

STATES OF JERSEY



PUBLIC FINANCES (JERSEY) LAW 2005: FUNDING REQUESTS UNDER ARTICLE 11(8) (P.64/2010) – COMMENTS

**Presented to the States on 2nd July 2010
by the Public Accounts Committee**

STATES GREFFE

COMMENTS

Court and Case costs

There is absolutely no doubt that the States have failed to control these costs, however the real question is whether control is possible. H.M. Attorney General would probably argue that it is his duty to make decisions irrespective of costs; and that it is in the Island's interests to bear the costs. The States have survived because the 2 confiscation funds have provided a cushion so that costs could be incurred without impacting States' public budgets.

The view of the PAC is that –

- (1) The Island has to accept that to be a credible jurisdiction the Island must bear costs of this sort – and they are likely to be unpredictable.
- (2) If the Confiscation Funds cannot cover the risk that in any year the actual costs will be greater than the budget, then there should be a contingency budget that the Minister for Treasury and Resources can release as required.
- (3) Whether the extra provision to cover this in P.64/2010 is sufficient is not an exact calculation.
- (4) None of this implies that micro-controls are currently acceptable – i.e. there may still be a question whether the Law Officers and others are controlling cost on individual cases adequately. This has been difficult to test in the past because the Attorney General always says that he should be free to make whatever choice of advocates and others he thinks appropriate. The PAC has investigated whether proper procurement processes were followed in the appointment of the lawyer selected in one high-profile case, and initial indications are not encouraging.
- (5) A Finance and Economics Audit Committee report in December 2003 concluded that the increase in Court and Case costs since 1998 was caused by a combination of unpredictably large cases and a lack of budgetary constraints. The report made a number of recommendations to control expenditure through greater budgetary discipline, introducing performance measurement and making better use of competitive tendering.
- (6) Those dealing with Court and Case costs should to be able to demonstrate that lessons have been learnt and standards of case management improved since the National Audit Office Report in 2005 made recommendations into the legal costs and charges incurred by the public in the Le Pas case. This report found that “more effective arrangements are needed in the procurement of professional services to ensure the costs incurred are necessary, relevant and reasonable” and that “savings could be made by a better, more robust management of professional service providers and by exercising closer and tighter control over costs and payments.”¹

¹ States of Jersey: Independent Investigation into Court and Case Costs. Report by the National Audit Office November 2005

Through this comment the PAC wish to formally ask the Minister for Treasury and Resources whether he believes this aspect of control is sufficient. The Committee notes that this is a more specific question than the review of legal costs mentioned on page 4 of P.64/2010 – which will include a wide range of legal costs beyond those which have caused the problem identified by P.64/2010. The Viscount’s Department’s forecasting looks woeful – and may require specific attention (see page 4 of P.64/2010 – estimate of £4.769 million compared with a budget of £1.756 million).

Voluntary Redundancy (VR)

The Report is correct – a scheme is required. However, it will be required as a part of the CSR process and its costs should really be set against the CSR outcome: i.e. whether the Minister achieves his CSR target should be assessed by looking at the net benefit of the CSR outcome. The effect of P.64/2010 is that the cost of VR will be treated independently of the CSR process and the PAC fears that the outcome of CSR will therefore be judged without taking account of all the relevant costs. This seems reinforced by the comments on page 8 of P.64/2010 which suggests that VR will be a free good for individual departments rather than a cost. The PAC is keen to ensure that VR is justified in terms of pay back – i.e. departments should be made to establish that any particular VR pays for itself within a period – i.e. savings should be contrasted with the cost. Little detail of this process is given in the Report.

Previous PAC investigations have shown that historically the States have been very generous in VR packages. If the Minister is right to think that a CSR is necessary, it would be right to look again at the generosity of the VR scheme. The basic terms are set out on page 8 of P.64/2010.

Procurement

The PAC is in the middle of a review on Procurement and the approach outlined in the Report looks reasonable. However, this is another example of increasing costs to save costs – the costs ought to be set against the benefits of the CSR process.

Accounting Officers

The PAC are uncomfortable about the comment on page 6 of P.64/2010 – ‘ . . . the Accounting Officers concerned will continue to overspend available budgets which is a breach of the Public Finances Law . . . ’

Elsewhere the paper says that drawdowns of funds will be tightly controlled (page 5 of P.64/2010). Have they not been tightly controlling such drawdowns? If they are tightly controlling – how could the breach of Public Finances Law occur as warned on page 6 of P.64/2010? Perhaps the Minister for Treasury and Resources could clarify.

C&AG Report (R.96/2007)

The PAC note it has taken them 3 years to implement the recommendation of the C&AG and conclude that they are only doing so now because the Confiscation Funds have been exhausted (see page 4 of P.64/2010).

In order to assist debate, the PAC hereby reproduces comments previously made in respect of Court and Case costs and Procurement.

Key Findings and Recommendations made by the PAC regarding Court and Case costs in P.A.C.1/2010:

KEY FINDING

Court and Case costs are an unpredictable and volatile drain on taxpayers' money. Therefore, this expenditure cannot be budgeted for. However, these costs can present a significant financial risk for a small island community and their volatility makes prudent financial management difficult.

RECOMMENDATION

Prosecution costs in the Magistrates Court should be recovered on an 'ability to pay' basis. A more holistic approach to court costs needs to be undertaken as matters such as legal aid provision need to be taken into account. The PAC recommends that the Judiciary undertakes an internal review of its funding requirements and looks towards the commerciality of all functions provided.

Key Findings and recommendations made in P.A.C.2/2010 (States Spending Review) re: procurement (in H&SS)

KEY FINDING

There is significant overspending due to an over reliance on locum staff, and problems within the recruiting process.

KEY FINDING

One of the reasons for believing that substantial procurement savings might be available was that the Department had issued a very large number of States purchasing cards. This indicates that many items are purchased on a piecemeal basis rather than by means of general contracts – where terms can be controlled.

RECOMMENDATION

The Procurement Manager at Treasury and Resources should be given overarching control over all HSS procurement functions.

KEY FINDING

While the PAC anticipates that savings will flow from the centralisation of IS under Chief Ministers, it is troubled that the savings mentioned above are promises for the future and that the above technology is not already in place. Installing and implementing ICT systems is only part of the picture. It appears that the rationale for procurement in this area has been simplistically based on the purchase of equipment, without consideration of the process design which will allow staff to use it properly.

KEY FINDING

The PAC are heartened to note the efforts made to buy as a consortium.

RECOMMENDATION

More efforts should be made to co-operate with Guernsey in Health. The PAC recommends that potential avenues for making savings via joint purchases be thoroughly explored.

Procurement of legal aid

The Committee is also concerned at the apparent lack of a systematic procurement process regarding legal aid, for example in the case of Curtis Warren.

Comments regarding Procurement by the Comptroller and Auditor General in his report of May 2008 – ‘Emerging Issues.’

“The States are in the process of renewing the initiative to achieve reductions in expenditure by improving the States’ management of procurement. Although some reductions have already been achieved, there remains much that could be done, as is shown by the inclusion in the departmental reviews of a reference to the possibility of a material reduction in spending by the Department of Health and Social Services. If similar reductions were to be achieved generally within the States, the effect would be a reduction in expenditure that would amount, conservatively, to at least £3 million.”²

“The corporate initiatives aimed at improving procurement practice have not been followed consistently by all departments”³

“It is plain that departments have been able to frustrate corporate initiatives. The experience of the creation of Jersey Property Holdings demonstrates this. As I have mentioned above, departments were not enthusiastic about transferring their properties to JPH although this has now been accomplished: but much later than had been anticipated. Further maintenance budgets proved difficult to transfer. But there are other examples. It has proved difficult to implement straightforward procurement disciplines through all departments.”⁴

The C&AG’s proposal for procurement in H&SS:

“Management of procurement

<i>Amount</i>	<i>£800,000</i>
<i>Timing</i>	<i>Medium-term</i>
<i>Type of reduction</i>	<i>Efficiency</i>
<i>Certainty</i>	<i>Not speculative</i>

App. 3–18. The department should establish a centralised procurement function with a view to achieving savings through a more rigorous approach to purchasing. The department already purchases drugs through a main land consortium but reductions could be achieved by extending good procurement practice to other areas of purchasing.⁵

The PAC is extremely concerned that 2 years on from issues raised in the C&AG’s report above, progress in procurement still appears extremely slow, with hundreds of purchase cards still in circulation, and a lack of centralised and consistent procurement system still evident. The PAC shall be investigating this matter closely and publicising its findings.

² Emerging issues, report by the C&AG May 2008 page 13

³ Emerging issues, report by the C&AG May 2008 page 25

⁴ Emerging issues, report by the C&AG May 2008 page 25

⁵ Emerging issues, report by the C&AG May 2008 page 41

Summary

In summary, the PAC considers that a key element of sustainable and successful change in any large organisation is a sense of urgency. It is this sense of urgency which the States really seems to lack, with major issues such as human resources, staff terms and conditions, property usage and procurement being allowed to coast without prudent management or expedient measures being taken – all at a major cost to the taxpayer.