



**Response to a Question Pursuant to Rule 14
of The Rules of Procedure of the States of Deliberation and their Committees**

Subject: Committee *for* Home Affairs – Rule 14 Litigation Case Response

States' Member: Deputy G A St Pier

Date received: 11th March 2024

Date acknowledged: 11th March 2024

Date of reply: 27th March 2024

Question

A number of questions arise from the responses recently received to Rule 14 questions lodged with the Committee *for* Home Affairs.

1. What and how many other roles are there within the public service where an individual is deemed not to be an employee but holding public office from which they might become subject to civil legal actions in their own name?
2. Will the Committee revise the Directive on 'Managing Matters of Litigation with Committee Business' to make clear that:
 - a. It is to apply to all matters of litigation in respect of which the States is financially exposed, including in respect of litigation costs borne on behalf of individuals holding public office?
 - b. It is to apply in circumstances where the States is indemnifying individuals (whether holding public office or otherwise) whether in respect of litigation costs or other liabilities such that, for example, the States shall retain the right to use such legal advisers as the States sees fit and settle any matter in any manner and at any time it sees fit?
3. In respect of the action by Mr & Mrs Curgenvén against four police officers, commenced in March 2022 and subject to Tomlin Orders in February 2024, was and if so when and how frequently was the Committee apprised of the matter, particularly in respect of mounting litigation costs (estimated at £250-400k) wholly disproportionate to the size of the claims (circa £12,000)?

Response

1. There are a number of roles across the public service where, due to the legislative basis of the role, the individual can be considered to hold public office. These roles can vary considerably in scale and function and may range from the discharge of very specific statutory functions, such as the Chief Inspector of Marine Accidents, to broader regulatory considerations, for example the Health & Safety Executive or responsibility for the implementation of government policy, for example the Chief Pharmacist. In some cases, these responsibilities will equate to a full-time employed role, but others may be engaged relatively infrequently. The 2020 Review of Arms' Length Bodies provides information on the posts in place at that time. The Committee is under resolution to consider the Review's recommendations and to report back on further recommendations and an implementation timetable.

Noting the context in which the question is asked, the Committee considers it important to clarify that the treatment of these posts for litigation purposes may be materially different to that of Guernsey Police. The status of Guernsey Police Officers as 'office holders' rather than 'employees' was determined by the Royal Court in the 2011 case of *Le Huray -v- The States of Guernsey* and is therefore specific to that section of the workforce. That is not to say that others holding office in public service may not be similarly deemed 'office holders' rather than 'employees' in the event of legal challenge, but given the varied nature of such roles and their contractual bases, such determinations would be most likely to arise on a case by case basis.

2. The litigation directive was originally developed with input and oversight of the Law Officers Chambers and applies to any litigation notified or being managed across the public service. The directive is due for review in 2024, and the Committee can confirm that this work will be undertaken during the second quarter of the year.
3. In July 2022, Treasury staff were advised on this matter and noted that the Committee *for* Home Affairs was projecting an underspend of £1.1m in year and expected to be able to accommodate the costs from within its existing budget (should the matter not have been covered through insurance arrangements). In November 2022, the President of the Committee *for* Home Affairs wrote to notify the Committee of the matter, confirm that the Litigation Directive was being followed and estimate the financial risk. All costs associated with the matter have since been met through insurance arrangements or from within the Budget of the Committee *for* Home Affairs.

Deputy Lyndon Trott
President
Policy & Resources Committee