

**STATEMENT TO BE MADE BY THE EDUCATION AND HOME AFFAIRS  
SCRUTINY PANEL**

**ON THURSDAY 21st JULY 2011**

The remaining members of the Education and Home Affairs Scrutiny Panel have decided to announce their intention to resign from the Scrutiny Panel once the ongoing review of the issues surrounding the financial management of Operation Rectangle has been completed.

The members fully support the action taken by Deputy Tadier in announcing his immediate resignation in the States following the debate on P.84/2011 on the Composition of the Prison Board of Visitors. We wish to make it quite clear that we feel strongly about the Minister's conduct in this debate, which was the culmination of two years of unreasonable delay and stonewalling. It appears to us that the never-ending saga of the wait for legal advice has shrouded the failure on the part of the Minister to examine the case for change brought forward in our review. This has been symptomatic of an attitude towards Scrutiny which borders on disrespect, which is not confined to this Minister. Hence we are calling for a long hard look at the role of Scrutiny in general and the value that should be placed on its work.

We believe that the proposal laid before the States in P.84/2011 was straightforward and quite clear; consequently we are surprised at claims by some members after the debate that our recommendation regarding the Jurats was confusing. Our proposal sought to open up the Board to lay people whilst retaining the possibility for a limited number of Jurats to remain on the Board. This mirrors the model of the Independent Monitoring Boards in the United Kingdom and reflects modern best practice. Given the representations made on behalf of the Jurats the Panel attempted to combine the best of the current and proposed Board.

The Minister in his response to our original review (presented to the States in August 2009) agreed with our recommendation that the role of the Prison Board of Visitors should be reviewed yet has delayed taking any action on this on the basis of the need to seek legal opinion on the single issue of the retention of the Jurats on the Board.

The Panel Chairman made several requests to the Minister seeking progress on this matter, through Oral and Written Questions<sup>1</sup> in the States and through both formal and informal approaches over this period from the Panel.

Given the inordinate delays that were occurring in receiving the Minister's response to the Sub Panel's recommendations, it was suggested to him several times that if the compromise solution was unworkable, then the Sub Panel would consider dropping it and instead present the Assembly with a choice between an entirely Independent Lay Panel and the current Board. The report of the proposition also invited the Minister to bring amendments, if he thought that the proposition was not viable.

In the absence of any clear answer the main Panel decided to move an amendment which would bring matters to a head. The Panel never saw the advice obtained by the Minister but, his comments presented to the States on 11th July 2011 (two days before the debate) implied support for the proposition, based on legal advice.

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<sup>1</sup> Oral question 22nd June 2010; Written Question 5859 30th November 2010; Chairman's letter to Minister dated 1st December 2010.

It then appears that the Minister obtained further legal advice which led to the quite extraordinary situation of the Minister, during the course of the debate, calling on the Solicitor General to lay this advice before the Assembly. The Minister then drew the conclusion that this advice allowed him to propose the retention of the Prison Board of Visitors.

Ironically, follow up questioning of the Solicitor General suggested that the approaches of both the Sub Panel and the Minister could be supported by the legal advice. It seems to us that the Minister was opposed to our proposition either way, and simply used the legal advice to back his position, even when the legal advice proved to be more balanced.

It became clear in the debate that the Jurats were not supportive of the recommendation brought forward by the Sub Panel for a mixed Board of Visitors. The Minister appears to have allowed himself to give the Jurats a veto on this issue and to ignore the evidence presented in our report that the current system is not an appropriate or proper means of monitoring the state of the prison.

We believe that the implications of the Minister's stance warrant our stated intention to resign once the current Scrutiny on the Operation Rectangle financial report is concluded.

This unfortunate episode has come on the heels of the Minister's attempt to derail this latest Scrutiny review by removing two members from the Sub Panel on the grounds that they had already expressed trenchant views on matters relating to the subject under review. In our view, the Minister has misinterpreted the repeated search by these members for answers to questions on a significant issue as a pre-determined bias. It is vital that members are free to persist with probing lines of questioning when they believe that the responses they have received have been unsatisfactory.

We believe that Scrutiny members are fully capable of leaving aside preconceptions and looking at evidence in an objective fashion when they commit to a Scrutiny Review. Members approach issues in Scrutiny with a range of views gathered from various sources, whether from the media, personal contacts or their own research. It would be impossible to find members without previous knowledge and views on issues under review. The process of gathering evidence through public enquiries and submissions is transparent. In addition, Panel membership imposes its own checks and balances and conclusions can be tested and challenged. This is, of course, the approach followed within Select Committees at Westminster. We believe this fact speaks for itself.

Our examination of the evidence to date for this latest Scrutiny has already revealed significant questions about the way the review of financial management was carried out and we are determined to pursue the matter to the end. This is an example of the way we believe Scrutiny should operate - responding to concerns from members of the public, asking awkward and challenging questions, seeking to penetrate beneath the status quo and laying out the evidence before coming to considered conclusions.

The Panel is very disappointed that this position has arisen whereby we feel that we must tender our resignation as a Panel. There have been good examples of Scrutiny done in co-operation with the Minister. However, these recent episodes demonstrate that Ministers have yet to face up to the fact that Scrutiny has, at times, to be uncomfortable and challenging.

We call on members of the States to reflect seriously on the role Scrutiny is playing at present and how it can be better supported.

**Education and Home Affairs Scrutiny Panel**

**Review of Prison Board of Visitors**

**Timeline**

11th February 2009	Review commenced
26th March 2009	Public hearings.  Following hearing with Minister the Sub Panel agreed to extend timetable for review in order to obtain legal advice from the Attorney General
2nd April 2009	Letter sent to Attorney General
19th May 2009	Sub Panel agreed to seek independent legal advice on the issue
4th June 2009	Sub Panel received legal advice from Attorney General
11th & 18th June 2009	Sub Panel confirmed decision to seek external legal advice - confirmed by main Panel
6th July 2009	Sub Panel responded to enquiry from AG re UK legal advice and requested that the AG make his advice available to the public
9th July 2009	Sub Panel received legal opinion from UK lawyer
18th August 2009	S.R.7/2009 presented to the States. UK Legal advice available on Scrutiny website but AG advice remained confidential
4th December 2009	Ministerial response received by Sub Panel
23rd December 2009	Panel Chairman wrote to Minister offering to meet the Minister to discuss the recommendations
4th January 2010	Minister informed Panel that he was seeking legal advice; however, he did not view the issue as a high priority due to the backlog of major pieces of law inherited at Home Affairs (list provided)
22nd June 2010	Oral Question to Minister - Minister informed the States (i) the advice taken by the Sub Panel had tended to indicate that the Jurats should not be members of the PBoV; however, the Sub Panel had recommended that Jurats could remain on a mixed board (ii) he had sought his own advice on the issue - this advice existed in draft form and hopefully would be with him shortly

	In response to Deputy Tadier's request for the Minister to clarify his position with regard to opening up the PBoV to lay people he stated: (i) if it was HR compliant for Jurats to remain on the board, then his preference, in terms of a mixed board would be to retain a number of Jurats and (ii) he was open to the possibility of non Jurats joining them.
30th November 2010	Written Question to Minister - he said that although he had several times been promised the advice he needed, it had not yet arrived and he was once again seeking to hasten its arrival
1st December 2010	Panel Chairman wrote to Minister to inform him that the Panel was minded to lodge a proposition calling for reforms to the PBoV, welcoming his comments about which recommendations from SR7/2009 the HA Department was pursuing
19th May 2011	In debate on P.49.2011 (Scrutiny Code of Practice) Deputy Tadier referred to lack of 'any meaningful results' from the Minister to the Sub Panel's 'even-handed report' and 'non contentious' recommendations
31st May 2011	P.84.2011 lodged for debate in the States
11th July 2011	Minister presents comments on P.84.2011 to the States
13th July 2011	P.84 debated in the States

## Appendix B

### List of outputs: Education and Home Affairs start Jan 2009-end July 2011

#### Scrutiny Reports

	Date	Title	Membership
SR7/2009	18.08.09	Prison Board of Visitors	
SR11/2009	02.11.09	Fort Regent	
SR7/2010	25.05.10	School Suspensions	
SR14/2010	26.11.10	Political Education	
SR5/2011	08.04.11	Cultural Strategy	
SR6/2011	03.05.11	School Exam Results	
SR7/2011	17.05.11	Succession Planning Police	
SR10/2011	18.07.11	Policing of Beaches and Parks	

#### Comments

Draft Sex Offenders (Jersey) Law 200- (P132-2009)	05.10.2009
Young Offenders: Naming By The Media (P.148/2009)	28.10.2009
Strategy For Dealing With Young Offenders: Establishment of Working Group (P.201/2009)	24.12.2009
Chief Officer of the States of Jersey Police Force: appointment (P.30/2010)	08.04.2010
Draft Annual Business Plan 2011 (P99/2010)	23.07.2010
Draft Civil Partnership (Jersey) Law 201- (P85/2011)	12.07.2011
Historical Child Abuse: Request to Council of Ministers (P.19/2011)	14.02.2011
Draft Repatriation of Prisoners (Jersey) Law 201 – (P.67/2011)	06.06.2011
Draft Civil Partnership (Jersey) law 201 – (P.85/2011)	11.07.2011

#### Propositions

Prison Board of Visitors: composition	Lodged 31st May 2011 debated 13th July 2011	
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#### Amendments

Draft Civil Partnership (Jersey) Law 201- (P.85/2011)	27.06.11

#### Statements

School Exam Results  
Succession Planning Police

#### **4. Statement by the Education and Home Affairs Scrutiny Panel re resignation of panel**

##### **4.1 Deputy R.G. Le Hérissier (Chairman, Education and Home Affairs Scrutiny Panel):**

It is slightly lengthy but I shall speak fast. The remaining members of the Education Scrutiny Home Affairs Panel have decided to announce their intention to resign from the Scrutiny Panel once the ongoing review of the issues surrounding the financial management of Operational Rectangle has been completed. The members fully support the action taken by Deputy Tadier in announcing his immediate resignation in the States following the debate on P.84/2011 on the composition of the Prison Board of Visitors. We wish to make it quite clear that we feel strongly about the Minister's conduct in this debate, which was the culmination of 2 years of unreasonable delay and stonewalling. It appears to us that the never-ending saga of the wait for legal advice has shrouded the failure on the part of the Minister to examine the case for change brought forward in our review. This has been symptomatic of an attitude towards Scrutiny which borders on disrespect, which is not confined to this Minister. Hence we are calling for a long hard look at the role of Scrutiny in general and the value that should be placed on its worth. We believe that the proposal laid before the States in P.84/2011 was straightforward and quite clear. Consequently, we are surprised at claims by some Members after the debate that our recommendation regarding the Jurats was confusing. Our proposal sought to open up the board to lay people while retaining the possibility for a limited number of Jurats to remain on the board. This mirrors the model of the independent monitoring boards in the United Kingdom and reflects modern best practice. Given the representations made on behalf of the Jurats, the panel attempted to combine the best of the current and proposed board. The Minister, in his response to our original review presented to the States in August 2009, agreed with our recommendation that the role of the Prison Board of Visitors should be reviewed yet has delayed taking any action on this on the basis of the need to seek legal opinion on a single issue of the retention of the Jurats on the board. The panel chairman made several requests to the Minister seeking progress on this matter through oral and written questions in the States and through both formal and informal approaches over this period from the panel. Given the inordinate delays that were occurring in receiving the Minister's response to the sub-panel's recommendations, it was suggested to him several times that if the compromise solution was unworkable then the sub-panel would consider dropping it and instead present the Assembly with a choice between an entirely independent lay panel and the current board. The report of the proposition also invited the Minister to bring amendments if he thought that the proposition was not viable. In the absence of any clear answer, the main panel decided to move an amendment which would bring matters to a head. The panel never saw the advice obtained by the Minister but his comments presented to the States on 11th July 2011, 2 days before the debate, implied support for the proposition based on legal advice. It then appears that the Minister obtained further legal advice which led to the quite extraordinary situation of the Minister, during the course of the debate, calling on the Solicitor General to lay this advice before the Assembly. The Minister then drew the conclusion that this advice allowed him to propose the retention of the Prison Board of Visitors. Ironically, follow-up questioning of the Solicitor General suggested that the approaches of both the sub-panel and the Minister could be supported by the legal advice. It seems to us that the Minister was opposed to our proposition either way and simply used the legal advice to back his position, even when the legal advice proved to be more balanced. It became clear in the debate the Jurats were not supportive of the recommendation brought forward by the sub-panel for a mixed Board of Visitors. The Minister appears to have allowed himself to give the Jurats a veto on this issue and to ignore the evidence presented in our report that the current system is not an appropriate or proper means of monitoring the state of the prison. We believe that the implications of the Minister's stance

warrant our stated intention to resign once the current scrutiny on the Operation Rectangle financial report is concluded. This unfortunate episode has come on the heels of the Minister's attempt to derail this latest Scrutiny review by removing 2 members from the sub-panel on the grounds that they had already expressed trenchant views on matters relating to the subject under review. In our view, the Minister has misinterpreted the repeated search by these members for answers to questions on a significant issue as a pre-determined bias. It is vital that members are free to persist with probing lines of questioning when they believe that the responses they have received have been unsatisfactory. We believe that Scrutiny members are fully capable of leaving aside preconceptions and looking at evidence in an objective fashion when they commit to a Scrutiny review. Members approach issues in Scrutiny with a range of views gathered from various sources, whether from the media, personal contacts or their own research. It would be impossible to find members without previous knowledge and views on issues under review. The process of gathering evidence through public inquiries and submissions is transparent. In addition, panel membership imposes its own checks and balances and conclusions can be tested and challenged. This is, of course, the approach followed within Select Committees at Westminster and we believe this fact speaks for itself. Our examination of the evidence to date for this latest Scrutiny has already revealed significant questions about the way the review of financial management was carried out and we are determined to pursue the matter to the end.

[17:15]

This is an example of the way we believe Scrutiny should operate - responding to concerns from members of the public, asking awkward and challenging questions, seeking to penetrate beneath the status quo and laying out the evidence before coming to considered conclusions. The panel is very disappointed that this position has arisen whereby we feel that we must tender our resignation as a panel. There have been good examples of Scrutiny done in co-operation with the Minister. However, these recent episodes demonstrate that Ministers have yet to face up to the fact that Scrutiny has, at times, to be uncomfortable and challenging. We call on Members of the States to reflect seriously on the role Scrutiny is playing at present and how it can be better supported. Thank you. [Approbation]

**The Deputy Bailiff:**

Chairman, I am afraid this is perhaps my fault in that I did not pick the matter up earlier, but in the penultimate paragraph you indicate the panel is tendering its resignation as a panel whereas in the first paragraph you say you intend to resign once the review of issues around Operation Rectangle have been completed. Could you just clarify for Members which it is?

**Deputy R.G. Le Hérisier:**

Yes. Clearly it would have been better to have resigned if we were going to take a stand but obviously we do not wish to offer discourtesy to the House or to people involved in that Scrutiny. We will resign when the Scrutiny is completed.

**The Deputy Bailiff:**

So it is not at present a resignation. Thank you. Right, there are 10 minutes of questions, Mr. Chairman. Senator Ozouf.

**4.1.1 Senator P.F.C. Ozouf:**

Would the chairman accept that many Members felt compelled to vote against the proposition, which appears to be at the heart of this statement, because of the summing up and because it appeared to suggest that they were wanting to coerce the Jurats to serve on a mixed board? Would he accept that there is a view among Members that this does need to be solved, that the proposition did not solve the problem and would he also accept ...

**The Deputy Bailiff:**

No, Senator, you cannot have 5 questions.

**Senator P.F.C. Ozouf:**

I was going to say if a Minister were to do this we would be regarded as petulant and does he not think that he is being petulant?

**Deputy R.G. Le Hérissier:**

I totally refute that. This was done, as I made clear in the statement, the panel looked at the issue because representations were made, there was a lot of confusion at the end. We believed the issues were laid out; they were laid out in the body of the proposition, in fact, and there was a further email from the Assistant Minister for Home Affairs which laid it out very, very clearly.

**4.1.2 The Connétable of St. Lawrence:**

I congratulate the panel on the amount of work that they have produced since 2009. But 2 questions: the first is there is no evidence of who the members of the panel are so could the chairman please name those people who intend to resign from it? Will he accept that a Minister may have a different view to a Scrutiny Panel?

**Deputy R.G. Le Hérissier:**

Yes. The members are myself, Deputy Maçon and Deputy Pitman. Absolutely, a Minister should have a different view. The whole point of what I have laid out here is that we would have wished that different view to have come out very clearly at the beginning and not have been subsumed under an interminable wait, ostensibly centred around a wait for legal advice. No problem with different views; let us have healthy argument.

**4.1.3 Senator B.I. Le Marquand:**

In relation to the allegation that I attempted to derail the Scrutiny review, would the chairman please indicate did I ever object to the conducting of the review or indicate other than that I would fully co-operate with the review and have I fully so co-operated?

**Deputy R.G. Le Hérissier:**

Indeed, in those terms the Minister was fully co-operative and, indeed, it gives me a very heavy heart to have to respond to him because he has been, in many respects, an excellent Minister to work for. But the point is the interminable delays that occurred, the sudden U-turn that was performed on the basis of receiving yet another further set of legal advice, quite frankly, amounted to a very - to put it mildly - strange turn of events and I do not think they fall under the meaning of the term "full and unequivocal co-operation".

**4.1.4 Deputy J.A. Martin:**

Would the chairman not agree that the confusion did not lie in the summing up; the penny dropped when the majority of people realised that it was not mandatory that 3 Jurats had to sit on the panel and that Jurats would not work with lay people? My understanding of a Jurat is they are a lay person.

**Deputy R.G. Le Hérissier:**

Obviously there can be confusion and obviously it can be our fault, I do not deny that for a moment. But in a sense, while that may indeed be the case - certainly that is what we were trying to put across - there is a much bigger picture and this statement is about putting the bigger picture forth.



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

The Members may well recall there was a very late introduction of legal advice by the S.G. (Solicitor General) who I did compliment. I thought it was a very good human rights opinion. But would the chairman not accept that with hindsight it was a mistake not to have included the independent human rights opinion from an eminent human rights lawyer from the U.K. and that should have been included in P.84?

#### **Deputy R.G. Le Hérisier:**

Perhaps it should have been but, of course, it was laid out in the Scrutiny report itself. But, yes, maybe it could have been re-emphasised. But I think the speaker has to take note of the fact that there was what you might call evolving legal advice and, of course, the Solicitor General did say he had access to a case which had not been considered earlier. I have got no problem had the whole lot been laid out; one has to remember that Scrutiny Panels operate with an arm behind their back. They cannot see the original, authentic legal advice.

#### **4.1.6 Senator T.A. Le Sueur:**

This resignation statement deals with one issue by one particular Minister in respect of one particular panel. Could the chairman, therefore, reconcile his penultimate paragraph when it states that these recent episodes, whatever they were, demonstrate that Ministers have yet to face up to the fact that Scrutiny has at times been uncomfortable and challenging? I believe that Ministers have faced up and I ask what evidence he has to suggest that Ministers have not, talking collectively about Ministers, rather than one particular Minister?

#### **Deputy R.G. Le Hérisier:**

The Chief Minister has chosen to place his own interpretation on and reach conclusions based upon a faulty analysis. It may not be crisis point but there has been, as he well knows, a series of incidents where it has been reported to him by the Chairmen's Committee that relationships are not good and that there needs to be a much different approach taken to Scrutiny, most importantly, an acceptance of the fact that Scrutiny can be uncomfortable and challenging. So his notion that this is just one, it is not one incident and, indeed, I would not wish to single out the Minister for Home Affairs who, in many respects, I have to say, has been an excellent Minister. But in terms of this and the major report on Operation Rectangle, there were very serious issues arising which had to be addressed.

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

Would the chairman not concede that some Members - I for one - was confused by the wording of the debate and only found at the last moment myself in a dilemma as to supporting the principle and then having to abstain? In the third paragraph the panel's statement is that the Scrutiny Panel was surprised by: "... claims by some Members after the debate that our recommendation regarding the Jurats was confusing." Will you not accept that on certain occasions some Members are generally surprised at the last moment, as I certainly was?

#### **Deputy R.G. Le Hérisier:**

Yes.

#### **4.1.8 Deputy R.C. Duhamel:**

I thank the panel chairman for his early warning of his intention for himself and the panel to resign but he does state in his first paragraph that: "... this is only after the ongoing review of the issues surrounding the financial management of the Operation Rectangle has been completed."

Would the Deputy inform the House of the final date at which he hopes to have this work completed?

**Deputy R.G. Le Hérissier:**

Well, I am not the chairman but one would hope by the end of August.

**4.1.9 The Deputy of St. John:**

Would the rapporteur please confirm that he was in the House at the time of the debate and that at the 11th hour and 59th minute there was confusion between one of the panel members and the chair and thereby that confusion led to myself, for one, not abstaining but voting against because of the confusion that was across the 2 Members on the floor of this Chamber was too great and needed resolving.

**Deputy R.G. Le Hérissier:**

That may well have been the case but I do not think it provides exoneration from all the issues raised in the statement.

**4.1.10 Senator B.I. Le Marquand:**

This is a question which was not answered in relation to the correct matter of the first one, it is a question, just to make it clear to the chairman, it does relate to the issue to do with BDO, which was not answered by the chairman's first answer, did I, in my letter to the Chairmen's Committee and to P.P.C., raise objections to any member sitting on this group, other than Deputy Trevor Pitman, and that upon any grounds other than that he had twice expressed a clear view in relation to the matter which was going to be reviewed?

**Deputy R.G. Le Hérissier:**

Yes.

**4.1.11 Deputy M. Tadier:**

Does the chairman accept that while some Members may have been confused, that confusion arose because it was that those Members had not read the wording of the proposition or the report or the reports of the review of Scrutiny and that this is further evidence that Members do not pay sufficient attention to the work that Scrutiny produces?

**Deputy R.G. Le Hérissier:**

That may well have been the case but I do not necessarily agree with the speaker's conclusion.

**4.1.12 Senator P.F.C. Ozouf:**

Could he confirm that while he has cast his net wide on Ministers, he has no reported issues in relation to the relationship between Treasury Resources and Corporate Services?

**Deputy R.G. Le Hérissier:**

If there are issues I am sure they will come via the Chairmen's Committee. I cannot speak directly.

**The Deputy Bailiff:**

The 10 minutes has now expired for questions.

**Deputy T.M. Pitman:**

Could I just on point of clarification ...

**The Deputy Bailiff:**

As to the date on which your panel is going to report?

**Deputy T.M. Pitman:**

I can say that. We hope it will be done before September but the Minister has not been correct in what he said, he did object to Deputy Tadier, he objected to Deputy Wimberley being on the panel and he was upset that apparently Deputy Maçon had been excluded, none of which was true.

**Senator B.I. Le Marquand:**

On a point of order, may I point out that my question was very clear in relation to 2 specific letters and the answer from the chairman was, yes, he agreed with me.

**Deputy R.G. Le Hérissier:**

Yes, I certainly did agree with the Minister but, of course, there are other aspects to the picture.