

3.1 Connétable J. Gallichan of St. Mary of the Chairman of the Privileges and Procedures Committee regarding the communication with complainants under the States members Code of Conduct:

Does the chairman consider it satisfactory that complainants under the States Members Code of Conduct are not, as a matter of routine, contacted by the committee to discuss their complaints or advised of the progress of proceedings and, in the absence of such communication, how does the committee ensure that all elements of complaints are fully understood and dealt with?

Deputy J.M. Maçon of St. Saviour (Chairman, Privileges and Procedures Committee):

P.P.C. (Privileges and Procedures Committee) investigates complaints in accordance with the procedures set out in Standing Orders and successive committees have adopted similar processes since the current Standing Orders were introduced in 2005. If the nature of the complaint is clear from the complaint received and P.P.C. decides that there are grounds to investigate, it is not necessary to contact the complainant during the course of the investigation. It is only necessary to contact the complainant if the exact nature of the complaint is not clear from the initial request and in particular if it is not clear to which part of the Code of Conduct for elected Members the complainant believes that the Member may have breached. It is important to stress that the responsibility for investigating and adjudicating on any complaint is the responsibility of P.P.C. and it would be wrong for the process to be driven or directed by the complainant. In addition, P.P.C. has always made clear that in common process with other parliaments the investigation is not undertaken in an adversarial way and there is no scope for complainants to question or cross-examine the Member who is the subject of the complaint or *vice versa*. P.P.C. ensures that complainants are made aware of the outcome of the investigation. This is normally done by email or letter, although in the case of a complaint submitted by a States Member the outcome might, for example, become known through the publication of a report to the States.

3.1.1 The Connétable of St. Mary:

Notwithstanding what the chairman has said, which of course I am fully conversant with, does the chairman not accept that in several cases there are possibly interpretations to complaints which are not understood? For example, I recently made a complaint where I outlined a specific area that I wished to be looked at, yet I see no reference to that area in the complainant's report. Furthermore, does the chairman think that it is acceptable for the complainant to hear only through the media when things are being progressed?

Deputy J.M. Maçon:

To take the questions apart in reverse order, obviously a complaint against perhaps a States Member is ideally seen as an initial disciplinary process and as much as possible not for the media to be aware of as it is effectively a personnel matter. Therefore during recent times one has tried to reduce the media awareness of the complaint for the particular reason the Constable raises. With regard to the other aspects, if the Constable could just repeat that part of the question, please?

The Connétable of St. Mary:

It is just I wonder how the chairman would respond if a complainant said that the aspect of the complaint they wished to be addressed did not seem to have been addressed in the report?

Deputy J.M. Maçon:

P.P.C. considers whether a breach of the Code of Conduct has been made and complaints relate to the breaching of the Code of Conduct, not necessarily every single argument which is made which the complainant might feel have been transgressed, although I am happy to speak to the Constable in order to make our legacy report a better process for this particular aspect.

3.1.2 Deputy G.P. Southern of St. Helier:

Is the chairman aware that there is substantial overlap between the powers of the Chief Minister and the powers of P.P.C. in investigating complaints against the Minister and what steps has he taken or, should he be returned to the House, will he take to make sure that this is cleared up and areas of responsibility are clearly defined in our rules?

Deputy J.M. Maçon:

Yes, this matter was considered greatly when we were considering the introduction of the Commissioner for Standards for the better conduct of States Members and in some areas there is an overlap. I believe that a piece of work which is being undertaken by the Council of Ministers currently is to review the Code of Conduct for Ministers so that it is much clearer, because at the moment there is replication between the Ministerial Code of Conduct and the Code of Conduct for elected Members. Pending the outcome of that review P.P.C. will review the situation.

3.1.3 Deputy G.P. Southern:

Is the chairman aware of when that review started and when it is likely to come to a conclusion and publish its results?

Deputy J.M. Maçon:

Yes, it did commence last year, I believe. I am not aware of its outcome and I am happy to seek the conclusions of that.

Deputy G.P. Southern:

If I may, is the chairman saying that it has taken 10 months to produce a report on responsibilities of Ministerial Government?

The Bailiff:

That is a third question.

3.1.4 Deputy N.B. Le Cornu of St. Helier:

Could the chairman confirm that the current procedures under the Members Code of Conduct relating to complaints are not Article 6 compliant, Article 6 being Article 6 of the European Convention on Human Rights to which this Island is committed, which concern fair trial, the right to examine and cross-examine witnesses by the accused, which is standard procedure in any criminal procedure in any court in this Island? Secondly ...

The Bailiff:

That is the question. I think we will have one question at a time.

Deputy N.B. Le Cornu:

There is a supplementary, Sir. There is an additional part.

The Bailiff:

One question at a time.

Deputy N.B. Le Cornu:

I will come back when he has answered that.

[9:45]

Deputy J.M. Maçon:

A complaint made against a States Member for investigation is not a criminal procedure and therefore the same standards do not apply. This is an internal disciplinary matter, and P.P.C. has

always sought it to be a non-adversarial process, as is common with other parliamentary democracies in the world.

3.1.5 Deputy N.B. Le Cornu:

Supplementary? I am sure the chairman is not a lawyer, unfortunately, but he should be aware that the European Convention on Human Rights Article 6 does not simply apply to criminal matters. It applies to all disciplinary hearings, and is therefore relevant in this case. Could I also remind him that in 2012 the Greffier of the States produced an excellent report of 36 pages which has been gathering dust, one that related to this very subject? Parallel is the fact that States Members ...

The Bailiff:

Sorry, Deputy. You are coming to a question?

Deputy N.B. Le Cornu:

The question is, is he aware of that, because this procedure under his tenure as the chairman has not been looked at. He has had a wonderful report and he has done nothing about it. Why? When States Members pay is dealt with ...

The Bailiff:

That is the question, Deputy. Thank you very much.

Deputy J.M. Maçon:

I am aware of that report. Of course it did come out some time before I became chairman. That is not an excuse, just an observation. With regards to the ongoing process, again the States Assembly has approved and there are law drafting instructions going ahead for a Commissioner for Standards in order to deal with this matter and if there is a concern over the processes through the disciplinary proceedings against States Members complaints then there is an opportunity to inform the shaping of that particular process.

The Bailiff:

Connétable, do you wish a final question?

3.1.6 The Connétable of St. Mary:

Yes, Sir. I appreciate the difficult position that the chairman is in, probably more so than anyone else in this Assembly. However, the other concern I had was that it is always important to consider what is said publicly, especially by members of the P.P.C. Will the P.P.C. chairman leave a legacy report with tighter guidelines? I was quite concerned to see that some Members were not able to sit on the complaint because of having made comments publicly beforehand, which of course is their right but which can put the chairman in a difficult position. Will he issue guidelines for the future?

Deputy J.M. Maçon:

Yes, again it was a very difficult process, but yes, I give the Constable that undertaking.