

Education and Home Affairs Scrutiny Panel

2009 Annual Business Plan

Draft Proposals and
Provisional Cash Limits

1. INTRODUCTION

- 1.1 This report sets out a response from the Education and Home Affairs Scrutiny Panel to the draft proposals and provisional cash limits for the 2009 Annual Business Plan (ABP).
- 1.2 The draft proposals of the Council of Ministers, published in March 2008, identified a number of issues pertinent to the Panel's remit. These issues provided the primary focus of the work undertaken by the Panel during April 2008. They may be summarised as follows:

Home Affairs Funding Pressures:

- Base budget of HMP La Moye
- Revenue implications of implementing the Sexual Offenders (Jersey) Law
- Establishment of a local vetting and barring office
- Implementation of Discrimination legislation
- Customs and Immigration Service

Education, Sport and Culture Funding Pressures:

- Potential increase in top-up fees for Jersey students studying in higher education in the United Kingdom
- Funding for Mont-à-l'Abbé School
- Funding the Aquasplash contract

Education, Sport and Culture Potential Savings:

- Demographics (i.e. reduced numbers of students within the local education system)
- Funding of higher education students in the United Kingdom

In addition, the proposals indicated a funding pressure for the implementation of the Criminal Justice (Supervised Release of Offenders) Law 200-. Whilst this pressure related to the budget of the Probation Service, there were some aspects of relevance to the Department of Home Affairs.

- 1.3 The Panel explored all of these issues with the exception of the funding pressures affecting the Customs and Immigration Service and Mont-à-l'Abbé School. The Panel decided in January 2008 that it would undertake more detailed reviews of these areas and that it would report separately on each in due course.
- 1.4 When the draft proposals were published, the Council of Ministers requested views from Scrutiny Panels on three specific matters: whether as a principle States expenditure should be increased; whether a proposed contingency fund would be appropriate; and which, if any, spending pressures would merit an increase in expenditure. The Panel was mindful of the

Council's requests but set the following objectives of its own to guide its work on the draft proposals:

- To assess the rationale behind the draft proposals relating to:
 - Reprioritisation undertaken within the two relevant Departments
 - Decisions on whether to progress identified initiatives and spending pressures
- To identify and consider the options available to the two relevant Ministers in relation to the above decisions

1.5 There were some questions as to whether the Panel could feasibly address the Council's request and provide views on the matters raised by the Council. Firstly, it was possible that some aspects, such as the management of any proposed contingency fund, lay outside the Panel's remit and belonged more appropriately to the remit of the Corporate Services Scrutiny Panel. Secondly, whilst all Panel Members could be expected to have personal and political views on matters of prioritisation and expenditure, there was a need to ensure that the Panel's collective Scrutiny view was based on an objective assessment of information gathered and received. Given the scope of the draft proposals and the short timescale for work to be undertaken, it was therefore likely that insufficient evidence would be gathered for firm conclusions to be drawn and for the Council's requests to be addressed fully.

1.6 Notwithstanding the above, it is hoped that the work of the Panel, and this report, will contribute towards an informed and reasoned consideration of the 2009 ABP, including those issues raised by the Council of Ministers.

1.7 The evidence considered by the Panel in developing a view of the draft proposals primarily came from the Public Hearings that it held with Senators W. Kinnard, Minister for Home Affairs, and M.E. Vibert, Minister for Education, Sport and Culture. Some written documentation was also gathered whilst in some areas the Panel was also able to draw on knowledge gained from work in previous years. By necessity, this report merely summarises the information received and the Panel would therefore direct people to copies of the transcripts (available on the Scrutiny website) for a full description of the information provided to the Panel.

1.8 The report begins with a consideration of general issues relating to reprioritisation. It then turns to the specific matters outlined in Paragraph 1.2, focusing firstly on those relating to Home Affairs before turning to those relevant to Education, Sport and Culture. For each item, the Panel will highlight significant issues that it sought to address and summarise the evidence received on those issues. Where it has proved possible, the Panel has provided comments for consideration. The report ends with an indication of the work on the 2009 ABP that the Panel will undertake subsequently.

2. THE MINISTERS' REPRIORITISATION PROCESS

2.1 ISSUES EXPLORED

2.1.1 The Panel wished to understand the overall process of reprioritisation that had been followed by the two Ministers within its remit. The draft proposals indicated that this process had in fact been followed for all Departments and that each Minister had subsequently made a presentation to the Council of Ministers.

2.1.2 On the basis of this information, the Panel questioned each Minister on the following matters:

- The general process of reprioritisation followed within the Department;
- The work that had been undertaken on Departmental objectives;
- The reaction that had been received from the Council of Ministers; and
- Any public feedback there may have been on the issues identified in the draft proposals.

2.2 REPRIORITISATION WITHIN HOME AFFAIRS

2.2.1 The Minister for Home Affairs advised the Panel that a number of factors had to be considered during any examination of her Department's priorities. These included, for example, the two reviews of HMP La Moye that had been undertaken in 2001 and 2005; the implications of the Criminal Justice Policy (adopted by the States on 21st November 2007); and the Department's objectives as outlined in the Strategic Plan. She also highlighted that the Home Affairs budget largely comprised the costs of the staff needed to deliver front-line services. The Minister explained that in terms of reprioritisation there had effectively been four options available to her:

1. Moving funding from one Departmental service to another;
2. Using unplanned savings from within the Department;
3. Reviewing the funding allocations to 'non-core services' within the Department; and
4. Obtaining growth funding from other sources such as year-end carry forwards from other Departments.

2.2.2 In relation to the first option, the Minister indicated that the Department of Home Affairs did *"not have either the sufficiency of budget or, indeed, the flexibility of budget to achieve that [option]."* It was suggested to the Panel this option was therefore not practicable.

2.2.3 For the second option, the Minister stated that savings had indeed been made within recent years, for example by the States of Jersey Police in its use of the funding of unfilled posts. However, again the Panel was advised that this option was an uncertain means of obtaining funding for pressures affecting the Department.

2.2.4 Options three and four were therefore presented as the most viable in terms of reprioritisation and the location of available funding. The third option had in fact been taken during development of the draft proposals for the 2009 ABP. As such (and as shall be explored in more detail later), responsibility for funding awards from the Criminal Injuries Compensation Scheme would be moved from the Department to the Criminal Offences Confiscation Fund, thereby freeing up funding for the Department to use on other services.

2.2.5 Similarly, the fourth option had been followed during development of the draft proposals. Thus, as shall be seen, additional funding of £1 million from outside the Home Affairs budget could be provided for HMP La Moye due to the savings that had been identified by the Department of Education, Sport and Culture.

2.2.6 In terms of the work on Departmental objectives, the Panel was advised that those for the 2009 ABP would resemble closely those found in the 2008 ABP. However, there would be changes as some objectives had been completed whilst others had been reformulated. For instance, the Criminal Justice Policy was no longer an objective as the States had already approved it. The Panel was provided with further examples at its Public Hearing with the Minister (which may be read in the transcript of the Hearing).

2.3 REPRIORITISATION WITHIN EDUCATION, SPORT AND CULTURE

2.3.1 The Minister for Education, Sport and Culture advised that reprioritisation within his Department occurred continually and did not merely take place in relation to the ABP. Similarly with Home Affairs, it was noted that a majority of the Department's expenditure went towards staffing costs. The Panel was also advised that certain factors had to be taken into account when considering reprioritisation within the Department. For example, the formula used to fund the Department was raised as an issue at the Public Hearing. Broadly speaking, the Department's budget was largely based on the number of pupils within the education system; difficulties were therefore faced when numbers of pupils fell. Another difficulty facing the Department was that the financial and academic years did not run concurrently; this posed problems as it was therefore necessary to predict pupil numbers in order to gain an idea of the funding required.

2.3.2 There were also large projects to be taken into account, such as the re-examination of the relationship between the Department and Highlands College that was due to occur. This re-examination had in part been brought about through the development of the Skills Executive. Finally, the Minister explained that early years education remained a primary concern. The Panel was due to present its report on early years education and care shortly after the Hearing with the Minister was held.

2.3.3 In terms of reprioritisation, one theme that came through at the Public Hearing was that a more integrated view of the Department would be taken rather than viewing it as distinct 'vertical' strands (i.e. 'education', 'sport' and 'culture'). This was apparent when the Panel questioned the Minister on the work undertaken on Departmental objectives. The Panel was given sight of the draft objectives for both Departments within its remit and the Minister for Education, Sport and Culture explained that objectives were drafted with consideration to the overarching Strategic Plan objectives and whether, for example, they had been achieved. Furthermore, draft objectives for the 2009 ABP endeavoured to place the Department's work within a clear strategic framework of four aims. These aims would provide the focus for all areas of the Department and thereby allow for an integrated approach to be taken to issues. As an example, the Panel was advised that the Department was working on how the Sports and Leisure Service could be involved in the delivery of P.E. in schools.

2.3.4 The Panel was interested to know which services within the Department were least required, in the view of the Minister. The Minister stated that he considered all services offered by his Department to be vital and, when questioned further, referred to the Department's statutory duties and to the general acceptance within western democracies that services of the type offered by his Department were generally provided by the public sector.

2.3.5 The Minister was also questioned on the manner in which efficiency savings were met within the Department. He explained that savings were 'pro rata-ed' out within the Department and that it was left to individual services to decide how to meet the savings target that had been set for them. Given the presence of the Assistant Director – Sport and Leisure at the Public Hearing, the Panel was able to be advised on how savings had been met within that area.

2.4 CONSIDERATION OF THE COUNCIL OF MINISTERS

2.4.1 The Panel was aware that, to a certain extent, the work it was undertaking had already been done in some guise by the Council of Ministers. All Ministers had presented their proposals to the Council and the Panel therefore anticipated that the Council would have questioned each Minister on those issues affecting his or her Department. The Panel believed it pertinent to ask what challenges and questions the Council had made during that process.

2.4.2 The Minister for Home Affairs advised the Panel that the Council had "*largely focused on what the funding pressure was, had we identified other sources of funding and how essential they were.*" The Panel was told that the Council had been interested in what reviews Ministers might have undertaken to examine the pressures affecting their Departments. When questioned on the same matter, the Minister for Education, Sport and

Culture spoke of the funding pressures facing his Department and stated that the Council had been primarily interested in those areas.

2.5 PUBLIC ENGAGEMENT

2.5.1 As stated in the introduction to this report, the Panel endeavoured to adhere to the principle that any views developed on the draft proposals should be on the basis of evidence and information gathered. This raised the question of how processes of (re)prioritisation could be measured objectively and, indeed, what measures could be used. This question had posed some difficulties for the Panel in establishing precisely the nature of work it should undertake on documents such as the ABP.

2.5.2 Some measures could be gleaned from the submissions of the two Ministers. Both made reference when talking about prioritisation to the objectives contained within the Strategic Plan. The Minister for Education, Sport and Culture also referred to his Department's statutory duties. Reference could be made to the Strategic Plan or legislation, for example, as measures against which priorities could be judged. Indeed, the draft proposals linked specific funding pressures to Strategic Plan objectives.

2.5.3 One measure considered by the Panel was whether the Ministers' objectives tied in with the public's priorities and the issue of public engagement was therefore raised with both Ministers.

2.5.4 When asked what public feedback there had been on the draft proposals relating to her Department, the Minister for Home Affairs advised that public responses to the proposals would be co-ordinated by the Chief Minister's Department. The Minister for Education, Sport and Culture provided a similar answer although he stated that he had personally received opinions relating to the funding pressure affecting Mont-à-l'Abbé School.

2.5.5 Given the Chief Minister's Department would take responsibility for collating public responses to the proposals, the Panel was interested to learn what information on this matter had come from the Chief Minister at his Public Hearing with the Corporate Services Scrutiny Panel. The Panel understands that at the time of that Hearing (15th April 2008) there had in fact been little public reaction to the draft proposals. It was also understood that the Chief Minister had referred to the contradiction apparent in public views in that spending should be cut whilst services should be improved. This view was mirrored in the submission of the Minister for Education, Sport and Culture at his Public Hearing with the Panel. The Minister also referred to the difficulty in assessing accurately the public's opinion on given matters aside from at election time.

2.5.6 The issue of public engagement was explored with the Minister for Education, Sport and Culture when considering 'non-core services' within his Department. The Panel asked the

Minister which services he considered to be the least vital or required and was advised that the Minister considered all services offered by his Department to be vital. The Panel challenged the Minister to explain on what basis he made that assessment and, in particular, how his view compared to the public's view of priorities for his Department.

2.5.7 The Minister explained the manner in which public opinion could be gauged by his Department. Public consultations were undertaken on specific issues whilst feedback could constantly be generated through schools. In the Minister's view, the Department was very close to the public in a number of areas (e.g. the Youth Service, schools) and could therefore obtain public views on matters.

PANEL COMMENT:

2.5.8 No evidence was received to suggest that the reprioritisation undertaken by the two Ministers within the Panel's remit was inappropriate. The Panel's work did however highlight the difficulties in measuring the (re)prioritisation process objectively and it would therefore suggest that this is a matter for exploration in the future.

3. PARTICULAR ISSUES RELATING TO HOME AFFAIRS

3.1 HMP LA MOYE

3.1.1 The draft proposals, if adopted, would result in £1.5 million of additional funding for HMP La Moye. Of this total, £500,000 would be found from within the Department of Home Affairs (from funding previously set aside for the implementation of Discrimination legislation) and £1 million would be added to the Home Affairs cash limit. However, this would not equate to a £1 million increase in overall States expenditure as, according to the proposals, that amount would be balanced by savings elsewhere. With the additional £1.5 million, the base budget of HMP La Moye would effectively increase to £9.8 million.

3.1.2 The draft proposals indicated that a shortfall of £2.3 million had been identified in a report considered by the Council of Ministers in November 2007. A copy of this report was provided to the Panel and it was therefore able to use it as a basis for questioning the Minister. An injection of £1.5 million would still potentially leave the Prison with a shortfall in its budget of £800,000. When questioning the Minister, the Panel sought to ascertain the use that would be made of the additional £1.5 million and the implications of a shortfall of £800,000.

3.1.3 The Panel was advised that the additional funding would primarily be used to increase staffing levels, partly in the educational side but predominantly in uniformed staff. Specifically, the Panel was advised that it would be feasible to recruit 25 new staff although this would not amount to the figure of 31 staff identified as necessary in the report of November 2007. If a further £800,000 were to be allocated this would seemingly allow for the recruitment of extra staff.

3.1.4 Given that the draft proposals would not provide all the funding that had been requested, the Panel asked what the priorities would be at the Prison as a result. In answer, the Prison Governor advised that he would seek to ensure that the Prison was safe, secure and humane. He added that:

“the last priority would be that it is an effective prison and to be effective, we have to do more than keep them [prisoners] in secure custody. We have to address the offending behaviour and bring about a change.”

In respect of this latter priority, reference was made to ‘spending to save’, an idea initially raised by the Minister for Home Affairs when discussing the merits of prisoners undertaking community service on day release. In other words, expenditure on measures such as these would affect recidivism rates and thereby potentially reduce future spending at the Prison. It would be in these areas that the shortfall of £800,000 would be felt most.

3.1.5 In some respects, the funding pressure affecting HMP La Moye was not new and the Panel was aware, from work it had previously undertaken, of issues facing the Prison. In particular, the Panel was aware of the recommendations that had arisen from the 2001 and 2005 HMI reports, the latter of which had led to the development of the Performance Improvement Plan (PIP). Additional funding had already been allocated to the Prison since the 2005 report in order that the PIP could be implemented. The allocation of £1.5 million within the current draft proposals could be seen as a continuation of this process. In relation to the PIP, the Panel was advised that the additional funding would allow some of the Plan to continue to be implemented but that the potential shortfall of £800,000 would mean that it could not be implemented fully.

3.1.6 The Panel asked for the Minister's view on what an HMI report would reveal, were an inspection to be held now. The response received suggested that improvements had been made but that any inspection would undoubtedly pick up on issues that remained to be addressed, such as the continued need for slopping out to occur. The Panel was able to see for itself the work that had been undertaken on developing the Prison when it visited on 9th April 2008. For some Members, this represented a return following a previous visit in 2006 and allowed for a comparison to be made.

3.1.7 The Panel gave consideration to measures that could be taken to reduce some of the spending pressures on the Prison. For instance, the Panel considered the educational arrangements at the Prison and the fact that HMP La Moye employs education staff of its own rather than through the Department of Education, Sport and Culture. The Panel questioned whether it would be more efficient if greater use were indeed made of that Department's resources. It was advised that greater use would allow more flexibility and expansion in the delivery of education at the Prison; however, it would not lead to greater cost-effectiveness.

3.1.8 The Minister was also questioned on the transfer process (whereby prisoners can be moved from HMP La Moye to a prison in the United Kingdom) and the budgetary impact this could have. The Minister advised that there had been some success in transferring prisoners under their own volition in which case the Prison was not required to pay for their accommodation. Finally, the Panel asked the Minister whether any discussions had been undertaken with the judiciary about sentencing policy. The Minister advised that sentencing remained within the purview of the judiciary and that managing the number of prisoners was not within her Department's remit.

PANEL COMMENT:

3.1.9 Notwithstanding its earlier comment on the difficulties of measuring prioritisation, the Panel understands why the Council of Ministers has given high priority to the spending pressure affecting HMP La Moye as it would appear to be consistent with the Council's previous

commitments. However, two possible issues arise on which further clarification could be provided:

1). If the Council of Ministers itself believes that spending limits should be increased to address funding pressures, why not increase the spending limit to meet the full requirements of HMP La Moye? The Panel asked the Minister whether receiving the full £2.3 million would allow all the outstanding issues to be addressed and was advised that this would be the case. If so, an allocation of that amount could potentially take the Prison off the list of issues to address.

2). Why was it decided to allocate an additional £1 million and not, say, £900,000? In other words, was the allocation based primarily on financial concerns in terms of what could be afforded (bearing in mind the request that had been made) or were there operational reasons for why £1 million was allocated?

3.2 IMPLEMENTING THE CRIMINAL JUSTICE (SUPERVISED RELEASE OF PRISONERS) LAW

3.2.1 The draft proposals indicated that this was a spending pressure where final proposals were still being developed. The proposals reported that one or two posts would be required within the Probation Service to implement the legislation. Dependent on how many were required, revenue implications would be either £60,000 or £120,000 per annum.

3.2.2 The Panel was advised that the introduction of the law arose out of the Criminal Justice Policy. An explanation was provided of how the law would operate and it was highlighted that supervised release in Jersey would be discretionary rather than automatic, as in the United Kingdom. It was noted that some consultation on the draft law had already occurred but that further consultation (with the public) would occur in due course.

3.2.3 The Panel sought to understand the implications the draft law would have for HMP La Moye. In terms of actual numbers, the Minister advised that relatively few prisoners would potentially be released early or eligible for consideration under the supervised release scheme. The Minister's view was the legislation would potentially reduce recidivism and thereby ensure a safer community. In that respect, the Minister's comments tied in with other statements made about 'spending to save': expenditure on implementing the legislation would potentially reduce re-offending and thereby reduce eventual spending pressures at HMP La Moye.

3.3 REVENUE IMPLICATIONS OF THE SEXUAL OFFENDERS LAW

3.3.1 The draft proposals reported that the Department of Home Affairs required £180,000 to cover the revenue implications of implementing the Sexual Offenders (Jersey) Law. This £180,000 would incorporate the recruitment of three States of Jersey Police Officers to sit within the Force's Public Protection Unit. The Law would establish the operation of a register but would not prescribe offences itself; these would be taken from other items of legislation.

3.3.2 The Panel questioned the Minister on the history of the legislation and was advised that the Sexual Offenders Law had first been proposed in 2004 and had at that time formed part of a larger 'overall review' of sexual offences legislation. However, given recent circumstances within the Island, it had become apparent that the Sexual Offenders Law needed to be progressed as quickly as possible as it would take too long to await the result of that 'overall review'. As an example of another aspect of that 'overall review', the Minister spoke of the 'abuse of trust' legislation that had been identified as necessary during approval of the Sexual Offences (Jersey) Law 2007.

3.3.3 The Panel had understood that funding this pressure would require an increase in the Department's cash limit. However, it became apparent at the Hearing that this was not the case and that a solution to the spending pressure had been identified. The Council of Ministers had proposed that responsibility for funding awards made under the Criminal Injuries Compensation Scheme (CICS) be moved from the Department of Home Affairs to the Criminal Offences Confiscation Fund (COCF). The COCF was established by the Proceeds of Crime (Jersey) Law 1999 and exists to receive the proceeds of Confiscation Orders made by the Royal Court when it determines that a defendant has benefited from criminal conduct. The Panel understands that the COCF is overseen by a Steering Group although responsibility lies with the Minister for Treasury and Resources. In the draft 2009 ABP proposals, the Department of Home Affairs would retain the £275,000 that it had budgeted for the awards. This £275,000 could then be used towards both the Public Protection Unit and also the establishment of a local vetting and barring office.

3.3.4 The Panel was aware from work undertaken in 2007 that the CICS had constituted a spending pressure of its own for the Department. As the Department had no control over the size of awards granted by the Board that administered the CICS, financial management was problematic. Indeed, in 2006 expenditure on the scheme had amounted to £438,957, an overspend of approximately £165,000.

3.3.5 In previous discussions on the subject, the Panel had been advised that the suggestion had been made in the past that responsibility for funding the CICS be transferred to the COCF. However, it is understood that this suggestion was rejected on the basis that there was no

spare money within the COCF. Given that provision for this transfer occurred in the draft proposals for the 2009 ABP, it would appear this situation had since changed. Indeed, the Panel understands that funding awards made under the CICS would not have a large impact on the COCF.

3.3.6 There was insufficient time for the Panel to explore in great detail the implications for the COCF of the transfer of responsibility for funding the CICS. The Panel was aware that issues relating to management of the COCF had been raised in the past and that, indeed, the COCF had been subjected to a review by the Comptroller and Auditor General. Several recommendations were made as a result of that review although the Panel was unaware of whether or not these recommendations had been implemented.

3.3.7 Subsequent to its Hearing with the Minister, the Panel re-examined the draft proposals and recognised that this transfer of funds would entail an increase in 'total States spending' rather than a direct increase in the Home Affairs cash limit. However, the Panel was uncertain where this increase in States expenditure was reported in the tables provided in the draft proposals.

PANEL COMMENT:

3.3.8 The Council of Ministers should explain what impact the transfer of responsibility for CICS awards would have on the COCF. The Council should also clarify what developments have occurred to allow this option, previously unavailable, to be taken. When clarifying and explaining these matters, an update on whether recommendations from the Comptroller and Auditor General were implemented would also be beneficial.

3.4 ESTABLISHING A VETTING AND BARRING OFFICE

3.4.1 According to the draft proposals, £160,000 would be required for a local vetting and barring office. Whilst this was described as a funding pressure for the Department of Home Affairs, it was in fact a 'corporate initiative' between Home Affairs and the Departments of Education, Sport and Culture and Health and Social Services. The draft proposals indicated that a change to vetting arrangements would be necessary due to developments in this area in the United Kingdom.

3.4.2 As with the revenue implications of the Sexual Offenders Law, options to address this funding pressure had been identified. Thus, of the funding initially used towards the CICS (£275,000), £180,000 of this would be put towards implementing the Sexual Offenders Law whilst the remainder (£95,000) would go towards establishing a vetting and barring office.

3.4.3 Beyond the implications of the above measure for the COCF (which has already been explored), the Panel sought to understand how the vetting and barring office would operate.

It also wished to explore whether any issues arose from the status of this funding pressure as a 'corporate bid.'

3.4.4 It was apparent from the Hearing with the Minister that a good deal of work remained to be undertaken on developing the vetting and barring office and that no firm conclusions had been drawn. For instance, whilst there was a move towards centralising the vetting process (to address the ad hoc systems currently in place), it had not yet been established exactly where the vetting and barring office would sit; the Minister indicated that it might ultimately be most appropriate for responsibility to be given to an independent office. Similarly, although the costing had been based on the assumption of a centralised provision, the Panel understood there were in fact options in terms of how the service could be delivered. Furthermore, although the draft proposals identified a spending pressure of £160,000, this was essentially a guess and there were no firm costs. Thus, if costs were ultimately greater than £95,000 (see Paragraph 3.4.2) other methods of funding would need to be explored (i.e. beyond increasing spending limits).

3.4.5 The Panel questioned the Minister on what could be done to ensure that the office would not become the sole responsibility of her Department (given that it was in essence a 'corporate bid'). The advice received was that this question remained to be addressed but would be covered in due course.

PANEL COMMENT:

3.4.6 The Panel accepts the prudence in highlighting this spending pressure early in its development. However, it is clear that a significant amount of work remains to be undertaken and it is difficult for Scrutiny to undertake its work when the Minister herself has to guess. Furthermore, clarification should be provided on how it can be ensured that 'corporate bids' do not ultimately become the responsibility of one partner in any given bid.

3.5 Implementing Discrimination Legislation

3.5.1 The draft proposals reported a spending pressure of £500,000 for the implementation of discrimination legislation. Funding for this legislation had in fact previously been agreed and allocated to the Department of Home Affairs. However, it had subsequently been decided to put the £500,000 towards HMP La Moye instead. This spending pressure remained without solution within the draft proposals for the 2009 ABP.

3.5.2 The Panel questioned the Minister on the need for legislation to be implemented and was advised of the Island's obligations under international treaties and covenants to ensure that Islanders were protected from discriminatory behaviour. Subsequent to the Hearing, the Panel wrote to the Minister with questions on the impact in real terms of not introducing the

legislation: a question was therefore put as to how many cases would be frustrated by the lack of Discrimination legislation. However, the Panel had not received a response in time for consideration to be given whilst drafting this report.

3.5.3 It was clear from the Public Hearing that introducing the legislation was high on the list of the Minister's personal priorities but that it took on lower significance when considered next to the other spending pressures facing the Department of Home Affairs. Indeed, whilst the pressure affecting the Customs and Immigration Service was not discussed in detail at the Hearing, the Minister indicated that funding would be put towards addressing that pressure before any funding would be provided for implementation of Discrimination legislation.

3.5.4 Notwithstanding this, however, the Minister indicated that she would prefer to bring the draft legislation to the States Assembly for debate, regardless of whether funding were currently available. In this way, if the draft law were approved, a commitment would be made although it would be necessary to bring a separate Appointed Day Act at a later time, once the funding issues had been addressed.

PANEL COMMENT:

3.5.5 The Panel recognises that this is a personal priority of the Minister but that it has not been considered as a priority to be taken forward. As a general comment, the Panel would say that it is not good policy for laws to be brought to the States without appropriate funding being available.

4. ISSUES RELATING TO EDUCATION, SPORT AND CULTURE

4.1 AQUASPLASH CONTRACT

- 4.1.1 The draft proposals included an allocation of £370,000 for funding towards the Aquasplash Leisure Pool contract. Within the draft proposals, this additional expenditure would not result in an increase in the overall cash limit for the Department of Education, Sport and Culture (or indeed for the States overall) as it would be counter-balanced by savings identified elsewhere. The additional funding would go towards the States' liability under the terms of the contract to meet a proportion of the losses incurred by the pool.
- 4.1.2 It was apparent from the Public Hearing with the Minister and from the draft proposals that the need for additional expenditure arose from errors made in the past. For example, the Panel was advised that the contract had been drawn up on the basis of bad business planning; it had been projected that the pool would not operate at a loss whereas evidence suggested that public pools in fact generally operated at a deficit. It was also indicated at the Hearing that funding for the Aquasplash had reached a level where it would have been no more expensive to have maintained the pool at Fort Regent (although a greater injection of capital spending would have been required to renovate Fort Regent pool than was needed for construction of the Aquasplash).
- 4.1.3 Mindful of any shortcomings that may have arisen in the past, the Panel sought to understand what measures were being taken to address the current situation, beyond merely increasing expenditure. It also questioned the Minister on what would happen if £370,000 were not spent on the contract.
- 4.1.4 The Panel was advised at the Hearing that options were currently being explored. This advice reflected the content of a report on the Aquasplash pool produced by the Department in 2007, a copy of which was provided to the Panel. The preferred option was to attempt a renegotiation of the contract with the pool operators. It was hoped that such renegotiation would lead to a reduced risk to the States (i.e. the Department) in terms of the revenue liability and that it would also produce greater incentives for the operators to perform well. The Minister was unable at the Hearing to state when any renegotiations were likely to have been completed. A second option raised as a possibility at the Hearing was that the Department could look to operate the pool itself.
- 4.1.5 The Minister informed the Panel that the alternative to allocating an additional £370,000 was for the pool to close. Further explanation was subsequently provided and the Panel was informed that the contract included a 'get-out' clause for the States. However, when considering the implications of closure or whether to invoke the clause, decisions would need to be made as to the merits of maintaining a public pool in St. Helier.

PANEL COMMENT:

4.1.6 The current situation is unacceptable and efforts to resolve it could have been made sooner. An alternative solution to this spending pressure ultimately needs to be identified and the Minister should ensure that renegotiation of the contract, if appropriate, should begin as soon as possible. By the time of the Business Plan debate in September 2008, States Members should have been given a clear idea of the options available to the Minister, including the implications of potentially closing the Aquasplash.

4.2 DEMOGRAPHICS

4.2.1 The draft proposals placed the Department of Education, Sport and Culture in the somewhat unusual position of having its cash limit effectively reduced due to service changes (i.e. potential savings). Additional expenditure on HMP La Moye and the Aquasplash could only be factored into the proposals without there being a (significant) consequent increase in the overall cash limit due to savings identified in relation to demographics and higher education funding.

4.2.2 Savings identified in relation to demographics amounted to £325,000. As schools within the Department were effectively funded on the basis of pupil numbers, a projected fall in numbers would automatically lead to a reduction in expenditure. The draft proposals reported that the savings were also based on the assumption that the “*rôle at Highlands College will be constant over the period 2009 to 2011.*” The Panel questioned the Minister on the assumptions that had been made in order to ascertain the viability of the potential savings. Consideration was therefore given to how the Department responded to fluctuating pupil numbers; the funding formula used by the Department; and the rôle of Highlands College.

4.2.3 The Minister advised the Panel that to predict pupil numbers, information was gathered from the Department of Social Security and that actual birth rates were used to predict numbers four years ahead; beyond that time, the Department based predictions on information gathered by the Statistics Unit. It was clear from the Hearing with the Minister, however, that there was a degree of uncertainty in the process of prediction. For instance, the Panel was advised that eighty more children had appeared in the education system in 2007 than had been estimated. The Panel was also aware from its early years review of the possible difficulties facing attempts to establish the population of 0 to 5 year olds.

4.2.4 The Panel’s discussions with the Minister turned to measures that could potentially be taken in response to falling pupil numbers, such as possible closures of schools or combining year groups within schools. For the latter, it was stated that this was not beneficial from an educative point of view. With regard to closure of schools, the Minister spoke of a need for

consideration for schools to be cited within the context of their local communities. Furthermore, decisions had been made to change two-form entry primary schools to a one-form entry system. However, again, there could be a degree of uncertainty: Samarès School, for example, had been reduced to one-form entry but this decision was being reconsidered in the light of housing policy in the area. The Panel understood that the question of demographics was therefore not merely one of the total number of pupils within the system; account had to be made for issues such as the location of schools and where in the Island demands were made of the system. Finally, the Panel asked the Minister whether work had been undertaken on rationalising sixth-forms; it was advised that moves had been made towards greater co-operation, for instance through establishing joint timetables.

4.2.5 The Panel was also advised that the Department operated a 'surplus system' whereby approximately 250 spaces are maintained within the school system for the event that they may be required. The Panel was aware that a large amount of work on demographics had already been done. However, at the Public Hearing, the Panel was advised that a further review was due to be undertaken by the Department but that it remained at a tentative stage. Indeed, the Panel was made aware that such a review would be undertaken during its work in 2007 on the 2008 ABP.

4.2.6 The complexities of having to predict pupil numbers and manage fluctuations within those numbers linked to the manner in which the Department is funded. The Department receives funding under the Age Weighted Pupil Unit (AWPU) system in which funding is effectively provided on the number of pupils present in the system. Difficulties are presented by this system, however, by the fact that the academic and financial cycles did not run concurrently. The Minister advised that his Department was working with the Department of Treasury and Resources on examining the current funding formula for schools.

4.2.7 In terms of the rôle of Highlands College, the Panel asked what guarantees there were that the rôle would in fact remain constant. The Minister advised that there were no guarantees for anything to remain constant. When the Panel asked further questions on why the draft proposals were based upon that very assumption, it was explained that the roll at the College was expected to remain constant. The Panel was uncertain whether this was a typographical error in the draft proposals. However, in terms of the College's rôle, it would appear that this will change: the Panel was advised the relationship between the Department and Highlands College was to be examined, in light of the formation of the Skills Executive and that this examination would include consideration of the funding formula used for the College.

4.2.8 One statement made by the Minister would appear to be pertinent when considering the potential savings on demographics. When asked whether he was confident in the savings that had been identified, the Minister replied:

“The one thing you can be sure of with any estimate you make is that it will not be right. It will be out one way or the other; it is just a matter of how close you can get it. The issue we have, as I say, with the difference in the school year and the academic year and so on, and also having a statutory duty to educate children, we could have, for example, 20 more students we did not know about suddenly appearing this coming September which we would have to deal with. We could have 20 less than we have estimated.”

PANEL COMMENT:

4.2.9 The Panel acknowledges the complexity of the issues relating to demographics. However, this is another area where the Panel has had to work on estimates or guesses. There remains uncertainty surrounding matters such as the prediction of pupil numbers and the rôle of Highlands College and the question must therefore be asked of whether the savings identified in relation to demographics, as they have been presented, could be realised. By the time of the debate, States Members should have been provided with an update on the review of the funding formula used for the Department.

4.3 HIGHER EDUCATION

4.3.1 The issue of funding Island students in higher education in the United Kingdom appeared twice in the draft 2009 ABP proposals. It was listed both as a pressure that could be covered by a contingency fund proposed by the Council of Ministers; and an area where savings for 2009 had been identified. The uncertainty surrounding funding of higher education students in the United Kingdom arises from the lack of knowledge on what will happen with top-up fees in the United Kingdom. Any decision to increase fees would impact upon Jersey and consideration would need then to be given to how this should be managed within the Island. It had been estimated that an increase in top-up fees of £1,000 per student would ultimately mean an additional cost of £1,400,000 to the Island. As it was expected that top-up fees would not increase in September 2009 (as had first been projected), savings of £689,000 had been identified in this area.

4.3.2 This situation appeared at first glance to be somewhat contradictory and the Panel therefore asked the Minister how it had arisen. The Panel also sought to understand the negotiation process followed by Jersey when dealing with the United Kingdom as well as the implications of other work being undertaken by the Department in the area of Higher Education funding.

- 4.3.3 As it appeared that assumptions on what would happen with top-up fees were partly based on the negotiations that took place between Jersey and the United Kingdom, the Panel asked the Minister what negotiating tool he brought to the table. The Panel was advised that the Island produced good students that did not count towards universities' quotas: universities could therefore offer places to Island students and be certain of the income.
- 4.3.4 The Panel was aware from previous discussions with the Minister that consideration was being given to the feasibility of establishing an Island-friendly 'club' of universities. This would incorporate those universities most popular amongst Island students; if overall negotiations with the United Kingdom fell down, it was hoped that establishing such a 'club' might mitigate some of the impact of an increase in top-up fees. The Panel asked for an update on work on establishing such a 'club' and was advised that work was ongoing. It was noted that the establishment of any such 'club' would possibly restrict students' choice as to which university to attend.
- 4.3.5 When asked about the apparent contradictory nature of the draft proposals, the Minister stated that it was self-explanatory. Further explanation was provided to the effect that without an increase in top-up fees, there would be an 'underspend' within the Department's budget in this service area. The question could therefore be asked of whether some of this underspend (of £689,000) could be moved towards vocational and tertiary education; decisions made within the previous year's ABP had in fact moved funding from that latter service area to higher education funding and such a move would therefore be a transfer back to vocational and tertiary education. Reference to this possibility is found on page 18 of the draft proposals whilst it was also highlighted as a possibility at the Public Hearing by the Director of Education, Sport and Culture.
- 4.3.6 This would not appear to tie-in with the Panel's reading of the figures presented in the draft proposals. The potential underspend of £689,000 was described as 'savings' and the Panel's understanding was that this amount would effectively be removed from the Panel's cash limit. This would appear to be the case in the tables presented on page 10 of the draft proposals. As a result, the Department would therefore have no effective access to this funding and could not therefore transfer it to vocational and tertiary education. Nor would the sum be available for placing in any contingency fund (a second option highlighted by the Department's Director). That funding would be put towards spending pressures such as HMP La Moye or the Aquasplash contract.
- 4.3.7 A student loan system now operates for Island students. From its previous work on Higher Education funding (undertaken at the time that the Minister brought forward proposals for loans to be introduced), the Panel was aware that work would continue to be undertaken on three areas: local business bursary schemes; tax incentives; and re-defining the family. The Panel was provided with an update on the Department's work in these areas. Consideration

was also given to the Department's policy on recouping costs from students (funded by the Department) who failed to complete their studies. At the time of this report, it was the Panel's intention to gain further documentation in order to inform its subsequent work.

PANEL COMMENT:

4.3.8 There remains uncertainty regarding this potential saving. The Council of Ministers should provide more detailed clarification of how the Education, Sport and Culture cash limit can be reduced in an area where it has been acknowledged there will be funding pressures in the future.

5. CONCLUSION

- 5.1 The Panel undertook work on the draft proposals and provisional cash limits in line with the programme of work agreed by the Council of Ministers and Chairmen's Committee. There was a short timescale for this work to be completed but the Panel has endeavoured to ensure that, at the very least, further information relating to the draft proposals has been placed in the public domain.
- 5.2 It is recognised that development and scrutiny of the ABP remains a work in progress. From its work on the 2009 draft proposals, the Panel was struck by the need to assess proposals that, even from the Executive's own perspective, were based on informed estimates or best guesses. This fact can make it more difficult for an objective view to be taken of such proposals and highlights the need for information to be provided in full and in a timely fashion.
- 5.3 Prior to receiving the requests from the Council of Ministers in respect of the draft proposals, the Panel had already made a commitment to working on the 2009 ABP by setting aside time within its work programme for 2008. In essence, the Panel's work could be divided into two areas: work requested of the Panel by the Executive; and the work the Panel identified of its own accord. This report has emanated from the first part of that work.
- 5.4 From its work on the draft proposals, the Panel has identified issues that it might pursue during subsequent work on the 2009 ABP. Beyond that, however, it has also identified areas within the two relevant Departments for which issues were not raised in the draft proposals. As such, the Panel intends to consider the Fire and Rescue Service from the Home Affairs perspective and, with regard to the Department of Education, Sport and Culture, to examine the area of culture. It is intended that consideration of both areas will form part of further Public Hearings due to be held once the 2009 ABP has been lodged.

6. APPENDIX: METHODOLOGY AND BIBLIOGRAPHY

- 6.1 Due to the short timescale for evidence to be gathered and considered, the bulk of the Panel's questioning was based upon the document detailing the draft proposals and provisional cash limits that was released in March 2008. The majority of the evidence for consideration therefore came from this document and the advice garnered from the two Ministers at their respective Public Hearings.
- 6.2 However, in some areas, the Panel was able to draw on information and knowledge gleaned from its work undertaken in previous years, either from documents that had been received or from previous meetings and Hearings held with the Ministers. Whilst the following list may not be exhaustive, it provides an indication of the areas in which the Panel could draw on previous experience:
1. HMP La Moye – the Panel undertook work on the Prison in 2006 following the publication of the 2005 HMI report. This work included, amongst other things, a Public Hearing with the Minister for Home Affairs and a meeting with the Chairman of the Board of Visitors.
 2. Criminal Injuries Compensation Scheme – this topic had been discussed with the Minister in previous years and the Panel had considered whether to undertake a detailed review of this matter. At that time, the Panel received documentation from the Department.
 3. Higher Education funding – following the Minister's proposals to introduce a student loan system, the Panel gave consideration to undertaking a detailed review of this matter. It was ultimately decided not to do so but the preliminary work on the matter allowed the Panel to make a statement to the States Assembly in March 2007.
- 6.3 Finally, the Panel received a number of reports and briefings from the Council of Ministers that outlined work on the 2009 ABP. Beyond that information, documentation received by the Panel during its work on the 2009 ABP draft proposals included the following:
1. Review of Prison Budget (November 2007), Home Affairs Department Report for Council of Ministers
 2. Prison Performance Improvement Plan (PIP) – Progress Review, 22nd February 2008
 3. Sexual Offenders (Jersey) Law – Resource Implications, Report prepared by States of Jersey Police
 4. Aquasplash Review of Operations (2007)
 5. Acts B3 of the former Education, Sport and Culture Committee (6th October 2004) and B3 of the former Finance and Economic Committee (2nd June 2005) both of which related to the Aquasplash