

**WRITTEN QUESTION TO THE VICE CHAIRMAN OF THE EDUCATION AND HOME AFFAIRS
SCRUTINY PANEL
BY DEPUTY G.P. SOUTHERN OF ST. HELIER**

ANSWER TO BE TABLED ON TUESDAY 19th JUNE 2007

Question

Will the Vice-Chairman outline to members whether the Panel agreed to the conditions prepared by H.M. Attorney General prior to their meeting to discuss the Cooper opinion on the rôle of Centeniers, and, if so, why?

Will the Vice-Chairman release to all States members the Cooper opinion and other advice received by the Panel to date, and if not, when will the Panel be prepared to do so?

Answer

1. The Education and Home Affairs Scrutiny Panel gave consideration to meeting H.M. Attorney General at a Panel Meeting on 4th June 2007. This Panel Meeting occurred prior to the resignation of the Deputy of St. Martin as Chairman of the Panel.

During the course of this meeting, telephone correspondence occurred between the Chairman and H.M. Attorney General. The Panel subsequently understood that H.M. Attorney General had asked for a private and confidential meeting with Panel Members only and without their advisor. The meeting would be formal, however, and therefore minuted. A precedent for this arrangement had already occurred during the Review of the Rôle of the Centenier in the Magistrate's Court when, on 10th July 2006, the former Social Affairs Scrutiny Panel, led by the Deputy of St Martin, had met not only H.M. Attorney General in private session but also a former Centenier who wished to give testimony in private session.

The Panel agreed by a majority decision that it would meet H.M. Attorney General on the basis described above; the intention was not, however, to discuss the legal opinion given to the Panel by Mr. J. Cooper. The Panel wished to consider with H.M. Attorney General the process by which the Panel could elicit advice and evidence from him and, in addition, the subsequent way forward in dealing with such advice.

The Panel would like to stress that, in making this majority decision, it is satisfied that it has acted in accordance with accepted procedure.

In particular, it would highlight Items 6.7, 9.1, 9.15 and 10.14 of *Code of Practice for Scrutiny Panels and the Public Accounts Committee* in addition to Standing Orders 138(6) and 138(7). These items (included as an appendix to this response) indicate that Scrutiny Panels may hold meetings in private session and receive evidence confidentially if it is felt appropriate to do so. The Panel believed that it would be so appropriate in this matter given the sensitivity of the issue, and on a majority decision therefore agreed to meet H.M. Attorney General in private session.

In this regard, the Panel acted no differently to other Scrutiny Panels that have conducted meetings in private session and, as previously stated, no differently to how it had previously conducted earlier meetings during the Review of the Rôle of the Centenier in the Magistrate's Court.

2. Members will be aware that, at the sitting on 19th June 2007, the States will elect a new Chairman of the Education and Home Affairs Scrutiny Panel. It would therefore be inappropriate to make any firm undertaking at this time regarding the potential future release of Mr. Cooper's legal opinion. Following the election of 19th June 2007, and the subsequent reconstitution of the Panel, it will be for the newly constituted Panel to decide how it wishes to proceed in relation to this matter.

The Panel would again highlight that, in not releasing Mr. Cooper's opinion to date, it has not ignored

procedure. Item 11.1 of *Code of Practice for Scrutiny Panels and the Public Accounts Committee* indicates that Scrutiny Panels will prepare their reports once all the evidence has been received. Item 11.3 indicates that Panels, whilst preparing their reports, will generally hold meetings in private to discuss the evidence it has received.

Significantly, Item 11.3 states that -

“It is important that the Panel’s preliminary views are not broadcast prematurely.”

It is the opinion of the current Panel that the Review of the Rôle of the Centenier in the Magistrate’s Court has not yet been completed. The Panel considers that it has yet to gather all the evidence and advice required for a firm view to be formulated (and thus for a balanced report to be finalised and approved). To date therefore, it would have been premature to release Mr. Cooper’s opinion: the Panel had a responsibility to give consideration to the sensitivity of the issues involved and the potential implications that releasing the opinion in isolation might have on the subsequent course of the review.

The Panel acknowledges that much evidence received by Scrutiny Panels is often made public before presentation of the final report by being uploaded to the Scrutiny website. However, the Panel has not set a precedent in its treatment, to date, of Mr. Cooper’s opinion; there have been previous occasions on which Panels have not released or uploaded evidence as the evidence in question has been designated as confidential.

1. Extract from *Standing Orders of the States of Jersey* -

“138 Scrutiny panel: proceedings

- (6) The public may observe a meeting of or hearing by a scrutiny panel, unless the scrutiny panel decides otherwise.
- (7) A member of the States who is not a member of a scrutiny panel may observe any of its meetings or hearings, but must withdraw at any time when it is discussing or hearing any matter or information which, by virtue of any enactment or code, it is entitled to discuss or hear in private.”.

2. Extracts from *Code of Practice for Scrutiny Panels and the Public Accounts Committee* -

“6.7 The Panel may decide to take all or part of a meeting in private. The agenda will normally indicate in advance of the meeting those items which will be taken in private session. The Panel may, however, decide in the course of a meeting that it should continue in private session.

9.1 A large part of the Panels’ workload will involve taking evidence and gathering views. Panels will gather evidence formally through written submissions and oral evidence sessions. They will consider documentation provided by the Executive and may conduct fact-finding visits in order to clarify technical and practical issues.

9.15 The Panels are committed to the principle of open access to information with appropriate data protection. In principle, all written evidence received by the Panel will be published on the website. However, where the Executive or any other witness considers that the information to be provided is of a sensitive or private nature, a request should be submitted to the Panel Chairman, in advance, for the information to be treated in confidence. In addition, the Panel may decide itself that certain information should be treated in confidence.

10.14 The Panels may agree to take oral evidence in private session if the matters under consideration are of a sensitive, confidential or private nature.

11.1 Once all the evidence, both written and oral, has been collected the Panel will meet to consider and analyse it. The Chairman will previously liaise with the Scrutiny Officers in preparing a draft ‘Heads of Report’ document based on an assessment of the evidence received.

11.3 The Panels’ discussion at this stage will generally be held in private as this will allow a more frank exchange and development of views and an opportunity to reflect on the evidence received. It is important that the Panel’s preliminary views are not broadcast prematurely.”.