



BILLET D'ÉTAT

WEDNESDAY, 26th FEBRUARY, 2020

THE BUSINESS OF THE MEETING

1. Scrutiny Management Committee – Tribunal of Enquiry, P.2020/24

VI
2020

BILLET D'ÉTAT

TO THE MEMBERS OF THE STATES OF THE ISLAND OF GUERNSEY

I hereby give notice, pursuant to the provisions of Rule 2(4) of the Rules of Procedure of the States of Deliberation and their Committees, that at the Meeting of the States of Deliberation to be held at **THE ROYAL COURT HOUSE**, on **WEDNESDAY**, the **26th February, 2020** the item listed in this Billet d'État is submitted for debate.

R. J. COLLAS
Bailiff and Presiding Officer

The Royal Court House
Guernsey

11th February, 2020

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

SCRUTINY MANAGEMENT COMMITTEE

TRIBUNAL OF INQUIRY

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled 'Tribunal of Inquiry', dated 11 February 2020, they are of the opinion:

1. To resolve it is expedient that a Tribunal of Inquiry be established in accordance with the Tribunals of Inquiry (Evidence) (Guernsey) Law, 1949, as amended, to inquire into a matter of urgent public importance, namely the establishment of the facts and circumstances surrounding appointment to the post of Head of Curriculum and Standards in accordance with the following Terms of Reference:
 - a) to inquire into the circumstances leading up to and surrounding the appointment of the Head of Curriculum and Standards;
 - b) to examine whether the appointment made conformed to the current policies and procedures of the relevant Committees of the States of Guernsey;
 - c) to examine whether good governance standards were maintained during the appointment process;
 - d) to examine such other associated relevant matters as the Tribunal may think fit; and
 - e) to make such recommendations as the Tribunal considers appropriate.
2. To direct the Scrutiny Management Committee to request the Royal Court to appoint an individual or individuals to constitute the Tribunal of Inquiry.
3. To delegate authority to the Policy & Resources Committee to approve expenditure as required up to £150,000 in order that the Tribunal of Inquiry may be established and discharge its functions.
4. To resolve that the Tribunal of Inquiry should forward its resultant report to the Presiding Officer of the States of Deliberation for publication as an appendix to a Billet d'État.

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

SCRUTINY MANAGEMENT COMMITTEE

TRIBUNAL OF INQUIRY

The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

11 February, 2020

Dear Sir,

1 Introduction

- 1.1 The Scrutiny Management Committee wishes to request for a second and final time that the circumstances surrounding the recruitment process for the appointment of the role of Head of Curriculum and Standards, employed by the States of Guernsey at the Committee *for* Education, Sport & Culture, do justify the establishment of a Tribunal of Inquiry in accordance with the Tribunals of Inquiry (Evidence) (Guernsey) Law, 1949, as amended. The Scrutiny Management Committee has been attempting to commission an effective independent review of this matter since September 2019 but, despite best efforts, has only made very limited progress to date with that independent review.
- 1.2 This recruitment process attracted significant media and public interest during 2019 resulting in substantial public comment of a highly critical nature. It is alleged that politicians sitting on the Committee *for* Education, Sport and Culture interfered with the appointment process by attempting to predetermine the outcome of the interview process and that there was poor or irregular governance surrounding the appointment. In the opinion of the Scrutiny Management Committee, such allegations have undermined public trust and confidence in their government's appointment processes and in government itself.
- 1.3 The Scrutiny Management Committee brought forward a Policy Letter and Propositions on the 27th August 2019 requesting that the States agree to the

establishment of a Tribunal of Inquiry in order to undertake an effective investigation of this matter. On 4th September the Assembly decided¹ by a narrow margin (*the original Propositions were amended 16 votes to 15 and the Propositions as amended were lost 13 votes to 14*) not to support the Propositions.²

- 1.4 Following this decision by the States Assembly, the Scrutiny Management Committee then chose to appoint a suitably qualified independent reviewer to undertake an investigation on its behalf. The Scrutiny Management Committee wrote to both the Committee *for* Education, Sport & Culture and the Policy & Resources Committee on the 12th September 2019 asking that the relevant information be supplied to its chosen independent reviewer. Eventually, after significant delay, a handover of some relevant documentary material was produced with concerns regarding data protection and employment law cited to explain the delay. Material from the Policy & Resources Committee was received on the 22nd November 2019 and material from the Committee *for* Education, Sport and Culture was received on the 13th December 2019. This material was reviewed by the independent reviewer commissioned by the Scrutiny Management Committee. It is important to emphasise that much of the material provided to the Scrutiny Management Committee had been submitted in heavily redacted form. This Committee understands that the documents had been substantially redacted due principally to data protection concerns. In particular, it is clear that because a number of key witnesses have withdrawn their consent in respect of their personal data being shared with the Scrutiny Management Committee and/or its independent reviewer, it was felt that such material could not be disclosed to the review process without contravention of the Data Protection Law.³
- 1.5 Changes in data protection legislation⁴ introduced on 7th January 2020 by the Committee *for* Home Affairs initially appeared to provide a helpful legal gateway to allow the relevant Committees to supply the data in un-redacted form to the investigation. The Scrutiny Management Committee immediately wrote to the relevant Committees on the 8th January 2020 and requested that all relevant material be submitted to its independent reviewer without redaction. However, no additional material has been received with additional data protection concerns being cited by both the relevant Committees. Furthermore, the recent

¹ [Hansard 4th September 2019 pg.1795](#)

² [Billet XVII of 2019 - Votes 2019/75](#)

³ The Data Protection (Bailiwick of Guernsey) Law, 2017

⁴ The Data Protection (General Provisions) (Bailiwick of Guernsey) (Amendment) Regulations, 2020

changes in data protection legislation have potentially introduced additional challenges to the Scrutiny Management Committee regarding publishing and publicly making reference to evidence from the independent review or holding a public hearing relating to this matter.

- 1.6 To date, the Scrutiny Management Committee has incurred significant cost amounting to circa £60,000 to progress its independent review and it is now clear that its completion will incur an overall cost of not less than £150,000. This anticipated cost is believed to be similar to the estimated cost to undertake a Tribunal of Inquiry and could be reduced further if the work done thus far by the independent reviewer is incorporated into the proposed Tribunal process. Furthermore, the Scrutiny Management Committee remains concerned that any final report submitted by its independent reviewer will face significant obstacles to being published without significant redactions, due to data protection and employment law concerns. This has raised a significant concern with Members of the Scrutiny Management Committee regarding value for money if the final independent report cannot be published without redaction and also in light of certain key documents not being available to the independent reviewer. The Scrutiny Management Committee is of the view that it should not continue with its independent review at further cost to the taxpayer if the final report will not be allowed to set out a full analysis of what happened and deliver genuine transparency to the public. Any published report that does not clearly identify the issues in a full and frank manner would not in the opinion of the Scrutiny Management Committee represent an efficient use of resources.
- 1.7 Therefore, the Scrutiny Management Committee has concluded that, in these unusual circumstances, it believes the best and only effective way to deliver a complete, independent and transparent review is pursuant to the Tribunals of Inquiry (Evidence) (Guernsey) Law, 1949, as amended; the Guernsey equivalent of a public inquiry process.

2 Tribunals of Inquiry (Evidence) (Guernsey) Law, 1949, as amended

- 2.1 The Tribunals of Inquiry (Evidence) (Guernsey) Law, 1949, as amended, states that the provisions of that Law shall apply “*where it has been resolved...by the States that it is expedient that a tribunal be established for inquiring into a definite matter described by the Resolution as of urgent public importance*”. The Scrutiny Management Committee is unanimously of the opinion that the facts and circumstances surrounding the appointment process do satisfy the statutory criteria for such an inquiry under the 1949 legislation. Precisely what happened

before, during and immediately after the specific appointment process in question is “a definite matter” and the “urgent public importance” test has been well documented by the weight of public and media interest. This matter needs to be determined once and for all so that there is real clarity about what happened and why; and so that the States of Guernsey can learn from the experience and implement any relevant recommendations.

The Law confers upon the Tribunal all the powers, rights and privileges as are vested in the Royal Court with regard to:

- a) enforcing the attendance of witnesses and their examination on oath;
- b) compelling the production of documents; and
- c) issuing of a commission or request to examine witnesses out of this Island.

To put the matter simply, only a Tribunal set up under the 1949 Law would have the authority to cut through the barriers to scrutiny that have been documented above.

The Royal Court would be responsible for the appointment of persons to serve on the Tribunal.

- 2.2 The Scrutiny Management Committee is mandated to advise the States when it believes a Tribunal of Inquiry should be established⁵. It is the unanimous, firm belief of the Scrutiny Management Committee that this course of action is justified in the interests of holding an effective review that will have unimpeachable independence and transparency. Additionally, this Committee believes such action fulfils another mandated duty, *“to recognise that the carrying out of scrutiny in public where possible is likely to contribute positively to public perceptions of scrutiny”*.
- 2.3 Since 12th September 2019 the Scrutiny Management Committee has attempted to progress this matter by means of an independent review. It has acted in good faith in trying to progress an effective review. However, the Scrutiny Management

⁵ Extract from the Scrutiny Management Committee mandate “To advise the States if and when in its opinion circumstances justify the establishment of a Tribunal of Inquiry in accordance with the Tribunals of Inquiry (Evidence) (Guernsey) Law, 1949, as amended.”

Committee now firmly believes that this option is unlikely to result in the publication of a transparent meaningful and conclusive report.

- 2.4 It has become apparent that to be effective the review requires access to all the relevant information as well as an ability to compel any and all relevant witnesses of fact to attend a hearing to give evidence.
- 2.5 The Scrutiny Management Committee believes that the public interest would be best served if this review process is conducted in public and that any other potential mechanism available to the Scrutiny Management Committee is not sufficiently robust and ultimately would prove ineffective. It should be well understood that if this Policy Letter is not supported by the Assembly, the Scrutiny Management Committee will cease to investigate this matter for the reasons given above.

3 Recommendations

- 3.1 To resolve it is expedient that a Tribunal of Inquiry be established in accordance with the Tribunals of Inquiry (Evidence) (Guernsey) Law, 1949, as amended, to inquire into a matter of urgent public importance, namely the establishment of the facts and circumstances surrounding appointment to the post of Head of Curriculum and Standards in accordance with the following Terms of Reference:
 - a) to inquire into the circumstances leading up to and surrounding the appointment of the Head of Curriculum and Standards;
 - b) to examine whether the appointment made conformed to the current policies and procedures of the relevant Committees of the States of Guernsey;
 - c) to examine whether good governance standards were maintained during the appointment process;
 - d) to examine such other associated relevant matters as the Tribunal may think fit; and
 - e) to make such recommendations as the Tribunal considers appropriate.
- 3.2 To direct the Scrutiny Management Committee to request the Royal Court to appoint an individual or individuals to constitute the Tribunal of Inquiry.
- 3.3 To delegate authority to the Policy & Resources Committee to approve expenditure as required up to £150,000 in order that the Tribunal of Inquiry may be established and discharge its functions.

- 3.4 To resolve that the Tribunal of Inquiry should forward its resultant report to the Presiding Officer of the States of Deliberation for publication as an appendix to a Billet d'État.

4 Compliance with Rule 4

- 4.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 4.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- 4.3 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the Propositions above have the unanimous support of all Committee Members.
- 4.4 In accordance with Rule 4(5), the Propositions relate to the duties of the Committee mandate; *"To advise the States if and when in its opinion circumstances justify the establishment of Tribunal of Inquiry in accordance with the Tribunals of Inquiry (Evidence) (Guernsey) Law, 1949, as amended"*.

Yours faithfully,

C J Green

President

L B Queripel

Vice-President

J S Merrett

Member

G Morris

Non-States Member

Advocate P Harwood

Non-States Member