

## **7. Statement by the President of the Scrutiny Chairmen's Committee regarding the release of information to the media:**

### **7.1 Deputy S.C. Ferguson (President, Scrutiny Chairmen's Committee):**

The Chairmen's Committee is extremely concerned about the release of 2 documents to the media in the week beginning 1st October 2007 arising from the work of the Education and Home Affairs Scrutiny Panel on the role of the Centenier in the Magistrates Court. Firstly, the Chairmen's Committee deplores the action of the Deputy of St. Martin, as an individual Member, in releasing into the public domain an early draft of the report prepared by the Panel's legal advisor in conjunction with the Deputy of St. Martin who was then the Chairman of the Panel. This draft report was not approved by the Panel and therefore was subsequently amended. The Deputy, having resigned from the Panel, does not have the authority to release any documents which are the property of the Education and Home Affairs Scrutiny Panel. Members should note that the Panel has rigorously observed confidentiality in relation to the document. The draft report of 4th June was prepared for and financed by the Education and Home Affairs Scrutiny Panel. For the Deputy to have published it as a private Member is inappropriate. The Chairmen's Committee takes an extremely serious view of this episode. If a Member of a Scrutiny Panel disagrees with the conclusions of a Panel or how it has reached its conclusions, they are at liberty to have their dissenting views published as a minority report or, if that is deemed insufficient, to resign from the Panel. Furthermore, if a Member is no longer a member of that Scrutiny Panel, as in this instance, then that Member is able to bring a proposition to this Assembly or to bring an amendment to a relevant proposition. By following one of these routes, their concerns can be aired and fully debated in the Assembly. This Assembly is based on the freedom of the individual Member to bring to the attention of the public such matters as are deemed to be in the public interest. That freedom is not a licence to publish incomplete documents which are the property of another party. Secondly, the Chairmen's Committee also deplores the release to the media, by persons unknown, of a confidential letter addressed to the Education and Home Affairs Scrutiny Panel. For the avoidance of doubt, the Panel makes it clear that the decision to release documentation as part of its review remains a matter for it alone. The Committee is, however, aware that this case also raises fundamental issues about the conduct of Scrutiny proceedings, particularly the need to ensure that, except in rare cases, they are conducted in public.

#### **7.1.1 The Deputy of St. Martin:**

Can I make it clear to the House the first I knew of this document was when I arrived this morning at 9.25 a.m. I certainly welcome the Chairman's interests in public rights issues. It is rather a pity that it did not look at Article 6 of the Human Rights Law which gives a person a right to a fair and proper trial. In this particular case I was not given even opportunity of explaining myself. Will the Chairman explain why I was not invited to a formal Chairmen's Committee meeting to be given the opportunity to explain my reasons for my actions?

#### **Deputy S.C. Ferguson:**

The Chairmen's Committee is concerned that a document was released into the public domain. It does not matter who released it or where. This was a document that was the property of a Scrutiny Panel and should not have been released. Any Member who is not aware that documents in progress should not be released until they are completed and all assented to ... I am sorry; Members should be aware that this is not the honourable thing to do.

#### **7.1.2 Senator S. Syvret:**

Does the President agree that, contrary to the impression given by her statement, it is the people of Jersey who paid for this work, for these reports, and therefore the reports are the work - are the property - of the people of Jersey? Also, is she familiar with the code of practice on public

access to freedom of information which stipulates a range of exemptions, certainly, but they are not obligatory exemptions and that the public authorities may release documents even if they are potentially covered by the exemptions, especially so if the client, in this case the Panel, wished to release them? Could she inform the Assembly whether she really thinks it satisfactory for the States' Scrutiny Panel to seek to withhold from the public information which may indicate that the convictions of many hundreds and possibly thousands of people over a period of decades are unsafe?

**Deputy S.C. Ferguson:**

Yes, the people of Jersey do pay for this. On the other hand, the people of Jersey deserve a complete picture and to have an incomplete document issued is not conducive to proper information for the public. In actual fact, no information has been withheld at all. If the Senator has read the report - if he has looked on the website - then all the information relevant to this report is freely available in the public arena and was immediately the report was issued.

**7.1.3 Deputy G.P. Southern:**

Will the Chairman make known to Members the fact that I objected to the sending of this statement and withheld my assent from this statement last night?

**Deputy S.C. Ferguson:**

Yes, Sir.

**7.1.4 Deputy J.A. Martin:**

I think it is more clarification. In the first part of the second paragraph, the Deputy refers to: "An early draft of a report prepared by the Panel's legal advisor in conjunction with the Deputy of St. Martin who was then the Chair of the Panel." Then it goes to the bottom: "The draft report of 4th June was prepared for and financed by the Education and Home Affairs Scrutiny Panel." Were they one and the same report or was this a different report? I seem to be getting the impression that the Deputy of St. Martin and a legal advisor were working on something that the rest of the Panel may not have agreed with and it has not been released. Can she clarify that if what the Deputy has released is the first part - a report worked on by himself, with probably a lot of man hours, and a legal advisor - it would not be the same report that was prepared for and financed by the public of the Island?

**Deputy S.C. Ferguson:**

It is my understanding that in fact the draft report of 4th June is the report that was prepared by the legal advisor in conjunction with the Deputy of St. Martin; they are one and the same report. Obviously, as the legal advisor was being paid for, eventually, by the public of the Island of Jersey, he was sub-contracted to the Panel to work on this. Therefore, this report, which was not approved by the rest of the Panel, was work in progress. To release something which is only an interim stage report is not in the best interests of informing the public of the Island.

**Deputy J.A. Martin:**

The Deputy says an interim report released is not in the best interest of the Island. Surely the report from 4th June was released a long time after the official new Panel's report on Centeniers.

**Deputy S.C. Ferguson:**

Yes, but it does not help to release interim documents which are incomplete, and they were not complete because the Panel had not agreed all the evidence and conclusions. It is irresponsible to do this. Yes, people have the right - and we hear a lot of talk about the rights - but there are responsibilities as well.

**7.1.5 Deputy P.V.F. Le Claire:**

I am confused. No doubt there were a lot of questions and a lot of people unhappy about the incident itself, not least of which now we add the Deputy of St. Martin to that list. But what I am particularly confused about is how this is being presented to the States by the Chairmen's Panel of the Scrutiny Committee. Why was this not referred to the Privileges and Procedures Committee for consideration and why is it not the Privileges and Procedures Committee Chairman who is standing up and giving his opinion of the Committee which was put in place by the States to adjudicate upon the actions of States Members? If it has been deemed the right organisation to put this before the States of Jersey, the Scrutiny Chairmen's Panel, where in the States of Jersey Law does it give that authority? I am not aware of it. Why was that statement this morning not read out, if it belongs in the domain of Scrutiny, by the Chairman of the Education and Home Affairs Scrutiny Panel? Why was it not forwarded to the Privileges and Procedures Committee?

**Deputy S.C. Ferguson:**

We are questioning a matter of principle here, and it is a matter of principle that the release of information by a Scrutiny Panel is undertaken by the Chairman of that Panel with the consent of a majority of members. This is a principle that should apply to all Scrutiny Panels and all Scrutiny Chairmen. Therefore, it is within the remit of the co-ordinating Panel of the whole of the Scrutiny function to bring this to this House so that it is understood that this sort of behaviour is not in accord with the best principles of Scrutiny.

**Deputy P.V.F. Le Claire:**

On a point of order, Sir, if we are discussing a principle of the actions of an individual within the remit of Scrutiny, then we can be at that kind of analogy all day long. What I am asking is it the right Committee to be presenting this type of a report, under the procedures of the States of Jersey. Should it not have been considered and presented by the Privileges and Procedures Committee?

**The Bailiff:**

No, it is absolutely the right Committee, Deputy. Standing Order 143 gives the terms of reference of the Chairmen's Committee, which are at paragraph (c): "To keep under review the operation of the Scrutiny function." If the Chairmen's Committee considers that the Scrutiny function is being abused in some way, it is perfectly open to the Chairmen's Committee to say so.

**7.1.6 The Deputy of St. Martin:**

I had a number of questions I would like to have an opportunity of asking, but I strongly question the Chairman's assertion that Scrutiny Panels have the right to suppress matters of a public interest, particularly when the public have paid for that information. Will the President confirm that she and the rest of her Panel have read the perceived confidential letter and agree that the advice given by the Attorney General was unsolicited and of a political nature and therefore something which could be put in the public arena?

**Deputy S.C. Ferguson:**

We are talking matters of principle here. The point was that there was a letter sent in confidence. This letter had no bearing in the end on what information came out in the report. If Mrs. Bloggs who works for ABC Company sends a letter in confidence into a Scrutiny Panel, she needs to be able to be confident that her letter will not be released into the public sector. As far as the Chairmen's Committee is concerned, it is a question of confidentiality with regard to a letter. As it happens, I do not think it matters who it is from, whether it is the Queen of England, the Attorney General or Mrs. Bloggs who works at the Co-op. The whole point is confidentiality should be observed. The fact is that it made no difference to the way that the report was finally

presented. All the information, including the legal opinion about which there has been so much talk, is freely available on the website of the Scrutiny Panel.

**The Bailiff:**

That completes the period allowed for questioning of the Chairman.