's Finance Director, therefore there is an assumption that had there been any dissent from the Chief Officer, the process set out in Financial Direction 2.2 will have been followed. Financial Direction 2.2 is based on the UK Central Government Model. Chief Officers and Ministers will be reminded that they must comply with Financial Direction 2.2 where there is a disagreement. We are not aware of any evidence where this has not been the case.</p>	
12	<p>9.11, It is important to establish what happens (or what should happen) when a Minister decides to pursue a course that his Chief Officer considers fiscally or operationally unwise, if this course of action means that the Chief Officer cannot reconcile it with his responsibilities under the Public Finances (Jersey) Law 2005.</p> <p>9.18 Where a Minister and Chief Officer disagree about a course of action, the UK Central Government model should be strictly followed with no exceptions. This would be a process which would actively involve the Treasurer and a written direction from the Minister. Notification should also be made automatically, with no exceptions or delays, to the Chief Minister, the Chairmen's Committee and the relevant Scrutiny Panel.</p>	<p>This is already in place (see comment)</p>		
13	<p>10.8</p>	<p>There is no collective responsibility</p>	<p>The Public Finances Law is currently being reviewed</p>	

	<p>Lines of Accountability need to be defined beyond doubt. The position of collective responsibility within the Council of Ministers needs to be re-examined. Whilst this is ultimately a political decision, we feel that from a purely financial perspective, controlling spending where no collective responsibility exists will be extremely difficult.</p>	<p>under the current arrangements— see comment</p>	<p>and proposed revisions will be brought forward to the States for debate. This will include proposals to clarify and strengthen lines of accountability and overall financial control of States spending, but will have regard to States decisions and the structure of Ministerial Government.</p>
14	<p>11.5 (Quoted from the Comptroller & Auditor General) Article 30 of the Public Finances Law should be amended in order to oblige Accounting Officers to comply with Financial Directions. Alternatively, if the status of Financial Directions were to be re-considered, Accounting Officers should be obliged to follow the guidance issued by the Treasurer, whatever form that guidance may take.</p>	<p>Accounting Officers are required to comply with Financial Directions.</p>	<p>The current process of appointing an Accounting Officer seeks positive confirmation from the relevant officer that they will comply with Financial Directions.</p> <p>In the planning the forthcoming amendments to the PFL the Treasury will propose amending the PFL to explicitly require compliance with Financial Directions</p>
15	<p>11.8 The Public Finances (Jersey) Law 2005 should be changed in order to strengthen the independence and powers of the Treasurer.</p>	<p>Accept that the role of the Treasurer needs to be reviewed and clarified; this will be done as part of the review of the Public Finances law</p>	<p>In the planning the forthcoming amendments to the PFL the Treasury will consider the role of the Treasurer, with reference to existing reports published by the PAC, CAG and best practice elsewhere and propose amendments the PFL to clarify the role of the Treasurer as appropriate.</p>
16	<p>12.6 The States must embrace the role of the Treasurer in its purest form – as an independent Treasurer appointed by and responsible to the States Assembly. The Treasurer should have the freedom to comment independently on Propositions, where appropriate, in</p>		

17	<p>respect of the financial implications.</p> <p>15.18 The Public accounts Committee considers that Accounting Officers have responsibility but that there should be an overarching responsibility embodied by the Treasurer. This would have the effect of centralising control of States spending. A 151 Officer should be appointed and charged with prudent financial management, in line with 151 duties in the UK. This individual should be the Treasurer. The Public Finances (Jersey) Law 2005 should be updated to encompass this extra responsibility. In other words – Accounting Officers of Departments are responsible but the Treasurer would have an overarching responsibility to investigate and resolve problems i.e. the Treasurer would act like a 151 Officer.</p>		
18	<p>15.13 The Public Finance Law should be changed to make the Treasurer explicitly responsible for providing advice, with added whistle blowing powers to provide for potential conflicts.</p>		
19			
20	<p>13.10 Given the admission that the role of Chief Executive is limited to that of advisor and implementer – and that ultimately the politicians carry the bulk of the responsibility – the terms and conditions of senior civil servants should be</p>	<p>Reject, terms and conditions are kept under review</p>	<p>It is certainly reasonable that the terms and conditions of senior civil servants should be regularly reviewed. The role of a departmental Chief Officer both in the ministerial system and previously was one of advice, guidance and implementation, and policy decisions have never been part of that remit, other than in advising elected States Members of the implications of</p>

	reviewed to reflect the lower level of responsibility.		carrying out such policy. It is not realistic to compare the role of a CEO directly with that of the Managing Director of a corporate organisation, and there is no indication that the current terms and conditions do other than reflect this difference.
21	14.9 The process should be more formalised and open. The States Assembly should be notified of all inter-Departmental transfers, with an explanatory Report (R). This report should be written in a style that can be understood by the majority of States Members and the Public.	This is already in place – see note	The process of inter department budget transfers is formal, requiring a Ministerial Decision by all Ministers party to the transfer plus final approval by the Minister for Treasury and Resources. The Public Finances law requires that all such transfers are also reported to the States in a separate explanatory report (R). In addition, they are all reported again in the Financial Report and Accounts each year.
22	15.23 If the Treasurer is truly acting as “head of profession”, then he will have a duty to see these audits and the Departments would have a duty to supply them. The Treasurer must look to address weaknesses of a financial nature that appear in the various reports presented to the States.	All audit reports are already copied to, and read by, the Treasurer.	Financial Directions will be amended to require the outcome of any reviews or audits to be reported to the Treasurer
23	17.4 Improved cash management processes need to be adopted, with greater attention paid to when funds will be required in order to produce a bespoke strategy that will maximise income.	Bespoke strategy already in place.	There is a bespoke investment strategy for the Stabilisation Fund, published in June 2010. This strategy aims to maximise financial returns whilst maintaining highly liquid assets that will maintain their capital value and will be readily realisable in 2011, in accordance with the recent Budget.
24	20.9 There should be a review of core Government activities, with areas of	Accept on the basis that this is already underway as part of the next phase of the CSR process	The Deputy Chief Executive has been given responsibility of the Organisational Development Programme (following on from the Comprehensive

	<p>possible outsourcing identified and examined. This is a review that could, perhaps, be undertaken by the Comptroller & Auditor General in his independent capacity, as his role is free from political influence.</p>		<p>Spending Review). This will include reviewing opportunities for providing services more efficiently across all departments, including outsourcing services/function where appropriate. We suggest that the Comptroller & Auditor General wish to comment on the validity of this process.</p>
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CONCLUSION

The Public Accounts Committee has highlighted a number of important issues in their analysis of the 2009 Accounts. Many of these have already been addressed, or will be addressed in the very near future.

In particular, the revision of the Public Finances Law in 2011 will be an opportunity to strengthen financial management and control. The desire for stronger accountability and control of States spending will need to take account of the structure of Ministerial Government and be balanced with the freedom of the States to make decisions. Members will have the opportunity to consider and discuss these issues as part of the plan to bring forward changes to the Public Finances Law, reflecting many of the issues referred to in the report.

Additional Expenditure Approved Since 2005 Budget	£'000	2009 £'000
2005 Budget		466,000
Additional Expenditure Approved in 2006 Budget Debate		14,000
Including:		
- Health - MRI Scanner and Other Funding Pressures	8,907	
- Social Security - Funding Pressures	3,437	
- Other Approved Expenditure	1,656	
2006 Budget		480,000
Additional Expenditure Approved in Strategic Plan/2007 Business Plan		26,750
Including:		
- Transfer of Parish Welfare from Parishes	10,000	
- New Initiatives	2,700	
- Emerging Pressures	3,000	
- Impact on Fiscal Changes	6,750	
- Other Approved Expenditure	4,300	
Strategic Plan 2006-2011		506,750
2007 Business Plan		508,760
Additional Expenditure Approved in 2008 Business Plan		18,431
Including:		
- Increased Pay and Benefit Provision	17,026	
- Social Security - Supplementation Adjustment	3,000	
- Other Approved Expenditure	(1,595)	
2008 Business Plan		525,181
Also Approved in 2008 Business Plan:		
Income Support Transitional Relief		5,600
2008 Business Plan including Transitional Relief		530,781
2009 Business Plan		530,781
Amendments to 2009 Business Plan:		
International Relations, Emergency Planning, Social Policy Support, Chief Minister Support and Improving Resource Management		570
Tax Strategist		200
Early Years Education		552
Discrimination Law		250
Environmental Package and Energy Efficiency		1,000
Supplementation		4,500
Inclusive vocational day services and employment		529
Income Support Transitional Relief and Winter Fuel Allowance		2,320
Sustainable Travel & Transport and Recycling Initiatives		1,000
Law Officers - Staffing for restructuring and improved service levels		520
2009 Business Plan as amended		542,222
P138/2008 - Help those affected by higher food and fuel prices (Soc Sec)		3,400
2009 Budget		545,622