

**WRITTEN QUESTION TO THE CHAIRMAN OF PRIVILEGES AND PROCEDURES COMMITTEE
BY THE DEPUTY OF ST. MARY
ANSWER TO BE TABLED ON TUESDAY 19th OCTOBER 2010**

Question

Following the States decision of 27th September 2001 to add the words 'Privileges and' to the originally proposed title 'Procedure Committee', would the Chairman advise -

- (a) what actions have been taken since that time to protect the privileges of members?
- (b) what research has been carried out by the Committee into the privileges of elected members of national assemblies in other jurisdictions?
- (c) what research has been carried out by the Committee into how these privileges are protected in other jurisdictions?

Answer

As set out at the start of this question the original name for PPC as proposed by the then Policy and Resources Committee in 2001 was "Procedure Committee" but this was amended to "Privileges and Procedure Committee" following the adoption of an amendment from the then Senator Lakeman (later changed to Privileges and Procedures). It is nevertheless of interest that in his accompanying report (P.122/2001 Amd) Senator Lakeman referred principally to championing the interests of members in areas such as facilities and remuneration. Those two particular matters were subsequently included in the terms of reference of PPC and significant progress has been made since that date in both areas. Nevertheless for the purposes of this question the word "privileges" has been interpreted in its strict parliamentary sense as this appears to be the sense in which the Deputy of St. Mary is asking the question. This answer covers parts (a) to (c) together.

In 2009, following event surrounding the arrest and detention of a States member, PPC became aware that there was some misunderstanding in the mind of some members relating to the concept of parliamentary privilege. As a result the Committee requested the Greffier of the States to research the position in Jersey and in other jurisdictions and the result of the Greffier's research was published on 22nd July 2009 in a lengthy report entitled "Parliamentary Privilege in Jersey" (R.79/2009). PPC would again urge any members who have not yet had the opportunity to consider this report to read it carefully as it sets out very clearly the nature and extent of parliamentary privilege in Jersey and in other jurisdictions.

As set out in the report parliamentary privilege in parliaments with a Westminster tradition such as Jersey, does not confer special individual rights or privileges on parliamentarians outside their parliamentary duties. It only applies to actions that are undertaken in direct relation to "proceedings in parliament". In addition the privilege belongs essentially to parliament as a whole and individual members can only claim privilege insofar as any denial of their rights, or threat made to them, would impede the functioning of the parliament as a whole. Privilege is, in summary, the sum of the immunities and powers which a parliament, its members and officers, possess to enable them to carry out their functions effectively and without hindrance.

Parliamentary privilege in Jersey and other parliaments with a Westminster tradition can be contrasted with the Continental European model where in many countries parliamentarians benefit from a much wider immunity including protection from both civil and criminal prosecution, within and outside of their roles as parliamentarians. In many European countries parliamentarians are protected from all arrest or prosecution unless parliament agrees to waive the immunity and this is a significant difference from the Westminster model where parliamentarians have never had any special treatment under the criminal law.

Although PPC has had little need to consider issues of privilege in recent years PPC recognises its duty to defend privilege as established in Jersey and would, if necessary, take action if it felt that the privileges of the Assembly were being threatened. It is nevertheless important to stress, as referred to above, that privilege is not a form of

special immunity that applies to members outside their work during proceedings of the States or committees/panels of the States. The Committee has not therefore had cause in recent years to take any significant action in relation to privilege, although on 16th April 2009 the Committee presented a report to the States (R.38/2010) in relation to a breach of privilege that had occurred when one member had disclosed the contents of an “in camera” debate to the media. In that report PPC drew attention to the fundamental principle of parliamentary privilege that members are able to speak freely in the Assembly without inhibition and pointed out that during any “in camera” debate members may wish to express views with the assurance that their remarks will not subsequently be reported outside. The disclosure of remarks made “in camera” by one individual member was therefore a fundamental breach of privilege in relation to the overall privileges of the States.