

4.2 The Deputy of St. Martin (Chairman of the Social Affairs Scrutiny Panel):

At the States meeting on the 18th January 2006, the Sexual Offences (Jersey) Law 200- (P.196/2005) was referred to the Corporate Services and the Social Affairs Scrutiny Panels for consideration of a formal review in accordance with Standing Order 79 of the Standing Orders of the States of Jersey. As Chairman of the Social Affairs Panel I have to report back to the States Assembly on the course of action the Social Affairs Scrutiny Panel proposes to take. It is the opinion of the Panel there are 3 distinct areas for review within the proposed legislation in question.

1. Whether it is necessary to pass the legislation in order to adhere to the Human Rights legislation, namely the European Convention on Human Rights. We believe this is an area which comes within the remit of the Corporate Services Panel.
2. Whether enough consultation has been conducted in respect of the social implications of the proposed legislation; and
3. Similar changes to those proposed in the Sexual Offences Jersey Law have been adopted in the UK with supporting legislation relating to the abuse of a position of trust.. However, it has not been proposed that the similar supporting legislation is introduced in conjunction with the Sexual Offences (Jersey) Law.

The Panel has reviewed the background papers from the Home Affairs Department as well as the documentation from the Law Officers' Department, the former Legislation Committee, the Department of Health and Social Services and the Department of Education, Sport and Culture. The former Legislation Committee asked for comments from the former Education, Sport and Culture Committee and the Health and Social Services Committee (Legislation Committee Act No. A4 of the 5th November 2004 and No. A4 of the 3rd December 2004). Subsequently both former Committees considered the request in February 2005 (Committee Acts Nos. A3 and A21 refer) and as a consequence both Committees requested formal comments to be prepared on the proposed legislation. The Panel has not been provided with any evidence of the comments being presented by the Health and Social Services Committee, nor any evidence of the comments being forwarded to the former Legislation Committee or the former Home Affairs Committee which assumed responsibility for the Sexual Offences (Jersey) Law in July 2005. However, a former Education and Sport Committee Act has been traced which records that it had considered comments relating to the Sexual Offences (Jersey) Law on the 27th April 2005. The comments were recorded in Committee Act No. B9 of 27th April 2005. It was requested that these comments be forwarded to the Legislation Committee, however, the Panel has not been provided with evidence that these comments were received or discussed by the former Legislation Committee or the Home Affairs Committee. In addition, the Panel has not been provided with any evidence of consultation with external organisations or with the general public. The Panel recommends that the Home Affairs Minister carries out wide consultation before drafting the appropriate legislation. In addition, the Panel requests that the evidence of that consultation be provided to it prior to the proposed legislation being brought back to the States. Consequently, the Social Affairs Scrutiny Panel strongly recommends that the debate on the proposed Sexual Offences (Jersey) Law does not go ahead until this course of action has been undertaken.

Deputy C.J. Scott Warren:

I think I should point out, Sir, that on the fourth paragraph from the bottom which starts: "The former Legislation Committee", the Chairman read out his sentence incorrectly in that he said: "The Panel has not been presented with any evidence of the comments being presented by the Health and Social Services Committee." It is: "...being presented back to the Health and Social Services Committee" so it is a completely different meaning. Thank you.

Senator M.E. Vibert:

Similarly, I think language is very important when used in a document that is put out like that and the third paragraph from the bottom states: "However, former Education, Sport and Culture

Committee Act” as presently put at the time, Sir, it says: “...has been traced.” Well, I find that a very odd use of the word “traced”. It gives the impression that it was difficult to find. In fact, before this was started, I referred to that Act in my speech on 18th January and we discussed it and as soon as it was requested, we provided it from the department. So, you can hardly say it has been traced, it was there all the time. Also, very important with language, it says it accepts that that Act existed and that my Committee requested these comments be forwarded to the Legislation Committee. It goes on to say that the Panel has not been provided with evidence that these comments were received or discussed by the former Legislation or Home Affairs Committee. I wonder did the Panel have any evidence that it was not received and not discussed because that is normal procedure. One Committee used to send an Act to another Committee and it got there and I think one needs to be very careful, particularly in Scrutiny Panels, on the language they use in describing a series of events.

The Deputy of St. Martin:

Yes, Sir, that is a fair question. Can I say that the Scrutiny Panel requested information from both Committees for it to be returned to the Scrutiny Panel by Thursday of last week. As up to Friday last week, when our draft was presented to the Chairman’s Panel, that information had not been forwarded to us from the Education Department. Likewise, I had asked our Scrutiny officers to check with the Greffier or the Greffier’s Department to ensure that any minutes appertaining to any of the correspondence with the Health and Education Committees were forwarded to the Scrutiny Panel. No records were found. In actual fact when we say the word “traced”, these were submitted to our office only yesterday lunchtime and as a result it caused our officers tremendous amount of work in trying again to trace what had happened to the legislation in the Committee Acts. Can I say I can only speak on behalf of the officers that they have checked and double-checked and, again, there is no record has been found to show that the Committee Acts were received by the Legislation Committee nor the Home Affairs Committee.

4.2.1 Senator W. Kinnard:

If I could just ask the Chairman a couple of questions if I may on the last paragraph because obviously I want to be clear about what is being recommended here. First of all, the Panel is recommending that the Home Affairs Minister carries out wide consultation. Can I be clear as to what extent that wide consultation is to go? Clearly this is an issue that really has very divided opinions and is therefore the Panel recommending that I consult all of the adult population of the Island or perhaps a representative sample in a carefully constructed survey and how long indeed would the Chairman expect for this work to be carried out? If he does not mean something of that ilk, Sir, what is the point of the wide consultation? I think I need to be clear about that. The second question, Sir, that particular sentence goes on to talk about appropriate supporting legislation. Which legislation is it he is wishing me to consult widely upon?

The Deputy of St. Martin:

I am sure the Minister of Home Affairs does not want to be really told what consultation means, but if you listen to my report - my statement - it made it clear that in the penultimate paragraph: “In addition the Panel had not been provided with any evidence of consultation with external organisations or with the general public.” I think I heard this morning the Constable of Grouville had made mention that at least 2 organisations had been in touch with him and I know 2 had been in touch with our Scrutiny Panel. So, that is just an example of some of the organisations that have not been consulted. I think it would be incumbent upon any Committee or any Ministry to ask the public for their views and, of course, we expect there will be diverse views. However, I think as part of the consultation process, those people should be given the opportunity to express those views and as indeed as our statement says, we have seen no evidence of any consultation. The other question was to do with what legislation has not been introduced alongside the Sexual Offences Act. It is quite clear that is the situation about the

abuse of trust and I would hope that the Home Affairs Ministry would ensure that piece of legislation goes along hand in glove with the Sexual Offences Law.

Senator W. Kinnard:

I am sorry I must be clear. If I am being given a job by this House, to come back to this House, I must be assured that I can satisfy the House of its requirements. Sir, I do need to know what the Panel requires me to do in terms of wide consultation. Consultation has to be meaningful and on an issue such as this you are going to get very divided views. I think, Sir, I have no problem consulting with particular groups such as the 2 mentioned this morning, but I must be clear about what this House is intending. Are they intending by wide consultation some sort of representative survey of maybe 1,000 residents? Are they expecting me to ask every single adult of their opinion? Because if we just have a JEP phone-in or some other sort of poll, we know that that is not a representative poll and is going to be most likely slanted by those who have a particular strong opinion and it will be the silent majority who perhaps do not expect that opinion. I must be clear, Sir, what does the Panel expect me to do in terms of consultation because I need to know what will satisfy them?

The Deputy of St. Martin:

I must reply, Sir, I find it rather embarrassing to have to tell a Minister what consultation means. Surely consultation means exactly what that word says - consult with the organisation, consult with the public as we have said in our penultimate paragraph of our statement. Wide consultation means - and again I repeat, -consulting with the general public and those organisations which have not been consulted with to date.

The Deputy of St. John:

I would like some assurance from the Chairman of the Committee that he will not take into account unscientific surveys such as the JEP survey and that the sort of sampling that Senator Kinnard has alluded to we do undertake. Scientific sampling is very effective. Random surveys by the public such as media surveys are definitely not. I would like some assurances they will not be taken into consideration.

The Deputy Bailiff:

He has asked for assurance.

The Deputy of St. Martin:

Well, I would hope in the first instance that it will be the Minister for Home Affairs who will consider this. The role of Scrutiny is to ensure the proper scrutiny or the proper consultation process has been carried out. Once we have had the report from Home Affairs, Sir, we will then ensure that if, indeed, we do not feel the right consultation has been carried out, we on the Scrutiny Committee have to do it ourselves.

4.2.2 Deputy G.W.J. de Faye of St. Helier:

I find myself slightly baffled by this line of questioning because it seems to me that the Scrutiny Panel is simply not in a position to instruct the Home Affairs Department to carry out any consultation. In fact, I have to point out to the Deputy of St. Martin it seems to me that if the Scrutiny side feel strongly about carry out a consultation it should be down to Scrutiny.

The Deputy Bailiff:

Deputy, we need questions, not statements.

Deputy G.W.J. de Faye:

I would like to ask the Deputy of St. Martin, does he feel he is not renegeing on his responsibilities as a Scrutiny Panel Chairman to conduct his own consultation?

The Deputy of St. Martin:

Again, in the statement we make it clear that we could find no evidence whatsoever of any consultation. In fact, we could not find any evidence of the comments which were requested from the Health Committee even being drafted. So, I would have thought that before the Home Affairs Committee could draft their report and proposition, those comments would be vital to its report. In fact, that was some of the concerns expressed by Members in the debate 2 weeks ago, the lack of consultation even with the Committees. So, it is not for us to tell the Home Affairs what to do, but what we are recommending is they do carry out this wide consultation before the matter comes back to the States.

The Deputy Bailiff:

One more question, then the 10 minutes will have expired.

4.2.3 Deputy C.J. Scott Warren:

I would like to ask the opinion of the Chairman of Social Affairs Scrutiny Panel whether he believes and will be pushing for legislation regarding the abuse of a position of trust to go hand in hand with this legislation.

The Deputy Bailiff:

I think that has already been made clear.

The Deputy of St. Martin:

Yes, Sir, we are suggesting that, yes.

4.2.4 Senator M.E. Vibert:

Just to make clear, because I have read the statement and I do not find it very clear at all. I understood that the idea of the reference was the Scrutiny Panel would come back and make a clear statement of whether it was going to undertake scrutiny or not. In fact, may I complement the Corporate Services Scrutiny Panel who say for these reasons the Panel has decided to undertake a scrutiny review. In the Social Affairs Scrutiny Panel we have no such statement of whether a scrutiny review will be undertaken or not and what I would like to know is it yes, no, or maybe, and if it is maybe my concern is that the timetable is stretching on and on. Surely the Scrutiny Panel must decide whether it wishes to scrutinise or not.

The Deputy of St. Martin:

The Scrutiny Panel will scrutinise it, however, what we are saying at the moment is there has been very little to scrutinise because the process of consultation et cetera has not been carried out. So, quite clearly, Sir, the answer will be yes.

The Deputy Bailiff:

Deputy, we have to be clear about this. Your statement certainly does not say that your Scrutiny Panel wishes to have the matter referred to it for scrutiny. Now, are you saying you do now wish to have it referred to you for scrutiny?

The Deputy of St. Martin:

Yes, Sir, the matter will be scrutinised.

The Deputy Bailiff:

You must tell the Assembly whether you wish to have it referred to or not. Now, what is your answer?

The Deputy of St. Martin:

Well, Sir, the situation is that we have had nothing yet to scrutinise. When we have got something to scrutinise, then we will do so.

The Deputy Bailiff:

Is the answer yes or no?

The Deputy of St. Martin:

The answer is no.

The Deputy Bailiff:

No, very well. The answer is no. Can we just be clear now, because under Standing Order 79 the Chairman of the respective Scrutiny Panel has to return to the Assembly and confirm whether or not he or she wishes to have the proposition referred to the Panel for scrutiny. The Panel chaired by Deputy Ryan has stated that it does. The Panel chaired by the Deputy for Martin has said that it does not. What this means now is that the matter is referred for scrutiny by the Corporate Services Scrutiny Panel and the Assembly must fix a date at which the debate on the law is to resume. Deputy Ryan has asked for 8 weeks. Has the Assembly agreed to 8 weeks? Accordingly, it seems to me, as the Assembly agrees, that it should be noted therefore this matter will resume for debate on the 28th March.

The Deputy of St. Martin:

I am rather confused here because the difficulty our Scrutiny Panel has had and we are trying to be absolutely fair to the Home Affairs Committee which, it is quite apparent, did not carry out the consultation beforehand and clearly before anything can go forward the Scrutiny Panel would have to have evidence of that consultation and we are saying, Sir, that until that...

The Deputy Bailiff:

I am afraid you have had your opportunity. You have said you do not wish to have it referred to you. The Assembly has now taken this decision. We must move on.