

STATEMENT TO BE MADE BY THE CHAIRMAN OF THE PRIVILEGES AND PROCEDURES COMMITTEE ON 8th NOVEMBER 2011

The Privileges and Procedures Committee has recently been approached by BDO Alto (the firm") which has asked the Committee to investigate their concerns about the manner in which the Education and Home Affairs scrutiny sub-panel's review into issues surrounding the Review of Financial Management of Operation Rectangle has been conducted. To avoid any perception of a potential conflict of interest, Senator Ferguson as President of the Chairmen's Committee, Senator Le Marquand as Minister for Home Affairs and Deputy Trevor Pitman as Chairman of this sub-panel, did not participate in the consideration of this matter which was therefore considered by the remaining 4 PPC members.

In making this statement I wish to make it clear that, notwithstanding the on going concerns expressed to us, PPC is not questioning the Chairmen's Committee original decision to allow the sub-panel's review to go ahead. Neither is it questioning the choice by the Education and Home Affairs panel of this particular review topic. PPC's concerns therefore relate solely to the manner in which the sub-panel and the Chairmen's Committee have acted in this matter.

PPC further wishes to make it clear that its involvement in this matter comes not in the usual manner from a complaint under the Code of Conduct for States Members but rather from paragraph 4.25 of the Code of Practice for Scrutiny Panels and the PAC (R.30/2008). This states that "Questions about a potential conflict of interest on the part of a member of a Panel should be referred in the first instance to the Chairmen's Committee for consideration who will refer the matter to the Privileges and Procedures Committee if a satisfactory resolution cannot be achieved". Although in this case, there was a resolution put forward by the Chairmen's Committee, the complainant did not feel that the terms of that resolution had been adhered to. PPC has also considered this matter in accordance with its duty under Standing Orders to '*promote high standards amongst members of the States*'

The Committee's investigations have shown that the firm first approached the Chairmen's Committee at the outset of the review because it was concerned about the perceived lack of impartiality of the sub-panel Chairman, Deputy Trevor Pitman. At that stage the Chairmen's Committee considered the concerns raised but concluded that it saw no reason to prevent the review going ahead.

Before making this decision the Chairmen's Committee had received correspondence from the Chairman of the Education and Home Affairs scrutiny panel which included an undertaking that '*the review will be conducted rigorously and fairly and that all matters will be dealt with on an evidential basis*'. When responding to the firm on 1st July the Chairmen's Committee wrote '*The Chairman of the Sub panel and the Chairman of the main Panel were quite clear that they were determined to focus the review on evidence from a full range of witnesses and to consider their findings in a fully objective fashion. They gave an undertaking that there would be no further public comments by members of the Sub Panel on issues connected with the review until the review had been completed*'.

In contacting PPC recently the firm remained concerned that its initial concerns about conflict of interest had not been properly addressed but they also raised additional concerns that the undertakings about 'no further public comments' had not been complied with. The firm drew PPC's attention to entries on Deputy Trevor Pitman's own blog about the review, to a Channel Television interview he had given and to 2 video interviews about the review given by Deputy Pitman to the Voice for Children blog.

PPC considered the content of the blogs and received transcripts of these video interviews. PPC was extremely concerned about the tone and content of the 2 video interviews by the

sub-panel Chairman which were critical of the actions of BDO Alto and which comment on a wide range of other issues relating to the on-going review.

Having identified these matters PPC wrote to the Chairmen's Committee to enquire what action, if any, the Committee had taken to enforce the undertaking given at the outset that the members of the sub-panel would not make public comment during the course of the review. It was clear from the response received that no action at all had been taken by the Chairmen's Committee even though the President wrote in her reply that '*the Chairmen's Committee does indeed stand by its decision that it is inappropriate for any comments to be made on personal sites during any Scrutiny Review*'.

Prior to the final preparation of this Statement, PPC met with the President of the Chairmen's Committee, Senator Ferguson who confirmed that no specific measures were put in place by the Chairmen's Committee to monitor adherence to the undertaking given by the sub-panel. The Senator opined that this matter was effectively delegated to the Chairman of the main Education and Home Affairs Scrutiny Panel and indeed her letter to PPC dated 11th October 2011 included the comment "*However, the (Chairmen's) Committee has also been made aware that reminders to the Sub-Panel Chairman in respect of his undertaking not to make blog entries have been given by the main Panel Chairman.*"

PPC subsequently also met with Deputy Le Hérisser (Chairman of the main EHA Scrutiny Panel) and Deputy T Pitman (Chairman of the sub-panel). During that meeting it became apparent that Deputy Pitman disputed that he had given an undertaking not to make further public comment on issues connected with the review prior to its completion. He commented that he would not allow himself to be constrained in such a way and that he would respond to media enquiries, including those from citizens' media as he felt appropriate. He was asked if he had seen the letter of July 1st in which the undertaking was given and he said he could not be sure, although Deputy Le Hérisser reminded him that he had seen it.

Deputy Le Hérisser said he had reminded Deputy T Pitman about the undertaking but had believed that the blog entries had tailed off very soon after the letter of 1st July was sent.

It is clear from these two meetings that there was confusion between the Chairmen's Committee and Deputy T Pitman about the precise nature of the undertaking given to the firm. The Chairmen's Committee was not monitoring the situation and Deputy Pitman did not advise them that he disagreed with the undertaking set out in their letter to the firm. The Chairman of the EHA Scrutiny Panel did not feel that he had been specifically tasked with monitoring the situation as he felt he had been involved in the early discussions about a potential conflict more as a witness than as a member of the Chairmen's Committee.

The correspondence that PPC has seen makes it clear that the sub-panel Chairman was well aware at the outset of this review that concerns had already been raised about a perceived lack of impartiality on his part. PPC's view is that when the Chairmen's Committee nevertheless agreed that the review could proceed he should have been scrupulous to ensure that the review was conducted in accordance with the undertakings given to that Committee. PPC does not know what conclusions or recommendations will be in the sub-panel's report when it is published in the coming days, but is concerned that whatever the outcome, the review may be overshadowed by a perception that a conflict of interest did exist despite assurances to the contrary given by the Chairmen's Committee. PPC would consider it to be regrettable if because of this perception, the review was seen by some to be of limited value.

PPC is equally concerned that the Chairmen's Committee, having allowed this review to go ahead on the basis of certain undertakings, took no action as soon as the Committee became aware that those undertakings had not been complied with.

PPC would suggest that the next Chairmen's Committee take on board the following -

1. if a commitment has been made then it must be communicated to all parties;
2. any commitment must identify who is responsible for maintaining compliance;
3. compliance with a commitment must be monitored;
4. members must be scrupulous to ensure that their actions do not reinforce any perceived conflict;
5. scrutiny members must recognise that the successful outcome of a review is their paramount concern.

Recommendation 4 in the recent review of the last 3 years of scrutiny undertaken by the Chairmen's Committee (R.118/2011) is that "All Members and Officials must ensure adherence to Standing Orders, Code of Practice, Protocols and Guidelines". The new Assembly will shortly be sworn in and this is the ideal opportunity to review the lessons learned from recent reviews and to ensure that members undertaking the vital role of scrutiny in future are adequately supported. PPC believes that if scrutiny is to be taken seriously in the new Assembly the new Chairmen's Committee must be prepared to take steps to ensure that scrutiny panels act in a professional way and the Committee must be willing to take firm action if panels do not follow agreed procedures.

The Deputy Bailiff:

The statement having been made the matter is then open to questions.

1.1.1 Senator S.C. Ferguson:

I have not yet received an explanation as to why I was excluded from the discussions as being conflicted. Perhaps the chairman would explain to the Assembly.

The Connétable of St. Mary:

Indeed I did give an explanation of this to Senator Ferguson when she attended on the P.P.C. last week. The explanation being that as President of the Chairmen's Committee and that being the organisation being directly looked into by the P.P.C, there was obviously need to consider whether she would be conflicted. An initial meeting was held by P.P.C. to discuss this with the 4 members who clearly were not conflicted and it was unanimously agreed that this was the right course of action.

1.1.2 Senator S.C. Ferguson:

Supplementary? Would the chairman also explain what P.P.C. intends to do or to recommend to the new P.P.C. regarding blogging by all Members of the Assembly when they are involved with Scrutiny reviews?

The Connétable of St. Mary:

I would like to be quite clear; the purpose of our investigation has been to deal with the perceived conflict of interest by the Scrutiny Panel itself. Matters of other members blogging, witnesses for example, may be something that needs to be considered but did not form part of this discussion.

1.1.3 Deputy R.G. Le Hérisser of St. Saviour:

Notwithstanding the confusion that may have arisen, would the chairman acknowledge that a letter was sent to P.P.C. on 27th September from the major witness who was cited in this report? The contents were never shared with ourselves or with the Chairmen's Committee. I and the sub-panel chairman were summoned to meet P.P.C. with 2 days' notice with no explanation given of what the charges were or what the circumstances were. Would she confirm that those were the circumstances and to this date we have not seen that letter and until that letter is replied the witness will not verify their evidence to the Scrutiny Panel?

The Connétable of St. Mary:

Deputy Le Hérisser is well aware of the reasons why P.P.C. was undertaking this investigation. The letter sent to P.P.C. was requested specifically because of perceived conflicts of interest of members of P.P.C. to be dealt with exclusively by the remaining panel, but Deputy Le Hérisser was advised of the nature and the specifically tight nature of the matter we were investigating, which was simply the perceived conflict of interest. As for whether or not the witness will reply to the report, whatever Deputy Le Hérisser mentioned, P.P.C. has been specific to advise the witness that any replies it needs to make to the Scrutiny Report should not be held up as a result of this statement.

1.1.4 Deputy R.G. Le Hérisser:

Can I ask a supplementary? Does the chairman - I repeat the question - think it is right to accuse people of things in total darkness and in a covert manner? We were not informed. The company mentions legitimate and numerous concerns. That is what is on the letter to us and to the chairman. Why were we not informed of those concerns and not given an opportunity to reply to them?

The Connétable of St. Mary:

As I said, Deputy Le Hérisser was informed of the precise tight nature of this inquiry. The numerous concerns mentioned are all concerns of perceived conflict of interest that are raised in the blog entries, but they all stem from the same direct concern.

1.1.5 Connétable D.W. Mezbourian of St. Lawrence:

A bit more general; in the final paragraph we are told that: "P.P.C. believes that if Scrutiny is to be taken seriously in the new Assembly ..." This is a question addressed to the chairman of P.P.C., I would like her to tell the House of her view as to how Scrutiny has been viewed in this Assembly?

The Connétable of St. Mary:

I do not purport to speak for the Assembly but I would say that there have been numerous instances where Scrutiny members say they do not think their work has been valued, therefore I think it is entirely appropriate to mention when Scrutiny members themselves seem to be the cause of their undervaluing.

1.1.6 Deputy T.M. Pitman of St. Helier:

Can I just say that as I believe the chairman is misleading the House, I will be seeking to make a statement tomorrow and I will be putting it on my blog. Will the chairman just confirm that we were denied any access to these allegations and it is completely untrue to say that we were informed about the details because we were not, and if the chairman cannot confirm that I will have to say that she is telling the House an untruth?

The Connétable of St. Mary:

All the other parties were informed that we were investigating a perceived conflict of interest. Any details stemming from that stem from the entries in the blogs themselves. There is no intention to mislead the House. I have said exactly what has transpired but the content of the letter to P.P.C. is kept confidential as has been requested.

1.1.7 Deputy T.M. Pitman:

Supplementary? Again that is not correct that we have been informed of these alleged conflicts, which were of course thrown out by the Chairmen's Committee. Does the chairman think it is not right? The actual thing she is referring to is my revelation that this company was attempting to charge the taxpayer and Scrutiny £14,000, discounted from £26,000, for attending a 2-hour scrutiny hearing and have been obstructive right from the very start.

The Connétable of St. Mary:

There are those who may think that this was a reluctant witness right from the start, but any investigation of the chronology of events leading up to this review would at least give some explanation as to why that perception might exist. P.P.C. understands that the review was initiated by approach from 2 local bloggers, one of whom had published a highly critical series of reports about this particular company which of course, as with any other company, needs to defend its professional image. On 12th June, that blog announced that the review would take place some 2 full days before the Education and Home Affairs Scrutiny Panel had met to decide that that would happen. Not only was it announced 2 days before the panel had agreed to undertake it on the blogger's site, but it was also referred to on that same day by Deputy Pitman, on his own blog. Therefore I think we have some understanding of how concerns of preconceptions have already started to appear in the minds of that company. As regards a fee note, which is obviously a confidential matter sent to the panel, which was broadcast widely by Deputy Pitman and others, my understanding is that was the result of a misunderstanding between the company and the department, and the company was advised quite firmly that Scrutiny does not, has not and will not pay for evidential evidence, although I would stress that this is not by any means the only time when a fee note has been raised in error and having been advised of the fact the company has not sought any payment thereafter, to the best of my knowledge.

Deputy T.M. Pitman:

The chairman is misleading the House; the company are still seeking that money.

1.1.8 Deputy M. Tadier of St. Brelade:

First of all may I congratulate the chairman in her part that she is playing in this highly predictable set piece, which is to discredit the report of the Scrutiny Panel even before it comes out. The question is, why is P.P.C., and the chairman in particular, so quick to jump on a perceived conflict due to the separation of roles from a Back-Bench Member when it does nothing and has done nothing to address the conflicts of interest with the Constables, the Jurats, the Solicitor Generals, the Attorney Generals, and the Bailiff who also have dual roles, which is a much more important conflict of interest than a Back-Bencher. I would ask also why P.P.C. does not take the plank out of its own eye before trying to remove the speck from one of its Back-Benchers who is trying to do a job to uncover a very important issue for the public of Jersey, which has already been discredited, probably successfully, by P.P.C?

The Connétable of St. Mary:

Firstly I regret the fact that Deputy Tadier seems to try to import motives to me that simply do not exist. Secondly, I am specific that this investigation is simply into a perceived conflict of interest, which has already been adjudicated on by the Chairmen's Committee for which undertakings were given and then, blatantly, these undertakings were not complied with. That is no fault of P.P.C. and it is not a question of a dual role. It is one of States Members absolutely actively deciding to take one course of action, which may or may not be to the detriment of the final report. P.P.C. has, quite clearly from my statement, taken no issue with the subject of the report or even issue with the way the Chairmen's Committee adjudicated initially on the conflict of interest. So Deputy Tadier must understand and listen to the content of the statement rather than making his own ill-conceived judgments.

1.1.9 Deputy M.R. Higgins of St. Helier:

I may have misheard the chairman, but did she say that some information was not passed to the people who were accused of having a perceived conflict of interest because the person who had written said the matter was confidential? If that is the case, does she think she has

followed the principles of natural justice by revealing all the allegations and all the information to the people who have been accused of this conflict?

The Connétable of St. Mary:

As I have said repeatedly, what P.P.C. has investigated is a very narrow point arising out of a letter. The point we are investigating is a perceived conflict of interest in the way the review has been carried out - nothing more, nothing less - relating specifically to blog entries and media statements given by the chairman of the sub-panel. To that extent everybody has been informed as to what P.P.C. has been looking into.

1.1.10 Deputy M.R. Higgins:

Supplementary? Can the chairman just confirm was all the information that she was given passed on to the people who were accused of this perceived conflict of interest?

The Connétable of St. Mary:

All the information I have ever been given about anything? No. What has been passed on is the information relevant to the investigation that P.P.C. has undertaken.

The Deputy Bailiff:

The 10 minutes has now expired and therefore questions are at an end.