
STATES OF JERSEY



INTERNAL REVIEW INTO SECOND TERM OF SCRUTINY IN MINISTERIAL GOVERNMENT: DECEMBER 2008 TO AUGUST 2011

Presented to the States on 7th October 2011
by the Chairmen's Committee

STATES GREFFE

REPORT

President's foreword

Following increasing dissatisfaction by some scrutiny members over a period of time and the announcement of the resignation of the Education and Home Affairs Scrutiny Panel, I decided in my capacity as President of the Chairmen's Committee to undertake an internal review during the summer recess of 2011 to try to identify the reasons behind the disillusionment. The review focussed on the last session from December 2008 to August 2011.

Without detracting from the outcomes and recommendations of the review detailed below, one point was very clear: there is an almost universal support for Scrutiny in a robust form and an acknowledgment that Scrutiny is credible in the main and has been successful in a number of areas. There was, however, support for the concept that Scrutiny should follow up reports more decisively to ensure Ministers are held to account.

On the other hand Scrutiny has not, perhaps, fully matured and there are issues which need to be addressed. Ministers should take the recommendations seriously, rather than dismissing them out of hand. Alternatively Scrutiny must avoid slipping into a quasi opposition role.

There is also the problem that Scrutiny is perceived to be "second-best" and is inferior to the Ministerial role. Added to which some Ministers who have never been on Scrutiny appear not to understand clearly what the function of Scrutiny is intended to be. It is also not always appreciated that Scrutiny has the right to have access to all relevant information for background information incase a review may be warranted or as part of a review with Panel-agreed terms of reference. With more consensual working practices this should be easily achievable.

There is a general view that Scrutiny could be usefully involved in the development of policy. This would improve the sense of inclusivity and would provide Ministers with an objective sounding board.

I hope that this review will encourage existing members of the Assembly, as well as new members, to think how they can contribute to the improvement and development of Scrutiny as well as improving their understanding of its importance to our system of government.

I would also like to take the opportunity of thanking all those Members and officials who gave up their time to discuss the issues with me. It has proved an interesting exercise and although this paper provides a basis initially for discussion amongst the Scrutiny Chairmen in preparation of a Chairmen's Committee legacy report I hope it will be of interest to you.

Senator Sarah Ferguson
President, Chairmen's Committee

Introduction

In conducting this review there was no intention of undertaking a study of Ministerial Government and government structure overall. The purpose was purely to examine the role of Scrutiny within the existing structure of government and, as stated in the foreword above, to analyse why there is so much disillusionment amongst Scrutiny Members leading to the claim that Scrutiny isn't working. Also it was intended to consider ways of enabling Scrutiny to be more effective and encouraging Members in the new States to see Scrutiny as worthwhile and valuable within the existing structure. Perhaps inevitably, views have been put forward about the overall structure of Ministerial Government, as during the review it became clear that Scrutiny is not seen as the "illness but as a symptom of the illness". Also as the report focuses on the Scrutiny function, it does not comment on non-Executive Members who opt out of Scrutiny.

Working methods

It was considered essential to acquire a representational view across all Members in various sectors of the legislature as to how Scrutiny had, or had not, impacted on them.

The format was to hold discussions with individual Members in an environment where Members could express views and opinions freely. Notes of all meetings were taken and forwarded to contributors. Participating Members and Officers have been advised that information provided in this paper will not be attributed in any way. Quotes in each of the key findings come from across the board from the Members interviewed below.

Initially all Scrutiny Chairmen were offered the opportunity of individual meetings, followed by a number of Members with a range of responsibilities as noted below –

- Scrutiny Member and no other role;
- Scrutiny Sub-Panel Member and no other role;
- Assistant Minister formerly on Scrutiny;
- Assistant Minister and no other role;
- Minister formerly on Scrutiny;
- Ministers and no Scrutiny/non-Executive role.

Unfortunately none of the non-Executive Members who do not sit or who have never sat on Scrutiny volunteered to share their views.

A meeting was held separately with the Education and Home Affairs Scrutiny Panel (including Deputy M. Tadier of St. Brelade who had recently resigned) because of the earlier announcements in the States of the future resignation of the Chairman and Panel Members. All States Members were invited to individually discuss their views. Meetings have been held with Senators, Deputies and Connétables.

A meeting was also held with Scrutiny Officers. Some departmental officials accompanied Ministers.

Meetings were held with 19 States Members in total. Whilst it is recognised that this is less than 50%, the meetings have given rise to some common outcomes, which it is believed are sufficiently important to follow up.

Background

As a starting point it is worth considering the original intended purpose of scrutiny, what it was set up to do and the requirements needed in order for it to be effective.

Original purpose of scrutiny

It is beneficial at this point to refer back to P.122/2001 (7.1) –

“...scrutiny should be regarded as embracing three main activities, namely participation in the development of policy, the review of legislation and the performance of government.”

The first responsibility of Scrutiny Committees (as they were termed in P.122/2001) was –

- “To seek to influence the formulations and development of policy by considering and commenting on proposals that have been received from individual Ministers and the Council of Ministers....”

It is apparent that there was an original intention for scrutiny to be involved in policy development, yet some Panels have felt excluded whilst others believe being involved early is doing the work of the Executive.

Original pre-requisites for effective scrutiny

P.79/2003 (27) dealt with the conditions for effective scrutiny. The full section is included as an appendix to this report but it is worth including a couple of excerpts here as follows:-

- **“Member Leadership and Engagement** – Scrutiny can only work in the longer term if scrutiny members drive the process and provide genuine leadership. This is not just a task for the Chairmen and Deputy Chairmen but a wider number of members must be actively engaged and enthusiastic about scrutiny. These members also have to demonstrate the appropriate skills to undertake this work and to have the trust of fellow members; and
- **Responsive Executive** – A responsive Executive which is willing to listen to and be influenced by scrutiny is a pre-requisite for effective scrutiny...”

Over the last 3 years enthusiasm to be part of scrutiny has declined. The reasons for this are discussed in detail below, however, one of the main reasons appears to be that Scrutiny Members do not feel that Ministers are willing to listen and willing to be influenced by Scrutiny. Indeed it was stated (and not by non-Executive Members) that some Ministers are arrogant and have a total disrespect for Scrutiny in any form. This in turn has helped to lead to a lack of active engagement and enthusiasm to be part of the Scrutiny function.

It seems to be vital to re-establish an understanding of what Scrutiny was originally set up to do, for Ministers to accept that Scrutiny can and should be involved in policy formation and also to demonstrate that they are willing to be influenced by Scrutiny (actually show that they have acted on Scrutiny recommendations rather than just accept/reject them). This in turn would hopefully encourage more non-Executive Members to be actively engaged and enthusiastic about Scrutiny.

Key Findings

Although the findings were very broad, this report focuses on the main ones relating to scrutiny within the current system of government. The main key findings were –

- There is minimal support for reverting to the Committee system;
- There is a strong common view that Scrutiny in some form should continue;
- There is a strong wish for more inclusivity i.e: being involved in the development of policy;
- There is general support for Scrutiny being involved at an early stage of policy formation and also in it assessing whether existing policy is fit for purpose; examples of successful reviews have been given as: Sale of former JCG, Importation of Bovine Semen, Rural Economy Strategy, Mobile Phone Masts, Fort Regent, Speed Limits and Long Term Care of the Elderly.
- There is an agreed view that Scrutiny should not be used for personal political agendas; Members have opportunities in Jersey to pursue personal politics outside Scrutiny.
- Scrutiny is not, nor should be, a vehicle for opposition politics (although there was a view held by some that there should be an opposition and that there is currently no mechanism for this).
- Very few Members, Scrutiny or Executive have read and are familiar with the Code of Practice for Scrutiny Panels and the PAC.

Summary analysis of views

A. Inclusion versus exclusion

This was the main common theme –

- Members stand for election because they want to make a difference based on personal and political viewpoints. Consequently, once elected, Members want to be in a position of pursuing those political aims and being involved in order to try to achieve what they set out to do.
- Members being placed in a position where they think they cannot make a difference results in a feeling of failure, they become frustrated which can lead to animosity and in turn, divisiveness and this creates a dysfunctional structure.

- There appears to be a four-tier society in the Jersey legislature with differing degrees of responsibility and power, the divisions of which seem to have caused it to become adversarial.

Ministers	Power in the hands of the few, many having diverse views of the role of Scrutiny or not understanding or appearing to even want to understand the role of Scrutiny. There appears to be a view held by some that Scrutiny is an irritant.
Assistant Ministers	Closer to decision-making and feel included but with no powers. Some have no real understanding of the role of Scrutiny. Also there is little understanding by non-Executive Members about what they actually do.
Scrutiny Members	No decision-making powers. Some feelings of exclusion and being unable to make a difference through influential means (evidence-based S.R.s). Differing views and opinions on the role of Scrutiny. Opposition and Scrutiny are getting confused.
Non-Executive Members not in scrutiny	Members on the non-executive but with no wish to sit on Scrutiny. Via other conversations this review found that some of these Members believe Scrutiny to be ineffective and others simply prefer to work on their own areas of personal and political interest.

B. Politicisation of scrutiny

One general outcome was an agreement that Scrutiny should not be political; there are opportunities in Jersey to pursue personal politics outside Scrutiny.

It was commonly felt that the original intention of Scrutiny approaching subjects on an impartial, objective and balanced basis had generally been lost. The reasons could be partly because of A above and/or because there is no vehicle for opposition politics, so Scrutiny has naturally filled that vacuum, although the Scrutiny Office maintains its impartiality and objectivity in advice given. The inclusion of personal politics in Scrutiny had, it was felt by many, led to a lack of trust.

Some quotes:

- Certain Members use Scrutiny for their own ends and to gain information for their own cases and political interests and as a result Scrutiny is undermined;
- Some Members play political games and abuse the Scrutiny system;
- Scrutiny being used as voicing political views;
- Some Members use Scrutiny to expound opposition politics;
- More attention should be given to political issues rather than topics that are in the public interest.

C. Scrutiny

When should scrutiny be involved?

The general agreement of those spoken to, with a few exceptions, was that Scrutiny should be involved in policy formation. It was felt that this could work without damaging the integrity of either the Minister and Department or the Scrutiny process. A means of achieving this may be by Panels nominating one Panel Member as rapporteur in a specific area (with Scrutiny Officer support) who could then be more involved in the Minister/Department's work on the policy under development (e.g. attending meetings). At an appropriate time the rapporteur would report back to the Panel and terms of reference would be drawn up for a review. It should be recognised however that Scrutiny members will maintain the independence to challenge and criticise during a formal review.

In order to do this, there are two essential elements:-

- Ministers must be prepared to be open with rapporteurs/Panels;
- Panels must be prepared to accept private meetings/briefings and respect confidentiality;
- All Members, Scrutiny Officers and departmental officials need to recognise and accept that Scrutiny can be involved at a number of stages: from the conceptual phase of policy to reviewing whether a policy is fit for purpose.

Some quotes:

- Scrutiny Members are very much part of the decision-making process;
- Generally scrutiny should review completed policy;
- Scrutiny should be involved asap working alongside Ministers when considering new policy but working independently from Ministers on reviews into those policies;
- Scrutiny should be involved at the earliest possible opportunity – at the conceptual stage;
- Scrutiny should be involved at the consultation phase;

How can scrutiny improve in the current system?

Outside the concerns of inclusion/exclusion above, and in consideration of what can be done to improve within the existing structure, the following prerequisites were mentioned:

- strong Chairmen with leadership skills were needed;
- the ability to work as a team was essential;
- improved selection of topics;
- a focus on specific reviews and not “dabble” in everything;
- be prepared to work closely with the Executive but keep a distance when review is underway;

- become more robust and challenging – bring forward more propositions for debate on the back of review evidence.

Some quotes:

- The quality of Scrutiny depends on effective leadership;
- The conspiracy theory idea (which has no foundation) needs to be dropped;
- Develop team working on Panels;
- Standardise approaches i.e: abide by the various documents pertaining to Scrutiny as mandated by the States so that there is less confusion for the public;
- Use the opportunity to form Sub-Panels more to include wider Membership across topic areas.

D. Ministers: approach to scrutiny

Whilst, perhaps inevitably, most Ministers believe that they have tried to be open with their respective Panels, some Panels do feel that the Ministers have “stone-walled” them. If more co-operative working practices could be developed as discussed above, communication should improve and information be shared more readily.

Some quotes:

- Some Ministers do not take Scrutiny reviews, nor quarterly hearings seriously;
- Executive can be seen as arrogant when it comes to Scrutiny;
- On occasions Panels have been misinformed about the existence and/or availability of information;
- The Executive want to lead and control Scrutiny;
- Some Ministers could often do more to interact with Panels and involve them in policy development whilst accepting that the time will come when the Panels will work independently on a review;
- Ministers have become defensive. When someone expects criticism, it is a normal reaction to go on the defensive.

E. Role of Assistant Ministers

Other than the fact that the role is not widely understood, there were mixed opinions about whether Assistant Ministers should be permitted to sit on Scrutiny Panels. Of concern was the fact that many Assistant Ministers attend the Council of Ministers meetings from time to time and are conversant with matters outside their own remit. There was the view that this may create difficulties if Assistant Ministers were to be objective when working on a Scrutiny Panel.

Some quotes:

- Scrutiny Members can have more access to information than Assistant Ministers;

- Assistant Ministers are not elected by the States and have no mandate;

F. “Troy Rule”

There was a very split view in respect of whether the “Troy rule” should be abolished. Many thought it would be unhealthy if the Executive had a majority. Furthermore, it was stated that for Assistant Ministers to sit on Scrutiny did not mean the abolition of the Troy rule. However, it was also stated that if the Troy rule were to be abolished, Assistant Ministers should be elected by the States.

Some quotes:

- “Troy rule” should be maintained;
- It would be unhealthy if the Executive had a majority, although it would be useful to spread the work around;
- More Assistant Ministers aren’t necessarily required and it could have some detrimental effects;
- Abolish. The Troy rule is only appropriate for a party system;
- It doesn’t serve an effective function;
- There is no problem with the “Troy Rule” as it ensures an appropriate balance between Executive and non-Executive Members.

G. Conduct of Members

There was a general view and a great deal of disappointment that conduct had deteriorated considerably, not just in Scrutiny but in the States Assembly. It was felt that Ministers had become more defensive; a possible result of being constantly criticised and being subjected to aggressive and sometimes offensive behaviour. It was felt that if there are Codes of Practice then there should be sanctions for any breaches although there were no clear suggestions what sanctions could be imposed nor who would implement them.

Some quotes:

- No professionalism in the States as a whole nor in Scrutiny: poor punctuality, poor behaviour during meetings, breaking Codes of Practice and protocols etc;
- Some Members have told officers to “break the rules” to get information;
- Members too willing to blame the Executive for Scrutiny’s lack of activity when in reality it’s usually due to the inactivity of the Panels;
- Some Scrutiny Members’ conduct brings Scrutiny into disrepute;
- A stronger PPC is needed to ensure appropriate behaviour overall

Recommendations

These recommendations are for discussion purposes and initial consideration by the Chairmen's Committee as part of its legacy report.

Recommendation 1: Improve Communication

There must be a will on the part of all States Members to understand what all the various rôles entail and a willingness to share information and co-operate with one another. Whilst this would necessitate a move from the current mood of Members it could be achieved as follows –

- Initial induction (immediately after October half-term) for newly-elected States Members on the work of the Scrutiny Office;
- Meeting of all States Members early January to consider the outcome of this review, more inclusive working practices and to receive information on the Standing Orders and Codes of Practice which apply to Scrutiny and the PAC;
- Ministers and Assistant Ministers hold departmental open-days early in 2012 for all Members (not just Scrutiny but for all Members whatever their role) to meet officers and receive briefings on the work of departments (in private);
- Ministers and Assistant Ministers hold departmental briefings in departments with respective Panels and relevant officials to give more in-depth briefing on work of the department(s) and the role that individual Assistant Ministers will have and forthcoming work programmes. This will give an opportunity for the Ministers to explain areas which may be particularly sensitive and confidential;
- A hearing in public, the purpose of which would be for the Minister and Assistant Minister(s) to explain work programmes;
- Scrutiny Officers and DSLO's (maybe Chief Officers) to hold an away-morning to consider potential improvements of working relationships and greater understanding of each other's role and the outcomes of the political discussions on the "Senator Ferguson Review";
- Continue dialogue through closer working arrangements between individual Panel Members and Departments on specific issues. It should be recognised however that Scrutiny members will maintain the independence to challenge and criticise during a formal review.

(There has been a proposal that new scrutiny members should be allowed to shadow Ministers for a period of time)

Recommendation 2: Reach an agreement that in order to bring about a more inclusive system within the existing structure, Scrutiny should be involved in policy development as per the original intention.

There should be a will on the part of all Members to overcome the divisiveness which now exists and to want to adapt the existing system within the current framework to create more inclusive work opportunities. There needs to be an overall change of

attitude towards the system and towards each other with “give-and-take” on both sides to succeed in working in partnership.

How can this be achieved?

- All Members and officials (Departmental and Scrutiny) need to embrace the original purpose of Scrutiny as set out on page 3 of this document;
- Scrutiny Members need to approach the new session by being actively engaged and bringing a determination to build more trusting relationships whilst being more robust (hopefully induction will help to achieve this but Members’ determination is the most important);
- Chairmen with strong and proven leadership skills need to be elected;
- Ministers must be more inclusive, inviting Panels into Departments to meet officials and to discuss forthcoming business (in private);
- Scrutiny Members have stated they want more inclusion and more information. To achieve this, they must accept that private meetings are at times essential, that confidentiality must be respected and this helps build better relationships;
- Ministers have power but must be less arrogant, less dismissive of Scrutiny, less on the defensive and much less controlling;
- Ministers must factor into their planning sufficient time for Scrutiny to undertake thorough reviews and advise the Panels of these timings in good notice;
- Ministers must attend on Scrutiny Panels as requested if reasonable notification is given (7 working days) or if the matter is urgent in less than 7 working days;
- Ministers must recognise that there is a presumption that Panels conduct their review business in public (in accordance with Standing Orders and with certain exceptions) and must not try to influence this;
- One Panel Member could have responsibility for an area as a rapporteur and attend Ministerial/Departmental meetings (but not to do work on behalf of the Minister) and when the time is ready for Scrutiny, the full Panel or a Sub-Panel becomes involved and a distance re-established;
- It must be recognised that Scrutiny resources are for Scrutiny purposes and Scrutiny Officers should not be requested to do research on work other than Scrutiny matters.

Recommendation 3: Scrutiny must be more selective in its review topics, re-organise and standardise its working practices and be more robust

- Panel Chairmen need to be strong leaders, understand the Scrutiny system and be prepared to work within Standing Orders and Codes of Practice etc.;
- Panel Chairmen must be prepared to develop strong working relationships with their Panel Members and Scrutiny Officers and be willing to heed procedural advice;

- Panels must recognise that the Scrutiny role is to undertake reviews of policy, (in development or other), legislation and government performance;
- To acknowledge the demand for more topic-based reviews, Scrutiny should mainly work through the Sub-Panel framework so opportunities are provided for Scrutiny Members to do work outside the remit of the main Panel;
- Members should have a genuine will to review a topic rather than feeling they “have” to;
- Scoping documents and Terms of Reference need much more serious consideration about what the review wants to achieve – deeper consideration about potential outcomes should be given at topic selection;
- Where appropriate, closer working arrangements with the Executive at the time of drawing up Terms of Reference have proved beneficial but Panels must always reserve the right to have control over the final ToR;
- Panels should follow-up recommendations with more propositions and amendments. This is the only way in the current system that matters can be brought to the States for debate and a Panel to feel it has influenced government policy.

Recommendation 4: All Members and Officials must ensure adherence to Standing Orders, Code of Practice, Protocols and Guidelines

Given that the diversity of approach and working practices across Panels is so wide, it is essential that some standardisation occurs to make Scrutiny more professional and less confusing for members of the public.

- All Members (Scrutiny and Executive) need to recognise that they are mandated by the States to abide by the Standing Orders and Code of Practice for Scrutiny Panels and the PAC, whilst recognising that these do give room for flexibility in working arrangements;
- Ministers need to honour Schedule 3(9) of Standing Orders and not delay/defer meetings/hearings with Panels, unless exceptional circumstances arise;
- Panels can achieve results without aggression but Ministers should expect challenge;
- Panel Chairmen and Members must accept that Scrutiny Officers cannot breach the Code of Practice as they are mandated by the States to abide by it, until changes are made at a political level.

Recommendation 5: Member behaviour needs to be modified to raise the professionalism of scrutiny in the public eye

If the presumption for holding review meetings and hearings in public is to be continued, then the public can rightly expect professional, business-like conduct from Panels.

- Elect Chairmen with good and proven leadership qualities;

- Chairmen should encourage Panels to work as a team;
- Chairmen should encourage Members to lead Sub-Panels or work as rapporteur in an area which is of interest to them dependent on resources;
- All Panel Members and witnesses must be punctual for meetings/hearings, unless unforeseen matters arise at short notice;
- It must be clear when meetings are to be in public;
- Meetings should not be cancelled at the last minute (unless unavoidable);
- Preparation meetings should be held prior to hearings to ensure questions are well formulated and the process is agreed.

Recommendation 6: There should be a comprehensive training programme planned for the next term of office.

Members should be willing to take part in training sessions to improve their skills which are pertinent to the role they play. Improvement is always possible and even Members who have held a political position for some time can gain something from refresher training. The following (in no specific order) is proposed –

- Induction session on Scrutiny for newly elected Members;
- Initial overview training for Scrutiny Members on Scrutiny;
- Seminar for all Members (new and re-elected) on Scrutiny and the Code of Practice;
- Visits to Westminster Select Committees (based on Panel visits with officers – special programmes can be made for Members and there may be the possibility of meeting Select Committee Chairmen and Members);
- Questioning training – repeated with refresher;
- Seminar on “evidence” and related analysis;
- Training on Chairing Skills – for all Scrutiny Members.

Other

1. **Assistant Ministers on Scrutiny:** Out of the 19 Members interviewed a large majority believed that Assistant Ministers should be able to sit on Scrutiny Panels. There was an alternative view that they should be able to sit on individual reviews but not on main Panels;
2. **Abolition of the “Troy rule”:** Out of the 19 Members interviewed a narrow majority thought the Troy rule should not be abolished;
3. **Compulsory to work in Scrutiny for a year before moving to the Executive:** There were split views about this but a fair number of Members believed that it would be beneficial for all newly elected Members to serve on Scrutiny;
4. **Assistant Ministers to be elected by the States of Jersey:** There was a split view on this with some Members being of the view that Ministers needed to

be able to work well with their Assistant Minister(s) and so should be able to select them. Others felt that it was equally important for Scrutiny Chairmen to be able to work with their Members and it was wrong for Panel Members to be appointed by the States. It should be the same rule for both.

APPENDICES

APPENDIX 1

Summary of comments

The comments which have been most repeated have been included in this section.

Main concerns

- The problems with scrutiny are just aspects of a much bigger problem with the system of government where power is concentrated in too few hands;
- Unless this is tackled, everything else will be tinkering at the edges;
- The current system is designed for party politics yet there is no appetite in Jersey for party politics;
- Jersey lacks a “proper” government with a “proper” opposition – scrutiny should not be the vehicle for opposition;
- There is a general deterioration in government in Jersey, that is in the States;
- Scrutiny and the Executive – poor punctuality, behaviour, break protocols etc.;
- Some of the personalities within the States at present are more of a problem than the system itself;
- Because some Panel Members have certain strong political views, Departments adopt a defensive approach and are reluctant to share information which could end up in the media or a public domain;
- Some of the Executive Members are arrogant and view Scrutiny as an irritant;
- Some people use scrutiny to make their voice heard resulting in a confrontational approach and this undermines scrutiny;
- Too many personal agendas in scrutiny instead of team spirit – at times Members have asked officers to “bend the rules” to get information to meet their own ends;
- Topics often chosen only when an individual has an “axe to grind”;
- Some Panels have a political foundation: scrutiny is not the vehicle for this;
- Important matters which should be scrutinised have not been whilst scrutiny has focussed on matters of limited importance;
- Reviewing legislation is currently very limited;
- Preconceived idea by some that scrutiny won’t work and they’ve tried to bring it down whilst others have kept it going;
- Deterioration in openness between scrutiny and the executive; down to increasing lack of respect and trust;
- Ministers portfolios are too vast, so more authority given to Civil Servants;

- The executive want to control scrutiny;
- In an executive role you feel you are doing something. In scrutiny you play a part which goes nowhere;
- Scrutiny was set up to challenge. As soon as you challenge, those challenged go on the defensive. Leads to exclusion of those challenging;
- Many Ministers and Departments don't take scrutiny seriously. They ignore scrutiny reports;
- Some Panel Members make personal attacks on departmental officials;
- Some Panel Members refuse to sign confidentiality agreements so don't get the information but then criticise the department for obstructing their work;
- Some former Ministers or Assistant Ministers refuse to participate in scrutiny as they see it as a form of demotion;
- Some Members expressed dissatisfaction during the election-campaign and came in with ideas that it wasn't working, with conspiracy theories, little motivation and wanting to be an opposition;
- Scrutiny is a "toothless lion" with ministers ignoring what scrutiny says and/or putting barriers in way of reviews;
- Departments not always willing to hand over information which has been requested;
- Departments don't factor in time for scrutiny (2/3/4 months) when planning their schedules;
- Some Members refuse to take procedural advise from Scrutiny Officers;
- The current disillusion will not be a good basis for new members coming in after the election;
- Panels are not effective at lodging propositions on the basis of reports to enable debate and decision nor are they good at following up on recommendations;
- Panels end up "monitoring " departments because they want o be included but everything can't be monitored;
- Departmental officers see scrutiny as a burden, slowing things down and getting in their way;
- Some policies are "rammed" through as quickly as possible to avoid scrutiny;
- Ambiguous definition of evidence. If scrutiny doesn't check evidence from Departments it could discredit scrutiny;
- Being a "back-bencher" bringing own propositions can be more effective than being involved in scrutiny;
- Panels have announced in the States that they haven't received information when in fact they have;
- There are times when Accept/Reject in Ministerial response template is inappropriate – recommendations might already being progressed;

- The issue of unregulated individuals filming or recording during public hearings needs to be addressed;
- No additional resources were put into Departments to deal with scrutiny enquiries; it was added to an already full job and with reducing numbers in departments it has become even more difficult to provide information in a timely manner;
- Also Departmental officials need to check the information before sending to ensure accuracy and this takes time; when officials don't have time to check documents they are sent out under confidentiality cover;
- Members don't like rules so they object to the CoP;
- Scrutiny Members keen to complain about workload and being busy but total commitment to reviews is minimal;
- Members too willing to blame the Executive for scrutiny's lack of activity when in reality it's rarely the fault of the Executive;

What needs to be done

- A definition of scrutiny needs to be agreed;
- Need meaningful dialogue between Panel and Minister/Department;
- Scrutiny Chairmen and respective Ministers should aim to have constructive, good working relationships whilst respecting that scrutiny will undertake its work at a distance;
- Sanctions are needed for Chamber/CoM/Scrutiny and need to be used although sanctions could block reviews;
- There should be one Code for all States Members: separate ones make it divisive from the outset;
- General presumption that hearings should be in public as should meetings where possible, but there are times when confidentiality is required, but Members must abide by the protocols for Members of the public;
- There have been some good scrutiny reports but they've been published too late to have major impact;
- Scrutiny Officers with Departmental officers could play a larger role in getting information for Panels;
- Scrutiny needs to be more assertive;
- Panels could do more to promote their work through the media;
- Panels should aim to bring about definitive changes where appropriate through debates in the Assembly and bring forward more propositions. This should bring greater satisfaction to Members in that they are making a difference;
- Panels should make use of fact-finding visits to departments;
- Panels need to influence policy through statements, comments, questions and amendments based on facts not political views;

- Chairmen should be aware of their responsibility to engender team work amongst members. Panels are only as good as the Chairmen they have;
- Consideration of non-political people sitting on Panels, interviewed by a senior body (PPC/SEB) and agreed by the Assembly;
- More topic-based scrutiny and less emphasis on shadowing or looking at all propositions/MDs etc.;
- Scrutiny Chairmen should be able to appoint Scrutiny Members without States involvement much as Assistant Ministers are;
- It is healthier to have Members working alongside Ministers so there are more people looking at policies;
- Every States Members should be obliged to carry out an “official” function and it should not be permitted for people to opt out;
- Newly elected Members on Scrutiny should be given the option of shadowing Ministers;
- It would be useful for all Members to understand what Green and White Papers are and when scrutiny should become involved;
- Scrutiny should be involved in the planning process;
- There should be an evaluation of scrutiny reviews which include the CC and the CoM to help strengthen the role of scrutiny;
- Ministers could be asked to respond to S.R.s in the Assembly and justify why they have rejected recommendations, equally be asked to give updates on work on agreed recommendations;
- Need to become more review-focussed. When dabbling in everything else it is time-wasting and not scrutiny.

Excerpt from P.79/2003**27. Conditions for effective scrutiny**

27.1 A recent report from the Office of the Deputy prime Minister looked at many examples of innovative good practice in the United Kingdom in the development of the potential of scrutiny. In its final chapter, it explored the key issue of how to identify effective scrutiny and points towards a number of conditions for successful scrutiny. Similar conditions are likely to apply in the Jersey context –

- **Member Leadership and Engagement** – Scrutiny can only work in the longer term if scrutiny members drive the process and provide genuine leadership. This is not just a task for the Chairmen and Deputy Chairmen but a wider number of members must be actively engaged and enthusiastic about scrutiny. These members also have to demonstrate the appropriate skills to undertake this work and to have the trust of fellow members.
- **Responsive Executive** – A responsive Executive, which is willing to listen to and be influenced by scrutiny is a pre-requisite for effective scrutiny. However, where the Executive “stone-walls” scrutiny it will still be possible for Panels to work to combat this through influencing the States, engaging and influencing partners and public.
- **Effective Support and management of Scrutiny Processes** – Whilst members must “lead” and “own” the scrutiny process, officer support is required to manage a range of scrutiny processes, including work programmes, meetings, agenda, identifying and contacting witnesses, preparing briefing notes, minutes and so on. The findings from a number of studies clearly identify a link between investment in officer support and effectiveness of scrutiny arrangements. Those U.K. local authorities that have invested more in terms of officer support (and other resources, including training and payment of expert witnesses) have reaped the rewards.
- **Senior Officers** – A culture where senior officers working for the Executive support and encourage scrutiny is just as important as a responsive Executive. In certain circumstances decision-making members and senior officers can work to blunt the effectiveness of over view and scrutiny. It is an important condition for effective working that senior officers welcome the challenge and added value that scrutiny can bring. In particular, senior officer support is vital in terms of ensuring general responsiveness of officers in departments to the requests and demands from scrutiny.
- **High Level of Awareness and Understanding of the Work of Scrutiny** – A pre-condition for effective scrutiny is that internal and external individuals and organisations are aware of, and understand, the work of this function. Educating officers and non-scrutiny members about the role and potential of scrutiny is an important task, as is raising the awareness of the work of Scrutiny Panels with partners, the public and the local media.

APPENDIX 3**CODE OF CONDUCT FOR ELECTED MEMBERS****1 Purpose of the code**

The purpose of the code of conduct is to assist elected members in the discharge of their obligations to the States, their constituents and the public of Jersey. All elected members are required, in accordance with standing orders, to comply with this code.

2 Public duty

The primary duty of elected members is to act in the interests of the people of Jersey and of the States. In doing so, members have a duty to uphold the law in accordance with their oath of office and to act on all occasions in accordance with the public trust placed in them.

Elected members have a general duty to act in what they believe to be the best interests of Jersey as a whole, and a special duty to be accessible to the people of the constituency for which they have been elected to serve and to represent their interests conscientiously.

Elected members must give due priority to attendance at meetings of the States in accordance with the terms of their oath of office and should be present in the Chamber when the States are meeting unless they have very compelling reasons not to do so.

3 Personal conduct

Elected members should observe the following general principles of conduct for holders of public office –

Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family and friends, their business colleagues or any voluntary or charitable organization they are involved with.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organizations that might influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest, or rules on freedom of information, data protection or confidentiality clearly demand.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example to maintain and strengthen the public's trust and confidence in the integrity of the States and its members in conducting public business.

*The principles in practice***4 Conflict between public and private interest**

Elected members should base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, at once, and in favour of the public interest.

5 Maintaining the integrity of the States

Elected members should at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of the States of Jersey and shall endeavour, in the course of their public and private conduct, not to act in a manner which would bring the States, or its Members generally, into disrepute.

Elected members should at all times treat other members of the States, officers, and members of the public with respect and courtesy and without malice, notwithstanding the disagreements on issues and policy which are a normal part of the political process.

6 Public comments etc. regarding a States' employee or officer

Elected members who have a complaint about the conduct, or concerns about the capability, of a States' employee or officer should raise the matter, without undue delay, with the employee's or officer's line manager (or, if he or she has none, the person who has the power to suspend the employee or officer), in order that the disciplinary or capability procedures applicable to the employee or officer are commenced, rather than raising the matter in public.

Elected members should observe the confidentiality of any disciplinary or capability procedure regarding a States' employee or officer and its outcome. If an elected member is nevertheless of the opinion that it is in the wider public interest that he or she makes a public disclosure of or comment upon the outcome of any such procedure, he or she should inform the parties to the procedure before so doing and, when so doing, refer to the individual by the title of his or her employment or office rather than by his or her name.

In this paragraph, "States' employee or officer" means a States' employee within the meaning of the Employment of States of Jersey Employees (Jersey) Law 2005, a member of the States of Jersey Police Force and any officer mentioned in the Schedule to that Law who is not a member of the States.

7 Gifts and hospitality

Elected members should not accept gifts, hospitality or services that might appear to place the recipient under any form of obligation to the giver. In receiving any gift or hospitality, members should consider whether they would be prepared to justify acceptance to the public.

8 Access to confidential information

Elected members must bear in mind that confidential information which they receive in the course of their duties should only be used in connection with those duties, and that such information must never be used for the purpose of financial gain nor should it be used in their own personal interest or that of their families or friends. In addition, members should not disclose publicly, or to any third party, personal information about named individuals which they receive in the course of their duties unless it is clearly in the wider public interest to do so. Elected members must at all times have regard to all relevant data protection, human rights and privacy legislation when dealing with confidential information and be aware of the consequences of breaching confidentiality.

Elected members must not disclose publicly, or to any third party, things said, or information produced, in a meeting of the States that is conducted in camera, unless the States have permitted such disclosure.

9 Co-operation with committees and panels

Elected members shall co-operate when requested to appear and give evidence before or produce documents to –

- (a) a scrutiny panel, for the purpose of the review, consideration or scrutiny of a matter by the panel pursuant to its terms of reference and the topics assigned to it, or to a sub-panel or any person appointed by the scrutiny panel to review, consider, scrutinize or liaise upon any particular matter;
- (b) the PAC, for the purpose of the preparation of a report upon or assessment of any matter pursuant to the PAC's terms of reference;
- (c) a committee of inquiry, for the purpose of the inquiry which the committee is appointed to conduct; and
- (d) the PPC, for the purpose of an investigation of a suspected breach of this code, or to any person appointed by the PPC to investigate a suspected breach.