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BILLET D'ÉTAT

WEDNESDAY, 16th JUNE 2021

VOLUME 3

BUSINESS OF THE MEETING

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Channel Islands Lottery, Guernsey Report & Accounts 2020

Elizabeth College Annual Report and Accounts for the year ended 31 August 2020

The Ladies' College Annual Report and Accounts for the year ended 31 August 2020

Committee for Economic Development - Public Trustee Annual Report and Audited Accounts for the year ended 31 December 2019

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

STATES' ASSEMBLY & CONSTITUTION COMMITTEE

GENERAL ELECTION 2020:
REPORTS FROM THE CPA BIMR ELECTION EXPERT MISSION AND
THE REGISTRAR-GENERAL OF ELECTORS

The States are asked to decide:-

Whether, after consideration of the policy letter entitled 'General Election 2020: Reports from the CPA BIMR Election Expert Mission and the Registrar-General of Electors' dated 10th May 2021 submitted under Rule 17.(9) of the Rules of Procedures of the States of Deliberation and their Committees, they are of the opinion:-

1. To agree the following workstreams should be undertaken by the States' Assembly & Constitution Committee:
 - a) investigate the creation of a dedicated, independent elections body for future elections;
 - b) review the Reform Laws and other relevant legislation underpinning General Elections, including:
 - i. increasing the number of signatories on the nomination form.
 - ii. introducing provisions requiring the publication of candidates and parties' election expenditure.
 - iii. reviewing the deadline for postal vote applications.
 - iv. introducing Deputy Polling Station Officers and Deputy Central Returning Officers to support election administration.
 - v. reviewing provisions relating to the vote count and recount to ensure they meet the requirements of an electronic vote count and recount.
 - vi. reviewing the margin required to trigger a recount;
 - c) introduce proposals for a system of complaints and appeals for future elections;
 - d) investigate the merits of introducing disclosures by candidates/and or Deputies and consider the disqualification provision at Article 8(e) of the Reform Law;
 - e) review the regulation of election finance, considering the findings of the

Committee on Standards in Public Life review of electoral regulation in England.

- f) review communication initiatives including the feasibility of the States of Guernsey co-ordinating 'hustings-type' meetings.
- g) research the feasibility of introducing i-voting for a future election.
- h) undertake consultation with relevant stakeholders in order to identify, and consider how the States of Guernsey can work towards the implementation of, suitable measures for Guernsey as outlined in Articles 4 and 7 of the Convention on the Elimination of All Forms of Discrimination against Women to Guernsey and Articles 21 and 29 of the Convention on the Rights of Persons with Disabilities
- i) increasing the information provided regarding the role of a States' Member, the States of Guernsey and the election process by the end of 2023.

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

STATES' ASSEMBLY & CONSTITUTION COMMITTEE

GENERAL ELECTION 2020:
REPORTS FROM THE CPA BIMR ELECTION EXPERT MISSION AND
THE REGISTRAR-GENERAL OF ELECTORS

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

10th May 2021

Dear Sir

1 Executive Summary

- 1.1 The States' Assembly & Constitution Committee ('the Committee') is under resolution to submit the Report of the Registrar-General of Electors, together with the Report of the Independent Election Observers, as an appendix to a Billet d'État as soon as possible, and no later than one year after the General Election.
- 1.2 The two reports are appended to this policy letter which has been submitted under Rule 17.(9) of 'The Rules of Procedure of the States of Deliberation and their Committees'¹:
- **Appendix A** **CPA BIMR Election Expert Mission Final Report**
Guernsey General Election - October 2020
 - **Appendix B** **Report of the Registrar-General of Electors**
Review of the 2020 General Election
- 1.3 It is strongly recommended that Members read the appended reports prior to considering this policy letter.
- 1.4 The Committee agreed to submit these reports with a covering policy letter setting out how it will address their findings and recommendations and to provide States' Members with the opportunity to endorse and provide feedback on the workstreams the Committee intends to undertake, and any other areas

¹ ['The Rules of Procedure of the States of Deliberation and their Committees'](#)

they believe the Committee should consider, as it prepares for the 2025 General Election.

2 Introduction

2.1 The 2020 General Election took place on 7th October 2020, having been postponed from 17th June as a result of the COVID-19 pandemic. The next General Election is due to take place in June 2025. The Committee is responsible for advising the States and developing and implementing policies in relation to elections to the office of People's Deputy.

2.2 On 12th December 2019, further to consideration of the amended propositions to the Committee's policy letter entitled 'General Election 2020 – Second Policy Letter'², the States resolved as follows³:

"To agree that, in his post-implementation review of the 2020 General Election and Island-wide voting, the Registrar-General of Electors shall seek the views of:

- *Candidates in the General Election (elected and unelected);*
- *Members of the General Election programme board;*
- *Officers, parish representatives, and volunteers involved in the delivery of the General Election;*
- *Election service providers (e.g. communications, e-count solutions);*
- *The voting public; and*
- *Any other consultees which he considers appropriate;*

and to direct the States' Assembly & Constitution Committee to submit the Report of the Registrar-General of Electors, together with the Report of the Independent Election Observers, as an appendix to a Billet d'État as soon as possible, and no later than one year after the General Election."

Report of the Independent Election Observers

2.3 The Commonwealth Parliamentary Association British Islands and Mediterranean Region (CPA BIMR) conducted a virtual Election Expert Mission to the Guernsey General Election. The CPA BIMR Election Expert Mission Final Report entitled '[Guernsey General Election October 2020](#)'⁴ was published on 7th December 2020 and is attached as Appendix A. This will be referred to as the 'CPA Report' in this policy letter.

² States' Meeting 11th December, 2019: Billet d'Etat XXIV: [General Election 2020 – Second Policy Letter](#)

³ Resolution 11 was the result of an amendment ([P.2019/132 Amdt 5](#)) lodged on behalf of the Committee.

⁴ The [report and accompanying press release](#) are available to download from the Commonwealth Parliamentary Association UK website: www.uk-cpa.org

- 2.4 The CPA BIMR Election Expert Mission “*offers 12 recommendations in this report to enhance the conduct of elections in Guernsey and to bring it fully into line with international obligations and standards for democratic elections.*”

Report of the Registrar-General of Electors

- 2.5 The Committee received the report from the Registrar-General of Electors on 6th April 2021. This is attached as Appendix B and will be referred to in this policy letter as the ‘Registrar-General’s Report’. This report offers 10 recommendations.

Structure of the policy letter

- 2.6 This policy letter will consider both reports’ findings and recommendations by grouping subjects under relevant headings as set out in the following table. The recommendations of the CPA BIMR Election Expert Mission or the Registrar-General of Electors will be shown in the relevant section (as below).

	Section	CPA	RG of E
3	Independent oversight and administration of elections	R2	R1
4	The legal framework for elections	R1	R2
5	Complaints and appeals	R12	n/a
6	Voter registration	R3	n/a
7	Standing as a candidate	R4	n/a
8	Communication initiatives by the States of Guernsey	n/a	R3
9	Political parties	R5	n/a
10	Election expenditure	R5 & 6	R10
11	Voting: Postal voting, polling stations and i-voting	R7	R4,5 & 6
12	Vote Count and Recount	R8 & 9	R7,8 & 9
13	Participation in elections	R10 & 11	n/a

Submission of the proposition under Rule 17.(9)

- 2.7 Rule 17.(9) of ‘The Rules of Procedure of the States of Deliberation and their Committees’ reads as follows:

“Where a Committee originating a matter for debate before the States is of the opinion that the proposals it is submitting to the States are of general policy, and where it is desirable that the principles of that policy should be considered, the Committee may have its propositions considered by the States without amendment on the understanding that if the propositions are accepted the Committee would return with detailed proposals which could be accepted or rejected with or without amendments. Where a Committee invokes the provisions of this paragraph it shall make express reference to it in its propositions”.

- 2.8 The Committee is submitting the policy letter under this Rule as it believes it is premature to submit firm proposals in respect of the 2025 General Election until the reviews detailed in this report are undertaken. Submitting the policy letter and the reports in this manner provides Members with the opportunity to confirm it agrees with the Committee’s next steps and to provide feedback on any other areas they believe the Committee should consider.
- 2.9 It must be noted that whilst the Committee will undertake the reviews and workstreams set out in this policy letter, given the pressures on public finances and resources that the States will face this political term, any proposals to be considered by the Committee, and the States, will take into account the priorities of the States at that time and set out the financial implications of such proposals.

3 Independent oversight and administration of elections

CPA R2	A permanent dedicated elections body should be constituted so that institutional knowledge and expertise can be embedded in the Guernsey electoral system. This body could provide continuous electoral oversight, including oversight of candidate and voter registration, political parties and campaign finance.
RG R1	It is recommended that SACC should investigate the creation of an independent body to advise on and oversee future elections.

- 3.1 In the ‘General Election 2020’ policy letter⁵, the then Committee identified that ‘the development of a permanent, independent election administration body should be investigated after the 2020 General Election with a view to such a body being established for the 2024 General Election’⁶.
- 3.2 In reaching this conclusion, the then Committee had noted the Commonwealth Parliamentary Association report ‘Recommended Benchmarks for Democratic Legislatures’⁷ stated at point 1.1.5:

⁵ States’ Meeting 24th April, 2019: Billet d’Etat VII: [General Election 2020](#) (P.2019/22)

⁶ Appendix 1, Section 3(a): Independent oversight of Elections (pages 49 – 50).

⁷ CPA [Recommended Benchmarks for Democratic Legislatures](#)

“An independent Electoral Commission or similar authority shall be established for the management of the conduct of elections and its tasks shall include monitoring the election expenses of parliamentary candidates and political parties”.

and the Venice Commission’s ‘Code of Good Practice in Electoral Matters – Guidelines and Explanatory Report’⁸ which stated that an impartial body must be in charge of applying electoral law.

- 3.3 The CPA report states that the International Covenant on Civil and Political Rights, which applies to Guernsey, has been interpreted as requiring that an independent electoral authority should be established to supervise the electoral process.
- 3.4 The UK Electoral Commission was established in 2001 and its establishment and general functions are set out in the [Political Parties, Elections and Referendums Act 2000](#).
- 3.5 The Committee agrees independent oversight of elections to the office of People’s Deputy is a key workstream to progress and will investigate the options for the creation of a permanent, independent election administration body.
- 3.6 The Committee will consider the type of body that might be appropriate for Guernsey, undertake consultation with existing stakeholders and consider whether there might be options for a pan-Island solution and consult with Jersey, Alderney and Sark accordingly. It will also research the practicalities, costs and timeframes for creating such a body.

4 The legal framework for elections

CPA R1	Greater codification of electoral rules and procedures, either via amending existing election law or via enacting a new omnibus election law, could be considered, in order to ensure that there is certainty and consistency in the law and that it applies equally to all concerned.
RG R2	It is recommended that SACC should review the Reform Law and other legislation relating to the holding of elections and, if it thinks fit, make suitable proposals for consideration by the States, for electoral reform by way of a standalone election Law that reflects modern election practices and is easily accessible.

- 4.1 [The Reform \(Guernsey\) Law, 1948, as amended](#) and [The Reform \(Amendment\) \(Guernsey\) Law, 1972](#) (‘the Reform Laws’) are the key items of legislation which

⁸ Venice Commission’s [‘Code of Good Practice in Electoral Matters – Guidelines and Explanatory Report’](#)

underpin elections in Guernsey. Both items of primary legislation can be found on the Guernsey Legal Resources website⁹.

- 4.2 In advance of each General Election, a number of items of secondary legislation – in the form of Ordinances for approval and Statutory Instruments – are agreed covering matters such as the date of the General Election, electoral expenditure, hours and location of polling etc.
- 4.3 The CPA report confirms that Guernsey’s legal framework for the conduct of elections complies with local, regional and international standards for democratic elections. It states the rights of political participation are well protected, with both the right to vote and the right to stand for election particularly well established.
- 4.4 The CPA report notes that it is not considered good practice to amend electoral law so close to an election, quoting the Venice Commission’s recommendation that: “The fundamental elements of electoral law, in particular the electoral system proper [...] should not be open to amendment less than one year before an election”.
- 4.5 The referendum on Guernsey’s voting system took place in October 2018 and the General Election was scheduled to place in June 2020. Given the need to amend primary legislation as a result of the referendum to implement a new electoral system, and a number of items of secondary legislation, the above principle could not be met in the intervening period. The Committee will endeavour to ensure that any changes to electoral law will be submitted to the States to be in place at least one year ahead of the General Election i.e. before May 2024.
- 4.6 In the ‘General Election 2020’ policy letter¹⁰, the then Committee stated:
- “... after the 2020 Election, it would be timely for the Reform Law to be subject to a comprehensive review from the States’ Assembly & Constitution Committee, to incorporate lessons learnt from the 2020 Election and to review existing provisions against international best practice”.*
- 4.7 The Committee agrees a review of the Reform Laws, and other electoral legislation, is a key workstream to be progressed and that part of this review should consider whether existing legislation should be amended or whether standalone election legislation should be drafted.

⁹ www.guernseylegalresources.gg

¹⁰ Appendix 1, Section 3(b): Future Review of the Reform Law (pages 50-51).

5 Complaints and appeals

CPA R12	Consideration should be given to the introduction of a system of complaints and appeals for all stages of the electoral process. Detailed procedures should be set out regarding the authority responsible to receive and adjudicate upon disputes arising in relation to voter registration, candidate nomination, voting and counting and all other aspects of the electoral cycle. Fair procedures must apply to any such regulations, with clear deadlines providing for the submission of complaints, making appeals and delivery of decisions, as well as rules of standing to lodge complaints.
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- 5.1 The CPA report states there was little detail of any procedures, in electoral law in Guernsey, to facilitate the making of complaints and appeals during the electoral process. The Registrar-General's report does not contain a specific recommendation but highlights the issues caused by the absence of an independent person or body to whom various types of complaints around election matters can be addressed.
- 5.2 Whilst the Reform (Guernsey) Law, 1948 enables the States to make by Ordinance such provisions as they may see fit in respect of the making and determining of complaints in respect of elections, no such Ordinance has ever been made by the States.
- 5.3 The Committee agrees that a system of complaints and appeals is required. This will be considered when considering the options for an independent elections body and during the review of electoral legislation.

6 Voter registration

CPA R3	Formal processes of voter registration could be introduced as part of an ongoing rolling process of registration. Voter registration could be done as part of any annual engagement that residents have with the state, such as filing tax returns.
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- 6.1 For the last three General Elections, a new Electoral Roll has been established each time. This means voters have had to register to vote prior to each General Election and has required the States of Guernsey to extensively publicise the need to register.
- 6.2 Both reports note the gap between those who are registered to vote and those that could be entitled to vote, with only 62.8% of those estimated to be eligible to vote registered on the Electoral Roll.

- 6.3 In April 2019, the States agreed that measures should be taken as may be necessary to enable elections to take place on the basis of an Electoral Roll compiled from an automatically generated list of persons eligible to vote, further to the delivery of Phase 2 of the Rolling Electronic Census Project.
- 6.4 The workstream rests with the Committee *for* Home Affairs to progress. The Committee consulted with the Committee *for* Home Affairs to receive an update on the status of this workstream and its letter of response is attached at Appendix C. The recommendation in the CPA Report should therefore be addressed via an existing workstream, if the States prioritise and resource the workstream.

7 Standing as a candidate

CPA R4	Consider removing the provision in Article 8 of the Reform (Guernsey) Law, 1948, which disqualifies candidates who have been sentenced to imprisonment for a period of six months or more, from eligibility to become a People's Deputy.
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- 7.1 Article 8 of the Reform (Guernsey) Law, 1948 sets out the eligibility criteria to stand as candidate in the General Election. The CPA report notes the disqualification in Article 8 which prevents anyone from standing who, during the five years preceding the election, was sentenced for an offence in the UK, Channel Islands or Isle of Man for a period of six months or more. It advised that the exclusion of all those sentenced to imprisonment, without regard to the nature of the offence, is unreasonable.
- 7.2 In considering the above recommendation, the Committee noted that, prior to and after the General Election, a number of people – including members of the public and Deputies – suggested that candidates and/or elected Deputies should be required to undergo checks by the Disclosure and Barring Service (DBS). It is commonplace for a number of posts of employment to require a form of Disclosure as a condition of a person taking up a post and it has been questioned why such checks are not required of candidates and Deputies.
- 7.3 The Committee has committed to look at this matter as part of its review of election procedures in advance of the 2025 General Election. It will consult with the Law Officers, the Committee *for* Home Affairs and the Office of the Data Protection Authority, as well as looking at practice in other jurisdictions, and the potential benefits and disadvantages of such disclosures being a requirement for candidates and/or elected Deputies. As part of this workstream, it will also look at Recommendation 4 of the CPA Report.
- 7.4 In the Registrar-General's report, under 'voter feedback', the substantial number

of candidates who stood in the General Election was raised by several different groups. Suggestions were put forward on processes that could be put in place to ensure candidates were committed to standing e.g. through the introduction of candidate deposits or requiring additional people to nominate a candidate.

7.5 These two suggestions were considered in the ‘General Election 2020’ policy letter¹¹. The then Committee had unanimously agreed that it would not recommend candidate deposits for the same reasons set out in the Registrar-General’s report.

7.6 At that time, the Committee did not propose increasing the number of signatories to nominate a candidate. However, the Committee has considered the arguments put forward in 2.6 to 2.12 of Appendix 1 to that report and believes the matter should be revisited in light of experience of the 2020 General Election.

8 Communication initiatives by the States of Guernsey

RG R3	It is recommended that consideration be given by SACC to how more hustings-type events can be organised by the States and/or the parishes, also having regard to how the requirements of “special interest” groups can be factored into such hustings.
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8.1 The ‘General Election 2020 – Second Policy Letter’ contained a section entitled ‘Communication initiatives’. At section 9(c) it considered face to face engagement and commented as follows regarding hustings:

“9.10 Hustings have always been organised by the Parishes historically, not the States of Guernsey. In previous General Elections, district-based hustings have provided a useful means of providing two-way communication between the voter and the candidate, in seeing how candidates answer questions under pressure and to hear their views on various issues.

9.11 The Committee does not believe it is appropriate for the States of Guernsey to set-up a series of hustings, as it does not believe they would be equitable or useful for either the candidates or the voters. It may not be possible for hustings to be held in the same manner as previous Elections. It may be possible that candidates may organise their own hustings e.g. candidates grouping together to set out their views on certain policy areas in a hustings style setting”.

8.2 The CPA report noted that there was a strong tradition of public meetings in

¹¹ Appendix 1, Section 2(b) Nominations: number of signatories; 2(c) Candidate deposits (pages 47 – 49)

Guernsey that had somewhat changed with the arrival of Island-wide voting due to the logistical challenges of hosting 119 candidates. It noted that some public events were organised by several civil society groups.

- 8.3 The Registrar-General's report noted that whilst the 'meet the candidates' event was considered useful, a number of candidates would have liked to have seen more hustings-type events. Some candidates also commented that the hustings events organised by civil society groups, whilst useful, took up considerable time in preparation and attendance. The report suggests there could be more engagement with such groups ahead of the Election to have a more co-ordinated approach.
- 8.4 The Committee notes that a number of hustings-type events were organised by not only civil society groups but candidates themselves. In the question time that followed the General Update Statement¹² delivered by the Committee at the 24th February, 2021 States' Meeting, it was suggested that the Committee look to help co-ordinate 'lobby groups' and their engagement with candidates. It was also suggested that the Committee consider arranging hustings to ensure that every candidate had the opportunity to participate in such sessions.
- 8.5 Notwithstanding the comments of the former Committee regarding the practical difficulties in holding hustings under an Island-wide voting system, given the experience in 2020, the Committee will consider how hustings-type events can be organised, and will liaise with the parishes, civil society groups, members and the public as to how this could be facilitated for 2025.

9 Political parties

CPA R5	Political parties should be subject to oversight, and their finances should be evaluated on an annual basis...
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- 9.1 Three political parties were formally created in 2020 which nominated a number of candidates:

Register of Political Parties	Registered	Candidates	Elected
Alliance Party Guernsey	12.02.2020	11	0
The Guernsey Party	05.08.2020	9	6
The Guernsey Partnership of Independents	18.08.2020	21	10

- 9.2 The CPA report noted that beyond the legislation relating to registration, filing annual accounts and election expenditure, there is no further regulation of

¹² States Meeting on 24 February 2021: [Hansard Report – Wednesday 24th February 2021](#) (page 136)

political parties. It stated that whilst this had not hindered the conduct of the election, further legislative intervention may become necessary to govern the operation of parties in political life.

- 9.3 The Committee notes that the existence of political parties in Guernsey's political life is still very much in its infancy, with only two parties remaining after the 2020 General Election, and current Members of the two political parties make up 18% and 23% of the Assembly respectively¹³. The previous Committee had taken a 'light touch' approach to regulating political parties and it is suggested this is continued, with the Committee maintaining a watching brief of the operation of parties. The Committee will give consideration as to how political parties' finances can be evaluated in line with the CPA report recommendation.

10 Election expenditure

CPA R5	Political parties should be subject to oversight, and their finances should be evaluated on an annual basis. Individual candidates' pre-election fundraising and expenditure should also be assessed and recorded. Reporting should not be onerous but simply conducted by the production of evidence.
CPA R6	Boundaries of pre-election and annual expenditure should be clearly defined. The limitations of expenditure outside the formal period of nominated candidature could be within similar boundaries to those defined for the election period, except with no additional public subsidy.
RG R10	It is recommended that the Reform Law (or any successor) should make explicit the fact that parties' and candidates' individual expenditure returns may be published.

- 10.1 The Registrar-General's report summarises the electoral expenditure rules for candidates and political parties. As noted, it was the first election where campaign finance regulations for political parties had to be introduced.
- 10.2 As part of the review of electoral legislation, the wording of the legislation around election expenditure will be carefully considered. The Committee notes that there is a particular need to clarify the boundaries of pre-election and annual expenditure and will consider this as part of its review. Whilst guidance was produced on electoral expenditure for candidates and parties, it is clear the guidance needs further finesse on how the rules work in practice, based on experience.

- 10.3 In June 2020, the Committee on Standards in Public Life announced a review of

¹³ There are currently seven members of The Guernsey Party and nine Members of the Guernsey Partnership of Independents in the States of Deliberation.

electoral regulation in England. The independent Committee on Standards in Public Life advises the Prime Minister on arrangements for upholding ethical standards of conduct across public life in England.

- 10.4 The review¹⁴ intends to identify the principles and values that should underpin the regulation of donations and campaign expenditure by candidates, political parties and non-party campaigners in election and referendum campaigns. It will also examine the Electoral Commission's remit as a regulator of election finance and associated electoral law and examine the enforcement regime for election finance offences committed by candidates, parties and non-party campaigners.
- 10.5 The review commenced with a public consultation inviting views on the way donations and campaign expenditure by candidates, political parties and non-party campaigners in election and referendum campaigns are regulated and enforced by the Electoral Commission, the Crown Prosecution Service (CPS) and the Police.
- 10.6 The Committee on Standards in Public Life intends to report with any recommendations by June 2021. The Committee believes the findings and recommendations of this review may prove an invaluable resource in reviewing the regulation of finances relating to elections in Guernsey.
- 10.7 The Committee agrees that electoral legislation should explicitly state that parties' and candidates' expenditure may be published and this will need to be communicated to all potential candidates prior to the nominated period in future. This recommendation will form part of the changes suggested further to its review of the electoral legislation.

11 Voting: Postal voting and polling stations

(a) Postal voting

RG R4	It is recommended that SACC should consider moving the deadline for postal vote applications further from polling day.
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- 11.1 69% of those on the Electoral Roll opted to register for a postal vote, with approximately 75% of all votes cast being via postal vote. In light of this uptake, it is likely that postal voting will continue to be a popular option in future elections.
- 11.2 Whilst the issue and return of postal votes was generally successful, as acknowledged by the Registrar-General's report, some problems were

¹⁴ Committee on Standards in Public Life: [Review of electoral regulation - Terms of Reference](#)

encountered, most significantly the challenges in the issuing and return of voting packs to and from overseas voters. The Committee will therefore consider whether the deadline for applications should be brought forward as part of its review of electoral legislation.

(b) Polling stations

CPA R7	The recruitment process for polling station staff should be open and publicly advertised, and increased training for polling station staff should be considered.
RG R5	It is recommended that the Reform Law (or any successor) should in future include provision for Deputy Polling Station Officers to be formally sworn in and given the authority to act across the full range of duties in the absence of a Polling Station Officer.
RG R6	It is recommended that SACC should consider consolidating the polling stations, with a view to reducing the number and/or opening hours of the Parish polling stations and increasing the number of super polling stations.

- 11.3 The Committee would like to place on record its thanks to all the Polling Station Officers and volunteers who manned the advance and parish polling stations. The support of the parishes and volunteers was invaluable in assisting the smooth running of the General Election.
- 11.4 The Registrar-General's report addressed the recommendation in the CPA Report, confirming that the recruitment process was open and publicly advertised. The Committee noted that some felt the training for polling station staff was unnecessary, however it supports training being provided to all polling station staff to ensure consistency in electoral administration.
- 11.5 Whilst postal voting proved a popular option with voters, 42% of all voters visited a polling station, with 25% of voters completing their ballot at a polling station and 17% of postal voters putting their postal votes directly into the ballot box. Voting at polling stations therefore remains a vital part of the election process.
- 11.6 The Committee agrees that there should be provision in the Law for Deputy Polling Station Officers to be sworn in to provide support to the Polling Station Officer and to provide resilience in the process. This recommendation will form part of the changes suggested further to its review of the electoral legislation.
- 11.7 When preparing for the 2020 General Election, the then Committee had acknowledged at the time that the polling station arrangements put in place (advance polling stations on the Saturday and Sunday immediately before the

Election, and two days of parish polling and ‘super’ polling stations) were likely ‘overcompensating’ for the logistical challenges Island-wide voting presented.

- 11.8 With the benefit of experience, and feedback from the parishes, it is clear that the number of polling stations could be reduced, and the number of ‘super’ polling stations could be increased. Further consultation will be undertaken with the parishes and the Registrar-General of Electors to identify an appropriate number of polling stations for future elections.

(c) i-voting

- 11.9 The ability to introduce i-voting was explored by the former Committee as stated in its ‘General Election 2020’ policy letter. I-voting can encompass voting from a personal computer to voting via an app on a mobile device. It could take place anywhere in the world and could largely replace the need for postal voting. Given the limited time available before the 2020 General Election, the Committee concluded that introducing i-voting for 2020 was not possible.
- 11.10 During the 2020 General Election, there was a desire expressed by some that i-voting should be introduced in Guernsey. The Committee will consider the feasibility of introducing i-voting for a future Election looking at the opportunities and challenges of such an option.

12 Vote count and Recount

(a) Vote count

CPA R8	The number of ballot papers cast should be verified at the start of the vote count. Adding an additional verification step should also be explored, namely the verification of the total number of votes cast.
CPA R9	A rigorous countback audit process should be put in place, so that an original ballot paper that is ‘transposed’ can be checked against the newly transposed ballot paper that is used to replace it.
RG R7	It is recommended that SACC should give consideration to amending the Reform Law (or any successor Law) to ensure that it is possible for Deputy Central Returning Officers to be sworn in and given the authority to act across the full range of the Central Returning Officer’s duties in his/her absence.

- 12.1 The votes at the 2020 General Election were counted using electronic counting equipment, a first for Guernsey. Whilst the technology worked well, as detailed in the Registrar-General’s report, administrative issues arose which caused delays in the votes being counted. The Election Project Board have noted these

issues, along with the findings and recommendations in the CPA Report, and will look to ensure comprehensive processes are put in place to avoid a reoccurrence of these issues.

- 12.2 The Committee would like to place on record its thanks to the Central Returning Officer who excelled in their performance of their role. The Committee agrees that the role would benefit from additional support from Deputy Central Returning Officers to assist in running the vote count and dealing with returns of expenditure. This recommendation will form part of the changes suggested further to its review of the electoral legislation.

(b) Recount

RG R8	It is recommended that SACC should consider the margin of votes required to trigger a recount after a General Election and, if appropriate, make recommendations for amendments to the Reform Law (or any successor) to reduce the that margin.
RG R9	It is recommended that the Reform Law (or any successor) should, in future, provide for the possibility of an electronic recount and, accordingly, afford the Bailiff more discretion over the exact requirements for a recount.

- 12.3 Whilst the CPA Report did not make a specific recommendation in relation to the margin of votes required to trigger a recount, it highlighted it was ‘a generous margin’ which election authorities may wish to re-evaluate. Noting that in the 2020 General Election, a candidate with nearly 500 votes below the last successful candidate could request a recount, the Committee agrees that the margin should be reviewed, and will consider the CPA report’s suggestion that:

“It might be more practical if the margin of difference between the candidate placed 38th and those below him/her would relate to a percentage of the difference between these contestants in the number of votes cast, rather than a percentage of the total number of ballots issued”.

- 12.4 Electronic counting equipment will be used again in future General Elections and the relevant provisions of electoral legislation will be reviewed to ensure that it accommodates such a count, in particular offering flexibility in how a recount can be undertaken, in line with the recommendation of the Registrar-General.

13 Participation in elections

CPA R10	Extension of Articles 4 and 7 of the Convention on the Elimination of All Forms of Discrimination against Women to Guernsey should be pursued without delay. This will entail enactment of legislation to enable fulfilment of convention obligations in advance of the extension.
CPA R11	Extension of Articles 21 and 29 of the Convention on the Rights of Persons with Disabilities should be pursued without delay. This will entail enactment of equality legislation to enable fulfilment of convention obligations in advance of the extension.

13.1 The Extension of Articles of the Convention on the Elimination of All Forms of Discrimination against Women to Guernsey and the Convention on the Rights of Persons with Disabilities fall within the mandate of the Committee *for* Employment & Social Security. The Committee consulted with the Committee *for* Employment & Social Security on the comments and recommendations in the CPA Report and its letter of response is attached at Appendix D.

13.2 The Committee notes that whilst the Committee *for* Employment & Social Security supports the extension of these Conventions to Guernsey at the earliest opportunity, it would not be possible to select only specific Articles for extension. It further notes that its comments that:

“...even if Guernsey meets the requirements of the priority Articles identified by the CPA BIMR Election Expert Mission, it would not be possible to seek to extend these Articles to Guernsey until we meet the pre-requisites set out above, which may or may not be relevant to those specific Articles.

Of course, the fact that the UK’s ratification of these Conventions has not yet been extended to Guernsey is no barrier to the States of Guernsey working towards the implementation of the measures outlined in Articles 4 and 7 of CEDAW and Articles 21 and 29 of CRPD”.

13.3 The Committee will undertake consultation with relevant stakeholders in order to identify, and consider how the States of Guernsey can work towards the implementation of, suitable measures for Guernsey as outlined in the aforementioned articles as part of its preparations for the 2025 General Election.

13.4 The Registrar-General’s report details the considerable effort that was made to ensure that candidates and potential candidates had access to information that would help them to understand the election process as well as gain insight into the role of a Deputy.

13.5 In a bid to reduce the barriers to people standing, the States funded and

organised the following which was available to all candidates:

- Comprehensive guidance published in advance of the Election and presentations for prospective candidates.
- A grant of £500 for each candidate.
- The ability to include a manifesto (two sides of A4 sized paper) in a candidate manifesto booklet, produced by the States of Guernsey and delivered to all homes on the Electoral Roll and published online on the election's website.
- A free dedicated web page on each candidate.
- The production of a short video promoting their candidacy published on the website.
- An event organised to facilitate voters meeting candidates at Beau Sejour.

13.6 Whilst acknowledging the improvements made to the support for candidates in advance of the 2020 General Election, the Committee is keen that work is undertaken providing information to the public about the work of Deputies and the work of the States, to demystify what being a Deputy entails in reality, for both the public and potential candidates. This will be aimed at all sectors of society but will look at some of the perceived barriers that may exist for those currently underrepresented in the States e.g. women, persons with disabilities etc.

13.7 The Committee will be working with Members, organisations and the public to ascertain what information should be produced and will be working with the Parliamentary Team to ensure this is provided as part of its outreach work. It will also seek to provide information on the General Election well in advance of it taking place (rather than just in the months immediately prior to the Election) to assist individuals who might consider standing.

14 Conclusion

14.1 As confirmed by the CPA BIMR Election Expert Mission, the 2020 General Election was a successful democratic exercise and Guernsey's legal framework for elections complies with international standards for democratic elections. The report from the Registrar-General of Electors shows that the criteria to measure the success of the 2020 General Election, set by the former Committee and the Committee *for* Home Affairs were largely met.

14.2 The only criteria that was not fully met was "A high percentage of those eligible to vote are registered on the Electoral Roll". Whilst acknowledging that those registered on the Electoral Roll exceeded 2016 figures, with only 62% of those eligible to vote registering on the Electoral Roll, it is noted that this cannot be claimed to be a high percentage. However, the workstream under the Committee *for* Home Affairs should resolve this, if the States prioritise and

resource the workstream.

14.3 The introduction of a new electoral system and its practical implementation was always expected to raise matters that would need to be reviewed. Both reports put forward constructive recommendations to assist the Committee in preparing for the next General Election and have helped to assist in identifying key areas for review by the Committee.

14.4 As set out in the policy letter, the key areas for further work, arising from consideration of the appended reports, can be summarised as follows:

- a) investigate the creation of a dedicated, independent elections body for future elections;
- b) review the Reform Laws and other relevant legislation underpinning General Elections, including:
 - i. increasing the number of signatories on the nomination form.
 - ii. introducing provisions requiring the publication of candidates and parties' election expenditure.
 - iii. reviewing the deadline for postal vote applications.
 - iv. introducing Deputy Polling Station Officers and Deputy Central Returning Officers to support election administration.
 - v. reviewing provisions relating to the vote count and recount to ensure they meet the requirements of an electronic vote count and recount.
 - vi. reviewing the margin required to trigger a re-count;
- c) introduce proposals for a system of complaints and appeals for future elections;
- d) investigate the merits of introducing disclosures by candidates/and or Deputies and consider the disqualification provision at Article 8(e) of the Reform Law;
- e) review the regulation of election finance, considering the findings of the Committee on Standards in Public Life review of electoral regulation in England;
- f) review communication initiatives including the feasibility of the States of Guernsey co-ordinating 'hustings-type' meetings;
- g) research the feasibility of introducing i-voting for a future election;
- h) undertake consultation with relevant stakeholders in order to identify, and consider how the States of Guernsey can work towards the implementation

of, suitable measures for Guernsey as outlined in Articles 4 and 7 of the Convention on the Elimination of All Forms of Discrimination against Women to Guernsey and Articles 21 and 29 of the Convention on the Rights of Persons with Disabilities; and

- i) increasing the information provided regarding the role of a States' Member, the States of Guernsey and the election process by the end of 2023.

14.5 There will be other areas that the Committee will consider when undertaking its review of the General Election before reporting back to the States with proposals. The Election Project Board will also consider how improvements can be made to the administration of the electoral procedures.

15 Compliance with Rule 4

15.1 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.

15.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.

15.3 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 the Committee.

15.4 In accordance with Rule 4(5), the Propositions relate to the duties of the Committee in relation to elections to the office of People's Deputy.

15.5 Also, in accordance with Rule 4(5), the Committee consulted with the Committee *for* Home Affairs and the Committee *for* Social Security.

Yours faithfully

Deputy C.P. Meerveld
President

Deputy L.C. Queripel
Vice-President

Deputy S.P. Fairclough
Deputy J.A.B. Gollop
Deputy L.J. McKenna



GUERNSEY GENERAL ELECTION

OCTOBER 2020

CPA BIMR ELECTION EXPERT MISSION FINAL REPORT



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EXECUTIVE SUMMARY

"This was an election of firsts. The first time election observers were invited by Guernsey; the first use of a new electoral system; the first inclusion of advance polling days; and, on top of all this, the first election to be conducted during a global pandemic.

The Guernsey Election was a successful democratic exercise. Guernsey's legal framework for elections complies with international standards for democratic elections. The introduction of new island-wide voting has led to some challenges. Many of these were effectively dealt with while others still remain as outlined in our report."

Jim Wells MLA, Head of Mission

The Commonwealth Parliamentary Association British Islands and Mediterranean Region (CPA BIMR) conducted a virtual Election Expert Mission to the Guernsey General Election in October 2020. This was the first time that international election observers had been invited by the States of Guernsey. Due to the Covid-19 pandemic, research was carried out online, and interviews with a wide range of stakeholders were conducted using digital meeting platforms.

Guernsey's legal framework that provides for the conduct of elections complies with local, regional and international standards for democratic elections. The right to vote is well protected, including the voting rights of prisoners. The right to stand for election is also well protected, except for anyone who, during the five years preceding the election, was sentenced to imprisonment for a period of six months or more by a court in the UK, the Channel Islands or the Isle of Man.

Election administration in Guernsey is not a permanent aspect of the governmental infrastructure, which caused pressure on the elections team in the lead up to the election. Voter registration in Guernsey is voluntary, and an extensive media campaign took place in the lead up to the election to encourage eligible voters to register, which was temporarily interrupted due to the outbreak of COVID-19.

A record total of 119 candidates were nominated for this election. This offered voters an unprecedented level of choice, while it also required them to read a broad range of manifestos. In the lead up to the election, three new political parties were registered and presented candidates, a total of 41 between the three of them.

This election saw a variety of new measures being introduced, including new campaign finance regulations for political parties, advance polling days, and new vote count technology. Voting took a significantly different form compared to previous elections, as some two-thirds of the registered electorate registered for a postal vote.

There is an absence of equality law and of any special measures to promote the increased participation of women in political life in Guernsey. The political participation right of persons with disabilities is protected by the legal regime, and commendable efforts were made by the elections team to ensure access to polling stations for persons with physical disabilities.

The CPA BIMR Election Expert Mission offers 12 recommendations in this report to enhance the conduct of elections in Guernsey and to bring it fully into line with international obligations and standards for democratic elections.

INTRODUCTION TO THE MISSION

At the invitation of the Guernsey States' Assembly & Constitution Committee (SACC), the Commonwealth Parliamentary Association British Islands and Mediterranean Region (CPA BIMR) conducted a virtual Election Expert Mission (EEM) to the Guernsey General Election in October 2020. The SACC's invitation followed consultation with the Policy & Resources Committee and agreement by the States of Deliberation. This was the first time that CPA BIMR had been invited to observe elections in Guernsey.

The Mission was composed of:

- Jim Wells MLA – Head of Mission (Northern Ireland)
- Anne Marlborough – Legal/Political Analyst (Ireland)
- John Ault – Electoral/Campaign Analyst (UK)
- Fleur ten Hacken – CPA BIMR Election Coordinator (The Netherlands)
- Jessica Onion – CPA BIMR Election Administrator (UK)

The Mission held virtual meetings between 28 September and 9 October. The Mission was guided by the Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers.

The Mission conducted an independent assessment of the Guernsey election against international legal standards, commitments and obligations as well as domestic laws. Its assessment considered the legal framework, election administration, political campaign, media, and opportunities for complaints and appeals. In addition, the Mission considered a number of wider issues such as gender equality and participation of persons with a disability. The Mission met key stakeholders, including the Bailiff, the Chief Minister, HM Procureur and HM Comptroller, the Chief Officer of the Guernsey Police, the Registrar-General of Electors, election officials, candidates, political parties, civil society groups, media outlets and voters.



The CPA BIMR Team of international observers

Election observers were introduced into the law of Guernsey for the first time in anticipation of this election. Article 72B was added to the Reform (Guernsey) Law, 1948, which enables the States' Assembly & Constitution Committee, after consultation with the Policy & Resources Committee, to appoint observers. Such observers will have the right to receive a copy of the Electoral Roll, to be present at any polling station, and to be present during the counting of votes.

An invitation was accepted by CPA BIMR to observe this election. Due to the COVID-19 pandemic, the Mission was originally planned to be delivered as a hybrid mission. The observers would conduct virtual meetings with stakeholders and visit Guernsey for a limited period of time to conduct in person observations of Advance Voting, Election Day and the Vote Count in Guernsey. In consultation with Public Health Guernsey, the observers were granted Critical Worker Travel Permits and had agreed to adhere to strict regulations, including daily COVID-19 testing, while in Guernsey.

Shortly before departure to Guernsey, the Mission was informed that there was increased concern in Guernsey around interacting with observers visiting from abroad due to the risk of COVID-19. Consequently, restrictions were proposed on the observers' access to polling stations, which led to the abandonment of plans to observe the election in person. In close consultation with the Registrar-General of Electors, the decision was taken to continue the Mission virtually. CPA BIMR had prior experience with this innovative adaptation of election observation methodology, as it had carried out a successful virtual Election Expert Mission to the Anguilla General Election in June 2020.

The Mission acknowledges its limitations, in particular the inability of members to visit the island in person and to observe the proceedings on Advance Polling Day, Election Day and the Vote Count. Despite this, the Mission has striven to look at the wider electoral process to the best of its abilities.

This report will offer a number of recommendations which it is hoped will be given due consideration by all the election stakeholders, particularly the States of Guernsey, for the improvement of future elections in Guernsey.

BACKGROUND & ELECTORAL SYSTEM

The "Bailiwick of Guernsey" is one of three British Crown Dependencies and is located in the English Channel, off the coast of France. The Bailiwick of Guernsey consists of three separate sub-jurisdictions, namely Guernsey, Alderney and Sark.

Guernsey is an island of 24 square miles and has a population of around 63,000.¹ Guernsey is administered by the States of Guernsey. Its assembly is the States of Deliberation, which comprises of 38 elected People's Deputies and two representatives of the States of Alderney who are elected separately in Alderney. The Election Expert Mission's mandate covers the election of the 38 deputies in the October 2020 General Election. This was the first time that deputies were elected via a First-Past-The-Post system on an island-wide basis.

The States of Deliberation acts as the overarching executive and legislative assembly with the power to raise taxation and determine expenditure. The States of Deliberation meets every month, except in school holidays, to discuss and debate reports, draft legislation and other matters.

The States of Deliberation has three unelected ex-officio members. The Bailiff of Guernsey is a member and presides over the States. The Bailiff is unelected and non-political, and also serves as the Chief Justice of Guernsey. Both Her Majesty's Procureur (Attorney-General) and Her Majesty's Comptroller (Solicitor General) also sit ex-officio.

¹ States of Guernsey website, available on: www.gov.gg/population

COVID-19 PANDEMIC

The COVID-19 pandemic, inevitably, had an impact upon the electoral process in Guernsey. The election was initially due to take place on 17 June 2020, but in April 2020 it was postponed by a year until June 2021. However, Guernsey's policies to stop the outbreak of COVID-19 worked well, and life in Guernsey returned to normal earlier than expected. Therefore, after several weeks, some Members of the States started lobbying for the election to take place later in 2020. This would mean the delay of the election by an entire year, which had been criticised by some sitting deputies and members of the public, would be shortened to a few months. Eventually, a decision was taken by the States of Deliberation on 1 July 2020 that the election would take place on 7 October 2020.

LEGAL FRAMEWORK

The fundamental law of Guernsey governing elections is found in the Reform (Guernsey) Law, 1948. This law establishes the overarching system of government and the electoral system, including provisions on the right to vote and the right to stand for election. Amended frequently since 1948, the most recent amendments have their origins in a referendum conducted in 2018² which mandated revision of the electoral system. The Reform (Guernsey) (Amendment) (No.2) Law, 2019 gave effect to the changes arising from the decision taken in the referendum. The Reform (Guernsey) (Amendment) (No.2) Law, 2019 (Commencement) (Ordinance), 2020 brought this law into force on 22 April 2020.

This was just short of six months in advance of the election date, offering minimal time for the legal changes to be put into effect. It is usually not considered good practice to amend electoral law so close to an election. The Venice Commission³ recommends that "the fundamental elements of electoral law, in particular the electoral system proper [...] should not be open to amendment less than one year before an election".

Subsidiary legislation, in the form of ordinances and regulations, provides detail on some aspects of the electoral process, including on the registration of political parties, electoral expenditure by candidates, postal voting and the location and timing of polling. Rules on other aspects of the electoral process are dispersed across other pieces of legislation including, for example, the Land Planning and Development (Exemptions) Ordinance, 2007, which provides for an exemption from planning restrictions on the erection of election signs. Some matters are largely unregulated, such as procedures for complaints and appeals relating to voter registration and candidate nomination. Other aspects of the electoral process are governed by customary law and practice, resulting in a lack of certainty in the absence of clear written rules.

International human rights law creates obligations in relation to the conduct of elections in Guernsey. While Guernsey is a British Crown Dependency, international instruments applicable to the UK are not directly applicable in Guernsey⁴ but must rather be extended on an individual basis. Several of the main international instruments pertinent to democratic elections have been

² Conducted on 10/10/2018, five options were given to voters who chose Option A, to have a single island-wide election for 38 deputies to the States of Determination, with a four-year term in office.

³ European Commission for Democracy through Law (Venice Commission) [Opinion No. 190/2002 CDL-AD\(2002\)023rev2-cor](#) (2002) Paragraph II.2 Regulatory levels and stability of electoral law.

⁴ UN ICCPR Committee (2015) [CCPR/C/GBR/CO/7](#), in reviewing UK record, noted with concern that the human rights instrument applicable to the UK was not directly applicable to Crown Dependencies

extended to Guernsey.⁵ These include the International Covenant on Civil and Political Rights and the International Convention on the Elimination of Racial Discrimination. The Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities have not yet been extended to Guernsey. The relatively recent 2017 UK national report⁶ under the Universal Periodic Review of the UN Human Rights Council stated that work is underway on a broad equality and human rights programme in Guernsey, including on disability and inclusion.

The European Convention on Human Rights applies to Guernsey and has been given domestic effect in the Human Rights (Bailiwick of Guernsey) Law, 2000, which came into force in 2006. This legislation is binding upon public authorities and enforceable in the local courts. A broad swathe of political rights is protected in the Human Rights Law.

Guernsey's legal framework that provides for the conduct of elections complies with local, regional and international standards for democratic elections. Rights of political participation are well protected, with both the right to vote and the right to stand for election particularly well established. The Human Rights (Bailiwick of Guernsey) Law, 2000, and the access to the local courts to vindicate the rights comprised therein, is significant.

Recommendation 1: Greater codification of electoral rules and procedures, either via amending existing election law or via enacting a new omnibus election law, could be considered, in order to ensure that there is certainty and consistency in the law and that it applies equally to all concerned.

BOUNDARY DELIMITATION

Previously, the States deputies were elected in seven multi-member constituencies, called districts (Castel, St Peter Port North, St Peter Port South, St Sampson, South East, Vale and West). These districts elected between five and six deputies, depending on the population of each district. In previous elections, all candidates were independent. However, there was frustration on the island that voters could only vote for a limited number of candidates in their district. There was a call for change by supporters of island-wide votes.

Following considerable discussion in Guernsey, a multi-option referendum was conducted on 10th October 2018 which offered voters the opportunity to vote on the future structure of the electoral system. The States had agreed to adopt the outcome of the referendum if 40% of people on the electoral roll cast their ballot. The referendum was decided on via preferential and transferable voting, with voters ranking up to five options in order of preference. The details of the referendum were set out in The Electoral System Referendum (Guernsey) Law, 2018.⁷ These options were either:

- Option A, one 38-member constituency covering the whole island. Deputies would serve four-year terms;

⁵ [UN HRI/CORE/GBR/2014 Common core document](#) forming part of the reports of States parties: UK, has an extensive commentary on & catalogue of human rights instruments relevant to Guernsey

⁶ [UPR National Report of the UK, British Overseas Territories and Crown Dependencies](#) (2017)

⁷ Available on: <http://www.guernseylegalresources.gg/article/165225/Electoral-System-Referendum-Guernsey-Law-2018>

- Option B, seven districts with five or six seats. Deputies would serve four-year terms. This option was essentially the status quo;
- Option C, seven district constituencies with three, four or five seats, and one 10-member constituency covering the whole island. Voters would vote in one district constituency and the whole-island constituency. Deputies would serve four-year terms;
- Option D, four constituencies with 9, 10 or 11 seats. Deputies would serve four-year terms;
- or Option E, a single island-wide 38-member constituency with one-third of the members (12 or 13) elected every two years for a six-year term.⁸

Option A, which proposed island-wide voting, secured the greatest number of votes in the final round of counting, having received 52.48% of the votes ahead of Option C which received 47.52%. Option B came third in the referendum. The turnout was 45.1%, which meant that the referendum result was adopted.

Thus, the 2020 election saw the institution of a novel format for all stakeholders to deal with the election of States deputies. Deputies were elected in a single island-wide district for the first time. Voters had 38 votes and were able to choose from the full list of candidates. Deputies were elected to serve for a term of 4 years.⁹ The formation of political parties was provided for by law, and three parties were registered to participate in the election.

The institution of island-wide voting had the effect of creating several outcomes that perhaps had not been entirely predicted before the election, such as a complex ballot paper and a significantly elongated counting process requiring the use of ballot scanning and electronic tabulation.¹⁰

ELECTION ADMINISTRATION

Election administration in Guernsey is not a permanent aspect of the governmental infrastructure. The staff are drawn from other parts of the civil service, including the Registrar-General of Electors who maintains electoral registration. The elections team seems to have general respect among stakeholders for carrying out its activities in an independent and impartial manner and for its readiness to provide information to voters and candidates. Nonetheless, the International Covenant on Civil and Political Rights, which applies to Guernsey, has been interpreted as requiring that an independent electoral authority should be established to supervise the electoral process.¹¹

The elections team is responsible for the planning and implementation of all aspects of the election process from publicity to polling day and from staff recruitment to engaging technology to conduct the counting process. The work is extremely demanding, with fixed deadlines and limited resourcing. The staff are to be commended for their work in achieving an effective election operation and polling day.

⁸ States of Guernsey website, available on: www.gov.gg/referendum

⁹ Due to the change in election dates due to COVID-19, the States agreed that the next election should be held in June 2025. Effectively, the deputies will therefore serve a term of 4 years, 8 months and 14 days.

¹⁰ Island-wide voting had previously been used to elect a smaller number of Conseillers for the island.

¹¹ UN Committee on Human Rights (27 Aug 1996) [General Comment 25 "The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service," 1510th meeting \(fiftyseventh session\)](#)

The Mission was told that nearly all arrangements for the June 2020 General Election were in place in early March, and that postponing the election to October meant a number of changes were needed, including adapting the recruitment of volunteers, amending the www.election2020.gg website, reorganising services being offered by third parties (in particular the production of ballot papers and the provision of electronic ballot scanners), reorganising training sessions, rewriting guidance and introducing contingency plans to cover all eventualities should the island move backwards in relation to COVID-19.

The restrictions imposed by the States of Guernsey to combat the spread of COVID-19 interrupted the election preparations for several months. Public outreach activities resumed once restrictions were lifted. The election administration should be commended for producing engaging public service announcements and making these available to the public on online platforms. This election took place in a context of extraordinarily challenging barriers, but the elections team still managed to deliver an effective election.

Recommendation 2: A permanent dedicated elections body should be constituted so that institutional knowledge and expertise can be embedded in the Guernsey electoral system. This body could provide continuous electoral oversight, including oversight of candidate and voter registration, political parties and campaign finance.

THE RIGHT TO VOTE

The right to vote is well protected in the law of Guernsey. Article 27 of the Reform (Guernsey) Law, 1948, sets out the qualifications to vote. Any resident on the island may apply to be included in the Electoral Roll, without any criteria as to nationality or citizenship. The only requirement is that a voter be “ordinarily resident”, which is defined as meaning that someone is living lawfully, and has a home, in Guernsey. One may be ordinarily resident without a fixed or permanent address.

In addition to being ordinarily resident when applying for inscription in the Electoral Roll, the intending voter must have been ordinarily resident for a period of at least two years immediately prior to the date of registration, or else for a period or periods of five years in total at any time prior to this. Persons aged 16 and above may vote, but they may be included in the Electoral Roll from the age of 15. Article 30 of the Reform (Guernsey) Law, 1948, provides that voting is by secret ballot.

The voting rights of prisoners are protected in the Reform (Guernsey) Law, 1948, in Article 27A. Two possibilities are available, in that prisoners may register for a postal vote or may vote in person, at the discretion of the Prison Governor. Postal voting has been available to all absent voters since 1972. Advance voting was provided for the first time in this election.



Polling stations

VOTER REGISTRATION

Voter registration in Guernsey is voluntary. There is no requirement for residents to be on the register. The Electoral Roll opened in December 2019 and was subject to an extensive media campaign. As a result of the outbreak of COVID-19 in March 2020, outreach initiatives had to be scaled back and reconsidered in light of the uncertain situation the island found itself in.

It was originally decided to delay the election from June 2020 to the same time in 2021. However, following the decision of the States of Guernsey to proceed with the election in October 2020, the election team campaigned extensively from 1st July onwards to encourage voters to register, with an extensive multi-channel approach, from radio, television, door drops, bus advertising and social media to more traditional methods.

The voting age in Guernsey is 16. In order to vote residents should have been registered by 21st August. The Election Expert Mission was informed that when the Electoral Roll closed at midnight on Friday 21st August, 31,301 voters had registered to vote. The population of Guernsey was 63,021 at the end of December 2019.¹² This number includes residents of Alderney and Sark (approximately 2,500), as well as people under the age of 16, neither of whom are eligible to vote in this election. An estimated 79% of people were eligible to vote (49,807).¹³ Of these estimated eligible voters, only 62.8% were registered on the electoral roll. So, although the number of registered voters was higher than in the past two General Elections in 2012 and 2016, there is still a significant gap between those who are registered to vote and those that could be entitled to vote. And even though this election saw a record voter turnout of registered voters (79%), only an estimated 49.6% of eligible voters voted in this election.

Voter registration is conducted on an ad hoc basis in the lead up to a General Election, and there is no rolling register of electors throughout the years in which no election is being held. This means the election team conducts voter registration campaigns, while having to organise all other aspects of the election simultaneously. The electoral roll is available for public inspection on an annual basis in March. However, access to the roll ahead of the election, as amended since March, was unclear.

Recommendation 3: Formal processes of voter registration could be introduced as part of an ongoing rolling process of registration. Voter registration could be done as part of any annual engagement that residents have with the state, such as filing tax returns.

THE RIGHT TO STAND FOR ELECTION

The right to stand for election is set out in Article 8 of the Reform (Guernsey) Law, 1948. This requires only that a candidate be of full age, which is 18 years of age, and be ordinarily resident on the island on the date of nomination. A candidate must have been ordinarily resident in the island for either a period of two years immediately before the date of nomination, or for a period or periods of at least five years in total at any time prior to nomination. The candidate must also be a registered voter, a qualification which was introduced in advance of this election.

¹² States of Guernsey (29 Oct 2020) 'Guernsey Quarterly Population, Employment and Earnings Bulletin', p.9, available on: <https://www.gov.gg/CHttpHandler.ashx?id=132534&p=0>

¹³ Ibid

Nomination requires the support in writing of two voters who are on the Electoral Roll. No deposit or fee is payable. The nominee must submit a declaration of eligibility to hold the office of People's Deputy. The person must also declare any unspent convictions which resulted in imprisonment anywhere in the world, or else the absence of such convictions.

There is a disqualification in Article 8 which excludes anyone who, during the five years preceding the election, was sentenced to imprisonment for a period of six months or more by a court in the UK, the Channel Islands or the Isle of Man. The International Covenant on Civil and Political Rights, applicable to Guernsey, provides, in Article 25, that citizens shall have the right and opportunity to take part in the conduct of public affairs. This has been interpreted to mean that the right to stand for election may be suspended or excluded only on grounds which are "objective and reasonable".¹⁴ It is arguable that the exclusion of all those sentenced to imprisonment, without regard to the nature of the offence, is unreasonable.

Recommendation 4: Consider removing the provision in Article 8 of the Reform (Guernsey) Law, 1948, which disqualifies voters who have been sentenced to imprisonment for a period of six months or more, from eligibility to become a People's Deputy.

CANDIDATE REGISTRATION

A record total of 119 candidates were nominated for this election. This offered voters an unprecedented level of choice, while it also required them to read a broad range of manifestos. Although the vast majority of candidates stood as independents, three political parties were registered and nominated candidates, a total of 41 between the three of them. These were:

- the Alliance Party, registered in February 2020, which nominated eleven candidates, two of whom were women;
- the Guernsey Party, registered in August 2020, which nominated nine candidates, including one woman;
- and the Guernsey Partnership of Independents, also registered in August 2020, which nominated 21 candidates, nine of whom were women.

Political parties are narrowly defined in the Reform (Guernsey) Law, 1948, which provides that a political party is "a free association of persons, one of the aims of which is to participate in the management of public affairs, including through the presentation of candidates to free and democratic elections." Applications for registration are made to the States' Greffier, who maintains a register of political parties. Registration depends upon a party having certain office holders, a constitution, and submission of an application signed by two party members who are registered voters, and payment of a fee of £80.¹⁵ Parties will be registered on satisfaction of these requirements, unless the name or emblem of the party is offensive or confusing.

In addition to rules on registration, political parties also have obligations to file annual accounts with the Greffier. They must also comply with the rules on election expenditure, set out in Article 45 of the Reform (Guernsey) Law, 1948, and the Electoral Expenditure Ordinance, 2020. Beyond

¹⁴ UN Committee on Human Rights (27 August 1996) [General Comment 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service \(Art. 25\)](#), paragraph 4.

¹⁵ [The Registration of Political Parties \(Fees\) Regulation, 2020](#)

these rules, there is no further regulation of political parties. While this has not hindered the conduct of the election, further legislative intervention may become necessary to govern the operation of parties in political life.

ELECTION CAMPAIGN

Not visiting the island has considerably restricted the Mission's ability to analyse the nature of the campaign in Guernsey, but aspects have been possible to assess through evidence gathered from online and social media, as well as through interlocutor meetings.

The election campaign appears to have been extremely competitive, with a large number of candidates, 119, seeking one of the 38 seats available. Independent candidates and political parties campaigned freely and peacefully, with no reports of impediments to campaign activities. The creation of party politics saw 41 candidates stand for one of the three political parties, while the remaining 78 candidates fought as independents.

There is a strong tradition of public meetings in Guernsey. This has somewhat changed with the arrival of island-wide voting due to the logistical challenges of hosting 119 candidates. Previously, these events were based in the local constituencies with a more manageable number of candidates in attendance. However, some public events were organised by several civil society groups. These include: the Guernsey Disability Alliance; Standing up for Guernsey's Environment; Life in Guernsey 2020 Work, Rights and Wellbeing Hustings; Guernsey Churches Convention for Candidates; Guernsey Institute Stakeholder event for candidates; Grammar School Meet the Candidates, and the Royal College of Nursing Hustings.

Campaigning has been different in this election, with some candidates campaigning on their own and others through one of the three parties. The introduction of parties was a focus point in the campaign of many candidates.

Candidates issued literature of their own, and posters were displayed. Whilst canvassing was once seen as the norm in smaller district constituencies, the practical limitations of candidates visiting every registered elector meant that in-person meetings and campaigning have been less frequent than in previous elections.

CAMPAIGN FINANCE

In a small jurisdiction like Guernsey, access to candidature is relatively open and the issues of campaign finance were not raised to any great extent with the Election Expert Mission. However, because of the significant change in boundary delimitation that took place for this election, moving from local smaller constituencies to an island-wide system, there are possible challenges to future potential candidates accessing the process.

Each nominated candidate received some support for their candidature from the States of Guernsey. Support took the form of:

- A candidate manifesto booklet containing a maximum of two sides of A4 sized paper per candidate, produced by the States of Guernsey and delivered to all homes on the Electoral Roll.
- A grant of £500 for each candidate.

- A free dedicated web page consistent with the manifesto booklet for each candidate.
- An event organised to facilitate voters meeting candidates. Each candidate was given an allocated table and chairs in a large sports hall. Arranged alphabetically they were either grouped by political party, or individually. Members of the public were encouraged to meet each candidate as desired. Whilst not a financial benefit there is an implicit 'in kind' financial element to this event.

There is no nomination fee or deposit required to stand for election, which facilitates ease of access to participate in the election. Campaign finance regulations for political parties were introduced for the first time this election. The regulations stated that the candidate expenditure limit would be £6,000 (including the generous £500 state support) and that the expenditure by a political party was only permissible by virtue of candidates affiliated to that party assigning a maximum of 50% of their permitted electoral expenditure to the party, and that such expenditure by a political party in any election may not exceed in total twice the permissible electoral expenditure for an individual candidate or £9,000, whichever is the lesser.¹⁶

The appearance of three registered parties in this election was a matter of considerable discussion. The nature of the parties' appearance in the election meant that their capacity to campaign, share finance and collaborate in saving on costs of their campaigns made them potentially better resourced than their independent opponents.

Some consideration should be given to the so-called pre-election period. Whilst election expenses are defined and limited for the period when the election campaign is 'live' and candidates have been nominated, no such limitations or reporting requirements exist for the period before an election, when a candidate or party has indicated its intent to contest an election. This period could potentially see high levels of spending by election campaigners without any oversight or limitation. With the advent of parties in the Guernsey context this may become an area of concern where parties exist and function throughout the period of a session of the States of Deliberation but there is limited oversight of their funding, finances or campaign expenditure except to make an annual declaration of their accounts to the nominated officer – the Greffier. This could lead to a significant imbalance in campaign parity between parties, richer individuals and ordinary citizens who wish to seek election in the future, whether as a party-affiliated candidate or as an independent candidate.

Recommendation 5: Political parties should be subject to oversight, and their finances should be evaluated on an annual basis. Individual candidates' pre-election fundraising and expenditure should also be assessed and recorded. Reporting should not be onerous but simply conducted by the production of evidence.

Recommendation 6: Boundaries of pre-election and annual expenditure should be clearly defined. The limitations of expenditure outside the formal period of nominated candidature could be within similar boundaries to those defined for the election period, except with no additional public subsidy.

¹⁶ Guernsey Election Website (August 2020): 'Information for Prospective Candidates: Guidance Notes', p.15, available on: <https://election2020.gg/media/k0ghm3qj/guidance-for-candidates-final-26-08-2020.pdf>

MEDIA

Although not extensive, Guernsey is served by an active, engaged, and local media. There is also active social media engagement, which appears to have been especially popular during the election campaign, spawning accessible processes for voters to assess who they might be most aligned with. There is a healthy media landscape which, although small, is free and open.

BBC Guernsey is a dedicated arm of the UK's BBC, which is funded by a license fee. It is based in Guernsey and reported on the campaign. During the election, BBC Guernsey broadcast a series of candidate hustings on the radio and it reported extensively on the various changes and novelties of the election reflecting the changing nature of the process, such as the number of candidates and the length of the ballot paper.

Guernsey is also served by ITV, in the form of Channel TV and a news website. It covers all of the Channel Islands, not simply Guernsey.

The Guernsey Press is the newspaper in Guernsey. Founded in the nineteenth century, the daily newspaper has significant coverage in Guernsey. As well as covering the election it also took paid advertising from candidates and parties. It has had no stated editorial line on support for parties or individual candidates. Guernsey is also served by The Bailiwick Express, an online media platform, which also covers Jersey.

Some media outlets faced challenges when covering the election because of quarantine restrictions in Guernsey due to COVID-19, as it impeded their ability to move equipment and personnel to Guernsey. Whilst not a limitation on press freedom, this does seem to have had some effect on the variety and depth of some of the media channels' capacity to offer its planned programming concerning the election.

Although some media respected an informal period of silence in their reporting on election-related matters during Advance Voting days and Election Day, this was not formalised. One aspect of the media coverage that was notable was the approach taken by the media towards incumbent politicians. The media's policy and practice of maintaining impartiality during the election period to afford equal and fair access to all candidates, whether incumbent or otherwise, was commendable.



Poster inside a polling station

Guernsey also has an active social media landscape, which was especially active during the island-wide election, where the 119 candidates may have been less individually known to the electorate. Interlocutors shared significant commentary that the electorate was active on social media and that it engaged with the issues of the campaign. Little or no evidence of intimidation or abuse was provided beyond the normal cut and thrust of political debate during an intensive election campaign. No comments or significant concerns were shared by the election authorities, law enforcement or candidates about intimidation, or worse, on social media.

TECHNOLOGICAL INNOVATION

Whilst much of the technology used in the election was focused on the process of encouraging residents to register to vote through social media there was also significant investment in technology to assist the vote count because of the significant change in the voting process.

As voters were offered up to thirty-eight votes on their ballot paper, scannable ballots were issued to voters that could either be cast in a polling station or by post.

As part of the counting process these ballot papers were then scanned, using commercially available scanning equipment. Optical Mark Recognition (OMR) technology was used to scan each vote on the ballot paper and record it. This was supplied by a UK-based company that was brought to Guernsey with all the necessary equipment to conduct the count. One of the challenges discussed with the interlocutors was the impact of the high number of returned postal ballots that were creased and ripped, which meant that ballots could not get scanned by the software.

This led to a high number of votes being rejected by the scanners and then being replaced (transposed) with a new non-creased ballot which the scanning equipment could accept. Whilst the equipment worked well, from the virtual observations that the Election Expert Mission could conduct, there was still a high number of human interactions with the ballots such as the 'transposition' process and the need for manual adjudication. Please see the section on Counting for further comment on this.

VOTING

Voting took a significantly different form compared to previous elections, as 69% of the registered electorate registered for a postal vote. In total, 21,271 postal votes were issued, including those sent to voters outside Guernsey.

Guernsey also saw significant extensions to the methods of voting for those who wished to vote in person at a polling station. As the information from the elections team indicates, 'it was agreed to introduce advance polling stations to increase the number of days that people on the Electoral Roll could cast their votes, and to enable voters to choose from voting in their parish polling station or at a 'super-polling' station.'¹⁷

Polls were open from 8am to 8pm as follows:

- Saturday 3 and Sunday 4 October: St Sampson's High School and The Princess Royal Performing Arts Centre;
- Tuesday 6 and Wednesday 7 October (formal polling day): all parish polling stations (14 in total) and The Princess Royal Performing Arts Centre.

Voters could attend the polls in person and vote for up to 38 deputies. Those who had been issued with a postal ballot were not eligible for a replacement ballot but could deliver their completed postal ballot to a polling station at any stage in the process.

¹⁷ Guernsey Election 2020 website, available on: <https://election2020.gg/voting/where-to-vote/>

To be issued with a ballot paper, voters are only required to give their name and no identification is required. The process depends on trust that the voter will not impersonate another voter on the electoral register, and no concerns about this practice were shared with the Mission. Voters also have the capacity, at the discretion of the Registrar General of Electors, to register to vote in the polling station on polling day if they have been inadvertently left off the register due to administrative error. The Mission was informed that this facility was used on a handful of occasions.



Polling booths inside a polling station

The staffing of polling stations is done on an unpaid voluntary basis. In previous elections, staffing of polling stations was arranged by the Douzaines, the administrative bodies of the parishes. For the first island-wide General Election the polling stations were the responsibility of the Registrar-General of Electors. The Douzaines still ran the polling stations using parish officials and volunteers and the States also advertised for volunteers to carry out various tasks on polling days. If extra staff were required, they were co-opted by members of the Douzaine from the local area as required. There did not seem to be an open process of application for these roles. With polling station staff working in shifts throughout polling days, there can be a high turnover of staff on the same day. This could potentially lead to a variable service for voters visiting the polling stations at different times throughout the day and lead to an inconsistency of electoral administration. The elections team provided training to all staff working in polling stations, which most staff attended. However, some staff felt strongly that training was unnecessary and there is evidence that some staff volunteered without having received training.

Recommendation 7: The recruitment process for polling station staff should be open and publicly advertised, and increased training for polling station staff should be considered.

The ballot paper caused a number of concerns for third sector groups, especially those associated with voters with partial sight or motor problems. The nature of the ballot required voters to fill in small oval shapes on the ballot (which could be scanned and recorded using the electronic counting equipment). This posed challenges for some voters as these ovals were relatively indistinct on investigation.

COUNTING

Counting began on Thursday 8 October at the Beau Sejour Leisure Centre in St Peter Port. Ballot boxes started to arrive from secure storage at 6am, with staff and counting teams arriving from approximately 8am. The Chief Returning Officer briefed those candidates attending the count at 8.30am. The first ballot boxes were opened at 9am and counting began.

Counting staff are paid a fee of £15 per hour. Specialised ballot scanners and software were engaged from the UK to conduct the count. The staff associated with the scanning technology were afforded critical worker status to conduct their work in Guernsey.

Counting should have three separate stages in the following order, in line with international best practice:

1. a verification of the number of ballot papers cast;
2. a verification of the number of votes cast (this stage is only relevant if voters can vote for more than one candidate, such as in the Guernsey 2020 election);
3. a vote count verifying how many votes the candidates received.

These three steps ensure a rigorous counting process. However, in this election the first two steps did not appear to take place as separate parts of the counting process. The first step would involve the counting staff counting how many ballots were received before moving on to counting votes, which would be relatively easy to implement. The second step would be more complex. Bearing in mind each elector had anywhere between 1 and 38 votes to cast, the total number of votes cast could have been up to approximately 900,000 votes in this instance. This could potentially be labour intensive and time consuming.

Recommendation 8: The number of ballot papers cast should be verified at the start of the vote count. Adding an additional verification step should also be explored, namely the verification of the total number of votes cast.

Once the ballots had been opened, in the case of postal ballots, and emptied from ballot boxes, they were fed through the electronic scanning equipment to analyse whom the elector had chosen. Two scanning machines were used for this purpose. Ballots were checked for accuracy by staff on desktop screens and approved as required.

Numerous ballot papers were rejected because the scanning equipment was unable to assess them correctly, due to being creased when returned in the post or ripped when envelopes were opened by counting staff. In these cases, counting staff assessed the ballot paper and then 'transposed' the original information onto a fresh ballot paper that would be accepted by the ballot scanner. This was a labour-intensive process, and to third party observers it was an unusual and potentially concerning method, due to the large amount of human engagement which could facilitate possible human error. While no evidence of malpractice was observed virtually, this could have been a possibility, particularly as a significant number of ballots were transposed via this method (852 in total). Once the original ballot had been transposed, it was kept in a separate pile from the newly transposed ballots, with no apparent audit trail in place linking the two ballot papers. This could have prevented a rigorous countback audit process. If candidates or agents had wanted to check the audit trail to ensure no errors had been made in this transposition process, this would not have been possible.

Recommendation 9: A rigorous countback audit process should be put in place, so that an original ballot paper that is 'transposed' can be checked against the newly transposed ballot paper that is used to replace it.

The declaration of the results was issued in the early hours of Friday morning 9 October, broadcast live on BBC Radio Guernsey and other media outlets. All candidates were announced in alphabetical order, and those elected were listed separately in the order of their election.

Following the declaration, a recount was requested, which had been widely anticipated. As per the Reform (Guernsey) Law, 1948, a recount could be requested by unsuccessful candidates if the margin of difference between them and the successful candidate placed 38th was 2% of the total number of people voting. Under the new island-wide voting system, this translated to a margin of approximately 400-500 votes. This is a generous margin which means the chances of a recount are high. In this election, six candidates were eligible to request a recount, and four of them did. Election authorities may wish to re-evaluate the basis on which recounts can be requested in future elections under the current island-wide system. It might be more practical if the margin of difference between the candidate placed 38th and those below him/her would relate to a percentage of the difference between these contestants in the number of votes cast, rather than a percentage of the total number of ballots issued.

The recount was conducted on Saturday 10 and Sunday 11 October, with the final results being available on Sunday evening. There was no material difference between the original declaration and that made after the weekend recount.

PARTICIPATION OF WOMEN

Women have long been participants in the States of Deliberation, but in numbers which have been quite inconsistent. In 2016 twelve women were elected, amounting to 32% of the representation of Guernsey in the assembly. This was the cause of some celebration, as just five women had been elected in 2012, amounting to 11% of the then membership.

Of the 119 candidates in this election, only 28 were women. Just eight of them were elected, among the total of 38 deputies representing Guernsey, amounting to 21%. This figure falls short of the minimum advocacy goal of 30% of women in parliament espoused in the Beijing Platform for Action, and very far short of the goal of gender parity of 50% men and women.

This is a disappointing outcome from the perspective of gender equality. Guernsey's legal framework offers scant regulation promoting equality of access to political office for women. The absence of equality law, particularly in the sphere of employment rights and equal pay, offers some evidence of historical and cultural discrimination against women which has yet to be eradicated. There is also an absence of any special measures to promote the increased participation of women in political life.

The UN Convention on the Elimination of All Forms of Discrimination against Women has not yet been extended to Guernsey. Attention was drawn to this fact when the Committee on the Elimination of Discrimination against Women most recently examined the 2017 report of the UK on compliance with the treaty obligations. In its concluding observations the Committee stated¹⁸ that it remained concerned that the provisions of the Convention have not been given effect in Guernsey.

¹⁸ UN Committee on the Elimination of Discrimination against Women (14 March 2019) [CEDAW/C/GBR/CO/8 Concluding Observations on the Eighth Periodic Report of the UK](#), page 4/16.

A new Discrimination Ordinance is under preparation in Guernsey, but this is narrow in focus. Article 4 of CEDAW would, if extended to Guernsey, make provision for the enactment of temporary special measures to accelerate de facto equality for women, such as to promote the candidacy of women. Among measures to support to women, political parties, in particular, could be encouraged “to adopt effective measures, including the provision of information, financial and other resources, to overcome obstacles to women’s full participation and representation and ensure that women have an equal opportunity in practice to serve as party officials and to be nominated as candidates for election”.¹⁹ Article 7 of CEDAW obliges parties to the convention to “take all appropriate measures to eliminate discrimination against women in the political and public life of the country” which includes ensuring that women “hold public office and perform all public functions at all levels of government”.

Recommendation 10: Extension of Articles 4 and 7 of the Convention on the Elimination of All Forms of Discrimination against Women to Guernsey should be pursued without delay. This will entail enactment of legislation to enable fulfilment of convention obligations in advance of the extension.

PARTICIPATION OF PERSONS WITH DISABILITIES

The Convention on the Rights of Persons with Disabilities makes provision in Article 29 for the participation in political and public life of persons with disabilities. Article 21 of the convention further requires that parties shall take all appropriate measures to ensure the freedom of expression and opinion and access to information of those concerned. The convention has yet to be extended to Guernsey. Legislative preparations are underway to allow such extension, as equality law in the form of a new discrimination ordinance has been drafted and appears likely to be enacted soon.

Recommendation 11: Extension of Articles 21 and 29 of the Convention on the Rights of Persons with Disabilities should be pursued without delay. This will entail enactment of equality legislation to enable fulfilment of convention obligations in advance of the extension.

In the meantime, the present legal regime protects the political participation rights of persons with disabilities. In 2016 a provision was added to the Reform Law which abolished “the mental incapacity” to vote. Article 27B now provides that any rule of law which provides that a person is subject to a legal incapacity to vote “by reason of his or her mental state” is abolished. This represents a liberal approach to voters with intellectual disability or mental illness.

Commendable efforts were made by the Registrar-General and her team to ensure access to polling stations for persons with physical disabilities. Polling stations were almost entirely accessible independently, with the exception of the polling station in St. Andrews. This deficiency was well communicated in advance and all voters wishing to do so could vote instead at the super polling station at the Performing Arts Centre, which was accessible.

¹⁹ UN CEDAW (1997) [General Recommendation 23: Political and Public Life](#), paragraph 32.

The ballot paper, which required the careful shading in of small ovals, to be recorded by optical scanner, gave rise to some concerns regarding difficulties posed for voters with visual or motor impairments. The ovals were relatively indistinct on investigation. Magnifiers were available for those who wished to use them. Voters may, by law, be assisted to vote, but secrecy is compromised for such voters. They do not have the facility to vote independently.

ELECTORAL JUSTICE

One of the fundamental elements of a legitimate electoral process is that provision is made for access to justice to resolve any disputes which may arise. International law provides for the right to an effective remedy, which includes both fairness and timeliness.²⁰ There is little detail of any procedures, in electoral law in Guernsey, to facilitate the making of complaints and appeals during the electoral process. There is no evidence, however, that there was any denial of access to justice or fair procedures during this election.

Electoral disputes are not segregated from other legal disputes in Guernsey. There is a presumption that fair procedures will be applied throughout the electoral process, including in relation to voter registration and candidate nomination. Recourse to judicial review before the courts is available. Uniquely in the Guernsey electoral sphere, the rules on the registration of political parties provide that decisions of the Greffier may be challenged in the Royal Court, with an appeal from that decision available to the Court of Appeal.

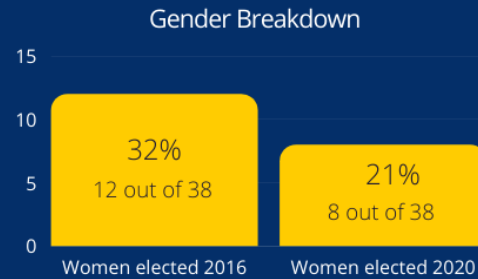
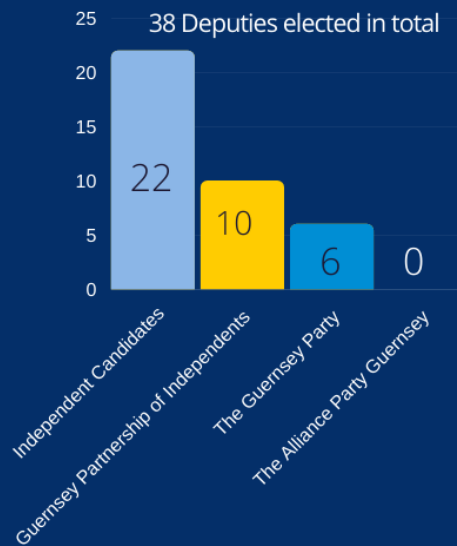
There were no complaints or appeals brought to the courts related to this election.

Recommendation 12: Consideration should be given to the introduction of a system of complaints and appeals for all stages of the electoral process. Detailed procedures should be set out regarding the authority responsible to receive and adjudicate upon disputes arising in relation to voter registration, candidate nomination, voting and counting and all other aspects of the electoral cycle. Fair procedures must apply to any such regulations, with clear deadlines providing for the submission of complaints, making appeals and delivery of decisions, as well as rules of standing to lodge complaints.

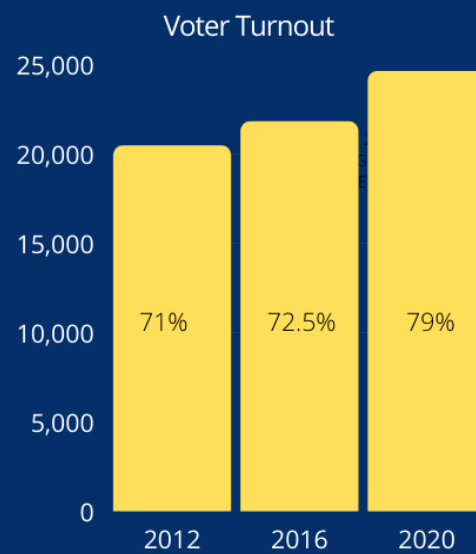
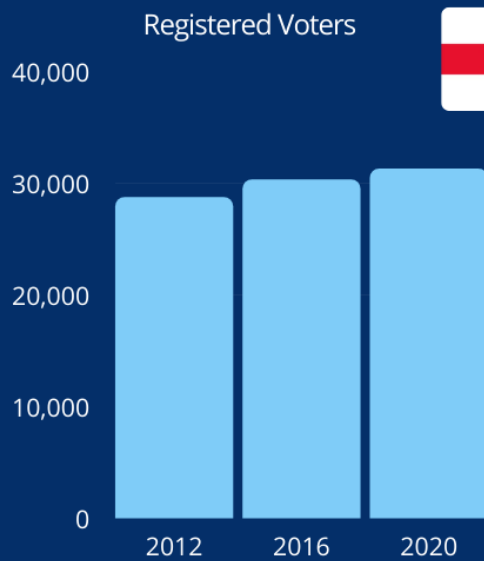
²⁰ The International Covenant on Civil and Political Rights establishes the right to an effective remedy in Article 2.3; the Universal Declaration of Human Rights also provides for an effective remedy in Article 8, and for a fair and public hearing by an independent and impartial tribunal in Article 10.

ELECTION RESULTS

Guernsey 2020 Election Results



Over 67% of registered voters opted for postal votes.



RECOMMENDATIONS

1. LEGAL CODIFICATION

Greater codification of electoral rules and procedures, either via amending existing election law or via enacting a new omnibus election law, could be considered, in order to ensure that there is certainty and consistency in the law and that it applies equally to all concerned.

2. ELECTIONS BODY

A permanent dedicated elections body should be constituted so that institutional knowledge and expertise can be embedded in the Guernsey electoral system. This body could provide continuous electoral oversight, including oversight of candidate and voter registration, political parties and campaign finance.

3. VOTER REGISTRATION

Formal processes of voter registration could be introduced as part of an ongoing rolling process of registration. Voter registration could be done as part of any annual engagement that residents have with the state, such as filing tax returns.

4. RIGHT TO STAND

Consider removing the provision in Article 8 of the Reform (Guernsey) Law, 1948, which disqualifies voters who have been sentenced to imprisonment for a period of six months or more, from eligibility to become a People's Deputy.

5. OVERSIGHT OF POLITICAL PARTIES

Political parties should be subject to oversight, and their finances should be evaluated on an annual basis. Individual candidates' pre-election fundraising and expenditure should also be assessed and recorded. Reporting should not be onerous but simply conducted by the production of evidence.

6. CAMPAIGN EXPENDITURE

Boundaries of pre-election and annual expenditure should be clearly defined. The limitations of expenditure outside the formal period of nominated candidature could be within similar boundaries to those defined for the election period, except with no additional public subsidy.

7. POLLING STATION STAFF

The recruitment process for polling station staff should be open and publicly advertised, and increased training for polling station staff should be considered.

8. VOTE COUNT

The number of ballot papers cast should be verified at the start of the vote count. Adding an additional verification step should also be explored, namely the verification of the total number of votes cast.

9. COUNTBACK AUDIT PROCESS

A rigorous countback audit process should be put in place, so that an original ballot paper that is 'transposed' can be checked against the newly transposed ballot paper that is used to replace it.

10. PARTICIPATION OF WOMEN

Extension of Articles 4 and 7 of the Convention on the Elimination of All Forms of Discrimination against Women to Guernsey should be pursued without delay. This will entail enactment of legislation to enable fulfilment of convention obligations in advance of the extension.

11. PARTICIPATION OF PERSONS WITH DISABILITIES

Extension of Articles 21 and 29 of the Convention on the Rights of Persons with Disabilities should be pursued without delay. This will entail enactment of equality legislation to enable fulfilment of convention obligations in advance of the extension.

12. ELECTORAL JUSTICE

Consideration should be given to the introduction of a system of complaints and appeals for all stages of the electoral process. Detailed procedures should be set out regarding the authority responsible to receive and adjudicate upon disputes arising in relation to voter registration, candidate nomination, voting and counting and all other aspects of the electoral cycle. Fair procedures must apply to any such regulations, with clear deadlines providing for the submission of complaints, making appeals and delivery of decisions, as well as rules of standing to lodge complaints.

ACKNOWLEDGEMENTS

The CPA BIMR Election Expert Mission wishes to express its gratitude to the States of Guernsey, election officials, candidates and to the people of Guernsey for their cooperation and assistance during the course of the virtual Mission.

For further information about this Mission, please contact cpauk@parliament.uk.

CPA BIMR ELECTION OBSERVATION SERVICES

The first objective of the BIMR Strategy is to strengthen parliaments and the skills of their members. As part of this work, CPA BIMR facilitates election observations when invited to do so.

For more information about these services, please contact the CPA BIMR Secretariat at cpauk@parliament.uk.



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REVIEW OF THE 2020 GENERAL ELECTION

REPORT OF THE REGISTRAR-GENERAL OF ELECTORS

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Introduction

The 2020 General Election took place on 7th October 2020. It was the first island-wide General Election and took place during a global pandemic. Both of these factors meant that the complexity of delivering the election was greatly increased and it is therefore a credit to all involved that it has largely been deemed a success by the community and that this was confirmed in the report of the Commonwealth Parliamentary Association British Islands and Mediterranean Region (CPA BIMR), which had conducted a virtual Election Expert Mission to the election, and concluded that “[t]he Guernsey Election was a successful democratic exercise.”¹

The first island-wide General Election saw 24,647 voters turn out, which was an increase of almost 3,000 over the 2016 election. Turnout was 79.77%, again higher than in 2016 when 72.5% of those on the Electoral Roll cast their votes. There were 30,899 people on the Electoral Roll and eligible to vote, a slight increase on the 2016 figure. (There were also some under-16’s registered who were not eligible to vote on this occasion.)

Prior to the General Election, the States’ Assembly & Constitution Committee (SACC) and the Committee *for* Home Affairs agreed the following criteria to measure the success of the 2020 General Election:

- i. A high percentage of those eligible to vote are registered on the Electoral Roll;
- ii. A good number of candidates stand for election;
- iii. The majority of those on the Electoral Roll cast their votes; and
- iv. There is a fair, efficient and democratic election.

A review of the election has been carried out, which has considered the above criteria and other matters, and, in accordance with the Resolution of the States dated 12th December 2019² the following have been consulted in preparing this review:

- Candidates in the General Election (elected and unelected);
- Members of the General Election programme board;
- Officers, parish representatives, and volunteers involved in the delivery of the General Election;
- Election service providers (e.g. communications, e-count solutions); and
- The voting public

Broadly speaking, feedback was positive, particularly around some of the communications tools that were offered to assist voters, and a number of constructive suggestions have been put forward for consideration of how future elections might be improved. This report

¹ CPA BIMR Election Expert Mission Final Report, available on: <https://www.uk-cpa.org/media/3806/final-report-cpa-bimr-eem-to-guernsey-2020.pdf>

² Billet d’Etat XXIV, 2019

considers and expands on those suggestions and includes a number of recommendations for consideration by SACC, which are repeated at the end of the document.

The report does not focus on operational improvements, as these fall within the remit of the Election Project Board and are not matters for the SACC or States to determine but, where relevant, they are mentioned to provide reassurance that they have not been overlooked.

Timing of the Election

No report on the Election would be complete without reference to the timing of the Election, which was originally scheduled to take place on 17th June 2020. When the Covid-19 global pandemic emerged, as a result of which Guernsey entered lockdown on 25th March 2020, SACC swiftly considered the implications of this for the island's ability to hold a General Election and submitted a policy letter to the States³ recommending that the Election be delayed, as it would not be possible to hold a free and fair Election if activities such as canvassing, hustings and, in particular, voting were likely to be prohibited or at least significantly impacted. On 15th April the States agreed that the Election should be postponed until 16th June 2021. Consequently, Election resources were scaled back, with temporary contracts being terminated and Election-related work streams deprioritised.

Before long it became apparent that Guernsey's lockdown measures had proved extremely successful, to the extent that, with the exception of travel restrictions, activities on island largely returned to pre-pandemic levels. Against this backdrop, SACC was asked to reconsider the feasibility of holding the election in 2020. After considering the resultant policy letter from SACC⁴, which was submitted as an urgent proposition under Rule 18 of the States' Rules of Procedure, the States resolved, on 1st July 2020, that the General Election should take place on 7th October 2020.

This meant that activity had to be stepped up immediately in order to ensure the election could be delivered in October 2020. Contracts were reinstated and work streams were resumed as soon as practicable. Whilst this meant that the election was successfully delivered on 7th October, the effort required to pick up all the work again at short notice, combined with the need for considerable contingency planning, should not be underestimated and it is important to acknowledge the contribution of everyone who played a part in making the election happen. This includes not only officers of the States but also Parish officials and volunteers, who willingly gave up their time to help.

³ Billet d'Etat VII, 2020

⁴ Proposition P.2020/117 available [here](#).

Legislative Framework

The Reform (Guernsey) Law, 1948 sets out the requirements for elections in Guernsey. The Law deals not only with General Elections but also with other separate, but related, matters such as the election of Parish officials and the constitution of the States of Deliberation. The Law has been amended many times in response to the changing requirements of democracy, and underwent extensive and significant amendment in 2019 by way of the Reform (Guernsey) (Amendment) (No. 2) Law, 2019, following the decision to move to island-wide voting.

Some of the details around elections are set out in Ordinances and Regulations made under the primary legislation. For example, the Advance and Super Polling Station Ordinance, 2020 sets out the dates, times and locations of advance polling and super polling stations, while the Elections (Presence of Candidates at Count) Rules, 2020 set out the rules around candidates attending the vote count.

The need to deal with certain matters by way of Ordinance or Regulation, rather than their being a permanent feature of the Law, can lead to “gaps” in the delivery of elections. For example, in respect of complaints regarding the conduct of elections, Article 38D of the Reform Law gives the States the power to make by Ordinance such provisions as they may see fit in respect of the making and determining complaints in relation to:

- The conduct of elections
- Breaches of procedures concerning elections
- The conduct, during elections, of candidates, returning officers and other persons or classes of persons prescribed by Rules under Article 38C of the Law and
- Breaches by such persons of their functions during elections

Any Ordinance made by the States under Article 38D may include, among other things, the person or body to whom complaints should be addressed; the persons or bodies who may make complaints; and the matters in respect of which complaints may be made.

Given the limitations on time in the lead up to the 2020 election to develop and implement a suitable solution regarding who/what would consider complaints, SACC agreed to maintain the status quo of previous elections rather than ask the States to approve an Ordinance to deal with it but that agreed that the matter would be revisited in the future.

In the absence of any legislation setting out rules around complaints, they tended to be received by the Registrar-General who, while able to give advice about many aspects of the election, had no power to arbitrate in complaints. In order to prevent this situation recurring, it is important that this is addressed. Ideally, such matters would be included in the Law rather than an Ordinance, as the latter approach means that it is possible for the matter to be left in abeyance. Inclusion of relevant provisions in the Law also provides greater certainty for all concerned.

In addition to the Reform Law, there are other relevant pieces of legislation and other guidance. For example, there is advice from the Law Officers of the Crown that dates back to 1973 regarding the display of posters and soliciting of votes inside polling stations but this is not reflected in any legislation, nor is there any consolidated guidance easily available to election officials, which is a particular concern because there has tended to be, in recent years, a lack of continuity of such officials.

Such lack of continuity is understandable because General Elections take place only once every four years and, during the period covered by a political term, officers often move on for a variety of reasons. There is also a reliance on temporary staff which will always be the case because of the intense period of activity preceding an election that cannot be absorbed by the existing workforce but more thought needs to be given to how greater continuity can be achieved between elections.

One possibility would be the creation of an Electoral Commission or similar, which would have the advantage of independence from government. Such a body could provide consistent, impartial advice as well as much-needed continuity. It also removes any potential issues around election officials having to give unwelcome advice to candidates with whom they may have a working relationship, if they are standing Deputies, or with whom they may need to work in the future if their election campaign is successful.

The CPA also commented on this in its Election Expert Mission Report, pointing out that *“the International Covenant on Civil and Political Rights, which applies to Guernsey, has been interpreted as requiring that an independent electoral authority should be established to supervise the electoral process.”*

Recommendation 1:

It is recommended that SACC should investigate the creation of an independent body to advise on and oversee future elections.

It would also assist greatly if consideration could be given to the creation of a new Law that focuses on elections and facilitates the delivery of an election in modern times. For example, as explained later in this report, the Reform Law does not give discretion to the Bailiff to carry out anything other than a full recount of votes in the event that a recount is requested. This does not reflect the use of ecount machines, which are proven to be highly accurate, which may mean that the Bailiff would be content to review only those ballot papers that have been manually adjudicated. This is the custom and practice in other jurisdictions and would reduce the resource requirement for a recount if it were the Bailiff’s preferred approach.

Recommendation 2:

It is recommended that SACC should review the Reform Law and other legislation relating to the holding of elections and, if it thinks fit, make suitable proposals for consideration by the States, for electoral reform by way of a standalone election Law that reflects modern election practices and is easily accessible.

The Electoral Roll

In April 2019, following consideration of a policy letter from the Committee *for* Home Affairs⁵, the States approved the establishment of a new Electoral Roll for the 2020 General Election of People's Deputies. This followed the practice established for the 2012 and 2016 General Elections. The new Electoral Roll opened on 1st December 2019.

Mindful of the need to ensure that a high number of those eligible to vote were registered on the Electoral Roll, considerable effort was put into publicising the fact that the Electoral Roll was open and encouraging eligible islanders to sign up. Initiatives and events included:

- The creation of a dedicated website for the election, including the facility to sign up to the Electoral Roll online
- Over 26,000 household registration forms delivered to all properties, including freepost return envelopes
- The launch of the #countmein campaign which saw some local faces backing the message that islanders needed to ensure they were able to cast their votes if they wanted to have a say in decisions
- Registration roadshows at a range of venues, where islanders could sign up to the Electoral Roll and obtain information about the election
- Frequent media releases, often supplemented with interviews
- Press and radio advertisements

Despite the fact that life in Guernsey returned to near normality in the run-up to the election, it was recognised that some sections of the community remained anxious about the possibility of contracting Covid and, in order to respect their desire to limit contact with others, the Election Project Board decided not to carry out any door-to-door enumerating as had been done in 2016, and planned visits to residential and care homes were cancelled.

Notwithstanding the fact that certain activities had to be curtailed, the number of people registered on the Electoral Roll was slightly higher than the 2016 total. The Roll closed on 21st August 2020, with 31,301 voters registered, of whom 30,899 were eligible to vote in the General Election, the remainder still being aged 15 on 7th October and not able to vote until their 16th birthdays.

Whilst this was an improvement on the 2016 numbers, only about 62% of those eligible to do so actually registered to vote, meaning that there were still potentially about 10,000 eligible residents who did not sign up. Although it is not possible to give an exact figure, as not everyone in the requisite age bracket will necessarily meet the residence criteria for signing up to the Electoral Roll, it shows that there is a significant number of islanders who are not exercising their democratic rights, despite every effort being made to ensure that signing up is as straightforward as possible. Therefore the first success criterion agreed by SACC and the

⁵ Billet d'Etat VII, 2019

Committee for Home Affairs, that a high percentage of those eligible to vote are registered on the Electoral Roll, was partially met, as the percentage is higher than in previous years but it is clear that there is room for improvement in this respect.

After the 2016 election it was noted that the process for compiling the Electoral Roll is difficult to administer and requires significant resource. Consequently a number of options were considered with the aim of making it easier for the community to sign up to the Electoral Roll as well as reducing the resources needed to administer the process. It was subsequently agreed by the States in April 2019⁶:

“5. To direct the Policy & Resources Committee when delivering Phase 2 of the Rolling Electronic Census Project (as approved by the States on 26th March 2013) to ensure that:

- i) there is included in its functionality, the capacity for automated generation of a list of persons eligible to vote; and*
- ii) any relevant legislation is submitted to the States for approval,*

in accordance with a time-scale which will enable use of the capacity for automated generation of such a list for the purposes of the 2024 general election and all elections thereafter.

6. To direct the Committee for Home Affairs to take such measures as may be necessary to enable elections to take place on the basis of an Electoral Roll compiled from an automatically generated list of persons eligible to vote, as soon as possible following delivery of Phase 2 of the Rolling Electronic Census Project in accordance with Proposition 5.”

Such an approach is in keeping with comments made by the Electoral Reform Society (ERS) in 2019: *“You shouldn’t have to opt in to your right to vote. we need to move towards automatic registration now, starting with being able to check you are registered online, and being able to register whenever you engage with government bodies or services. We know this works from other countries.”*

This work referred to in Resolution five above has been completed and the matter is now being progressed by the Committee for Home Affairs, as per Resolution six above.

⁶ Billet d’Etat VII, 2019

Candidates

There were 119 candidates in the first-ever island-wide General Election, which was a considerable increase on both 2012 (78) and 2016 (81). Therefore the second success criterion, namely that a good number of candidates stand for election, was fulfilled.

Candidate Support

In anticipation of a higher number of candidates, particularly new candidates, considerable efforts were made to ensure that candidates and potential candidates had access to information that would both help them to understand the election process as well as gain some insight into the role of a Deputy. Up to the point at which nominations closed, activities and material included:

- Officers and Deputies speaking at WEA talks for prospective candidates.
- Two presentations for prospective candidates, explaining key deadlines related to the election, both of which were well attended.
- A comprehensive pack from the Presiding Officer for candidates at the point of nomination.
- The preparation of Electoral Rolls for purchase.

Once the nomination period had closed, support for candidates continued, as follows:

- The creation of an Election website – election2020.gg – containing information for voters and candidates.
- The creation of a candidates' guide, which included comprehensive information about the Election, including links to relevant legislation, as well as a section setting out some of the demands of being a Deputy. This was made available prior to nominations opening, which meant that prospective candidates had access to a wealth of information in advance of putting themselves forward for election.
- A candidate page on election2020.gg.
- The opportunity of having two pages in the combined manifesto booklet, a printed copy of which was delivered to all households where residents had signed up for the Electoral Roll, with an electronic copy available on the website.
- The opportunity of creating a short video promoting their candidacy on the election website.
- A "meet the candidates" event at Beau Sejour, which gave the public an opportunity to speak to those candidates who participated, with the majority doing so.
- A £500 grant towards the production and distribution of campaign material.

Candidate Feedback

Of the 119 candidates, 48 provided feedback after the Election, either by responding to a short survey or direct to the Registrar-General of Electors. Just over half of those who responded were new Deputies who had not stood previously for election.

In terms of the support offered, the combined manifesto was rated as the most helpful element of the support provided, followed by the meet the candidates event.

Although respondents were generally satisfied with the support given, several constructive points were made about how it could be improved for the next General Election. Whilst, inevitably, candidates' opinions differed, there was broad agreement in a few areas.

Despite the fact that the "meet the candidates" event was considered useful, a number of candidates would have liked to have seen more hustings-type events. The difficulties inherent in organising such events for a field of 119 candidates were acknowledged but it was suggested that they could perhaps be organised by parish, open to the whole electorate but with only candidates resident in the parish in question attending.

The practicality of organising something by parish largely depends on the spread of candidates across the parishes. Based on the distribution of candidates in the 2020 election, this approach would be unlikely to work, as some parishes had very few candidates, whilst others had many, although possibly something based on the old electoral districts would be more feasible.

Some candidates found the number of hustings events organised by "special interest" groups, whilst useful, took up considerable time, both in terms of preparation and attendance. It would not be appropriate for the States to discourage such groups from holding events but more engagement with them ahead of the Election could result in a more co-ordinated approach and this is worthy of further investigation.

Recommendation 3:

It is recommended that consideration be given by SACC to how more hustings-type events can be organised by the States and/or the parishes, also having regard to how the requirements of "special interest" groups can be factored into such hustings.

It was suggested by a number of candidates and also members of the public that the "meet the candidates" event would have been of greater value if it had taken place after the distribution of the manifesto booklet, thereby giving time for the electorate to look at candidates' manifestos and formulate questions before attending. Manifestos were available online prior to the event, as well as candidate videos, but it appears that many people preferred to rely on the booklet as their prime means of finding out about candidates. This has already been acknowledged by the outgoing Election Project Board and will be passed on to the next Project Board as part of the "lessons learnt".

Voter Feedback

Feedback from voters was that they were in favour of island-wide voting but found the number of candidates, and therefore the amount of choice, overwhelming. The website and manifesto booklet were positively received but voters found it onerous to read the entire book, with some pointing out that only those with a keen interest in local politics would be likely to do so. The facility to select "yes", "no" and "maybe" via the election website was cited as being of great assistance and, as such, should be retained for future elections.

The number of candidates is something that was raised by several different groups providing feedback, which is unsurprising as it is relevant to so many different aspects of running an election, including the size of the ballot paper; organising hustings and other events; and the voter experience. Although the consensus is that election officials did a good job in addressing issues, particularly voter experience, there have been calls for limitations on the number of candidates.

Notwithstanding this, it would be contrary to the principles of democracy to seek to put barriers in the way of potential candidates. For example, it was suggested that candidates could be required to pay deposits, which would be returned only if they achieved a specified percentage of the vote. This is common in many jurisdictions around the world. In the UK, parliamentary candidates have to place a deposit of £500, which is returned if they poll over 5% of the total votes cast in the relevant constituency.

In the Republic of Ireland independent candidates for election to Dail Eireann must provide:

- A Certificate of Party Affiliation; or
- Statutory declarations signed by 30 constituents; or
- A deposit of €500

As in the UK, candidates who pay the deposit have the money refunded if they receive more than a specified percentage of votes cast in their constituency. At one time, all candidates had to pay a deposit until a High Court Ruling decreed that the obligatory payment of deposits by all candidates was “repugnant to the Constitution of Ireland”.

The UK Electoral Commission is not in favour of deposits for any candidate and its 2015 report *Standing for Election in the United Kingdom: Report and Recommendations*⁷ said the following about the use of deposits:

“... it does not seem reasonable to have a barrier to standing for election that depends on someone’s financial means. We do not think that the ability to pay a specified fee is a relevant or appropriate criterion for determining access to the ballot paper. We therefore recommend that deposit requirements are abolished.”

The purpose of requiring a deposit is to discourage any candidates who may not be serious about pursuing an election campaign but it has limited effect. In the 2017 UK General Election 1,568 candidates (47.5% of all candidates) lost their deposits and in the 2019 General Election the number who lost their deposits was 1,273.

In light of the comments above, plus the limited effectiveness of requiring deposits, it is not recommended that this approach be adopted in Guernsey, as it could make it more difficult for less affluent candidates to participate in an election and would therefore be likely to hinder achievement of the success criterion of ensuring a good number of people stand. It is also possible that some groups may be more disadvantaged than others by such an approach,

⁷ Available at: [Standing for election in the United Kingdom: Report and recommendations | Electoral Commission](#)

which could lead to a less diverse group of candidates and, ultimately, a less diverse Assembly.

It may, however, be worth exploring the possibility of requiring additional people to nominate candidates, along the lines of the UK, where nomination forms have to include the names of 10 registered electors from the constituency in question. A similar approach could help to ensure that candidates are serious about standing and would be more rigorous than the current system which requires only a proposer and seconder.

Whilst this may merit more consideration, any moves to ensure that candidates are truly serious about standing for election would need to be finely balanced with the requirement to ensure that barriers are not placed in the way of anyone seeking to become a Deputy, particularly if there is any possibility that such barriers might inadvertently disadvantage some groups more than others.

It is not yet known whether the high number of candidates will feature in future elections. The 2020 election was bound to attract a high level of interest in terms of candidates and voters, as it was the first ever island-wide general election. Whether interest remains as high in years to come remains to be seen and it may be that the issue does not recur.

Consequently, no firm recommendation for action is made in this respect, although it would be wise for SACC to keep a watching brief on this issue.

Postal Voting

In its December 2019 policy letter⁸ SACC recognised that island-wide voting would present new logistical challenges and acknowledged that it would have to address these:

“It is essential that there is sufficient capacity for all registered voters to vote either by post or in person. In light of this, the Committee has looked to offer an array of opportunities for members of the community to cast their vote.”

The Committee set targets for different elements of the suite of actions being undertaken, including a target of 30% of votes to be postal votes. In order to assist with the achievement of this target, the Election Team heavily promoted the option of postal voting.

Perhaps as a result of this promotion, the 2020 General Election saw a much bigger take-up of postal votes than in previous Elections, with 69% of those on the Electoral Roll opting to register for a postal vote. This meant that 21,271 postal votes were issued to addresses both within and outside of Guernsey. Completed ballot papers, accompanied by a Declaration of Identity, could be returned by post or placed into a ballot box at a polling station. The majority were returned by post. Approximately 75% of all votes cast were postal votes, meaning that the 30% target was exceeded by a considerable margin.

There were a number of reasons cited for the preference for postal voting. The fact that each voter was able to cast up to 38 votes was given by some as a reason for their choice, as they were able to consider their votes at their leisure in the comfort of their own homes. Covid-19 and uncertainty about the ability to attend a polling station was another relevant factor, as was the requirement for self-isolation for anyone returning to the island from elsewhere. This last factor was recognised by the States of Deliberation, which passed Regulations which meant that persons finding themselves having to self-isolate were able to register for a postal vote after the deadline for doing so had passed. The necessity of doing this was demonstrated by the fact that a handful of voters needed to rely on these Regulations.

In anticipation of a high number of voters opting for a postal vote, the preparation of postal vote packs was done by the provider of the ballot papers, UK company UK Engage (UKE), rather than, as had been the case in the past, manually by the Election Team. UKE also produced “spare” packs for use as replacement packs if necessary, or for issue after the print deadline had passed.

Postal voting has been embraced to such an extent by the electorate that it would be difficult to change the approach for the next election. It must be acknowledged, however, that potential risks have been identified in respect of postal voting, in so far as this method of voting could allow voters to be placed under undue pressure by others to vote in a certain way and also raises the possibility of “family voting”.

⁸ Billet d’Etat XXIV, 2019

The Venice Commission, in its Code of Good Practice in Electoral Matters⁹, offers the following guidance on postal voting:

“...postal voting should be allowed only where the postal service is safe and reliable; the right to vote using postal votes may be confined to people who are in hospital or imprisoned or to persons with reduced mobility or to electors residing abroad; fraud and intimidation must not be possible”.

Most of the postal votes issued went to Guernsey addresses and there are no concerns that the Guernsey postal service is anything other than safe and reliable. Whilst it would be extremely difficult to eliminate the possibility of fraud or intimidation in any voting system there is no reason to suspect it is sufficiently widespread in Guernsey to affect the result of an election. In the UK voters are given the opportunity to opt for a postal vote and it would be counterintuitive not to offer the same to voters locally, as the risks are almost certainly lower than in the UK, given the comparative scale of the two jurisdictions.

Whilst postal voting was embraced by the electorate and proved successful for most of those who opted for it, it must be acknowledged that some problems were encountered. The most significant was that logistical difficulties meant that, despite the best efforts of all involved, some overseas voters did not receive their voting packs in time to return their completed ballot papers.

There were a number of reasons for this, including the fact that contingency measures had to be developed alongside routine election preparation, thereby stretching the capacity of staff and suppliers. Whilst it is anticipated that the 2025 election will take place in less challenging circumstances, the Election Project Board has nevertheless made recommendations to its successor to ensure that postal votes are available and despatched, particularly to overseas voters, earlier.

Conversely, it is also important that postal vote packs are not sent to local addresses too early, as some candidates were frustrated to find that, during door-to-door canvassing, they were being told that postal votes had already been despatched.

Historically, the deadline for applying for postal votes has been five days prior to election day, which left only three working days to process applications received on the day of the deadline. SACC's December 2019 policy letter acknowledged that this had been problematic and, in light of the advance polling days, SACC took the opportunity to move the five day window to before the opening of polling, which therefore provided more time overall.

Consequently, the deadline for applications for postal voting was 25th September, which left seven working days before the General Election date. Notwithstanding the change, this

⁹ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)023rev2-cor-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev2-cor-e)

remained a fairly short window within which to process the applications and despatch voting packs. It meant that UKE could not produce voting packs for those who registered later in the process and the “spares” had to be used and processed manually. Whilst this was achievable, it did create pressure and the potential for errors. In the UK, the deadline for registering for a postal vote is 11 days prior to polling day and, with the benefit of experience, it is considered that it would be helpful to ensure that in future more time is allowed between the deadline for postal vote registration and polling day.

Recommendation 4:

It is recommended that SACC should consider moving the deadline for postal vote applications further from polling day.

Polling

Polling Days

A higher than usual voter turnout was anticipated as a result of moving to island-wide voting. With each voter able to cast up to 38 votes, meaning that completing a ballot paper would take longer than previously, it was necessary to take steps to ensure that voters did not have to stand in long queues awaiting their turn to enter a polling booth.

Consequently, pre-polling days were used for the first time and the concept of super polling stations was introduced. Super polling stations could be used by voters from any parish, as distinct from parish polling stations which were only available to residents of the parish in question.

Polling stations were open from 8am to 8pm on polling days as follows:

- Saturday 3 and Sunday 4 October: St Sampson's High School and The Princess Royal Performing Arts Centre (both super polling stations);
- Tuesday 6 and Wednesday 7 October (formal polling day): all parish polling stations (14 in total) and The Princess Royal Performing Arts Centre.

Staffing of Polling Stations

Prior to the 2020 General Election, the parishes voluntarily carried out a significant part of the running of general elections, including providing venues for voting (with associated costs being reimbursed by the States) and people to administer polling stations. Polling stations were established in each district by the Constables of the Parishes in question, in accordance with relevant Resolutions of the States.

In April 2019¹⁰ the States agreed that given the move to Island-wide voting; the intention to introduce advance polling stations; and the need for flexibility as to where polling stations were established, the Law should be amended to require the Registrar-General to establish polling stations, further to consultation with the Constables of the Parishes concerned.

The Reform Law therefore now provides that: *"Polling stations shall be established by the Registrar-General in accordance with any Resolution of the States for the time being in force in that behalf and the Registrar-General may provide for the establishment of such additional polling stations as he may deem convenient to the electorate."*

With the shift of responsibility to the Registrar-General, combined with the changes to the structure of the election – i.e. moving away from Parish- or district-based voting and with the addition of pre-polling days and the introduction of super polling stations – it was considered prudent to introduce training for all volunteers, from Polling Station Officers to those providing more general assistance to the electorate. Polling station volunteers were recruited

¹⁰ Billet d'Etat VII, 2019

both through the Douzaines and directly by the Election Office. Whilst this generally worked well, it did allow for potential inconsistency. Whilst it is recognised that some Parish volunteers are very experienced in election administration, the CPA, in its Election Expert Mission Report, commented on the fact that it was possible for volunteers to attend without receiving training and the report includes the following recommendation:

“The recruitment process for polling station staff should be open and publicly advertised, and increased training for polling station staff should be considered.”

Adverts did appear in local media, including social media, which means that the recruitment was “open and publicly advertised” but there was no requirement for training, although it was very much encouraged and most volunteers attended. While it is accepted that all concerned acted with good intentions, for the sake of good governance, plus consistency of voter experience, it is considered that the Election Mission’s recommendation should be pursued so that all helpers undergo the same recruitment and training experience.

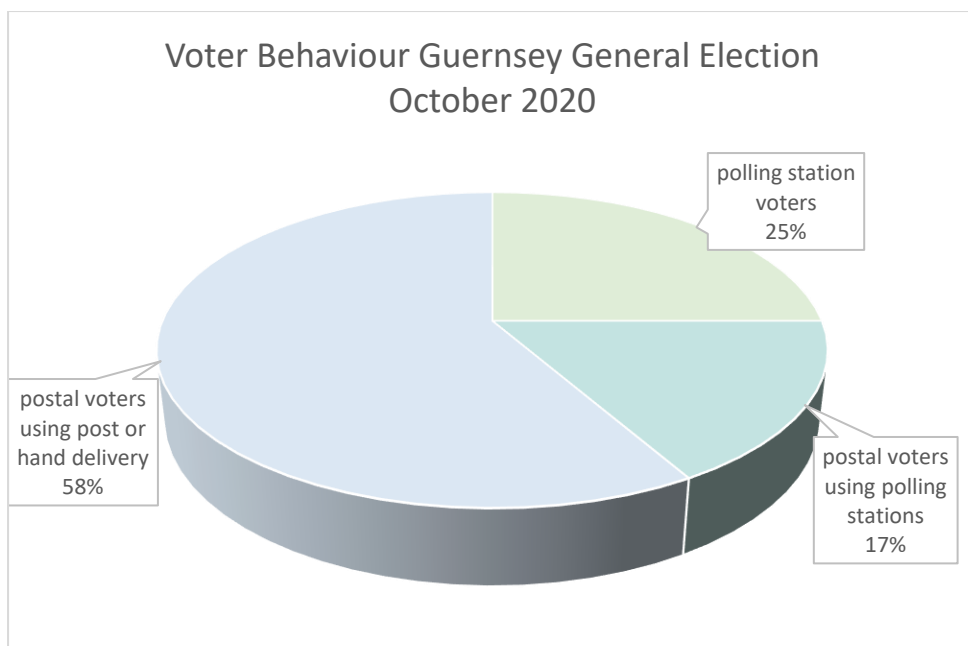
Every polling station had a designated Polling Station Officer (PSO) who was sworn in by the Royal Court. There was a great deal of responsibility placed on these officials and, while they had deputies, the responsibility was always carried by the PSO. These individuals worked long days with few breaks and should be commended for their dedication. However, for future elections, it is recommended that deputy PSOs should be formally sworn in and given sufficient authority to act in across the full range of duties in the absence of a PSO. This would mean that PSOs could take proper breaks and would also ensure greater resilience in the event that illness or unforeseen circumstances prevented a PSO from fulfilling his or her role.

Recommendation 5:

It is recommended that the Reform Law (or any successor) should in future include provision for Deputy Polling Station Officers to be formally sworn in and given the authority to act across the full range of duties in the absence of a Polling Station Officer.

Use of the Polling Stations

With 21,000 people opting for a postal vote it would be easy to overlook the importance of polling stations in the successful delivery of an Island-wide election. Approximately 18,000 postal ballots were returned, which represents 75% of all ballot papers received. However, as 4,000 of those postal voters chose to return their ballot papers via a polling station it meant that 40% of all voters visited a polling station as shown overleaf.



The number of users per polling is shown below:

Polling station	Number of users
St Andrew's Douzaine Room	293
St Sampson's Douzaine	596
Vale Douzaine Room	1232
St Martin's Parish Hall	887
Performing Arts Centre	2620
St Peter Port Constables' Office	956
Castel Douzaine Room	805
St Sampson's High School	451
St Saviour's Community Centre	414
St Sampson's Church Community Hall	320
St Pierre du Bois Community Hall	392
Castel KGV	302
Forest Douzaine Room	276
Torteval Church Hall	201

NB: The figures for the Performing Arts Centre are for four days' polling, whereas the others are for two days.

Parish Feedback

Notwithstanding the high proportion of voters who used the polling stations, it is evident from the above that some were considerably less busy than others. Feedback from the Parishes suggested that some Parish polling stations need not be open for two days and that one would suffice. The Castel Parish also felt that one polling station in the Castel Parish

would be adequate. If implemented, these measures would reduce the need for volunteers as well as bringing the cost down.

It was felt that the super polling stations had proved a great success, and it has been suggested that it would be helpful to locate one in the west/centre of the island as well as St Peter Port and St Sampson's. This idea certainly merits further consideration.

Recommendation 6:

It is recommended that SACC should consider consolidating the polling stations, with a view to reducing the number and/or opening hours of the Parish polling stations and increasing the number of super polling stations.

Vote Count

The vote count was overseen by the Central Returning Officer and, as such, sits outside the remit of the Registrar-General. However, issues that arose during the vote count will need to be addressed by SACC and/or the States and therefore need to be mentioned in this report.

In anticipation of a large number of votes being cast, SACC recommended¹¹, and the States agreed, that electronic counting equipment should be used for the 2020 election. Following a competitive tender process, a UK-based company, UKEngage (UKE), was selected to provide the necessary technology to count votes electronically. This included production of the ballot papers in order to ensure that they were of a suitable specification to be used with the technology.

In addition, as touched on previously, UKE oversaw the production of the postal ballot packs, as this would have been beyond the capacity of the small team if totally reliant on manual processing.

From the perspective of the Election Project Board, UKE provided a good service in difficult circumstances, particularly during the time leading up to the election, when representatives of the company were present on the island for the first time. This meant that they had to have daily Covid tests, isolate when not working, observe strict social distancing and hand hygiene practices and wear masks when with others. Despite these challenges, their communication with the team was of a high standard.

The vote counting machines were essentially high-powered scanners that captured images of the ballot papers and recorded a vote every time one of the ovals to the right of a candidate's name was shaded. If the mark was unclear or the voter intent was otherwise ambiguous then the ballot paper was automatically sent for adjudication; that is to say, it was examined by a small team of scrutineers, working in pairs, who made a decision as to how the ballot paper should be interpreted.

As each ballot paper listed 119 candidates they were very long, which meant that it was difficult to fit them into the envelope provided for the return of postal votes. This meant that frequently they were damaged when they were removed from the envelopes, which in turn caused problems with the scanners because the ballot papers could not pass through without difficulty and were being rejected.

Consequently, it was necessary to transcribe manually the information on such ballot papers onto fresh ballot papers. This task was undertaken by teams of civil servants working in pairs: one to read out what was on the ballot paper; one to mark the votes on a clean ballot paper. Once a ballot paper had been transcribed, the pair swapped papers and double-checked, with

¹¹ Billet d'Etat VII, 2019

the other reading out whilst his/her colleague checked that the ballot paper was marked correctly.

Whilst this activity was carefully monitored and there is no cause to suspect any fraudulent activity, it did, understandably, raise questions. It will be important to reduce the number of papers transcribed in future, whilst still maintaining the integrity of the election.

The count took place in the Sarnia Hall at Beau Sejour Leisure Centre. It commenced at 10am on the day after the election, 8th October 2020, and concluded at around 1am, with the results being announced by the Central Returning Officer at about 1.45 am. This was longer than original estimates, largely because of unforeseen difficulties with scanning the ballot papers, which are explained above. A further delaying factor was that postal ballots were not separated from other ballot papers at polling stations; they were all placed in the same ballot boxes. This meant that the outer envelopes and the Declarations of Identity could not be opened and checked until the count commenced, whereas this initial step could have been completed earlier had the postal ballots been kept separate. This point has also been picked up by the Parishes in their feedback, and should be addressed by the Election Team for the next election.

The length of time taken to complete the count featured in various stakeholder feedback, including candidate feedback. Some candidates felt that there was a sense of anti-climax when the results were issued, as few people were inclined to attend Beau Sejour at such a late hour. Others felt that the wait was too long and it would have been preferable to call a halt at some point during the evening and recommence the following morning. It has also been suggested that the count could have commenced earlier in order to bring forward the announcement of the results.

With the benefit of experience, there is every expectation that the count could be shortened in future, and it would also be worth the Central Returning Officer considering whether to commence much earlier – e.g. 8am or possibly earlier on the day after the polls close.

Central Returning Officer

Under the previous Parish-based election system, there was a Returning Officer for each district, making seven in total, each of whom had responsibility for ensuring an accurate vote count in his/her electoral district. With the move to island-wide voting, the task of overseeing the vote count fell to a Central Returning Officer who was sworn in by the Royal Court.

Whilst the appointee did an excellent job, the appointment of only one official not only placed a considerable burden on that one person but also created a single point of failure. Should he have become unavailable – for example through illness – on or close to the day of the count, it would have been extremely difficult, if not impossible, to find a suitable replacement able to take over at short notice.

There are certain parallels with the situation regarding Polling Station Officers and, as such, the recommendation is similar in so far as it is considered important that there should be provision in the Law to allow Deputy Central Returning Officers to be sworn in and given the authority to act across the full range of duties in the absence of the Central Returning Officer. Any Deputies appointed could not only step up in the absence of the Central Returning Officer but could also act in support of the individual concerned, which would help to ease the appointee's heavy workload.

Recommendation 7:

It is recommended that SACC should give consideration to amending the Reform Law (or any successor Law) to ensure that it is possible for Deputy Central Returning Officers to be sworn in and given the authority to act across the full range of the Central Returning Officer's duties in his/her absence.

Recount

Unsuccessful candidates had the right to ask for a recount in the event that the difference between the number of votes they received and the number of votes received by the candidate in 38th place was less than 2% of the total number of votes cast.

In the 2020 election, this was the case for six unsuccessful candidates, four of whom requested a recount. The candidate in 39th place received 126 fewer votes than the candidate who came 38th, and the candidate in 44th place, who polled 493 votes fewer than the 38th-placed candidate, was also able to seek a recount.

As pointed out by the CPA in its Election Expert Mission report:

“This is a generous margin which means the chances of a recount are high. ... Election authorities may wish to re-evaluate the basis on which recounts can be requested in future elections under the current island-wide system. It might be more practical if the margin of difference between the candidate placed 38th and those below him/her would relate to a percentage of the difference between these contestants in the number of votes cast, rather than a percentage of the total number of ballots issued.”

In light of the experience of the 2020 General Election, and given the above comments, it is recommended that SACC should consider the margin of votes required to trigger a recount.

Recommendation 8:

It is recommended that SACC should consider the margin of votes required to trigger a recount after a General Election and, if appropriate, make recommendations for amendments to the Reform Law (or any successor) to reduce the that margin.

Under the Reform Law, recounts are the responsibility of the Bailiff, who appointed a number of Jurats to oversee the administrative aspects of the recount.

UKE advised that it is usual in other jurisdictions where recounts are required, to examine only those ballot papers that had been manually adjudicated, as the ecount machines would not give a different answer, whereas different adjudicators might interpret voter intention differently.

This would be a logical approach but the Reform Law does not give such flexibility, as it was drafted with a manual count in mind and has not been updated to reflect the current reality of electronic vote counting. Consequently, there was no option but to run the entire count again, which is of course more costly and time-consuming than simply re-examining the adjudicated ballot papers.

Given that this was Guernsey’s first experience of using an e-count system, it nevertheless provided assurance when the recount did not result in any changes to those elected. It was

therefore a worthwhile exercise in the context of a new system but it is recommended that the Reform Law should be amended in order to allow the Bailiff to exercise more discretion over the exact parameters of any recount, given that electronic counting is set to become the norm.

Recommendation 9:

It is recommended that the Reform Law (or any successor) should, in future, provide for the possibility of an electronic recount and, accordingly, afford the Bailiff more discretion over the exact requirements for a recount.

Election Expenditure – Candidates and Parties

The Rules

Rules regarding the amount of expenditure permissible by candidates and political parties are governed by Article 44 of the Reform Law and the Electoral Expenditure Ordinance 2020, made under the Reform Law.

In summary, the Law and the Ordinance between them set out the permitted maximum levels of expenditure for candidates and political parties, and the transfer of permitted expenditure from candidates to parties; the value of assistance given in kind (“in money’s worth”); the need to maintain financial records; and the way in which spending before the Election period is counted towards a candidate’s or party’s permitted expenditure.

To understand the rules around expenditure it is necessary first to understand what is meant by the regulated period. This runs from the first day on which a nomination of a candidate may be delivered to the Presiding Officer (for the 2020 election 1st September, 2020) and ends on the date of the General Election.

Any money spent, and any materials used, during this period to promote a candidate’s election (or to promote a party and its policies) – regardless of when those materials were originally bought or created – must be recorded and counted towards a candidate’s (or party’s) permitted expenditure.

For the 2020 election candidates were permitted to spend up to £6,000 in money or money’s worth.

For the first time, political parties were able to form and endorse candidates for the General Election. Three political parties were registered during 2020: The Alliance Party Guernsey (registered 12th February 2020); The Guernsey Party (registered 5th August 2020); and The Guernsey Partnership of Independents (registered 18th August 2020).

Candidates who were supported or endorsed by political parties had the option of transferring up to £3,000 of their expenditure allowance to the relevant political party, to be used by the party to spend on the promotion of the party and its policies. The expenditure limit for political parties was £9,000.

The issue of campaign expenditure became contentious during the period preceding the election, with concerns being raised that political parties were being treated differently to individual candidates, and complaints that some candidates and parties might have been circumventing the rules by spending money on campaigning outside the regulated period.

With regard to candidates, the interpretation of the term “candidate” is that no-one can become a candidate until his or her nomination has been accepted. Consequently, expenditure prior to the regulated period on “one-off” items – e.g. newspaper or radio advertisements – would not contravene the rules because, although related expenditure

would have occurred outside the regulated period it would not constitute expenditure by a “candidate” and, as such, would not have to be declared in candidates’ returns.

Expenditure on items that were less discrete or short-term – for example posters displayed prior to and during the regulated period – would have to be declared because they would be being used during the regulated period, even if the expenditure had occurred in advance.

Notwithstanding the fact that it seems that candidates adhered to the letter of the Law, feedback from the community both before and after the election was that perhaps not everyone had abided by the spirit of the Law. Whether or not such claims are justified, there is little that can be done about them, providing the Law is observed.

A significant issue appears to be the point at which someone becomes an election candidate, as the expenditure rules apply only to candidates. This distinction is not well understood in the community, and it may be that it needs to be emphasised in communications.

In theory, a would-be candidate could incur considerable expenses on promoting his/her candidacy during the nomination period but not submit a nomination form until close to the deadline, meaning that one-off expenses incurred prior to the nomination date do not have to be declared. The only advantage in such an approach would be to enable expenditure in excess of the £6,000 limit. Few candidates came near the expenditure threshold and so this is unlikely to prove a motivation for many.

In the UK, the situation regarding expenditure during the regulated period is the same as in Guernsey but the determination of when someone is deemed to be a candidate, and therefore subject to expenditure rules, differs slightly.

Prior to a UK General Election, the UK Parliament is dissolved. The earliest date that anyone can officially become a candidate is the day of Parliament’s dissolution. Parliament is dissolved 25 working days before a General Election. In 2019, the General Election was held on 12th December and Parliament was therefore dissolved on 6 November.

The difference between the UK and Guernsey is that, in the former, if a person has already announced his/her intention to stand, formal nomination is not a pre-requisite for the expenditure rules to apply. A person will become a candidate on the date when Parliament is dissolved if they or others have already announced the intention to stand. If the intention to stand has not been announced by the day of the dissolution of Parliament, people will officially become candidates on the earlier of:

- the date the intention to stand is announced, which may be by the candidate or a third party; or
- the date when the candidate is nominated. This must be prior to the close of nominations.

In Guernsey there is no formal dissolution of Parliament, although the States of Deliberation do not meet during the period preceding an election. Because Guernsey's parliament and government are one and the same, the dissolution of the States would also mean the dissolution of government. Committee business can, and often does, continue throughout the election period and indeed beyond, until the elected Deputies are formally sworn in.

It is difficult to devise and enforce rules in this respect, particularly as prospective candidates can promote themselves via social media at no cost. In practical terms it would be impossible to prevent all pre-election expenditure if a prospective candidate decides to declare his/her intentions very early. However, given that this issue caused much comment from the community, it is suggested that consideration be given to ensuring that formal nomination is not a pre-requisite for the rules to apply, once nominations have opened. This would need to be reinforced with careful communications about the rules, as a lack of understanding contributed to some of the queries received.

It has to be recognised that the nature of political party spending is inherently different from that of an individual election candidate. Political parties endure beyond elections in a way that individual candidates do not. Political parties may incur ongoing expenses associated, for example, with premises from which they are operating, as well as one-off events, potentially linked to promoting the party and its policies but not necessarily directly linked to an election.

Guidance issued by the UK Electoral Commission for the 2019 General Election¹² explains that *"campaign spending is what your party spends on activities to promote the party or criticise other parties during a particular period in the run-up to the election"*, which is a helpful way to distinguish such expenditure from other party expenditure.

One of the issues in respect of party spending in 2020 was that there was little time (ranging between eight months and seven weeks) between the formal establishment of the parties and the election. In such circumstances it is perhaps understandable that there was a perception among some members of the community that parties were disregarding the rules in respect of spending, as it was difficult to separate the everyday expenditure of a political party, particularly one in its infancy, and therefore incurring costs associated with the start-up and promotion of any party, from campaign spending.

This situation is unlikely to recur, as legislation enabling the establishment and recognition of political parties is now in place, well before the next election, whereas there was a much smaller window of opportunity in respect of the 2020 election.

In the 2020 election, the Guernsey Partnership of Independents saw 11 candidates elected (although one has since opted to leave the party), and the Guernsey Party six. No Alliance Party candidates were elected and the party has been dissolved. It is not yet known how Guernsey's political system will mature in respect of political parties. Given that 2020 saw the

¹² [UK Parliamentary General Election 2019: Political Parties \(GB & NI\)](#)

first island-wide General Election which also happened to be the first election featuring political parties, it is perhaps not surprising that a degree of confusion existed around some of the rules pertaining to party expenditure.

Consequently, it is considered that more consideration needs to be given to how the rules are clarified and communicated to parties, candidates and the community but there is no overriding reason to revise the rules at this time.

Candidate Expenditure

As stated above, election candidates were permitted to spend up to £6,000 in money or money's worth. They were able to claim a grant of up to £500 in respect of receipted expenditure for the production and distribution of campaign material, as part of the overall expenditure limit.

There have been many calls for individuals' election expenses to be published but the Law does not expressly permit publication and candidates were not asked to consent to these details being made public, although they are at liberty to publish their own expenditure should they wish. The same is true of political parties' election expenditure, although they are required to file annual accounts.

In light of the understandable desire for transparency, it is recommended that the Law be amended to ensure that the ability to publish individuals' expenditure is captured.

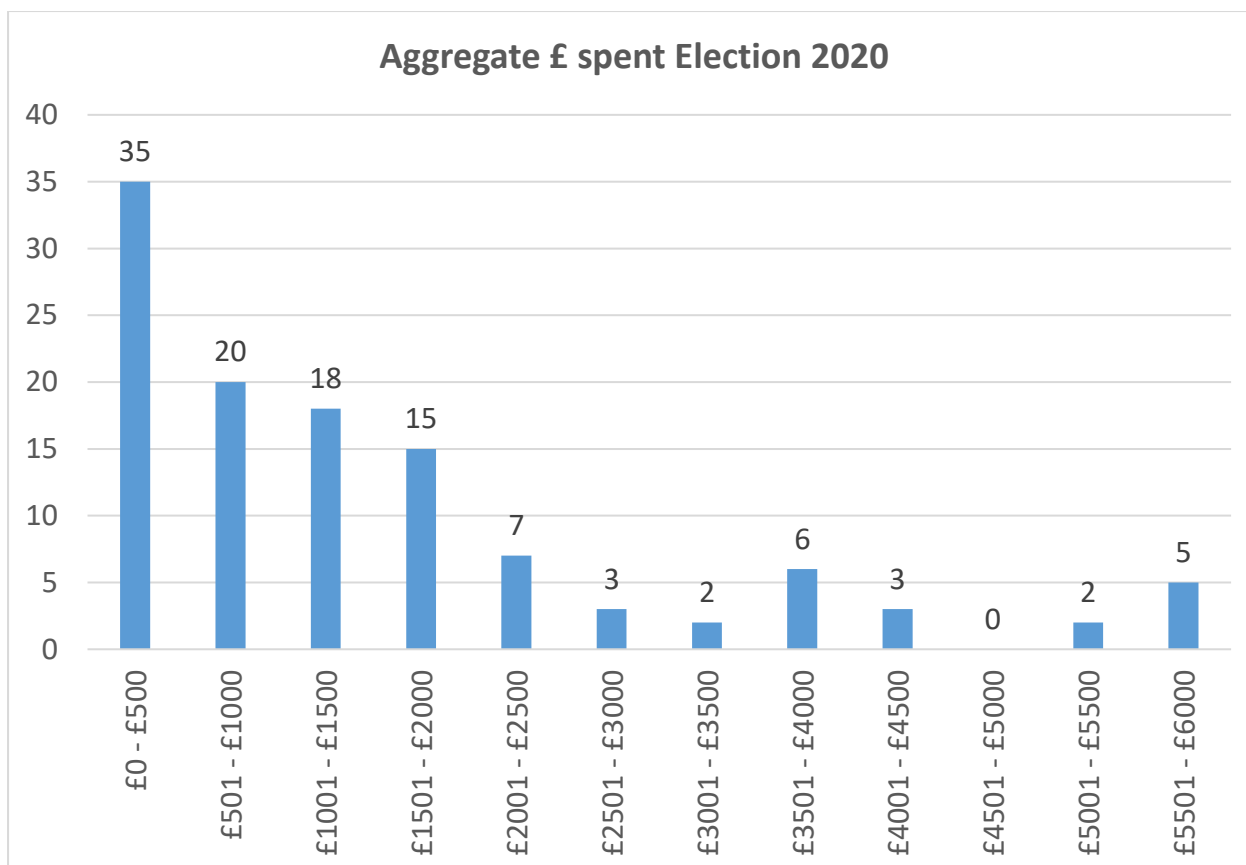
Recommendation 10:

It is recommended that the Reform Law (or any successor) should make explicit the fact that parties' and candidates' individual expenditure returns may be published.

Notwithstanding the fact that individual expenses cannot be published without consent, it has been possible to compile some aggregated data that gives an overview of expenditure.

Aggregated candidate expenditure is shown in the graph below¹³:

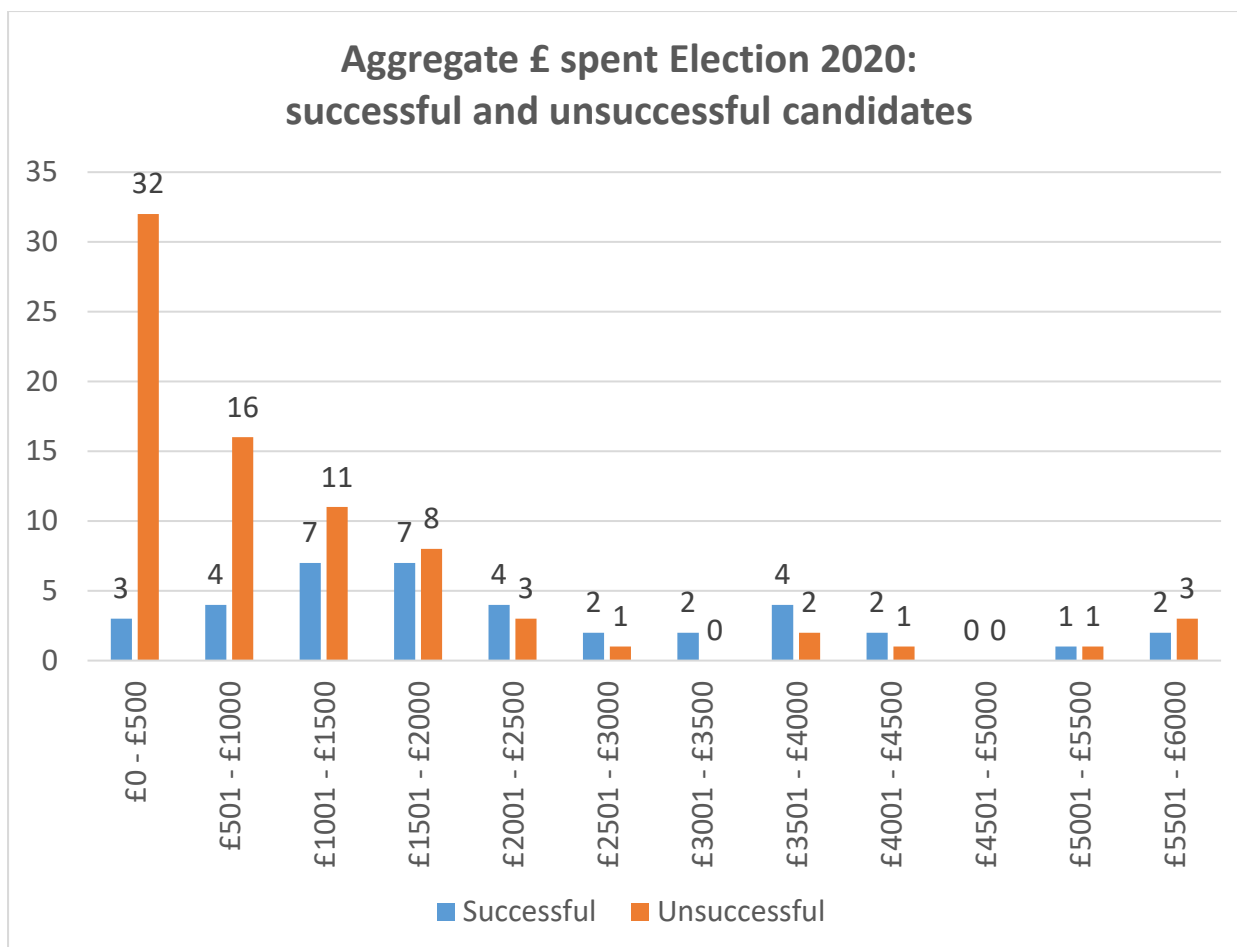
¹³ The data relates to 116 candidates, as three (all of whom were unsuccessful) did not submit any returns.



As can be seen, the majority of candidates (98 in total) spent no more than 50% of the £6,000 limit, with most spending significantly less.

There has been speculation over whether it might have been possible to “buy” election success, particularly as the expenditure limit was higher than in past elections. The graph below, which breaks down aggregated expenditure between successful and unsuccessful candidates, shows that greater spending did not necessarily mean success in the election, with three out of five of the highest spenders failing to be voted into political office. Of the successful candidates, 27 spent less than 50% of the permitted expenditure limit. Spending for successful candidates ranged from £285 to £5,859, demonstrating that election success was possible with minimal expenditure.

Despite this, on average, successful candidates spent more than those who were unsuccessful. The average spend by those who were elected was £2,242, whilst for those who were not it was £1,178. Three candidates did not incur any expenditure, none of whom was elected.



The ten successful candidates with the lowest expenditure spent between £265 and £1,034. Of these, five had been Deputies in the 2016-2020 term, whilst five had not.

It is difficult to draw any conclusions based on expenditure alone because the data relates only to those activities and items that had to be declared on an expenses return. It does not take into account the fact that many candidates also went door knocking and/or used free social media or other free activities to promote themselves, nor can it account for existing public profiles. It does show, however, that it was not necessary to spend anything close to the £6,000 expenditure limit to secure election success.

The position regarding publication of party expenditure is the same as for individuals. Aggregate expenditure across all three parties was just under £19,000, with no party exceeding the £9,000 limit. Two parties, the Guernsey Partnership of Independents and the Guernsey Party, have confirmed publicly their election expenditure as £6,500 and £6,200 respectively.

Election Costs

It was difficult to plan the budget for the first island-wide election because, understandably, there were many unknown factors, particularly in the early stages, and it also became necessary to factor in contingency planning occasioned by Covid.

The table below shows expenditure against budget for both the election and the creation of a new Electoral Roll.

Area	Expenditure Category (Per	Budget	Expenditure	Variance
Election	Staffing of Polling Stations and Vote Count	91,000	14,226	76,774
Election	Postal voting	35,000	59,951	(14,951)
Election	Postage (general)	10,000		
Election	Candidate manifesto booklet	82,000	134,505	(42,505)
Election	Printing	10,000		
Election	Contingency	25,000	3,543	21,457
Election	Advertising	24,000	189,894	7,107
Election	IT - hardware / website	38,000		
Election	E-Count Solution	110,000		
Election	Contingency	25,000		
Election	Election Observation Mission	50,000	16,611	33,389
Election	Grants for candidates	50,000	50,454	(454)
Election	Administration - meetings etc.	50,000	43,022	6,978
Election	TOTAL	600,000	512,205	87,795
Electoral Roll	Staffing	260,000	249,476	10,524
Electoral Roll	Staffing (uplift in respect of pay awards)	5,593	0	5,593
Electoral Roll	Printing	11,000	16,997	(5,997)
Electoral Roll	Postage (general)	33,500	22,258	11,242
Electoral Roll	IT - hardware / website	25,000	44,201	(19,201)
Electoral Roll	Administration / Stationery	8,500	(728)	9,228
Electoral Roll	Advertising	42,000	32,622	9,378
Electoral Roll	TOTAL	385,593	364,826	20,767
COMBINED	TOTAL	985,593	877,031	108,562

As can be seen from the table, the cost of running the election was just over £512k, whilst the cost of creating a new Electoral Roll was a little less than £365k, giving a combined total of £877k.

There were a number of factors that influenced the total expenditure. First, the high number of candidates (119) meant that the combined manifesto document was larger than anticipated, which meant that the printing and postage costs increased. The budget for candidate grants was based on 100 candidates claiming the full £500 but, as expected, not all candidates claimed the full amount and therefore the overspend in this area was marginal.

Owing to uncertainty regarding the possible re-emergence of Covid in the community, the decision was made to put a contingency in place should the island have to revert to a previous phase of lockdown over the election period. This contingency plan required a postal voting

ballot paper to be created for all persons on the electoral roll, regardless of whether they were signed up for a postal vote. The cost for this was c. £20k. Fortunately this contingency was not triggered, and thanks to careful budget management, the cost was covered from general contingency and underspends within other areas.

The uptake for postal votes was considerably higher than had originally been anticipated, which may have been influenced by both the number of candidates, meaning that voters preferred to vote in the comfort of their own homes, and also, potentially, concerns about Covid. This area exceeded the budget by c£15k. Feedback from voters has shown that postal voting was very popular and the high uptake is likely to endure, which should be noted for budget planning for future elections.

Owing to the restrictions on travel at the time of the election, it was decided that an in-person election observation mission would not be possible. A remote expert mission was undertaken instead. This meant a significant reduction in the actual cost because of savings on travel, accommodation, staffing costs, etc. The final cost of the election observation mission was £16.6k against a budget of £50k. There is no need to have an election observation mission at every General Election and this is therefore a cost that need not feature in the budget for the next election and, in all likelihood, the one after that too.

The experience gained during the 2020 General Election will help to inform budget decisions in respect of the 2025 election, meaning that a more accurate budget should be achieved.

Conclusion

The 2020 General Election was unique. It was the first General Election to be run on the basis of island-wide voting; it was the first to feature political parties; and it was organised in the middle of a global pandemic.

All of these circumstances threw up issues for those planning and running the election but, notwithstanding the challenges, it can be concluded that the success criteria agreed by SACC and the Committee *for* Home Affairs, were largely met. To recap, those criteria were:

- i. A high percentage of those eligible to vote are registered on the Electoral Roll;
- ii. A good number of candidates stand for election;
- iii. The majority of those on the Electoral Roll cast their votes; and
- iv. There is a fair, efficient and democratic election.

As set out in the report, more needs to be done in order to increase the percentage of the electorate who are registered on the Electoral Roll but that work is in train and it is hoped that it will have been concluded in time for the 2025 election.

The other criteria are considered to have been met; again the reasons for this conclusion are set out in the report.

Regardless of the success of any undertaking, lessons can always be learnt and improvements made, which is what the recommendations in the report (and attached as an appendix for ease of reference) are designed to achieve.

Finally, I should like to thank all those who contributed to the delivery of the election and also those who kindly gave up their time to provide feedback afterwards. It is much appreciated.

Colette Falla
Registrar-General of Electors

31st March 2021

Appendix: Recommendations

1. It is recommended that SACC should investigate the creation of an independent body to advise on and oversee future elections. (See p.6)
2. It is recommended that SACC should review the Reform Law and other legislation relating to the holding of elections and, if it thinks fit, make suitable proposals for consideration by the States, for electoral reform by way of a standalone election Law that reflects modern election practices and is easily accessible. (See p.6)
3. It is recommended that consideration be given by SACC to how more hustings-type events can be organised by the States and/or the parishes, also having regard to how the requirements of “special interest” groups can be factored into such hustings. (See p.11)
4. It is recommended that SACC should consider moving the deadline for postal vote applications further from polling day. (See p.16)
5. It is recommended that the Reform Law (or any successor) should in future include provision for Deputy Polling Station Officers to be formally sworn in and given the authority to act across the full range of duties in the absence of a Polling Station Officer. (See p.18)
6. It is recommended that SACC should consider consolidating the polling stations, with a view to reducing the number and/or opening hours of the Parish polling stations and increasing the number of super polling stations. (See p.20)
7. It is recommended that SACC should give consideration to amending the Reform Law (or any successor Law) to ensure that it is possible for Deputy Central Returning Officers to be sworn in and given the authority to act across the full range of the Central Returning Officer’s duties in his/her absence. (See p.23)
8. It is recommended that SACC should consider the margin of votes required to trigger a recount after a General Election and, if appropriate, make recommendations for amendments to the Reform Law (or any successor) to reduce the that margin. (See p.24)
9. It is recommended that the Reform Law (or any successor) should, in future, provide for the possibility of an electronic recount and, accordingly, afford the Bailiff more discretion over the exact requirements for a recount. (See p.25)
10. It is recommended that the Reform Law (or any successor) should make explicit the fact that parties’ and candidates’ individual expenditure returns may be published. (See p.29)



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5th May 2021

Dear Deputy Meerveld

CPA BIMR Election Expert Mission Report – Guernsey General Election 2020

I refer to your letter of 22nd April 2021 requesting an update in respect of the development of an automated electoral roll. The Committee *for* Home Affairs (the Committee) is pleased to note that the relevant legislation necessary to support the delivery of an automated generation of a list of persons eligible to vote is now in place.

The Committee supports the progression of this Extant Resolution and recognises the efficiencies that an automated electoral roll are likely to deliver. However, it will be essential for this work to be prioritised and resourced in the Government Work Plan in July if a digital solution and the necessary amendments to the Reform Law are to be progressed and in place in advance for the 2025 General Election.

The Committee looks forward to working with the States' Assembly and Constitution Committee and the Policy & Resources Committee to progress arrangements for the 2025 General Election including establishing an automated electoral roll. As part of these further discussions the Committee considers that there would be merit in reviewing the 'blue book' in terms of which Committee might appropriately have mandated responsibility for the electoral roll moving forward.

Yours sincerely

Deputy Rob Prow
President
Committee *for* Home Affairs



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President
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Our Ref:
Your Ref:
Date: 5 May 2021

Dear Deputy Meerveld

CPA BIMR Election Expert Mission Final Report - Guernsey General Election - October 2020

Thank you for your letter, dated 22 April 2021, inviting the Committee for Employment & Social Security ('the Committee') to submit a letter responding to recommendations 10 and 11 in the report from the CPA BIMR Election Expert Mission:

- Recommendation 10 – Extension of Articles 4 and 7 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to Guernsey should be pursued without delay.
- Recommendation 11 – Extension of Articles 21 and 29 of the Convention on the Rights of Persons with Disabilities (CRPD) should be pursued without delay.

Firstly, it is important to stress that international human rights treaties, such as CEDAW and CRPD, are extremely wide-ranging covering all areas of life, therefore, a whole government approach is required to progressively realise the requirements of these Conventions over time. That said, the Committee recognises that it has a lead role to play in advising the States of Deliberation on matters relating to equality and inclusion and in working towards the introduction of the key legislative provisions that need to be in force before H.M. Government will consider extending its signatory of either convention to Guernsey.

CRPD

I am advised that comprehensive legislation prohibiting discrimination on multiple grounds, including disability, must be in force before H.M Government will consider extending its ratification of CRPD to Guernsey.

In July 2020, following consideration of a Policy Letter entitled '[Proposals for a New Discrimination Ordinance](#)' ('the July 2020 Policy Letter'), the States agreed unanimously to the preparation of an Ordinance to outlaw discrimination on the grounds of disability, carer status and race. The States also approved an [Amendment](#) to the Committee's proposals, laid by Deputy Parkinson and seconded by former Deputy Tooley, which added religious belief and sexual orientation into the first phase of the development of the Ordinance. The States directed the Committee to develop policy proposals for phase 2 of

the development of this Ordinance, for consideration in 2023 and implementation in 2024. Phase 2 will include proposals to introduce protection from discrimination on the grounds of age and the transfer into the new Ordinance of the grounds of protection covered under the existing Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 (i.e. sex (including pregnancy and maternity), gender reassignment and marriage), with any necessary adaptations.

The Committee is currently working on the implementation of phase 1 of the new Discrimination Ordinance, for entry into force in late 2022.

CEDAW

H.M. Government has previously advised the States of Guernsey that the following requirements must be met before consideration will be given to extending the UK's ratification of CEDAW to Guernsey:

1. Introduction of statutory maternity leave with pay or equivalent benefits

Statutory maternity leave was introduced with effect from 1 April 2016 and maternity benefit was replaced with a suite of parental benefits, paid at higher rates, with effect from 1 January 2017. I believe this requirement is now met.

2. Introduction of comprehensive legislation prohibiting discrimination on the grounds of sex

Sex discrimination in employment is unlawful under the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005. However, sex discrimination in the provision of goods and services, education, accommodation and membership of clubs or associations is not unlawful in Guernsey at the present time.

As noted above, the Committee has been directed to develop policy proposals for phase 2 of the new multi-ground discrimination Ordinance, for consideration in 2023 and implementation in 2024. Phase 2 will include proposals to introduce protection from discrimination on the grounds of age and modernisation of the Sex Discrimination Ordinance, which will include plugging existing gaps where sex discrimination is currently lawful.

3. Introduction of a legal right for women to equal pay for work of equal value

In relation to this matter, the July 2020 Policy Letter said:

“The Committee envisages that phase 3* will include a proposal to introduce the right to equal pay for work of equal value in respect of sex in accordance with Guernsey's obligations under the International Covenant on Economic, Social and Cultural Rights and in order to support the extension of the Convention on the Elimination of All Forms of Discrimination Against Women.”

[Please note that the three-phase approach proposed by the Committee was condensed into two phases through a successful Amendment proposed by Deputy Parkinson and seconded by former Deputy Tooley, therefore, this will feature in the phase 2 Policy Letter referred to above.]*

The CPA BIMR Election Expert Mission has recommended that extension of the UK's ratification of Articles 4 and 7 of CEDAW and Articles 21 and 29 of CRPD (the text of these Articles is provided in Appendix 1) should be pursued without delay. While the Committee supports the extension of these Conventions to Guernsey at the earliest opportunity, I understand that it is not possible to select only specific Articles for extension. I am advised that Guernsey would need to seek extension of the UK's ratification of any Convention as a whole, with the possibility of declarations or reservations being applied in line with those that apply to the United Kingdom, and perhaps some that are specific to Guernsey, subject to negotiation with the UK and where the Conventions allow. Therefore, even if Guernsey meets the requirements of the priority Articles identified by the CPA BIMR Election Expert Mission, it would not be possible to seek to extend these Articles to Guernsey until we meet the pre-requisites set out above, which may or may not be relevant to those specific Articles.

Of course, the fact that the UK's ratification of these Conventions has not yet been extended to Guernsey is no barrier to the States of Guernsey working towards the implementation of the measures outlined in Articles 4 and 7 of CEDAW and Articles 21 and 29 of CRPD. Any actions taken in this regard will, in future, assist the States of Guernsey to demonstrate to H.M Government an adequate level of compliance with the requirements of the Convention when an official approach is made.

Given the critical importance of the new Discrimination Ordinance in moving towards extension of CEDAW and CRPD to Guernsey, the Committee looks forward to receiving your wholehearted support, and that of your Committee members, in the implementation of phase 1 of that Ordinance and the development and approval of policy proposals for phase 2.

Yours sincerely

A handwritten signature in black ink, appearing to read 'P. Roffey', with a stylized flourish at the end.

Deputy Peter Roffey
President

APPENDIX 1

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

Article 4 – Special Measures

“1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.”

Article 7 – Political and Public Life

“States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.”

CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

“Article 21 – Freedom of expression and opinion, and access to information

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

- (a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;
- (b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;

- (c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;
- (d) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;
- (e) Recognizing and promoting the use of sign languages.”

“Article 29 – Participation in political and public life

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:

- (a) Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:
 - (i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;
 - (ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;
 - (iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;
- (b) Promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:
 - (i) Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;
 - (ii) Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.”

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

SCRUTINY MANAGEMENT COMMITTEE

FREEDOM OF INFORMATION REVIEW: EVALUATION OF THE STATES OF GUERNSEY'S CODE
OF PRACTICE ON ACCESS TO PUBLIC INFORMATION

The States are asked to decide:

Whether after consideration of the Policy Letter dated 10 May 2021 entitled Freedom of Information: Evaluation of the States of Guernsey's Code of Practice on Access to Public Information, they are of the opinion: -

1. (a) That a Freedom of Information Law should be introduced in Guernsey, focusing on the creation of an independent process for appeals against the application of exemptions, together with the creation of clear timeframes for responding to information requests and the introduction of automatic disclosure rules, and to direct the Policy & Resources Committee to return to the States with detailed proposals, costings and directions for legislation not later than March 2022.

Or, only if Proposition 1a shall have been defeated,

(b) That the current Code of Practice on Access to Public Information should be strengthened by means of the addition of an independent process for appeals against the application of exemptions, and the current Code of Practice on Access to Public Information should be renamed the Freedom of Information Code and to direct the Scrutiny Management Committee and the Policy & Resources Committee to implement this change not later than 1 January 2022.

Or, only if Propositions 1a and 1b shall have been defeated,

(c) That the current Code of Practice on Access to Public Information is appropriate, fit for purpose and should continue in its existing form.

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

FREEDOM OF INFORMATION REVIEW: EVALUATION OF THE STATES OF GUERNSEY'S CODE
OF PRACTICE ON ACCESS TO PUBLIC INFORMATION

The Presiding Officer
Royal Court House
St Peter Port
Guernsey

10 May, 2021

Dear Sir,

1. Introduction

- 1.1 In 2019, a Scrutiny Review Panel was formed comprising the then Deputy Green, President of the Scrutiny Management Committee and Chair of the Review Panel, Deputies Merrett and McSwiggan and Advocate Harwood, in order to investigate the subject of Freedom of Information. A call for evidence was undertaken, research on Freedom of Information (Fol) regimes in Jersey and the Isle of Man was carried out and a public hearing was held in January 2020. The result of the Review Panel's work was published as a Scrutiny Review entitled '*Freedom of Information: Evaluation of the States of Guernsey's Code of Practice on Access to Public Information*'. That Report is appended to this Policy Letter and provides the information and evidence base on which to consider the propositions contained herein. It is recommended that it is read in conjunction with the Hansard transcript of the Public Hearing.¹
- 1.2 The reason for bringing this Policy Letter is to ensure that the substantial work of the previous Scrutiny Management Committee contained in the Scrutiny Review is properly considered. The Review contains the recommendations arrived at by the previous Scrutiny Management Committee, which have been used as the basis of the three options presented herein, for consideration by the States. This will

¹ Available at: <https://gov.gg/CHttpHandler.ashx?id=126331&p=0>

enable a decision to be made regarding whether changes should be made to the current Code of Practice on Access to Public Information (the Code), and if so, what the extent of those changes should be.

- 1.3 Proposition 1 provides three discrete options to the States in order for it to decide which model it prefers in respect of public access to information.
- 1.4 Proposition 1 (a) instructs the Policy & Resources Committee to return to the States with a policy letter detailing the full operation of a Freedom of Information law, proportionate to Guernsey, together with instructions for its implementation, including legislative drafting directions and detailed costings. The perceived advantages and disadvantages of this model are examined in the Scrutiny Review. It should be noted that the former Committee, under the leadership of the then Deputy Green, made the primary recommendation that a Freedom of Information law should be introduced in Guernsey, focusing on the creation of a proportionate independent process for appeals against the application of exemptions; the creation of clear timeframes for responding to information requests; and the introduction of automatic disclosure rules.
- 1.5 Based on the costs incurred in Jersey and the Isle of Man to establish and maintain legally established freedom of information regimes and taking into account the information provided by the Policy & Resources Committee, it is estimated that the net additional cost of introducing and operating this legislation is likely to be between £200,000 to £900,000 per annum depending on the chosen approach to implementation. Similarly, set up costs are likely to be between £500,000 and £2.68 million depending on the chosen implementation approach (section 5.58 of the review)².
- 1.6 Proposition 1b strengthens the current model of Access to Public Information by means of the addition of an independent appeals mechanism. It instructs the Scrutiny Management Committee to implement such an appeals mechanism. The perceived advantages and disadvantages of this model are examined in the Scrutiny Review (sections 5.31-5.37). The Scrutiny Management Committee believes it would be able to implement this change within its existing resources. This proposition also instructs the Policy & Resources Committee to rename the current Code of Practice on Access to Public Information as the Freedom of Information Code, in order to better signpost the purpose of the Code.

² Section 5.58 <https://www.gov.gg/CHttpHandler.ashx?id=129570&p=0>

- 1.7 Finally, Proposition 1c retains the status quo and endorses the current model of Access to Public Information as being sufficient for purpose.

2. Recommendation

- 2.1 The current Scrutiny Management Committee members hold differing views on which of the options contained in the Propositions should be pursued, however, all are agreed that the matter should be debated by the States. The majority recommendation of the Scrutiny Management Committee is to implement a strengthened Code with the addition of an independent appeals mechanism as contained in Proposition 1 (b).
- 2.2 The full appeals Panel would be a sub-committee of the Scrutiny Management Committee and would comprise five suitably qualified and knowledgeable persons, whose task would be to adjudicate on appeals against a refusal to release requested information in accordance with one or more exemptions contained in the Code.
- 2.3 The Panel would comprise a Chair, a Deputy Chair and three ordinary members, all of whom would be appointed by the Scrutiny Management Committee for a period of four years. A panel hearing to consider any specific appeal would comprise a quorum of three members. Sitting members of the States would not be eligible to serve on the Panel.
- 2.4 Should an appeal be upheld by the Panel, the relevant Committee or Body would be expected to release the information. Under this enhanced system, should the relevant Committee or Body fail to comply with the direction of the Panel, the relevant Committee or Body would in effect be exercising a veto and there would be no legal powers to challenge such a refusal. Mindful of this, it would be the intention of the Scrutiny Management Committee to publish the number of cases, if any, where such an exercise of the veto occurred, in its Annual Report. If a significant level of non-compliance with the decisions of the Independent Appeals Panel becomes evident, the Scrutiny Management Committee has the option to return to the States with proposals for further strengthening of the Code with the inclusion of legislative measures.
- 2.5 If Proposition 1b is successful, the existing Code of Practice on Access to Public Information will be renamed as 'The Freedom of Information Code' to make its purpose more easily understood. The Scrutiny Management Committee will also seek to publicise the existence of the Code by means of a public awareness campaign.

- 2.6 The Scrutiny Management Committee believes that its recommendation (Proposition 1b) constitutes a significant improvement on the current position. The recommended changes are proportionate and pragmatic, and do not require legislative drafting or significant expense at a time when pressures are being exerted in both areas. This Committee is also mindful that, even if the States Assembly were to support a full Freedom of Information Law, it is unlikely to be given drafting priority and it could be a number of years before its enactment. Although it would, be possible to introduce an independent appeals body pending the introduction of a full Freedom of Information law, on balance the Scrutiny Management Committee considers that its proposed incremental approach to firstly, strengthening the Code is the best way forward. It has reached this decision having considered current circumstances and it believes this course of action is more likely to result in a system for Guernsey which is proportionate to the Island's needs.

3 Compliance with Rule 4

- 3.1 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.
- 3.2 In accordance with Rule 4(1), the Propositions in this Policy Letter have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- 3.3 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that all members, with the exception, of Deputy Simon Fairclough support Proposition 1 (b). Deputy Fairclough supports Proposition 1 (a).
- 3.4 In accordance with Rule 4(5), the Propositions relate to the duties of the Committee mandate; 'To lead and co-ordinate the scrutiny of committees of the States and those organisations which are in receipt of public funds, by reviewing and examining legislation, policies, services and the use of monies and other resources.'
- 3.5 Also in accordance with Rule 4(5), the Scrutiny Management Committee has consulted with:

The Policy & Resources Committee

Yours faithfully,

Y Burford

President

S P Fairclough

Vice-President

J Dyke

Member

J Whittle

Non-States Member

G Ruddy

Non-States Member



Scrutiny Management Committee

FREEDOM OF INFORMATION REVIEW: EVALUATION OF THE STATES OF GUERNSEY'S CODE OF PRACTICE ON ACCESS TO PUBLIC INFORMATION

14 August 2020

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Acronyms, Abbreviations and Terms

Acronym, Abbreviation and Terms	Definition
API	Access to Public Information
FoI	Freedom of Information
GDPR	General Data Protection Regulation
IoM	Isle of Man
Reasonable Request	A request is not irrational, frivolous or vexatious
SAR	Subject Access Request
SSP	States Strategic Plan
The API Code / The Code	Code of Practice on Access to Public Information
The Committee/SMC	Scrutiny Management Committee
The States	The States of Guernsey

1. Executive Summary

The Scrutiny Management Committee launched this review of the Code on Access to Public Information, and the States' commitment to freedom of information (Fol), in 2019. A Review Panel was formed comprising Deputy Green, President of the Scrutiny Management Committee and Chair of the Review Panel, Deputies Merrett and McSwiggan and Advocate Harwood, a call for evidence took place during the third quarter of 2019; research on Fol regimes in Jersey and the Isle of Man was carried out; and a public hearing was organised in January 2020. This report summarises the findings of that work and sets out the Review Panel's recommendations.

This report sets out the background to Guernsey's current access to information regime, from 2010 to the present (Section 3), including key States' decisions.

It outlines the review process (Section 4) and identifies the key findings arising from the research and evidence presented to the Review Panel, on a thematic basis (Section 5). Additional supporting information is included in the appendices and Hansard Transcript of the Public Hearing¹.

Finally, it sets out the Review Panel's conclusions and recommendations in Section 6. In summary, these are:

1. That a Fol law should be introduced in Guernsey, focusing on the creation of a proportionate independent process for appeals against the application of exemptions; the creation of clear timeframes for responding to information requests; and the introduction of automatic disclosure rules.
2. That the independent appeals function, under any future Fol law, should be attached to an appropriate, existing statutory office or function, rather than being separately established.
3. That responsibility for the development of policy and legislation, in respect of Fol, should be included in the mandate of the Scrutiny Management Committee with immediate effect.
4. That the Scrutiny Management Committee should develop proposals to address recommendations 1 and 2, together with an assessment of the financial impact of their introduction, no later than the end of 2022.
5. That the existing Code should be renamed the 'Freedom of Information Code' with immediate effect, and that an ongoing programme of public awareness raising in respect of the Code, should be carried out.
6. To agree that the CIO should hold the role of an information champion within the States', with responsibility for reviewing and challenging the use of exemptions;

¹ Numbered references to the Hansard Transcript are included throughout the Report

coordinating requests and collating data; and helping to raise awareness of, and improve engagement with, the States' FoI responsibilities, across the public sector.

7. That the CIO should review annually progress made towards greater proactive publication of material by the government.
8. That further consideration should be given to promoting the development of an active and engaged civil society which can articulate interests and elevate individual grievances into broader concerns and to integrating the principles of Open Government across all States' work, in order to support the culture change required for an effective FoI regime.

2. Chairman's Introduction

My Committee's review into the effectiveness of the existing 'Code of Practice on Access to Public Information' (the 'Code') followed a suggestion by made by the States in 2013, when the Code was introduced, that the Code's progress '*could be measured and benchmarked by one of the parliamentary scrutiny committees*.'² Our objective was to determine whether the Code has succeeded in creating the intended culture of openness, accountability and good governance and thereby increased trust and confidence in government. If there are weaknesses in the way the Code is operating could they be rectified, or does Guernsey need to go down the statutory route with a full FoI law, as Jersey and the Isle of Man have done?

The Review Panel believes that the current COVID-19 pandemic has highlighted the importance of openness and transparency to the public. At the start of the pandemic, Public Health expressed its desire to be as open and transparent as possible with the public regarding the current health crisis and since then it has provided consistent and timely information including statistics and its decision-making rationale on an almost daily basis. My Committee has noted the positive response of the public to its proactive stance and the positive manner in which this engendered public trust and confidence in the authorities.

The Review has considered current guidance, policies & procedures, undertaken its own analysis of requests to date and looked at the workings of FoI arrangements in Jersey and the Isle of Man. The Review Panel has also considered whether the API Code can be improved by the introduction of an appeals mechanism, independent of the civil service.

My Committee is aware of changing expectations regarding FoI and the requirements for openness, transparency and accountability while also balancing public interest alongside rights to personal privacy and protection of information. The implementation of the new General Data Protection Regulations (GDPR) in 2018 introduced yet more complexity with regulators being required to greater understand the interplay between the different rights and responsibilities.

The Review Panel issued a call for evidence through the media followed by a direct approach to specific stakeholders and relevant bodies in other jurisdictions. We were, I am sorry to say, disappointed by the poor response, especially from the media and civil society, both of which we would have assumed to have a major interest in the subject. The lack of engagement could be a sign of satisfaction with the Code's workings, but we fear that it is more a reflection of a general apathy and quite the opposite of the public engagement which FoI measures are intended to stimulate.

² <https://gov.gg/CHttpHandler.ashx?id=83312&p=0> par 9.5

As with any evaluation of a measure it is important to have a vision of what ‘success’ might look like and, in this case, we took it to be achieving a cultural shift to greater transparency and openness: that means having both an open government and an engaged public. Simply generating a large volume of information requests from individuals which concern only specific grievances, will not by itself create a better-informed citizenry and greater involvement in public affairs. Guernsey lacks the organisations and campaign groups which elsewhere help formulate those specific complaints as broader concerns and this is a part of the picture that we believe needs to be addressed.

Given the lack of explicit calls in the evidence for a FoI law, it will seem surprising that the Review Panel’s conclusion is that Guernsey should go down that route. Indeed, it was not what I expected when we began this inquiry. Our reasons are contained in the report, but the crux of the case is that while we accept the need for a system that is proportionate, the present API Code’s credibility is undermined by its lack of an independent appeals process and this weakness is widely accepted, not least by the Policy & Resources Committee (P&R).

Where we differ from P&R is in the solution: for an appeal system to have integrity it has to be able, on the grounds of an overriding public interest, to overturn the States’ refusal to disclose information. Such a decision can only be exercised by a body or individual with a high level of authority. Once that is accepted then the difference in cost between an appeals body (with the necessary weight) under the API Code and one backed by a FoI law becomes less evident. The other cost objections which were raised by P&R, relate to the costs of operating a system to handle requests and to answer them; these, we consider, will be almost the same irrespective of whether we are talking of a code or a law. With the cost objections largely dispensed with, the case in favour of the clear cultural signal which would be sent by introducing a FoI law becomes much harder to resist.

The Review Panel held a public hearing in January 2020 to obtain additional evidence and to test P&R’s written submission. The witnesses were: Deputies Roffey and Gollop, Mr Nick Mann, Guernsey Press News Editor, Ms Emma Martins, Data Protection Commissioner³, Deputy St Pier, President of the Policy & Resources Committee, Lt Col Colin Vaudin, Chief Information Officer and Mr Rob Moore, Senior Media and PR Officer.

³ Ms Martins answered questions from her personal perspective only

3. Background

3.1 Guernsey's commitment to open government and transparency, and to freedom of information, has now been in development for a decade. Box 1 recaps the key events that have led to the current position, and which provide the context to this review commissioned by the Scrutiny Management Committee.

Box 1

27 October 2010	Debate on the States' Strategic Plan
	A successful amendment from then Deputies Rhoderick Matthews and Sean McManus led the States to direct the Policy Council ' <i>to consult with all States Departments and Committees and then to report to the States of Deliberation by no later than December 2011, setting out options for improving open government and transparency and establishing a corporate policy on freedom of information and open government.</i> '
2011	Crowe Report – an Information Strategy for the States of Guernsey
	<p>The Policy Council commissioned Belinda Crowe, a UK FoI expert, to produce an independent report into all aspects of a FoI regime. The Report, which was published on the States of Guernsey website in September 2011, said that:</p> <p><i>'If, when and how to legislate is a matter for the States but much can be done now, without legislation, to make transparency and openness meaningful, and accountability real, by making information available proactively at the earliest possible time'....'Taking the time to put the right information management processes in place and to create the right culture, whilst steadily increasing its proactive release of information, will create a solid foundation for proper consideration of the right statutory framework for Guernsey.'</i></p> <p>The first steps recommended by the report included: creating a strategic communications function; publishing information on salaries and expenses; introducing Hansard for the States and parliamentary Committees; allowing public access to Scrutiny hearings and Committee meetings; and putting in place resources to support the Information Strategy. These first steps were envisaged as the foundation of an ongoing process.</p>
30 July 2013	Policy Council report on a States of Guernsey Policy for Access to Information
	Following the 2012 General Election, the new Policy Council considered the recommendations of the Information Strategy. They

	<p>proposed introducing a non-statutory Code on Access to Public Information, rather than a FoI Law.</p> <p>The Policy Council considered the <i>'importance of the bigger picture'</i> and <i>'proportionality'</i> in making this recommendation. They said that: <i>'It is clear that putting an effective API process in place will create a solid foundation for proper consideration of the right statutory framework for Guernsey, in due course...the Code of Practice does not need to be made on a statutory basis; nor will it need to be assumed that it should lead to statutory framework.'</i></p> <p>Their Policy Letter stated that: <i>'The most important step at this time is to adopt constant good practice across the States and develop the right climate and culture before beginning to consider if a statutory framework is required...The clear lessons from jurisdictions that have adopted statutory FoI frameworks is that, ironically, such frameworks can have a detrimental impact on open government unless consistent good practice to agreed and measurable standards is put in place first.'</i></p> <p>The Policy Letter, together with several amendments, was approved by the States, and work began to implement it.</p>
	<p>Relevant to this review, the Policy Letter also recommended that, <i>'In order to maximise the effectiveness of a phased approach ... its [the Code's] progress could be measured and benchmarked by one of the parliamentary scrutiny committees.'</i></p>
28 May 2014	Deadline Missed & Chief Minister's Update
	<p>In the States' Resolutions of 30 July 2013, the Policy Council was directed to report back within a year with their <i>'assessment of the feasibility, desirability and potential cost of providing a right of appeal to an independent person'</i> when a request to access information was refused. In his update in May 2014, Deputy Jonathan Le Tocq (then Chief Minister) explained that this work had not progressed, as priority had been given to implementing the Code itself.</p> <p>He added that: <i>'The Policy Council's view is that this Code remains a proportionate approach to the maintenance and improvement to the standards of open government within a small jurisdiction. The</i></p>

	<i>practical application of the principles in the Code will foster greater transparency across the States.'</i>
Q1 2015	Deadline Missed
	In the States' Resolutions of 30 July 2013, the Policy Council was directed to report back in quarter 1 of 2015 on the effectiveness of the Code of Practice, and any recommended changes; and to examine the feasibility of introducing automatic disclosure rules similar to the UK '30 Year Rule'. This work was not brought forward to the States' at that time, or subsequently.
2017	Internal review by the Policy & Resources Committee
	<p>The Policy & Resources Committee carried out an internal review of the effectiveness of the Code of Practice, which led to a number of recommendations for change, including:</p> <ul style="list-style-type: none"> • All questions and responses under the Code being published on gov.gg; • Work being carried out to raise awareness of the Code within the public sector, and the wider public; and • The Chief Information Officer taking responsibility for reviewing all proposed uses of an exemption under the Code.
29 March 2017	Update from the President of the Policy & Resources Committee
	<p>Deputy Gavin St Pier, as President of the Policy & Resources Committee, gave an update on his Committee's progress with the implementation of the Code. He said that: <i>'Given that there has only been one request for review since the agreement of the Code, the Policy & Resources Committee ... does not consider that a single request for review merits the introduction of an appeals mechanism.'</i></p> <p>He added that: <i>'We cannot recommend ... a [Fol] law at this time. The low number of requests, the low refusal rate, the fact that many of those that have been refused would have been refused under a statutory regime in any event, and the amount of work that still needs to be done in the area of document management policy does not evidence the need for a Fol law.'</i></p>

3.2 This review was launched by the Scrutiny Management Committee in 2019 in order to assess the effectiveness of the Code of Practice on Access to Information, and to evaluate

the States' progress against its own recommendations for improving transparency and openness.

Overview of the Code of Practice on Access to Public Information

3.3 A link to the Code on Access to Public Information is included at Appendix 9. The Code is based around five guiding principles:

- A presumption of disclosure;
- A corporate approach;
- A culture of openness;
- Proactive publication; and
- Effective record management.

3.4 In summary, the Code suggests that the States' default position should be to publish information, either proactively, or in response to requests. However, it *'acknowledges that the States will need to keep some information confidential'* and that it *'has a duty to protect the proper privacy of those with whom they deal'* and to *'protect Guernsey's legal, commercial, competitive or public interests'*. This is reflected in a set of fifteen exemptions, which outline when information may not be released. These are:

1. Security and external relations
2. Effective management of the economy and collection of taxes
3. Effective management and operations of the public service
4. Internal discussion and policy advice
5. Law enforcement and legal proceedings
6. Immigration and nationality
7. Environmental
8. Public employment
9. Voluminous or vexatious requests
10. Publication and prematurity in relation to publication
11. Research, statistics and analysis
12. Privacy of an individual
13. Third party's commercial confidences
14. Information given in confidence
15. Statutory and other restrictions

3.5 In order to support the principle of *'proactive publication'*, the Code includes guidance for Committees on the kind of information that should be published, from *'information about what services are being provided along with Committee business plans'*, to *'any facts and relevant analysis which the Committee considers important in framing major policy proposals and decisions'*.

3.6 In order to support individuals making information requests under the Code, documents entitled *'Guidance on how to use the States of Guernsey Code of Practice for access to*

public information' and a *'Short Guidance note on Operational Implementation of the API Code'* are both published within the public domain on gov.gg. A dedicated email address (information@gov.gg) is also provided for handling Access to Information requests. Individual requests and media requests under the Code are handled on the same basis. Requests under the Code are logged by the Corporate Communications team before being referred to the relevant service area.

- 3.7 When a Committee or service area believes that an exemption should be applied to restrict the publication of information, the Chief Information Officer (CIO) of the States of Guernsey has a responsibility to review and assess whether that exemption is being used appropriately.

Complaints/Appeals Procedure

- 3.8 The Code indicates that the initial cause of action for any complaint related to non-release of information is in writing to the Chief Secretary / Principal Officer of the Committee concerned in the first instance.
- 3.9 The escalation route is to then write to the Committee itself and the Guidance to the Code states that if the requester is still not content then they may refer the matter to P&R⁴. Additionally, any Committee may refer any matter to P&R for their consideration. However, the Guidance document states, *'This is not an appeal process; it is a process of referral to the P&R Committee for advice or political guidance'*⁵.

⁴ <https://gov.gg/CHttpHandler.ashx?id=105845&p=0> para 2.12

⁵ <https://gov.gg/CHttpHandler.ashx?id=105845&p=0> para 6.62

4. Overview of the Review

- 4.1 The Scrutiny Management Committee launched its review of the Code of Practice on Access to Public Information in 2019, and a Review Panel was established in July 2019⁶. Full terms of reference for the review are set out in Appendix 1. In brief, the review sought to establish the extent to which the Code of Practice was effective in enhancing government openness and transparency, and public access to information; and the extent to which the States' had delivered on its own resolutions and commitments in respect of this important issue.
- 4.2 The Review Panel reviewed the available information on the number of requests that had been made, to date, under the Code of Practice, and the reasons why certain requests were declined, in whole, or in part. The Review Panel held an open call for evidence during summer 2019, which attracted responses from most States' Committees; a small number of individuals with experience of using the Code of Practice; and a very small number of journalists responding in their individual capacity. There were no submissions from campaigning groups, or from civil society.
- 4.3 The Review Panel also collected information from Jersey and the Isle of Man as comparable jurisdictions, both of which have introduced FoI laws, on their experience of operating FoI regimes. The Review Panel sought and received specialist advice from the Data Protection Commissioner on the interaction between freedom of information and data protection regimes; and from the States' Law Officers on the legal interpretation of the public interest test, in respect of freedom of information requests.
- 4.4 The Review Panel held a public hearing with key witnesses in January 2020, to further test the themes and conclusions which were emerging from its review. A full Hansard Transcript of the public hearing is available at: [Public Hearing Hansard Transcript - Access to Public Information Review](#).

Areas of Focus

- 4.5 As the review progressed, the Review Panel was able to refine its considerations into a small number of areas of focus. Some of these reflect the questions that were identified at the outset, through the terms of reference of the review; while others were added as themes emerged from the evidence which the Review Panel collected throughout the review process. In drawing this final report together, the Review Panel has focused on the following issues:

- a) Is the Code on Access to Public Information operating effectively?

⁶ The Review Panel consisted Deputy Green, President of the Scrutiny Management Committee and Chair of the Review Panel, Deputies Merrett and McSwiggan and Advocate Harwood.

- b) How far does the role of the Chief Information Officer improve the effectiveness of the Code?
- c) Are exemptions fairly applied under the Code?
- d) What evidence is there of a need for an Independent Appeals process?
- e) What evidence is there of a need for a FoI Law?
- f) What evidence is there of a need to codify the 'public interest' test?
- g) What are the costs, and what are the benefits, of increased freedom of information?
- h) What more can be done to improve proactive publication by the States of Guernsey?
- i) How should freedom of information requirements apply to reports or services commissioned, but not delivered, by the States of Guernsey?
- j) Should more be done to enhance public awareness and use of the Code?
- k) What more may be needed, in addition to the Code, to enhance government openness and transparency?
- l) What progress has the States made, to date, in respect of its own resolutions and commitments on freedom of information and open government?

Summary of Evidence

4.6 The next section of the report summarises the evidence that emerged in respect of each of these themes. Wherever possible, evidence from witnesses at the Public Hearing and responses to the Call for Evidence, are quoted verbatim; where necessary, some have been edited or paraphrased for clarity (these are not marked as direct citations). The Review Panel's conclusions and recommendations are then set out in the final section.

Further information to support the findings of this report can be found in the Appendices, and in the Hansard Transcript of the Public Hearing, as follows:

Appendix 2	Summary of the UK Freedom of Information Act
Appendix 3	Summary of the Jersey Freedom of Information Law
Appendix 4	Summary of the Isle of Man Freedom of Information Act
Appendix 5	Extracts from the Review Panel's supporting research on Open Government
Appendix 6	Links to documents cited in this report
Appendix 7	Details of the Call for Evidence
Appendix 8	States Resolutions – 30 July 2013
Hansard Transcript	Public Hearing Hansard Transcript - Access to Public Information Review

5. Review Panel Questions and Themes that Emerged

Is the Code on Access to Public Information operating effectively?

- 5.1 In their response to the Call for Evidence, P&R stated that: *“The API Code serves to ensure that the States of Guernsey’s default position with regard to information, is that it should be proactively published, or at the very least, consideration is given to why it can or cannot be published...”*.
- 5.2 P&R stated that the States of Guernsey had seen a significant rise in the number of requests for information submitted under the API Code. This was described as a “positive trend” which could be a result of increased awareness. They said the Code was regularly used by the local media for news coverage purposes, which in turn raised the profile of the API Code itself.
- 5.3 P&R said that few complaints have been received regarding the Code. However, this *“may not in itself be an indication of the general satisfaction of the responses as the process of receiving and recording complaints is not clearly defined, and there is no formal appeals process”*.
- 5.4 The majority of States’ Committees responding to the Call for Evidence, were similarly of the view that the Code was operating reasonably effectively and that it reflected both the public’s right to information and the cost and impact on the States’ of providing that information.
- 5.5 Although responses from within the States’ generally endorsed the principle of transparency, there was also an acknowledgment that some stages of the policy development process required a certain amount of privacy in order for ideas to be fully developed. One Committee wrote that *“it’s worth stating that participants in any consultation may not be so frank in any given consultation if they know that information may end up in the public domain”*, while the need for Committees to have space in which to consider their options, without a running commentary from outside, was discussed by witnesses at the Public Hearing. The importance of a balance between transparency and privacy was agreed by politicians and journalists alike, although there was some disagreement as to whether the current Code struck the balance in the right place.
- 5.6 The Review Panel received very few responses to the Call for Evidence from journalists or media organisations, and none from civil society groups. This was explored further during the Committee’s Public Hearing. Mr Nick Mann, News Editor of the Guernsey Press, said that the Code was not his first port of call, but rather a backstop when he was declined information which he had requested directly (*Hansard: line 110*). This may be an indication that the existing ‘presumption of disclosure’, in response to media requests,

reduces the need for the Code. It may also indicate that, in a small community, networking and unofficial sharing of information pre-empt the use of formal channels. Both possibilities were explored at the Public Hearing, but inconclusively.

5.7 It was suggested that the Code was most useful to journalists working on in-depth stories, rather than those who are chasing news stories and interviews. As this kind of long-form investigative journalism is uncommon in Guernsey, this may also help to explain the low level of engagement from media organisations in respect of this review.

5.8 Differences between the handling of API requests and 'Rule 14' questions (written questions by States Members submitted in accordance with the Rules of Procedure of the States of Deliberation) were explored. It was felt that Rule 14 questions tend to receive more timely and comprehensive responses.

5.9 P&R's written submission recognised two areas where there were inadequacies, or gaps in the way the Code operated. The first of these concerned commissioned reports, the second was the lack of a formal complaints and appeals process, which was described as *"the area where the API Code would most benefit from changes"*. At the Public Hearing Deputy St Pier said that he believed that the 2017 changes and greater promotion of the Code had all helped to promote its use but conceded *"there are still things that need to be done and developed"*. This is also one of the conclusions reached by the Review Panel.

How far does the role of the Chief Information Officer (CIO) improve the effectiveness of the Code?

5.10 As part of the changes made in 2017, the CIO of the States, Mr Colin Vaudin, has taken responsibility for certain decisions made under the API Code. There are three areas where the CIO has a particular role:

- Managing requests
- Challenging exemptions
- Promoting transparency

5.11 In terms of **managing requests**, the CIO's office (via information@gov.gg) is the front door for any request under the API Code. Requests are received centrally and forwarded on to the place from where the information can be provided. Information on requests received is also collated centrally and categorised broadly by type of requestor (*Hansard: line 1730*). However, responsibility for answering the request sits with the relevant Committee or service area, not the CIO.

5.12 In respect of **challenging exemptions**, any Committee wishing to apply an exemption to restrict the publication of certain information must first submit this to the CIO for

approval or challenge. The CIO stressed to us the robustness of his challenge, but he does not have the power to overrule a Committee, or the holder of a Public Office. If an exemption is applied, against the advice of the CIO, then the response is published with the exemption applied, but with a statement noting the CIO's dissenting view (*Hansard: line 1635*). The CIO told us that this had not happened since 2017; whether that can be taken as a sign of the strength or weakness of the system, is impossible to tell.

5.13 During the Public Hearing, the CIO said that he would regularly advise Committees against applying an exemption (*Hansard: line 1609*). P&R's submission states "*There have been no cases where the CIO has challenged the use of an exemption and this has not been resolved to the satisfaction of both the originator and the CIO*". It is difficult to establish, without more information, whether this is because the CIO has effectively influenced the Committees, or vice versa, but as a statement from 'government' it might unfortunately convey an impression of cosiness. Any civil servant, whatever their personal authority or commitment to transparency, would struggle to be perceived as fully impartial in challenging decisions of the States. During the Public Hearing, Deputy Gollop noted that the position of the CIO as investigator, gatekeeper and adjudicator of requests, might cause him to be conflicted in ways that an independent adjudicator would not be.

5.14 Nevertheless, the role of the CIO in the process has been welcomed by some States' Committees. One response to the Call for Evidence said that the "*requirement that any exemptions are approved by the States of Guernsey Chief Information Officer was a positive addition, and it provides appropriate oversight and ensures a consistent approach across the States/.*"

5.15 The CIO also considers his role to be one of **promoting transparency** across the States'. He felt that this was only possible because his position within the States' gave him a sufficient understanding of all the functional areas within the States' along with a corporate overview (*Hansard: line 1800*). He said that: "*I have noticed a cultural change in the last three-plus years through the application of this Code and the speed of response from service areas and Committee areas*" (*Hansard: line 1698*).

5.16 Establishing consistency and culture change across the States' is a significant challenge. While most States' Committees recognise the need to balance transparency with proportionality, one Committee's response to the Call for Evidence was striking for its argument that: "*rarely does the release of the data improve the quality of life for residents of the Bailiwick*" and "*there is not substantive evidence of anything important not being released by one means or another.*" These remarks indicate the uphill task faced in driving cultural change across the board. Deputy Roffey rightly pointed out there is no reason why all States' committees should be the same as far as the release of information is

concerned (*Hansard: line 480*). However, we would expect the culture to be consistent and to be demonstrated by a default position of openness and proactive publication.

5.17 However, the API Code is only a small part of the CIO's role, and the States does not have a specific resource dedicated to promoting culture change (*Hansard: line 1397*). In our view, Deputy St Pier weakened his claim of commitment to cultural change when he answered his own question *"Do we have a dedicated resource who are promoting the cultural change? No. We do not have people who are employed to do that"* (*Hansard: line 1397*). He went on to add that no one individual could drive cultural change and that it was the responsibility of politicians *"to help drive that cultural change in terms of their expectations"* (*Hansard: line 1402*). We see two difficulties with this argument: first, expectations change with each new States', and by his own admission, P&R has not implemented an extant States' Resolution from 2013 on introducing an independent appeal in respect of a request under the Code (*Hansard: line 1251*). Secondly, by making everyone responsible we fear that, in practice, no one sees it as their job to push for it. The Review Panel is of the view that the CIO 'owning' this responsibility is a positive step, which should be given the political backing it requires.

5.18 Finally, an exploration of the CIO's role necessarily gives rise to the question of **'ownership'** – who owns the information which is used to answer API requests, and who should ultimately decide whether or not it is to be released?

5.19 Mr Rob Moore, Senior Media and PR Officer, said that the decision as to who should handle an API request *"depends on the nature of the question to a point because some questions might be about policy in nature, some might be operational in nature and some might relate to a particular service area within a Committee structure... to a point that is also, kind of, on a case-by-case basis. It will be a different person who is the appropriate person to give the response on behalf of a service area"* (*Hansard: line 1835*).

5.20 In respect of commissioned reports, the CIO added: *"if it is commissioned on behalf of a Committee or Committee's area of work, the releasing entity effectively becomes the Committee Secretary on behalf of that Committee and whether the Committee Secretary, depending on their authorised authorities from that Committee – and those do vary across various Committee areas ... Effectively the Committee becomes the releasing authority"* (*Hansard: line 1851*).

5.21 This is altogether different to the UK, where the FOI Act provides for a ‘Ministerial Veto’, to be used in exceptional circumstances and only following a collective decision of the Cabinet: it is the nuclear option.⁷

5.22 If responsibility sits with each States Committee or statutory official, this further underlines the challenge – and the importance – of embedding a consistent approach across the States. The Review Panel agrees that decision-making in respect of the API Code must reflect the structure of the States’, with political Committees having the responsibility to make decisions in accordance with their mandate; but underpinned by shared resources and a common approach towards understanding and applying the Code.

5.23 The Review Panel also recognises that, while the more robust challenge provided by an independent appeals process is needed, the final decision to release or refuse government information, must rest with the political leadership of the States’. However, the mechanics of how this might be achieved as part of the Island’s system of government, needs further careful consideration. The Review Panel discussed whether this might be achieved by implementing a Guernsey equivalent of a ‘Ministerial Veto’, as exercised in Westminster, and potentially included in any future FOI legislation. This appears to be a potentially credible option, but the question remains as to where and how it could be effectively implemented within our current system of government. The Review Panel discussed another potential option that the President of the relevant Committee be given a right of appeal to the Bailiff in Chambers, on the sole ground that the disclosure ordered by the Independent Commissioner would not be in the ‘public interest’. The Panel Members also discussed whether this responsibility should instead rest with the President of P&R and concluded that, while the broad concept appeared potentially appropriate, it would require additional thought. However, overall the Review Panel believes the concept would seem to fit quite well with the island’s current system of government, subject to its overriding view that this aspect of a future FOI law needs further careful consideration.

Are exemptions fairly applied under the Code?

5.24 The Code’s guiding principle of a presumption of disclosure has to be measured against the need for confidentiality for a variety of reasons, which are set out in the Code’s exemptions. In the case of each exemption, the harm or prejudice arising from disclosure can be outweighed by the public interest in making the information available.

⁷ Section 53 of the FOI Act provides for a ministerial veto, whereby a decision notice by the ICO or a court requiring the release of information can cease to be effective following the presentation of a certificate to the Information Commissioner to that effect by a Minister attending Cabinet.

- 5.25 The most frequently used exemptions relate to voluminous, vexatious or frivolous requests; employment-related matters; and premature publication. The CIO advised the Review Panel that the number of exemptions had reduced over the last three years against a backdrop of more requests, adding that *“if your measurement of success perhaps is more requests and fewer exemptions, I would suggest that has been achieved”* (Hansard: line 1514). The Review Panel considers that the sample size (total number of requests made to date) is too small, as yet, to be able to assess trends with any confidence.
- 5.26 In its written evidence, P&R said that they felt the exemptions included in the API Code guidelines were applied consistently by the CIO, bearing in mind that applications needed to be considered on a case-by-case basis.
- 5.27 Under the current system, where an exemption is approved by the CIO, an explanation is provided. At the Public Hearing, Mr Nick Mann said that *“the level of detail provided in these explanations was too limited”* (Hansard: line 192), *“but accepted that a detailed provision of the justification for an exemption could be difficult to provide without revealing the information that the exemption was intended to protect”* (Hansard: line 206).
- 5.28 At the Public Hearing, Mr Nick Mann challenged the way in which some exemptions had been applied, especially in cases where the issue at stake was a matter of timing (for example, when the information is in a report which is due for public release at some future date). He also said there had been undue delays in responding to some requests: for example, a report in respect of St James Chambers took 6 months to be released and was then heavily redacted.
- 5.29 Mr Nick Mann challenged the lack of a definition of ‘public interest’, in the context of exemptions, and criticised the absence of an independent appeal process. Each of these is addressed separately below.
- 5.30 The Review Panel recognises that the application of exemptions will always be one of the most contentious elements of any FoI regime. This is evidenced by the differences in perspective between witnesses from within and from outside the States’. The Review Panel considers that this underlines the importance of having a process which is fair, and seen to be fair, when determining how exemptions should apply and when the public interest should be used to override them.

What evidence is there of a need for an Independent Appeals Process?

- 5.31 P&R acknowledged that the lack of a formal appeals process within the API Code was a weakness and stated that, *“the process of complaints and appeals is the area where the*

API Code would most benefit from changes... The Policy & Resources Committee believes there should be a clearer mechanism through the gov.gg website for members of the public to make complaints through a single channel, managed by the States of Guernsey Communications team.” Deputy St Pier said that P&R had not made progress regarding the complaints and appeals process under API as “it has not been one of our priorities this term.”

5.32 The need for an independent appeals process was endorsed by all witnesses at the Public Hearing. One said that *“it would provide greater credibility and help to drive cultural change”* (Hansard: line 219). Another said, *“that objectivity and neutrality were best provided by a statute-backed independent body”* (Hansard: line 800); and yet another *“emphasised the importance of an independent third party in handling appeals against the use of the Code”* (Hansard: line 148).

5.33 While P&R felt that the lack of an independent appeals process was a *“significant drawback”*, this acknowledgment was tempered by the comment, *“...it is important such an appeal process is proportionate and does not add significant cost”*. This was echoed in written evidence from other Committees. As one stated: *“the Committee would welcome the introduction of a proportionate and independent review mechanism for any decisions made under the API framework. This would help to strengthen the States’ commitment to access to public information.”*

5.34 In seeking a low-cost solution, Deputy St Pier pointed out that *“the States’ has plenty of appeals processes, various tribunals and others, that are manned at relatively low cost by volunteers”* (Hansard: line 1265). However, any appellate body would have to have a sufficient understanding of the working of the States’, and to be sufficiently authoritative and qualified to rule on where the public interest lies, where it clashes with the use of one of the Code’s exemptions. A tribunal populated by lay people may struggle to fulfil this role. Nevertheless, the Review Panel agrees there is merit in exploring whether this responsibility could be added to an existing decision-making body or function, rather than requiring an entirely new set-up.

5.35 Ms Emma Martins (who was invited to attend the Public Hearing in her personal capacity, given her experience of Data Protection and Information Commissioner-type roles) said *“that it was not uncommon for Fol responsibilities to be given to the Office of the Data Protection Commissioner in other jurisdictions, as data protection and freedom of information are two sides of the same coin. In particular, some of the more complex issues around freedom of information relate to data protection concerns. In Guernsey, the Data Protection Office receives enquiries regarding information requests because, given the API Code’s limited public recognition, the public think this is where they should go for information; once the system is explained to them enquirers often indicate a lack of confidence in it being able to help them.”*

5.36 The CIO agreed that an independent appeals process would *“engender trust in the public in the spirit of the Code rather than perhaps changing the substance of how the Code is run and independent processing of how exemptions are applied”* (Hansard: line 1780).

5.37 Support for some form of independent appeals process was unanimous, and this is reflected in the conclusions of the Review Panel. However, there was perhaps not a clear vision for what this process should look like in practice, and some respondents implied that an independent appeals process would be a kind of interim step; strengthening the Code, without moving to a full legal framework. The question of how independence could be achieved without statutory backing was not fully explained or explored.

What evidence is there of a need for a Freedom of Information Law?

5.38 In their written submission, P&R set out their view that a FoI law is inappropriate for a jurisdiction of Guernsey’s size, does not offer value for money, and could perversely restrict the amount of information provided to the public. These concerns were generally reflected in Committees’ responses, which suggested that the Code was a more proportionate approach in a small community.

5.39 Interestingly, a similar comment was made by a respondent who made regular information requests of the States, saying that: *“The API process allows some responses to be provided ‘in the spirit’ of the request, even where the letter of the API Code might simply apply an exception. Under a FoI law, the rules will inevitably become more rigid and could limit the flexibility for responding”*.

5.40 The Review Panel’s analysis of API requests and responses showed a varied pattern of answers to API requests, but it would be fair to say that on occasion the replies had gone beyond what was strictly necessary and had fully entered into the spirit of the request. However, without comparable analysis (of, say, FoI requests in Jersey or the Isle of Man) it is difficult to say whether this would be different under a law. It is noteworthy that even advocates of FoI legislation acknowledged that *“a law would always be more prescriptive than a code”* (Hansard: line 906).

5.41 The Review Panel explored the reasons why Jersey had decided that its Code was inadequate and needed to be put on a statutory footing. One of the reasons suggested to the Review Panel was the introduction of executive government in Jersey, *“for which a full-blown FoI law was seen as a quid pro quo”* (Hansard: line 710).

5.42 For Jersey, reputational benefits were also considerations behind the move from having a code to a law: *“the introduction of a sensible, balanced and workable law could bring*

public relations advantages for Jersey on the international stage. This could help counter some of the adverse criticism that the island sometimes attracts”⁸.

5.43 At the Public Hearing, Deputy St Pier was clear that the issue of FoI had not been mentioned in any of the States’ external relations dealings, even though Jersey and the Isle of Man have both introduced legislation, and Guernsey has not. To the extent that transparency is an issue for Guernsey’s international reputation, this relates to matters such as beneficial ownership, which would not be addressed by providing a statutory FoI regime concerning information held by public bodies.

5.44 Irrespective of whether there is external or domestic pressure for legislation, Ms Emma Martins’ evidence supports introducing a FoI law because it is the right thing to do. Her position is that *“you cannot half-do FoI”* and *“that it can be done in a way that is proportionate and delivers value”* (Hansard: line 685). When pushed on whether a legal framework for FoI was a critical element in creating the cultural change required for openness and transparency, Emma Martins told the Review Panel: *“Yes, I think it gives a very strong signal that it matters to you as Government”* (Hansard: line 786). She went on to add: *“I have not experienced what I would consider as to be much evidence of a genuine and robust commitment to the Code. I think the danger is that if the public see it as something that can be either opted in and opted out of, whilst the cultural default is, ‘Let’s keep it private’, ‘Let’s keep it confidential’ I think it will be a hard sell. I really do. The law will not fix that, you will still have those problems, but it means that there is a confidence in the process and that there is a process.”* When pressed further, Emma Martins went on to say, *“that ultimately, sanctions were needed to convince people [in government] of a cultural shift and that non-compliance had consequences”* (Hansard: line 845).

5.45 The Review Panel also had to consider whether the evidence it received indicated that the Code had led to the kind of culture change it was intended to. Most Committee responses indicated that the Code is well-embedded, but one response, which argued that *“there is no substantive evidence of anything important not being revealed by one means or another”*, gave cause for concern that some States’ Committees may remain disengaged from the Code and their responsibilities under it. In such cases, the ability of civil servants to point out to their Committee a legal requirement to disclose, strengthens the hand of officials in ensuring that potentially embarrassing (but not exemption covered) material, is not kept from disclosure. Unfortunately, P&R’s decision not to prioritise resolutions, which it accepts are designed to improve the API Code, but which have been outstanding for more than five years, indicates the relative low importance of API to the States’.

⁸ States of Jersey Freedom of Information Position Paper, December 2004

5.46 All the witnesses wished to see a cultural shift to what Deputy St Pier described as “*disclosure by default*” (Hansard: line 1081), but despite the optimism of the President of P&R and the CIO as to the direction of travel with the Code, the Review Panel is not convinced that the destination will be reached. Although there may be “*a growing degree of comfort with the Code*” (Hansard: line 1087) in the sense of the States’ learning how to live with and in the case of the Communications Team manage the system, the Review Panel fears that what Deputy St Pier described as “*comfort*” will, without legal sanctions to back it, be seen from outside as cosiness and an indication that the Code lacks teeth.

5.47 When exploring the question ‘Is a FoI law necessary?’ firmly held arguments were made in both directions. However, when exploring the question as to whether an independent appeals process is needed, the answer from all respondents was an emphatic ‘yes’. The Review Panel is of the view that an independent process, would benefit from a legal framework to support it; and this must therefore shape the argument for a FoI law if this can be achieved at a proportionate cost.

What evidence is there of a need to codify the ‘public interest’ test?

5.48 Some of the exemptions to the presumption of disclosure are absolute⁹. In other cases, the API Code requires the ‘public interest’ to be weighed against any exemption. Mr Nick Mann was concerned that “*we do not know where the States sees public interest*” (Hansard: line 139), however, by definition, this is a case-by-case test which is inherently subjective.

5.49 The ‘public interest’ may refer to a wide range of values and principles relating to the public good, or what is in the best interests of society. The UK Information Commission explains in its guidance, that while the public interest of an informed and involved citizenry promotes good decision-making by public bodies, those bodies need space and time to consider their policy options away from public interference. At the Public Hearing, Ms Emma Martins said that “*the question of what is in the public interest is heavily influenced by context, and to try to be prescriptive is dangerous*”.

5.50 At present, any decision on whether the ‘public interest’ should overrule the application of an exemption sits with the CIO. At the Public Hearing when asked how this test would be applied, the CIO said that in some challenging cases he had needed to bring in legal advice; however, such advice does not necessarily provide a definitive answer on where the public interest lies. The Review Panel received no evidence that it would be practical or desirable to codify the ‘public interest’ test. The Review Panel believes that any future arbitrator of an independent appeals mechanism attached to an existing statutory office

⁹ In some cases there are legal, commercial or security considerations which mean information cannot be published

or role, may be best placed to provide guidance on the application of the ‘public interest’ test.

5.51 The Review Panel found that, inevitably, if it is accepted that the application of the ‘public interest’ test is a matter of judgment, the question returns to *who* is the appropriate person to make that judgment. Deputy St Pier referred to *“the knowledge and expertise that such a person would need to have in order to make a judgement”* (Hansard: line 1305). He did not, however, address sufficiently the question of ‘clout’, of how much standing and authority is needed to say to Government, *“the public interest here overrides other political issues at the moment and this information needs to be disclosed”* (Hansard: line 1295). It is this requirement not for a ‘skillset’ but for independence plus authority, which has led the Review Panel to reject the suggestion that the job can be done in the way Deputy St Pier suggests, by, *“various tribunals and others that are manned at relatively low cost... by volunteers”* (Hansard: line 1265) and to accept the inevitability of an arrangement along the lines of an independent information commissioner function.

What are the costs, and what are the benefits, of increased freedom of information?

5.52 Certain assumptions are common among open government’s advocates when discussing the presumed benefits of greater transparency and freedom of information. The UN’s open government declaration speaks of improving services and achieving greater prosperity, while the Council of Europe refers to increasing public trust. Mr Mann spoke of *“an informed public enhancing debate”* (Hansard: line 449) and this view is one which is widely shared. However, openness comes at a cost, literally, in terms of the expense of operating the system, but also in its impact on confidentiality, hence the exemptions which all FoI regimes apply.

5.53 There is also the question of what might be the measure of a successful FoI regime. The Review Panel heard comments about the significantly higher number of FoI requests made in Jersey, compared to the smaller, though increasing number under the Guernsey’s API code. Deputy St Pier described a chicken and egg problem: where the cultural shift which we want will come from the pressure of API requests, which Guernsey doesn’t have in sufficient volume because of the lack of confidence and credibility in the API Code.

5.54 Then there is also the issue of what type of requests, by whom and about what? Would numerous requests from individuals in pursuit of their specific grievances be a victory for transparency? Possibly, but the Review Panel doubt that it is what is meant by those who talk of an informed public enhancing debate. The assertion that greater public scrutiny will, by improving the accountability of government pay for itself, remains just that, an

assertion. A culture of openness has to be justified as a public good in itself and its cost needs to be proportionate.

5.55 The question of proportionality, in respect of cost, featured in the submissions from Principal Committees and was central to P&R's argument for retaining a code rather than introducing a Fol law. However, there is a lack of firm numbers to examine when it comes to assessing what the extra costs of introducing a Fol law would be.

5.56 According to P&R's written evidence, there is no specific budget for the API process and the Communications team consider it as a 'part of the job'. The major cost is the time spent by officials responding to requests when they would otherwise be doing 'the day job'. It has to be borne in mind that this is access to *information* (not merely documents or pre-existing data) and sometimes that information will be time-consuming to compile. However, the time-cost of requests will be the same irrespective of whether there is a code or a Fol law.

5.57 Furthermore, the costs of putting together the information are demand driven and so the more successful the system is the more it will cost to operate. Although it is possible that if there is a culture shift and more information is published proactively then, in theory, there could be a tailing off in requests for information.

5.58 When Jersey introduced its Fol Law, set-up figures were estimated at around £2m (a later review put the cost of implementation at £2.68m). Ongoing annual costs were expected to be £900,000 (P&R's submission), though some of these costs were attributed to factors such as records management, which would be incurred irrespective of the type of approach taken. In the Isle of Man, the anticipated initial costs were around £500,000 with annual running costs of around £200,000.

5.59 P&R's written submission lists the factors which gave rise to both the establishment and ongoing costs in Jersey, many of which relate to records management, software services and staff training. With the exception of the Information Commissioner and staff, all the costs attributed are either already incurred by Guernsey in handling requests under the API Code or would be if the Code becomes as successful as its proponents intend it to be. The additional direct costs that would arise from legislation, relate to the establishment and running of an Information Commissioner-type function, to provide the independent challenge required. On the evidence available to the Review Panel, it is difficult to provide an accurate estimate of these additional costs.

5.60 P&R argued that the introduction of a full Fol law "*will increase the administration and costs involved in facilitating access to public information without any benefit to the public or the Government's transparency agenda*". However, the P&R Committee itself strongly supported the creation of an independent appeals process. For the reasons the Review

Panel has outlined in paragraph 5.51, it is convinced that such an independent appeals process requires a body with status and authority and cannot be run along the lines of existing appeals tribunals. Once that case is accepted, the difference in cost between an independent appeals process, which meets this new standard, and an Information Commissioner-type function, becomes significantly less.

5.61 In the Public Hearing, Deputy St Pier warned that *“...the cost of the new regime (Data Protection) is considerably more expensive than the cost of the last regime. I think we will find the same with Fol for the same reason...as soon as you are putting a much more rigid statutory framework around it, I think inevitably it will involve more people in managing the whole process of managing requests, exemptions and the decision-making. I think it will become, in a sense, a more contentious process and I think arguably you have seen this elsewhere where there is a statutory framework”* (Hansard: line 1330). This was reflected in a Committee response which expressed concern that *“placing the Code on a statutory footing may have some unintended consequences which would detract from its current smooth operation and come at some considerable cost.”*

5.62 The financial impact of sanctions, should a Fol law be introduced, was not discussed in submissions to the Review Panel, but may underpin some of the concerns about additional costs. Since a Fol regime applies, by definition, only to government, the Review Panel agrees that financial sanctions are not likely to represent a wise use of public funds.

5.63 The review process did highlight some concerns with the States’ existing ability to manage the day-to-day costs of any Fol regime in the absence of a dedicated budget. In its written evidence, P&R said that: *“Based on feedback provided by the Communications team which oversees the API process, there are service areas that feel providing API responses are proving too time-consuming, but overall the Policy & Resources Committee does not believe the current level of staff time involved in meeting API code obligations is excessive”*. On the other hand, witnesses at the Public Hearing noted that the level of demand for information under the API Code had not been as high as was originally anticipated.

5.64 The Review Panel recognises that the States’ must make difficult decisions about how to prioritise limited public funds. It understands the cautious response from Committees, in light of the impact of recent Data Protection legislation on the public sector and agrees that Fol should not be imported wholesale from another jurisdiction, without consideration of its implications for Guernsey. However, the Review Panel is of the view that the value-for-money argument is more straightforward than it may seem, as the day-to-day costs of a Fol regime are already being incurred under the Code; and there is unlikely to be a material difference between the introduction of an 'Independent Appeals process' and the introduction of a Fol law.

What more can be done to improve proactive publication by the States of Guernsey?

5.65 Any system of access to information can be expected to drive a process of proactive publication, records management and disposal policy. Being able to point to where published information can be found, is preferable to being required to pull together specific information on a request-by-request basis. At the Public Hearing, Deputy Roffey said *“that the States was now far more open than it had been when he entered politics in the 1980s”* (Hansard: line 500), a point with which Deputy Gollop concurred (Hansard: line 370).

5.66 In the Public Hearing, Ms Emma Martins *“was certain that Jersey’s statutory FoI framework had increased the level of proactive publication of information by the States of Jersey”* (Hansard: line 935) and that as a result *“there is much more information that is pushed out by default. That is just what happens to it.”* (Hansard: line 970). It was not clear, however, if this was her impression, or the result of monitoring. She was hesitant, however, to say that Jersey was the benchmark against which Guernsey should measure itself and argued *“that it was for each jurisdiction to define for itself what ‘good’ is like and how to define being ‘accountable to’”* (Hansard: line 985).

5.67 Guernsey does not know if the API Code is driving proactive publication. It is not clear how decisions are taken on the publication of material and whether it is something that is left to the discretion of senior officers, or if there are efforts at co-ordinating that from the centre. This is an area where the CIO can view the pattern of publication across the States’ and push for greater proactive publication and for more consistency between Committees. The Review Panel believes it would be helpful for the CIO to maintain an overview of the information published by the States’ each year, so that it is possible to assess progress. At the very least we should be able to measure whether we are pushing more information out than we were before.

How should freedom of information requirements apply to reports or services commissioned, but not delivered, by the States of Guernsey?

5.68 Under the API Code, every States’ Department and Committee is required to publish details of all reports they have commissioned, within six months of that report being commissioned. What is meant by ‘commissioned report’ is not specified, but the guidance¹⁰ suggests *‘any piece of work commissioned from a third party to the States’, such as a consultant or outside agency’*.

5.69 P&R in its submission, points to a lack of clarity in practice, as to which reports meet this criterion. For example, where reports are carried out by a panel that is a combination of States Members, civil servants and external experts, it is unclear whether these should

¹⁰ Guidance February 2017

be treated as 'commissioned reports'. There are also reviews carried out by third parties, which are still considered as internal reviews by the commissioning Committee. This lack of clarity can cause difficulties later, if contributors to the review took part with an expectation of confidentiality, while the Committee is asked to publish the report.

5.70 Too much of the discussion about commissioned reports has focussed on their identification as such and *"on the requirement to provide information every six months on what reports have been commissioned"* (Hansard: line 2067). Clearly, if you do not know the existence of something then you cannot know to ask for it to be made available under the Code. However, the real concern has to be whether the content of the commissioned reports is subject to the Code in the same way as other information held by the States', or whether other practices apply.

5.71 At the Public Hearing, Mr Nick Mann felt that the States was *"still commissioning reports without the intention of releasing them"* (Hansard: line 71). He criticised the use of the Code's exemption [number 2.10] against the release of information prematurely where its publication is already intended.

5.72 The CIO acknowledged the media's interest in cases potentially involving exemption 2.10, but told the Review Panel that *'a conversation' would be entered into with the releasing Committee on whether and why premature release of the information would be a problem and added that in these cases, "having the API process linked ... to media inquiries... provides us with a degree of more flexibility"* (Hansard: line 1574).

5.73 According to the CIO (Hansard: line 2085), *"problems occur when a report is commissioned with insufficient consideration of what will happen to it at the end. When a reasonable API request is then made a whole host of questions start to be asked which would have been better addressed when the report was first commissioned, and which probably would have meant a different approach to the report itself"*.

5.74 Mr Nick Mann referred to putting in a request to see a commissioned report and there then being *"a lot of movement behind the scenes to go and then speak to the authors of the report to make sure that that can be released"* (Hansard: line 71), which illustrates the issue.

5.75 In its written evidence, P&R said that *"it believed there should be a clearer, formal process for determining what constitutes a commissioned report, as this would improve how commissioned reports are recorded. This would allow Committees to establish, at the start of the commissioning (or terms of reference-setting) process, how the report would be handled in the context of the API Code"*.

5.76 In terms of policy scoping and advice, the States of Guernsey relies more on commissioned input from outside consultants than, in say, the UK where such work will form part of the day to day work of a much larger civil service. The current API Code allows for exemptions to be made for information whose disclosure would harm the frankness and candour of internal discussion¹¹ and refusals to release the contents of commissioned reports have been made under this provision. The question is whether this test is the appropriate one to apply to commissioned reports, or whether the fact that the source of the advice was external sets the bar higher for making that judgment.

5.77 The President of P&R accepted that Guernsey would inevitably be more reliant on the use of external expertise, but he saw the issue for the API Code *“as relating primarily to whether or not a Principal Committee recognises that it has commissioned a report in the first place”* (Hansard: line 1224). The issue of commissioned reports goes beyond the straightforward listing by Committees of the reports that exist and concerns whether different standards are applied to the release of their contents in relation to the internal discussion exemption. When this point was put to him, Deputy St Pier described it *“as an interesting and valid point”* (Hansard: line 1212), but he did not answer it. The Review Panel understand his reluctance to do so when sprung on him at a public hearing and trust that he will address it in his response to this report.

5.78 It is clear from what the Review Panel has heard, that there is no formal basis for treating commissioned reports in a different way from other material which the States’ possesses when it comes to disclosure under the API Code. However, the fact that so much of the discussion has been around this issue, leads the Review Panel to conjecture that, perhaps fearing a deterrent effect on third parties bidding for contracts, there has been a temptation to adopt a slightly different practice from that applied to internal States’ reports.

5.79 The Review Panel is of the opinion that any report commissioned with public funds, should normally be subject to the API Code on the same basis as the rest of the public sector (that is, the standard that applies should be neither less nor more rigorous). While a precise definition of a ‘commissioned report’ may not be easy to find, this is an area on which an independent appeals mechanism could rule in future, if required.

Alternative Providers and Public Funding

5.80 The Review Panel also considered whether services which are delivered by alternative providers, commissioned with public funds, should be subject to the API Code on the same basis as the public sector. In Guernsey, there are far fewer of these providers than in the UK, so the issue is less immediate; however, there are some services which are

¹¹ Exemption 2.4 internal discussion and policy advice

delivered by non-States' providers: some private companies, as with G4S at Guernsey Airport, and other charity organisations, such as in the case of the ambulance service.

5.81 The issue has its similarities with that of commissioned reports, though arguably the case is stronger when it comes to the ongoing provision of services, as opposed to a one-off piece of work. The Review Panel is of the view that the States' should move towards a position where it is clearly understood that FoI requirements apply equally to commissioned services (via the Committees that have commissioned them). However, this is likely to need to be a gradual process, with respect for existing contractual terms. There is also the issue of services which are part-funded by the States' and cases where small grants are given; care is needed to avoid placing an undue burden on voluntary and non-profit organisations that may be working in partnership with the States'.

Should more be done to enhance public awareness and use of the Code?

5.82 The need for ongoing awareness raising in respect of the Code featured strongly in the Review Panel's Public Hearing. It was felt that the Code was not well-publicised, and members of the public would not necessarily know where to go to make an information request. Ms Emma Martins gave us examples of public confusion about the Code (specifically that requests came to the Data Protection Commissioner) and unfortunately and probably unfairly, *"public cynicism about its usefulness"* (Hansard: line 830).

5.83 That the problem with the Code may largely be one of perception, is unfortunately not something that the Review Panel believe can be rectified easily under the existing system. To some extent the name, API Code, is a problem; the term FoI is very widely understood and anything else finds difficulty with recognition; as Mr Mann put it, *"say API to people, then they will have no idea what you are talking about"* (Hansard: line 265). Publicity may help, but the Review Panel fear that the label 'API Code' will always have the effect of conveying that which it is not, a FoI law. Nevertheless, the Review Panel agree with Mr Mann's suggestion that, *"if Guernsey does not introduce a legal framework, the simple change of renaming the Code as the 'Freedom of Information Code' would help to improve public awareness"*.

What more may be needed, in addition to the Code, to enhance government openness and transparency?

5.84 Although witnesses at the Public Hearing had divergent views on whether or not the Code should be put on a statutory footing, all agreed that a 'culture shift' towards greater openness was essential in achieving the aims of any FoI regime. All witnesses indicated that the States' still had room for improvement. The Review Panel is of the view that the Information Strategy produced by Belinda Crowe and published by the States' in 2011

still offers an important blueprint for a culture change towards increased transparency and considers that the States' should revisit its recommendations.

5.85 One Committee recommended *"additional training for staff, particularly at senior levels, so that they are aware of their requirements under the Code and can help promote the core principles of openness and transparency."* The Review Panel agrees that this would be a positive development.

5.86 Appendix 5 to this Report explores the concept of 'Open Government' as a way of doing democracy which goes beyond just access to information. It is based around the three principles of:

- Accessibility
- Transparency
- Participation

5.87 The Review Panel considers that the States' could integrate the principles of Open Government into every aspect of its work; and, in doing so, would make major progress towards the kind of culture change required to support an effective FoI regime.

5.88 In addition, it must be recognised that effective democracy depends not just on Open Government, but also on an informative and critical media, and an engaged civil society. The Review Panel notes that there are limits on the extent of investigative journalism in Guernsey, and there is very little by way of an active and engaged civil society (with some notable exceptions, organised around specific causes). In fact, civil society and campaigning groups have been completely absent from this inquiry. These are the groups which, along with the media, would normally be expected to be a driving force for greater transparency and a FoI law. The scarcity of such organisations in Guernsey means that there is often nothing between the States' as the service provider and the citizen as recipient, which can articulate and elevate individual grievances into broader concerns. With their focus on single issues, Civil Society Organisations often present challenges to elected representatives, who are required instead to balance competing claims. Nevertheless, the absence of such bodies in Guernsey leaves a gap and is a barrier not just to an effective FoI regime, but to the scrutiny system as well.

5.89 These are not gaps that the States' can plug on its own, if at all; but the Review Panel is of the view that they should be acknowledged, and that future States' should give consideration as to what more could be done to stimulate active, informed citizenship.

What progress has the States made, to date, in respect of its own resolutions and commitments on freedom of information and open government?

5.90 In drawing this section to a conclusion, the Review Panel has looked at each of the resolutions which the States has made, to date, in respect of open government and freedom of information. The table below shows the progress made so far, and indicates what, in the opinion of the Review Panel, remains to be achieved.

Resolution	Status	Comment
Billet d'État XIX, September 2010 8B) To direct the Policy Council to consult with all States Departments and Committees and then to report to the States of Deliberation by no later than December 2011, setting out options for improving open government and transparency and establishing a corporate policy on freedom of information and open government.	Partly achieved	<p>The States' has had a code on access to public information since 2013. This may fall short of the full FoI envisaged by those who led the amendment.</p> <p>A wider commitment to Open Government was set out in the 2011 Information Strategy, but its recommendations have not all been followed through.</p>
Billet d'État XV, July 2013 1. To agree the guiding principles outlined in that States of Guernsey Policy for Access to Public Information States Report, as follows: - A presumption of disclosure; - A corporate approach; - A culture of openness; - Proactive publication; and - Effective record management.	Achieved	<p>The Code on Access to Public Information is operational, and available at: https://www.gov.gg/information.</p> <p>These principles are enshrined in the Code. For the avoidance of doubt, this does not mean that the Review Panel considers they are universally observed in practice.</p>
Billet d'État XV, July 2013 2. To agree that the presumption of disclosure will need to be subject to certain stated exceptions in order to protect legal, financial, commercial, competitive and public interests which will be agreed by the States from time to time.	Achieved	<p>A set of exemptions, reflecting the need to protect these interests, are set out in Section 2 of the Code.</p>
Billet d'État XV, July 2013 3. To agree the Code of Practice on Access to Public Information in Appendix Three of that Report which	Partly achieved	<p>While the Code of Practice has been adopted, no progress has been made towards establishing a right of appeal to an independent person or body.</p>

will apply to all States Departments and Committees and which incorporates the guiding principles and describes the exceptions but to direct that, in relation to Part 1, paragraph 1.11 of the Code, by no later than July, 2014 the Policy Council shall report to the States of Deliberation setting out their assessment of the feasibility, desirability and potential cost of providing a right of appeal to an independent person or persons in respect of a request made for access to information which is refused by a States Department or Committee, and further subject to removing the sentence <i>"There is no commitment that pre-existing documents, as distinct from information, will be made available in response to reasonable requests"</i> from section 1.6 of that Code.		Since 2017, a degree of internal challenge has been introduced by the creation of a role for the Chief Information Officer in evaluating the use of exemptions.
Billet d'État XV, July 2013 4. To endorse the Policy on the Use of Confidentiality in Contracts and agreements contained in Appendix Four of that Report.	Achieved	The policy forms part of the Code.
Billet d'État XV, July 2013 5. To direct the Policy Council to implement, no later than 31 March 2014, a consistent mechanism which Departments and Committees can use to record and collate data on the number and category of requests made under the Code of Practice, including when exemptions are applied and to direct Departments and Committees to implement the	Mostly Achieved	A list of requests and responses under the Code is published at: www.gov.gg/information A summary overview of requests (including any exemptions applied) is not provided, although this was made available to the Review Panel on request.

policy so that data collection can commence from 31 March 2014.		
Billet d'État XV, July 2013 6. To direct the Policy Council to report back to the States during quarter 1 of 2015 with a report evaluating the effectiveness of the Code of Practice and recommending any changes it considers appropriate; that report to include details of all information requests which have been refused, providing the reason for the refusal, and under which part of the Code the refusal was made.	Not achieved	This remains outstanding, although an internal review of the effectiveness of the Code was carried out in 2017.
Billet d'État XV, July 2013 7. To direct the Policy Council to report back to the States during quarter 1 of 2015 with a report evaluating the feasibility and implications of expanding the Code of Practice to include automatic disclosure rules similar to the UK "30 year Rule".	Not achieved	This has not been completed.
Billet d'État XV, July 2013 8. To direct every Department and Committee to publish details (namely the title of the report, who it is commissioned by and from and date of commission) of all reports commissioned by the Department or Committee within six months of that report being commissioned, unless the publication of such detail would fall within one of the exemptions from disclosure set out in the Code of Practice on Access to Public Information set out in Appendix Three of the Report.	Mostly achieved	A summary of commissioned reports is available on: www.gov.gg/information However, an outstanding issue remains as to the definition of a 'commissioned report'.

5.91 Of the outstanding issues, only one (the introduction of a '30-year rule', or similar) was not raised at the Public Hearing, although the question has been discussed by the Review Panel. The Review Panel is of the view that, if a statutory framework is introduced, rules on automatic disclosure should form part of it.

6. Conclusions and Recommendations

- 6.1 The year 2020 marks a decade since the Matthews-McManus amendment which committed to the States to “*open government and freedom of information*”, and seven years since the introduction of the Access to Public Information Code. The Scrutiny Management Committee launched this review in order to assess the effectiveness of the Code and to identify areas where its operation could be improved.
- 6.2 The Review Panel has found some evidence of a move towards a culture of greater openness and transparency throughout the States’, during the past decade, but progress has been slow. A number of resolutions dating back to 2013 remain outstanding. The Review Panel received very few responses from outside the States’ and no evidence of a widespread public concern about the Code, which the Review Panel take to be a sign of indifference, rather than of contentment. While most States’ Committee responses to the Review Panel’s call for evidence were positive and accepted the Code as a proportionate balance between the public right to information and the need for privacy and confidentiality in some government matters, this was not universal. Responses from the media representative at the Public Hearing highlighted concerns with the length of time needed to obtain a reply, and what was perceived as an over-reliance on exemptions.
- 6.3 There was universal agreement that the **absence of an independent appeals process**, through which the application of exemptions could be challenged, was a weakness of the current system. The Review Panel concludes that, without such a mechanism, it is not unreasonable for the public to lack full confidence in the States’ commitment to openness and transparency.
- 6.4 The Review Panel is of the opinion that, in order for any appeals process to be independent, it requires a statutory framework – in other words, the development of a **Freedom of Information law** for Guernsey. While a number of witnesses suggested that an independent appeals mechanism could be introduced under the Code as an alternative option to a law, the Review Panel cannot see how this would be compatible with a body which has the authority to overrule Committees’ use of exemptions on the grounds of the public interest. Once the need for such a level of status and authority in the appeals process is accepted, the cost differential between a ‘voluntary’ and a statutory solution would be reduced significantly.
- 6.5 Many of the costs attributed to a law are potentially already incurred in handling requests under the API Code or would be if the Code becomes as successful as its proponents hope. However, the review process raised concerns, which the Review Panel believes are valid, that any access to information framework should be **proportionate**, bearing in mind overall constraints on States’ resources. For that reason, the Review Panel recommends that legislation should be carefully considered, rather than being copied directly from other jurisdictions. The primary focus of any legislation should be on the

introduction of an independent appeals mechanism to challenge the application of exemptions, in accordance with a 'public interest' test; and the creation of clear timeframes for responding to information requests.

- 6.6 The Review Panel also believes that, in developing a statutory framework, it will be necessary to clarify how FoI principles should apply to commissioned reports and commissioned services, through the public sector bodies that have commissioned them. The review process has demonstrated that the lack of clarity in this area, at present, can be a source of contention between requestors, the States, and providers of commissioned reports.
- 6.7 The Review Panel recognises that, while the more robust challenge provided by an independent appeals process is needed, the final decision to release or refuse government information must rest with the political leadership of the States (as discussed in paragraph 5.23 above). However, the mechanics of how this might be achieved in keeping with the Island's system of government needs further careful consideration.
- 6.8 The Review Panel believes that the independent appeals function, under a future FoI law, could and should be **added to an existing statutory office or role**. This would allow for greater resilience, and certain economies of scale, reducing the overall cost of introducing new legislation. It is not uncommon for FoI responsibility to be given to the data protection regulator. The Review Panel has not reached a preferred view as to which office or role this should attach to and believes there are a number of options for consideration including ones which the recent review of arms-length bodies may highlight.
- 6.9 The Review Panel considers that the role of the CIO as FoI champion has added value since its introduction in 2017. The Review Panel considers that the CIO should continue to have an internal role, reviewing and (as necessary) challenging the application of exemptions; raising awareness of the States' FoI responsibilities and helping to promote a consistent, positive approach towards information requests across all States' Committees; and providing central coordination of information requests (a single 'front door') and statistics about requests, responses and exemptions. The continued role is additional to and does not duplicate the work of, the independent appeals function; an increasing use of FoI will require more, not less from the CIO. This is an important function which helps to improve the quality of States' responses to information requests and may help to minimise the need for independent appeals against States' decisions.
- 6.10 There is a lack of clarity over what might be the measure of a successful FoI regime; success is often seen in terms of a significantly higher number of information requests, with little consideration given to the nature of those requests. The Review Panel considers a change in culture to be the ultimate goal and that, if one of its measures is

more proactive publication, then the extent to which that is happening has to be reviewed annually by the CIO.

6.11 The Review Panel believes that a FoI regime is an essential, and integral, part of the scrutiny of government. It therefore recommends that responsibility for developing FoI policy and legislation should be **added to the mandate of the Scrutiny Management Committee**. This means the Committee would become responsible for the development of FoI legislation as part of its programme for the next States' term.

6.12 The Review Panel considers that this division of responsibilities will give the public more confidence that, within government, there is an appropriate separation of powers in respect of FoI. For the avoidance of doubt, however, the Review Panel is *not* recommending that the role of the CIO should become a scrutiny function – this is clearly an important operational role helping States' Committees to deliver their responsibilities under any FoI regime.

6.13 The Review Panel considers that ongoing awareness raising, in respect of the Code on Access to Public Information, is required in order to enhance its usefulness. In support of this, the Review Panel recommends that the name of the Code should immediately be changed to the **'Freedom of Information Code'**.

6.14 Finally, the Review Panel recognises the need to provide a means for individuals to pursue their concerns but considers that information requests which only deal with grievance cases will not necessarily create a better-informed citizenry and greater engagement with public affairs. Guernsey lacks the civil society organisations which articulate interests and can elevate individual grievances into broader concerns. The Review Panel therefore recommends that consideration should be given to what can be done to stimulate civil society engagement, as an important pillar of a mature democracy and to integrating the principles of **open government** in all aspects of the States' work. These particular recommendations go beyond the scope of the Review and therefore have only been touched on lightly here; but the Review Panel commends them to future States of Deliberation for further examination.

The Review Panel summarises its recommendations as follows:

1. That a FoI law should be introduced in Guernsey, focusing on the creation of a proportionate independent process for appeals against the application of exemptions; the creation of clear timeframes for responding to information requests; and the introduction of automatic disclosure rules.
2. That the independent appeals function, under any future FoI law, should be attached to an appropriate, existing statutory office or function, rather than being separately established.

3. That responsibility for the development of policy and legislation, in respect of FoI, should be included in the mandate of the Scrutiny Management Committee with immediate effect.
4. That the Scrutiny Management Committee should develop proposals to address recommendations 1 and 2, together with an assessment of the financial impact of their introduction, no later than the end of 2022.
5. That the existing Code should be renamed the 'Freedom of Information Code' with immediate effect, and that an ongoing programme of public awareness raising in respect of the Code should be carried out.
6. To agree that the CIO should hold the role of an information champion within the States', with responsibility for reviewing and challenging the use of exemptions; coordinating requests and collating data; and helping to raise awareness of, and improve engagement with, the States' FoI responsibilities, across the public sector.
7. That the CIO should review annually, progress made towards greater proactive publication of material by the States'.
8. That further consideration should be given to promoting the development of an active and engaged civil society which can articulate interests and elevate individual grievances into broader concerns and to integrating the principles of Open Government across all States' work, in order to support the culture change required for an effective FoI regime.

Appendix 1 - Terms of Reference - Access to Public Information (API)

Overview

The Scrutiny Management Committee (the Committee) will review the effectiveness of the existing 'Code of Practice on Access to Public Information' (API Code)¹² in the context of determining whether the Code has facilitated a climate and culture of openness, accountability and good governance as envisaged in the 2013 Policy Letter¹³ and therefore whether the API Code remains fit for purpose.

Background

In July 2013, the States of Deliberation agreed to implement a "Code of Practice on Access to Public Information." In the supporting Policy Letter from the (then) Policy Council, it was clear that the intended new regime was envisaged to help develop a culture of transparency and openness; albeit through the development of guidelines and bespoke policies rather than through legislation.

The Policy Letter concluded that *'the most important step at this time is to adopt consistent good practice across the States and develop the right climate and culture before beginning to consider if a statutory framework is required'*¹⁴. It also recognised that a sensible balance needed to be struck between the desire for information and the cost of producing it.

The Policy Letter also stated that, *'In order to maximise the effectiveness of a phased approach ... its [the API Code's] progress could be measured and benchmarked by one of the parliamentary scrutiny committees'*¹⁵.

Review Scope

The Committee will consider but not be limited to the following areas as part of its review:

- Consideration of the current guidance, policies & procedures;
- A critical analysis of requests to date;
- The case for / against enhanced legislation in support of the API Code; and
- The right to appeal through an independent person / organisation.

Review Methodology

The Committee will form a 'Review Panel' tasked to consider this area which will include representation from the States of Guernsey and those independent of the Government. Following an initial desktop exercise to assess the current available information, the Review Panel will launch a formal consultation process involving the relevant elements of Government, the public and other interested parties on this matter. The Panel will seek to learn from experience in other jurisdictions, where appropriate. It is currently envisaged that public hearings may be held to gain additional clarity regarding the evidence submitted.

¹² As approved by the States of Deliberation in July 2013 and updated by the Policy & Resources Committee in 2017

¹³ <https://gov.gg/CHttpHandler.ashx?id=83312&p=0> para 2.1

¹⁴ <https://gov.gg/CHttpHandler.ashx?id=83312&p=0> para 6.2

¹⁵ <https://gov.gg/CHttpHandler.ashx?id=83312&p=0> para 9.5

Outcome

A balanced, evidence-based Scrutiny Management Committee Report, together with the transcripts of any public hearing(s), will be released into the public domain. The Report will consider the current policies in place, the effectiveness of the implementation of those policies, any gaps in the existing policy framework, and any recommendations on future action.

Further information

Public authorities need to be accountable for the decisions they make and the money they spend. Access to information helps the public and the media to make public authorities accountable; it allows for better informed public debate and could enhance the quality of decision-making by government. Access to information held by public bodies can also improve trust in government and increase public understanding of decision making and the operation of public bodies. Citizens have a right to know about the decision-making processes and activities of government, unless there is a public interest reason for them not to. This area has become increasingly complicated with the introduction of updated data protection laws in 2018.

The 2013 Policy Letter considered the issues surrounding the development of an Access to Public Information policy for the States of Guernsey, and asked the States to agree to the guiding principles for a Code of Practice on Access to Public Information, namely:

- A presumption of disclosure;
- A corporate approach;
- A culture of openness;
- Proactive publication; and
- Effective record management.

The Policy Letter spoke of how the States needed to balance meeting the desire for transparency against maintaining confidentiality, where necessary and justifiable. The presumption of disclosure was qualified by a list of circumstances where it was thought necessary to override that presumption in order to protect legal, commercial/competitive and public interests. This was intended to provide clarity on why information might be withheld from publication.

The Policy Letter examined the options available, taking into account the experiences in similar jurisdictions; this included the appropriateness of a legislative framework in support of freedom for information. The States of Deliberation endorsed the Policy Letter subject to amendments¹⁶.

¹⁶ <https://gov.gg/CHttpHandler.ashx?id=99648&p=0>

Following a review by the Policy & Resources Committee in early 2017 on the effectiveness of the code and how it should be applied, the P&R Committee agreed the following steps to enhance the effectiveness of the code:

- All Access to Public Information questions and responses will be published on gov.gg
- Work would be carried out to promote awareness of the code across the public service
- Work would be carried out to promote awareness of the code with the general public
- The Chief Information Officer will be tasked with reviewing any decision where an exemption has been used under the code

The Scrutiny Management Committee now considers it appropriate to review the working of the API Code, to assess whether the 'right climate and culture' has been developed along with consistent good practice across the States and to consider whether the Code of Practice is fit for purpose or whether a statutory framework is now required.

Further areas of interest

The Committee may consider the following areas as part of its review:

The existing provisions

- What use has been made and by whom of the existing API code; what types of requests are made?
- What beneficial changes could be made to the API code short of placing it on a statutory footing?
- What would be the impact and consequences of placing the current API code on a statutory footing?

Costs of the scheme and proportionality

- Access to public information comes at a cost; what would be proportionate in a jurisdiction the size of Guernsey?
- Is there evidence that the cost of administration can be offset by savings through access to public information leading to a more careful use of resources by public bodies?
- Requesting information is not the same as obtaining documentation; how far should public bodies have to go in compiling the information requested from the raw data that they may hold? What is a reasonable cost in terms of officials' time for a response to a request?
- Should there be a charge levied on requests in order to deter frivolous, vexatious, or multiple applications?

Intended and unintended consequences

- Does access to public information lead to an increase in proactive publication by public bodies and do such publication schemes significantly reduce future information requests?
- How to avoid the possibility of disclosure leading to a reduction in the frankness of advice to government and a diminution in the supply of information to government from third parties. Is there evidence of a shift towards keeping things off paper where they cannot be disclosed?

Exemptions

- What exemptions should there be and how would these be categorised between absolute and qualified exemptions?
- Would there be commercial exemptions and how would access to public information apply to outsourced public services?
- Should the Government (however defined) have a right of veto to requests in certain exceptional circumstances?

Administration of the scheme

- Who should adjudicate on requests and how is compliance enforced regarding access to public information?
- Should there be a 'requester blind' approach to applications for information?

Appendix 2 - The U.K. Freedom of Information Act 2000

The Freedom of Information Act 2000 provides public access to information held by public authorities.

It does this in two ways:

- public authorities are obliged to publish certain information about their activities; and
- members of the public are entitled to request information from public authorities.

The Act covers any recorded information that is held by a public authority in England, Wales and Northern Ireland, and by UK-wide public authorities based in Scotland. Information held by Scottish public authorities is covered by Scotland's own Freedom of Information (Scotland) Act 2002.

Public authorities include government departments, local authorities, the NHS, state schools and police forces. However, the Act does not necessarily cover every organisation that receives public money. For example, it does not cover some charities that receive grants and certain private sector organisations that perform public functions. Recorded information includes printed documents, computer files, letters, emails, photographs, and sound or video recordings.

The Act does not give people access to their own personal data (information about themselves) such as their health records or credit reference file. If a member of the public wants to see information that a public authority holds about them, they should make a data protection subject access request.

Justice Committee Report 2012-13

Freedom of Information brings many benefits, but it also entails risks. The ability for officials to provide frank advice to Ministers, the opportunity for Ministers and officials to discuss policy honestly and comprehensively, the requirement for full and accurate records to be kept and the convention of collective Cabinet responsibility, at the heart of our system of Government, might all be threatened if an FoI regime allowed premature or inappropriate disclosure of information. One of the difficulties faced in this inquiry was assessing how real those threats are given the safeguards provided under the current FoI legislation and what, if any, amendments are required to ensure the existence of a 'safe space' for policy making (Paragraph 154).

It was evident that numerous decisions of the Commissioner and the Tribunal have recognised the need for a 'safe space'. However, equally evident is the fact that in some cases their decision that information should be disclosed has challenged the extent of that safe space. We accept that for the 'chilling effect' of FOI to be a reality, the mere risk that information

might be disclosed could be enough to create unwelcome behavioural change by policy makers. We accept that case law is not sufficiently developed for policy makers to be sure of what space is safe and what is not (Paragraph 166).

While we believe the power to exercise the Ministerial Veto is a necessary backstop to protect highly sensitive material, the use of the word exceptional when applying section 53 is confusing in this context. If the veto is to be used to maintain protection for cabinet discussions or other high-level policy discussions rather than to deal with genuinely exceptional circumstances, then it would be better for the Statement of Policy on the use of the Ministerial Veto to be revised to provide clarity for all concerned. We have considered other solutions to this problem but, given that the Act has provided one of the most open regimes in the world for access to information at the top of Government, we believe that the veto is an appropriate mechanism, where necessary, to protect policy development at the highest levels (Paragraph 179).

Independent Commission on Freedom of Information Report 2016

The report recommends that instead of public authorities being able to extend the deadline for answering a request by an uncapped period while they consider the public interest, that this is limited to a statutory period of 20 working days; they also recommend that this extension to the time limit only applies where the request involves information that is complex or of a high volume, or where consultation is required with third parties who may be affected by the release of the information. In addition, the report also addresses the delays that can occur where a request is refused and a requestor asks a public authority to review its own decision. There is currently no fixed limit on the time taken for such a review and we propose a statutory time limit of 20 working days.

They also recommend that the prosecution powers of the IC are strengthened to make it easier for him to prosecute offences relating to destroying information that has been requested under the Act, and to increase the penalty for this offence. The report also makes a number of recommendations to increase the amount of information that is released proactively by public authorities.

The report recommends that all public authorities who employ at least 100 full time equivalent staff are required to publish their compliance statistics in relation to their duties under the Act, and to publish responses to requests where information is given out, and that more information is proactively published about the expenses and benefits in kind paid to senior public sector executives. Finally, the report recommends that the IC is given responsibility and powers of enforcement to ensure that public authorities are meeting their obligations to proactively publish information.

Chapter two (“section 35”) considers the protection offered by the exemptions that protect government policy formulation, Cabinet material and inter-ministerial communications, Law Officer’s advice, and the operation of ministerial private offices. The report recommends that the exemption for government policy formulation is redrafted to more closely match the exemption in the Environmental Information Regulations 2004, and that sections 35 and 36 are clarified so that material relating to collective Cabinet agreement is protected under a single exemption instead of being spread across two different exemptions.

In relation to the public interest test that is applied under section 35, it is recommended that the Act is clarified so that it is clear that the need for safe space is not diminished simply because a decision has been taken (although it may be diminished for other reasons), and that section 35 is amended so that when a public interest assessment is made some weight is given to the need to protect collective Cabinet responsibility, and the need to protect frank exchanges of views or advice for the purposes of deliberation.

Chapter three (“section 36”) considers the protection afforded by the exemption that protects information where its release would prejudice the effective conduct of public affairs. Here the report recommends that the outdated and burdensome provision which requires the reasonable opinion of a qualified person to be obtained before the exemption can be applied is removed.

Chapter four (“risk assessments”) considers the protection provided under the Act to candid risk assessments. It concludes that no additional protection is necessary.

Chapter five (“the Cabinet veto”) considers whether the executive should have a final veto over the release of information and, if so, on what terms. Here the reports finds that it was clear that Parliament intended that the executive should have a veto, and recommends that the government legislates to clarify beyond doubt that it does have this power and recommends that the veto should be exercisable where the executive takes a different view of the public interest in release, and that the power is exercisable to overturn a decision of the IC. The report recommends that in cases where the IC upholds a decision of the public authority, the executive has the power to issue a “confirmatory” veto with the effect that appeal routes would fall away, and any challenge would instead be by way of judicial review of that veto in the High Court.

Chapter six (“the appeals process”) considers the length and multiple stages of the existing appeals structure. This concludes that the First-tier Tribunal appeal too closely duplicates the full-merits assessment carried out by the IC and recommends that this appeal stage is removed. This would strengthen the position of the IC as final arbiter of the substance of cases, but (similar to the Scottish system) an appeal to the Upper Tribunal on a point of law would remain.

Chapter seven (“burdens on public authorities”) considers the burden of requests on public bodies against the public interest in information being available. The report makes it clear that it does not consider it appropriate to impose an up-front charge. The report recommended that the obligations of public authorities in respect of the form in which information must be provided are clarified; that the power to issue a code of practice under section 45 is reviewed; and that the Code is updated and expanded. It also recommends that stronger guidance to public authorities is included in the Code about the use of section 14 of the Act to address burdens. Section 14, which allows the refusal of vexatious or repeated requests, has recently been clarified and can be used to refuse requests which are disproportionately burdensome. Finally, it recommended that the government reviews the resources available to the Commissioner to ensure that they are adequate for him to carry out his duties under the Act effectively.

Appendix 3 - Jersey's Freedom of Information Law 2011

The UK's Freedom of Information Act (2000)¹⁷ came fully into force in January 2005, the long implementation was to enable UK authorities to be able to comply with the new legal requirements. Jersey considered the UK model not suitable for them as it had been criticised for being too 'cumbersome and ineffective...due to its exemptions and inclusions of a ministerial veto'. However, if the States decided not to proceed with a law, Jersey citizens would be less legally entitled to government information than their UK counterparts.

In October 2009 the States of Jersey presented a Policy Paper/White Paper of the draft Freedom of Information (Fol) Law. This was as a result of work commenced in March 1994 where a Special Committee was tasked to investigate the issues involved in establishing, by law, a general right of access to official information by members of the public¹⁸. As a result, the first step was to introduce a Code of Practice on Public Access to Official Information¹⁹ which came into force in January 2000. The purpose of the Code was 'to establish a minimum standard of openness and accountability' by introducing a number of key obligations on departments and Committees. However, the Code was missing any mechanism to monitor the way departments classified, stored and retrieved information, and whether this process was consistent across the States.

It was recognised that despite the introduction of the 'Code' Jersey people did still not have the statutory rights of access to official information enjoyed in more than 50 other jurisdictions and it was considered that the 'force of the law was required to continue the culture change, giving the ordinary citizen a legal right of access to government information'. The aim of the Law was to give the people of Jersey the right to be supplied with information held by public authorities.

Jersey based its Fol legislation on 22 key policy outcomes. Jersey considered the introduction of a Fol law raised the same issues as the Data Protection law, mainly around effective record keeping, which makes accessing the right information easier and in the long term reduces the burden of producing the information requested.

The Freedom of Information (Jersey) Law 2011, commenced in January 2015²⁰ after a Fol programme had been run across all States departments to fully prepare for its implementation. Since its commencement there has been a steady increase year on year of Fol requests and in 2019 averaging around 90 requests per month.

Cost of implementation²¹ - there were two separate allocations of funds for the Jersey FOI implementation, £500,000 to enable the start-up and project work in 2012 and a further £4,287,610 in 2013 for implementation during 2013 -2015.

¹⁷ <http://www.legislation.gov.uk/ukpga/2000/36/contents>

¹⁸ States of Jersey: Draft Freedom of Information Law 'Policy Paper': White Paper October 2009. States of Jersey - Fol Law White Paper 2009

¹⁹ A Code of Practice on Public Access to Official Information 1999/2004

²⁰ <https://www.jerseylaw.je/laws/revised/PDFs/16.330.pdf>

²¹ Cost of implementing the Freedom of Information (FOI) legislation- Jersey

Spend to date	Costs
2012	£22,200
2013	£111,955
2014	£1,115,915
2015 (to April 30 th)	£499,780
2015 forecast costs	£1,010,220
Total projected spend	£2,825,970

In May 2019 the Office of the Comptroller and Auditor General in Jersey published a report on the Arrangements for Freedom of Information: Follow-up²². It concluded that although there had been good implementation in areas such as the transition of central FoI activity into other departments, with a well-developed guidance manual and documents to collate responses. There was little progress in records management especially electronic records which would require an updated IT system and there appeared to be little evaluation of the effectiveness of FoI training or the costs of handling the FoI requests received.

A post implementation review of the UK FOIA completed in 2006²³ reviewed the operation and the implementation costs of the Act. It estimated that the total costs across government bodies in dealing with FoI requests was £24.4 million per year with the key cost driver being official's time in dealing with the requests.

²² <https://www.jerseyauditoffice.je/wp-content/uploads/2019/05/Arrangements-for-FoI-Follow-up.pdf>

²³ <https://webarchive.nationalarchives.gov.uk/%2B/http://www.dca.gov.uk/foi/reference/foi-independent-review.pdf>

Appendix 4 - Isle of Man Freedom of Information Act 2015

The Isle of Man first issued its Code of Practice on Access to Government Information²⁴ in September 1996. It has subsequently been revised with the introduction of the Public Records Act 1999; the Data Protection Act 2002 and the Freedom of Information Act (FOIA) 2015²⁵. It is the Isle of Man Government's view that their citizens must have adequate access to information, but in a way that is balanced with the requirement to maintain privacy of individuals and effective government. With the introduction of the FOIA the role of the 'Isle of Man Data Protection Supervisor' was changed to the 'Isle of Man Information Commissioner' whose function was independent and not subject to direction of Tynwald, its branches or the Council of Ministers.

In the House of Keys in February 2014²⁶, the estimated cost of implementation was discussed, and an estimated overall cost was predicted as up to £500,000 per year for the initial stages. The Minister also stated that 'the fundamental difference is that the Act creates a legally enforceable right to access information and therefore has to be more prescriptive than the Code.... necessary for a request to be valid through to the review and enforcement provisions'.

The Council of Ministers introduced the Freedom of Information Act 2015 Code of Practice which was produced in consultation with the Information Commissioner to assist and advise Public Authorities in their fulfilment of their responsibilities under the Act.

In the House of Keys in November 2018²⁷, 'Questions for Written Answers' on the FoI requests - Breakdown per Government department for the last 12 months, there was a total of 463 requests given in various formats depending on the information available or exemptions in part or in full. Costs that have been incurred centrally by the Cabinet Office in the project to rollout the Act across the Isle of Man are mainly employee costs²⁸. Other spend relates to costs of training staff in the requirements of the Act, software and reference materials. The Isle of Man Act was a phased implementation across the public service starting in February 2016 and finishing in January 2018.

Financial Year	Costs
2014 – 2015	119,508.86
2015 – 2016	195,270.59
2016 – 2017	294,690.51
2017 – 2018	204,126.95
Total	813,596.91

Now that the Act has been fully rolled out future expenditure is expected to be much lower.

²⁴ Isle of Man Code of Practice on Access to Government Information

²⁵ http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2015/2015-0008/FreedomofInformationAct2015_1.pdf

²⁶ Hansard - House of Keys, Tuesday, 11th February 2014. Pg. 563-564 HANSARD 11th February 2014

²⁷ Hansard - House of Keys, Tuesday, 6th November 2018. 2.1 Freedom of Information requests. Pg. 87-93 HANSARD November 2016

²⁸ Stats from the Isle of Man – Cabinet Office - November 2019

Appendix 5 – Extracts from “Open Government: Reflections for the Panel on Access to Public Information”

The following excerpts are taken from a paper prepared by Deputy McSwiggan for consideration by the Review Panel when determining the initial scope of its Review:

The origins of the current States of Guernsey Code of Practice on Access to Public Information ('**the Code**') date back to a successful amendment to the 2010 States' Strategic Plan (Billet d'État XIX, September 2010) led by former Deputies Rhoderick Matthews and Sean McManus. The amendment was:

*"To direct the Policy Council to consult with all States Departments and Committees and then to report to the States of Deliberation by no later than December 2011, setting out options for improving open government and transparency and establishing a corporate policy on freedom of information **and open government.**"*

[...] In our scrutiny of this area, [... we] need to look at the bigger picture of Open Government, and how Guernsey meets or falls short of those important principles, and what could be done through or alongside the Code to address that. [...]

What is "Open Government"?

According to the Open Government Declaration (which forms the basis of the Open Government Partnership, launched at the UN General Assembly in 2011), the principles of open government are:

- To increase the availability of information about governmental activities,
- To support civic participation,
- To implement the highest standards of professional integrity throughout the administration, and
- To increase access to new technologies for openness and accountability.

The Congress of Local and Regional Authorities of the Council of Europe ('**the CoE Congress**')²⁹ says: "open government describes a government that is transparent, participatory and accountable towards its citizens. It is a concept that can be applied to any government, irrespective of its size and no matter whether it is local, regional or national."

The CoE Congress says that the three principles of **transparency, participation and accountability** should be applied across five domains of government work: **budgeting, contracting, law making, policy making and service delivery.**

Why does Open Government matter?

Open government (that is, government that is transparent; that encourages civic participation; and that is visibly accountable for its actions) is not just good in its own right.

²⁹ In their report on "Transparency and Open Government" CG35(2018)14final. This is an excellent, comprehensive report on what open government means in practice, which could be very useful to us. I've drawn heavily on it for the rest of this paper and have attached a copy as an appendix.

According to the CoE Congress, it can play an important role in increasing public trust and reducing corruption, "both of which are necessary in order for local democracy to flourish." It can also "lead to more effective provision of local public services" – not only because politicians and officials know they will be held accountable for their choices, but also because a focus on participation means citizens can bring their own knowledge and insights to help improve government decision-making.

The Open Government Declaration puts it in the following terms: "We uphold the value of openness in our engagement with citizens to improve services, manage public resources, promote innovation, and create safer communities. We embrace principles of transparency and open government with a view toward achieving greater prosperity, well-being, and human dignity in our own countries and in an increasingly interconnected world."

According to the World Bank³⁰: "There are a few different reasons why we should value greater transparency. The first is the way that transparency potentially changes the way government operates. The second is that transparency potentially changes the relationship between people and government officials. And a third reason is that transparency enables groups, that otherwise would not be able to participate, to participate in governance."

Open government has the potential to strengthen the relationship between the States (including the public sector) and the people of the Island as citizens; to improve our stewardship of public funds; and to increase public engagement with, and creative thinking about, the challenges faced by our community and their possible solutions. It also reflects our aim, as set out in the Policy & Resource Plan, to maintain our reputation as a mature international jurisdiction. A commitment to open government in Guernsey is an important counterweight to the accusations of secrecy we often face from outside.

How open is Guernsey's government already?

The CoE Congress report on Transparency and Open Government (see Appendix 1) is particularly helpful in turning "open government" from a broad concept to a set of specific, reasonably measurable things which all governments could be doing to achieve greater transparency, civic participation and accountability.

This summary table is taken from page 14 of the report:

Function	Transparency	Participation	Accountability
Budgeting	The public have access to information on how government collects and spends public funds.	The public are involved in influencing or deciding how a public budget is spent.	The public can hold decision-makers to account for how public money is allocated and spent.
Contracting	The public have access to information on the	The public are involved in planning, awarding and/or	The public can hold decision-makers to account for how

³⁰ World Bank Blogs (written by John Turkewicz, June 2011) – "Why we should care about transparency" – available at: <https://blogs.worldbank.org/governance/why-we-should-care-about-transparency>

	full contracting cycle, including planning, tender, award, contract and implementation.	evaluating the implementation of government contracts.	goods and services are commissioned and procured.
Law making	The public have access to information on how laws are made and by whom.	The public are involved in informing, making and scrutinising laws.	The public can hold decision-makers to account for how they make laws and their implementation.
Policy making	The public have access to information on how policy is made and by whom.	The public are involved in informing, making, implementing and evaluating policies.	The public can hold decision-makers to account for how they make policies and what they achieve.
Service delivery	The public have access to information on their rights and entitlements, and the governance, funding and performance of public services.	The public are involved in designing, commissioning, delivering and evaluating public services.	The public can hold decision-makers to account for the quality and accessibility of public services.

I have looked at how this could be applied to the States, to illustrate how Guernsey is doing on open government, and to consider areas where we might want to make recommendations for change. [...]. My initial analysis, using a four-point scale, from 1 (good) to 4 (bad), is shown below. *[These represent one Panel member's analysis and should not be taken as the official view of the Panel.]*

Function	Transparency	Participation	Accountability
Budgeting	2 – Annual budgets and Accounts are published. The Budget process was improved this year, with more information included about Committee submissions, including unfunded requests, and analysis of alternative options. Accounts are still not provided in internationally recommended formats.	3 – There is no real opportunity for the public to be involved in budget-setting. A Social Investment Fund has been set up, to provide funding to civil society organisations working towards the States' objectives. A £1m Participatory Budget fund was created in 2019 but has not been used.	3 – The only real mechanism for accountability is the 4-yearly General Election. There is no recall mechanism. Confidence in the Code of Conduct process is low. Other ways of holding each other to account (Motions of Censure or No Confidence) are rarely used.
Contracting	2 – Fairly extensive information about government tenders is available on the CI Procurement Portal.	4 – Public or civil society involvement in the tender process is rare to non-existent.	3 – As above.

Function	Transparency	Participation	Accountability
Law making	2 – The law-making process is fairly public: policy letters provide drafting instructions. Laws are submitted to the States for approval before they are enforced. A public library of Guernsey's laws is available online at guernseylegal-resources.gg . The schedule of laws queued for drafting, their priority and latest progress, is routinely published. The biggest gap here is a lack of public knowledge about how Guernsey's law-making processes work.	2 – The public are not <i>systematically</i> involved in informing, making and scrutinising laws. But because the process is quite public, they can become actively involved – there was a lot of engagement with the Population Management regime, for example. In some cases there are focused technical consultations (e.g. Capacity law) or broad public consultations (e.g. Equality law) and representatives of civil society are included in working groups (e.g. Equality law).	3 – As above.
Policy making	3 – Policies which are brought to the States are publicly visible and often the subject of public debate. The quality of communication about States' policy is variable at best. The kind of policy-making that happens at Committee level is much less visible to the public.	2 – This is variable, but a lot of policy areas are informed by public consultation, if not by longer-term engagement (e.g. involvement on working groups). Public involvement in implementation or evaluation is much rarer.	3 – As above.

Function	Transparency	Participation	Accountability
Service delivery	3 – There is a lot of information in the public domain about people's rights and entitlements to public services (especially on gov.gg); however, this is often difficult to navigate. Information about the governance and performance of public services (e.g. KPIs) is generally not routinely produced.	3 – This is variable. Most services have complaints processes; some will hold focus groups with customers when looking to change a service, or to improve its implementation. The Social Compact was intended to improve third-sector involvement with service delivery, but has been limited in its impact.	3 – As above.

On pages 15 to 21 of its report, the CoE Congress identifies recommendations for governments wishing to improve their performance in each area. *[The paper assessed which of these could be taken forward by the States. The Panel is recommending that this should be given further consideration in due course. Therefore, the CoE Congress' recommendations are set out below without the original commentary in the paper.]*

Open Budgeting

- Publish key budget documents in a timely fashion and on a routine basis.³¹
- Produce an annual Citizens' Budget which communicates the headline figures of the Budget in an easy-to-understand format.
- Involve residents in defining budget priorities through holding budget consultations and/or defining a portion of the budget for participatory budgeting.

Open Local Contracting

- Publish key documentation and data on the contracts signed by the States, particularly where they relate to large amounts or critical services or infrastructure.
- Adopt the Open Contracting Data Standard.³²
- Involve citizens in defining, awarding and evaluating contracts, particularly for essential services or infrastructure.

³¹ See also the International Budget Partnership's "Guide to Transparency in Government Budget Reports": <https://www.internationalbudget.org/wp-content/uploads/Guide-to-Transparency-in-Government-Budget-Reports-Why-are-Budget-Reports-Important-and-What-Should-They-Include-English.pdf>

³² See <http://www.open-contracting.org/implement/global-principles/>

Open Local Law-making and Policymaking

- Publish information in an accessible format about the democratic decision-making process, agendas, and minutes.
- Make council meetings open to members of the public, civil society and the press, unless there is an exceptional case for holding a meeting in private.
- Enable citizens to propose and vote on local laws.
- Publish information in an accessible format on the policy-making process, including up-to-date information on current policy processes.
- Identify issues of high priority to residents and involve them in developing, reviewing and/or deciding on policy options.
- Develop a participation policy which establishes a requirement to engage residents, which is communicated to residents, and which is legally enforceable.

Open Service Delivery

- Publish and promote information on the public services to which residents are entitled.
- Collect feedback on citizens' satisfaction with the quality and accessibility of public services.
- Involve citizens, particularly service users, in reviewing, designing and delivering public service. This requires a genuine willingness to act on citizens' ideas, and to provide feedback to participants on the outcome.

Joining the Open Government Partnership

The 2011 Information Strategy recognised the importance of a symbolic commitment to openness, as well as the practical changes needed to make it a reality.

With that in mind, we may also wish to recommend to the States that Guernsey should seek to join the Open Government Partnership as a Local member³³. (The Local programme of the Open Government Partnership includes cities, regions and devolved administrations – including Scotland, Paris, Ontario, Tbilisi, Seoul and Kaduna State, among others.)

Joining the Open Government Partnership comes with a requirement to develop action plans, on a cyclical basis, to improve the openness of government. For the API Panel, this would give us some comfort that, rather than a one-off review of the Code alone, we would be leaving the States with a framework and a process that will require it to keep working towards better standards of transparency, civic participation and accountability. [...]

³³ See: <https://www.opengovpartnership.org/ogp-local-program/#About>

Appendix 6 - Key Documents/Sources of Information

Document Title	Reference (URL)
States Strategic Plan 2010-2015, Policy Council, 29 September 2010	https://gov.gg/CHttpHandler.ashx?id=5963&p=0
States Strategic Plan 2010-2015 Amendment, 27 October 2010	https://gov.gg/CHttpHandler.ashx?id=100591&p=0
Information Strategy, Belinda Crowe, September 2011	https://gov.gg/CHttpHandler.ashx?id=83312&p=0 p1057-1071
'States of Guernsey Policy for Access to Public Information' Policy Letter, Policy Council, Billet d'État XV, July 2013	https://gov.gg/CHttpHandler.ashx?id=83312&p=0 p1042-1086
'Code of Practice on Access to Public Information', original 2013 version.	https://gov.gg/CHttpHandler.ashx?id=83312&p=0 p1076-1083
'States of Guernsey Policy for Access to Public Information' Policy Letter, Resolutions	https://gov.gg/CHttpHandler.ashx?id=99648&p=0
Code of Practice on Access to Public Information, February 2017	https://gov.gg/CHttpHandler.ashx?id=103768&p=0
Detailed Guidance on how to use the States of Guernsey Code of Practice for access to public information, February 2017	https://gov.gg/CHttpHandler.ashx?id=105845&p=0
Short Guidance note on Operational Implementation of the API Code	https://gov.gg/CHttpHandler.ashx?id=109035&p=0
Freedom of Information Act 2000 (UK)	http://www.legislation.gov.uk/ukpga/2000/36/contents
Freedom of Information (Jersey) Law 2011	https://www.jerseylaw.je/laws/revised/PDFs/16.330.pdf
Jersey Audit Office –Arrangements for Freedom of Information Follow-up	https://www.jerseyauditoffice.je/wp-content/uploads/2019/05/Arrangements-for-FoI-Follow-up.pdf
Isle of Man – Freedom of Information Act 2015	http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2015/2015-0008/FreedomofInformationAct2015_1.pdf
Congress of Local & Regional Authorities – Transparency and Open Government	https://rm.coe.int/transparency-and-open-government-governance-committee-rapporteur-andre/16808d341c

Appendix 7 - Call for Evidence

Listed below are the Committees and organisations that were invited to submit evidence. A general Call for Evidence was extended to the public and advertised in the Guernsey Press, media and posted on the Scrutiny.gov.gg webpage.

Title
Policy & Resources Committee
Committee <i>for</i> Education Sport & Culture
Committee for Health & Social Care
Committee <i>for</i> Environment & Infrastructure
Committee <i>for</i> Economic Development
Committee <i>for</i> Home Affairs
Committee <i>for</i> Employment & Social Security
States' Trading Supervisory Board
States' Assembly & Constitution Committee
Development & Planning Authority
Overseas Aid & Development Commission
Transport Licencing Authority
Health Equality for All (HEAL)
Channel TV
BBC Guernsey
Guernsey Press
Bailiwick Express
Island FM
Press release to the General Public
UK Information Commissioner
School of Public Policy, University College London
CEO Leeds City Council
Chief Executive, Trust Management Offices, Southampton General Hospital
Mr Maurice Frankel

Appendix 8 - Resolutions, 30th July 2013, Access to Public Information

Billet d'État No XV dated 21st June 2013

After consideration of the Report dated 20th May, 2013, of the Policy Council: -

1. To agree the guiding principles outlined in that States of Guernsey Policy for Access to Public Information States Report, as follows:

- A presumption of disclosure;
- A corporate approach;
- A culture of openness;
- Proactive publication; and
- Effective record management.

2. To agree that the presumption of disclosure will need to be subject to certain stated exceptions in order to protect legal, financial, commercial, competitive and public interests which will be agreed by the States from time to time.

3. To agree the Code of Practice on Access to Public Information in Appendix Three of that Report which will apply to all States Departments and Committees and which incorporates the guiding principles and describes the exceptions but to direct that, in relation to Part 1, paragraph 1.11 of the Code, by no later than July, 2014 the Policy Council shall report to the States of Deliberation setting out their assessment of the feasibility, desirability and potential cost of providing a right of appeal to an independent person or persons in respect of a request made for access to information which is refused by a States Department or Committee, and further subject to removing the sentence "There is no commitment that pre-existing documents, as distinct from information, will be made available in response to reasonable requests." from section 1.6 of that Code.

4. To endorse the Policy on the Use of Confidentiality in Contracts and agreements contained in Appendix Four of that Report.

5. To direct the Policy Council to implement, no later than 31 March 2014, a consistent mechanism which Departments and Committees can use to record and collate data on the number and category of requests made under the Code of Practice, including when exemptions are applied and to direct Departments and Committees to implement the policy so that data collection can commence from 31 March 2014.

6. To direct the Policy Council to report back to the States during quarter 1 of 2015 with a report evaluating the effectiveness of the Code of Practice and recommending any changes it considers appropriate; that report to include details of all information requests which have

been refused, providing the reason for the refusal, and under which part of the Code the refusal was made.

7. To direct the Policy Council to report back to the States during quarter 1 of 2015 with a report evaluating the feasibility and implications of expanding the Code of Practice to include automatic disclosure rules similar to the UK “30-year Rule”.

8. To direct every Department and Committee to publish details (namely the title of the report, who it is commissioned by and from and date of commission) of all reports commissioned by the Department or Committee within six months of that report being commissioned, unless the publication of such detail would fall within one of the exemptions from disclosure set out in the Code of Practice on Access to Public Information set out in Appendix Three of the Report.

Appendix 9: Code of Practice on Access to Public Information

[States of Guernsey: Code of Practice on Access to Public Information](#)

States of Guernsey
States' Trading Supervisory Board
Channel Islands Lottery, Guernsey

Report and Accounts

For the year ended 31 December 2020

States' Trading Supervisory Board Channel Islands Lottery, Guernsey

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States' Trading Supervisory Board

Channel Islands Lottery, Guernsey

States' Trading Supervisory Board Members, Principal Officers and Professional Advisers

States' Trading Supervisory Board Members

Deputy P. Roffey	President	elected 21 October 2020
Deputy C. Parkinson		elected 21 October 2020
Deputy N. Moakes		elected 21 October 2020
Mr S. Falla MBE		
Mr J. Hollis		
Deputy P. Ferbrache	President	term ended 15 October 2020
Deputy J. Smithies		term ended 15 October 2020
Deputy J. Kuttelwascher		deceased 23 January 2020
Deputy P. Roffey	elected 26 February 2020	term ended 15 October 2020

The constitution of the States' Trading Supervisory Board ("STSB") provides that the membership of the STSB shall be a President and up to two members who shall be members of the States and up to two members who shall not be members of the States. If and when the STSB is inquorate and an urgent decision is required, the States' Rules of Procedure allow for the insufficiency of members to be replaced by members of the States chosen, in the first instance, from members of the Policy & Resources Committee.

Principal Officers to the States' Trading Supervisory Board

Mr S. Elliott, Managing Director, States Trading Group
Mr S. Gardiner, Finance Business Partner, States Trading Group
Mr A. Ford, Head of Shareholder Executive, States Trading Group
Mr R. Evans, Deputy Managing Director, States Trading Group resigned 1 November 2020

The Organisation of States' Affairs (Transfer of Functions) Ordinance 2016 directs that the Gambling (Channel Islands Lottery) (Bailiwick of Guernsey) Ordinance, 1975 is transferred from the Culture and Leisure Department to the STSB. Specifically, the STSB has responsibilities and oversight of the delivery of the administration and promotion of the Channel Islands Lottery, Guernsey ("CILG").

States' Trading Supervisory Board

Channel Islands Lottery, Guernsey

States' Trading Supervisory Board Members, Principal Officers and Professional Advisers – continued

Channel Islands Lottery, Guernsey Sub-Committee Members

Deputy C. Parkinson	Chairman	elected 21 October 2020
Deputy N. Moakes		elected 21 October 2020
Deputy J. Smithies	Chairman	term ended 15 October 2020
Deputy P. Ferbrache		term ended 15 October 2020
Mr R. Evans	non-voting adviser	resigned 1 November 2020
Mr S. Gardiner	non-voting adviser	
Mr J. Taylor	non-voting adviser	

The constitution of the Channel Islands Lottery, Guernsey Sub-Committee ("CILG Sub-Committee") as agreed by STSB at its meeting of 15 February 2018.

Further information on the role of the CILG Sub-Committee is provided in the Corporate Governance section.

Principal Officers to the CILG Sub-Committee

Mr R. Evans, Deputy Managing Director, States Trading Group resigned 1 November 2020
Mr S. Gardiner, Finance Business Partner, States Trading Group
Mrs C. Edwards, Senior Finance Manager, States Trading Group
Mr J. Taylor, Lottery Manager, States Trading Group

In these Financial Statements any reference to "President" refers to the President of the STSB and any reference to "Chairman" refers to the Chairman of the CILG Sub-Committee.

States' Trading Supervisory Board

Channel Islands Lottery, Guernsey

Chairman's Report

Overview

The STSB's mandate is the oversight of the administration and promotion of the Channel Islands Lottery, Guernsey (CILG). Its vision for the CILG is to ensure all CILG games continue to be a positive experience for participants, providing the best return to the charity sector and other notable good causes, whilst carrying out operations in a responsible manner.

In 2020, the CILG was impacted by the Covid-19 lockdown, which had a detrimental effect on sales during April, May and June. However, by the last quarter of the year sales were back to the same level as 2019.

May 2020 saw the start of a five-year contract with Guernsey Post Limited (GPL) as the new ticket main distributor. In addition to these new arrangements made for ticket distribution, the States of Deliberation made some changes to the manner in which proceeds were provided to good causes through the establishment of a new Social Investment Fund (SIF). The funds generated from the Lottery are distributed, at the discretion of the Policy & Resources Committee, for the following;

- Funding initiatives designed to help and support individuals experiencing gambling problems locally,
- Providing a ring-fenced annual grant to the Committee *for* Education, Sport & Culture specifically for funding Beau Sejour Leisure Centre, and
- Transferring to the Social Investment Fund.

States' Trading Supervisory Board

Channel Islands Lottery, Guernsey

Chairman's Report – continued

Business performance

Despite a difficult year, which saw the majority of resellers closed for several weeks during the Covid-19 lockdown, in 2020 overall sales in Guernsey were only down by 4.5% compared to 2019. This decline was similar to trends in other markets across Europe and North America. The price point which suffered most was the £2 category, which saw an overall decline of 32%; while the £10 price point had the biggest overall increase of 14%.

The number of tickets sold in Guernsey for the Christmas Lottery increased by 41% in 2020 compared to 2019, but revenues were down 6% compared to 2019, following a reduction in the ticket price from £3 to £2.

Our community

The STSB is committed to contribute to the Policy & Resource Plan's vision that: “We will be among the happiest and healthiest places in the world, where everyone has equal opportunity to achieve their potential. We will be a safe and inclusive community, which nurtures its unique heritage and environment and is underpinned by a diverse and successful economy.”

The CILG generates much needed funds for charities and good causes throughout the Bailiwick of Guernsey.

Our team

The CILG operations are administered by the Lottery Manager with support from a small team. I would like to thank the team for all their hard work and commitment throughout the year.

States' Trading Supervisory Board

Channel Islands Lottery, Guernsey

Chairman's Report – continued

Our business strategy and future

The CILG continues to work closely with the Government of Jersey to improve efficiencies across the islands with the aim of maximising contributions to good causes while maintaining the Channel Islands Lottery's reputation.

The CILG plans to continue the work enhancing its reputation and building interest in the good causes that the lottery supports throughout Guernsey. This will be achieved by collaborating with SIFto promote positive stories about how the Lottery benefits the local community. In addition, new ticket dispensers and point of sale materials highlighting the beneficiaries will be distributed through the reseller network.

The CILG will continue to work on improving efficiencies whilst working collaboratively with Scientific Games Limited and Guernsey Post Limited.

John Moore University was appointed by Guernsey's Public Health Services to carry out research into problem gambling and a comprehensive report is due for release in the third quarter of 2021. This initiative, funded from the Lottery Appropriation Account, recognises that while most people who gamble do so responsibly most of the time, problem gambling can be harmful for some. This includes binge gambling, excessive gambling, periods of loss of control and a more serious gambling addiction. This impacts not only on the gambler, but also on families, friends, communities and employers. It is therefore important that the prevalence of the problem is understood, and any areas of concern identified, so services can be developed to address these.

CILG will continue to collaborate with the addiction service providers on island and through the responsible gambling authority GamCare in the UK. The CILG will continue to provide awareness of helplines on the reverse of tickets and in any promotional materials and will also work to develop a player protection scheme.

States' Trading Supervisory Board

Channel Islands Lottery, Guernsey

Lottery Manager's Report

The STSB presents the report for CILG for the year ended 31 December 2020. These comprise the Operating Account Analysis, Appropriation Account and accompanying notes.

Principal activities

The STSB operates the lottery in Guernsey but it is effectively a joint operation between the States of Guernsey and the Government of Jersey. Its foundation is enshrined in legislation and States of Guernsey Resolutions. It is the oldest Lottery in the British Isles and was established between the Islands in 1975. In its infancy, Jersey and Guernsey used the revenues to help fund the operations of their respective leisure centres at Fort Regent and Beau Sejour. By 1980 a charity Christmas draw was introduced and remains popular today, albeit with declining sales in recent years.

The Channel Islands Lottery at present has two component formats: firstly, there are the regular instant-win games and secondly the Channel Islands Christmas Lottery which has a drawn top prize, secondary drawn prizes and an instant element.

Our customers

During 2020, the CILG changed its distribution arrangements. Previously, there were three main agents appointed to sell Lottery tickets within Guernsey. Now there is one main distributor appointed in Guernsey as well as the individual agents in Alderney and Sark.

Guernsey Post will operate as the main distributor for a five-year term, starting in May 2020.

The main distributor and agents purchase tickets from the States of Guernsey and ensure that the tickets are on sale as widely as possible.

States' Trading Supervisory Board

Channel Islands Lottery, Guernsey

Lottery Manager's Report - continued

Financial performance

	Actual 2020 £'000	Actual 2019 £'000
Revenue	12,920	13,637
Bailiwick surplus for the financial year	1,376	1,455
Distributions to Sark and Alderney	5	6
Guernsey Surplus for the financial year	1,371	1,449
Transfer to Beau Sejour Centre	1,045	605
Contribution to Island Games	275	125
Health Impact Assessment on Gambling Addiction	-	25
Donation to Association of Guernsey Charities	-	184
Donation to SIF (surplus for Christmas draw and scratch cards)	326	-
Donation to SIF (Appropriation account balance)	2,167	-
Balance of Appropriation Account	-	2,442

Since 2013 £9.9m has been raised in Guernsey which has gone towards: local charities, funding Beau Sejour's operating deficit, or to good causes that benefit the Island's community, such as the Island Games.

£155k was raised through the Christmas Lottery revenues in 2020, a decline of £29k on 2019. Net proceeds from the annual CILG Christmas Draw are now distributed through SIF having previously been donated to the Association of Guernsey Charities ("AGC").

The annual net proceeds of the CILG Instant Games, continued to be transferred to the Beau Sejour Leisure Centre up to the level of the Centre's operating deficit with any additional surpluses being transferred to SIF.

In 2020, Beau Sejour's deficit was £1,195k (2019: £605k), with 2020 revenues being affected by the Covid-19 lockdown. The Policy & Resources Committee agreed that General Revenue (from the Budget Reserve) should contribute £150k, to recognise the value of the staff resources and facilities provided to support the response to the pandemic. The amount transferred from CILG was therefore £1,045k, with the remaining proceeds from the CILG Instant Games of £171k being transferred to SIF.

In addition, in 2020 £275k was transferred from the appropriation account to fund the Island Games and the balance on the appropriation account of £2,167k was transferred to SIF.

Operational performance

The appointment of Guernsey Post Limited as the main distributor followed an open tender process with interested parties, including existing agents, invited to present proposals for

States' Trading Supervisory Board

Channel Islands Lottery, Guernsey

Lottery Manager's Report - continued

managing ticket distribution across the Bailiwick of Guernsey. GPL's proposal demonstrated the capability to manage the requirements in a responsible way and deliver best value.

- Ticket Sales:

Sales in 2020 were affected by the lockdown and for the first time since 2011 sales values were below the previous year.

A set percentage of the sales value of tickets in each game is assigned to prizes (72% is the highest on the £10 game, 60.5% is the average across the various price points). The biggest prize in the instant game portfolio is £100,000 on a £10 scratch card. The £5 tickets still contribute the most to sales, generating approximately 49% of total sales (£6.6m).

CILG scratch card sales in 2020 were £11.9m, a 4.4% decrease compared to 2019 but still an increase of £11.0m compared to 2011 sales of £0.9m.

- Channel Islands Christmas Lottery 2020:

As part of the continued efforts to maintain the Christmas draw's popularity, Island Global Research was commissioned to gather feedback from participants. The findings of this survey helped shape the 2020 Christmas game.

The ticket price was reduced from £3 to £2 and a new prize structure was introduced featuring a first prize that increased with ticket sales and which reached nearly £0.7m. In Guernsey 479,950 tickets were sold in 2020 contributing just under £1.0m to total sales, this represents a drop in revenues of 6% compared to 2019.

- CILG Profits Disbursed Towards Charity and Good Causes:

Over a period of eight years, a total of £9.9m has been raised for charity, Beau Sejour and good causes. Beau Sejour receives a significant amount which is utilised for the centre's operating deficit. In 2020 this equated to £1.0m (2019 £605k). The Island Games Association has received £600k over the last three years to be used for the operation of Guernsey's postponed 2021 Island Games; there is now no outstanding commitment to this event.

Prizes which are not claimed are forfeited after a given time, usually 12 months after the final issue of tickets for each game/draw. The total value of prizes unclaimed in the Bailiwick of Guernsey amounted to £36k in 2020 (2019: £139k). These forfeited prizes contribute to the proceeds available for good causes.

States' Trading Supervisory Board

Channel Islands Lottery, Guernsey

Corporate Governance

The purpose of the CILG sub-committee is to support the delivery of the STSB's mandate, ensuring the efficient and effective management, operation and maintenance of the CILG.

The CILG sub-committee is accountable to the STSB and operates by challenging established practices and assumptions and seeking to support the business in establishing clear strategic direction, business planning and operational delivery in support of the outcomes of the Policy & Resource Plan, the Medium Term Financial Plan, the Public Service Reform Agenda, Service Guernsey and other strategic reviews and organisational drivers.

The CILG sub-committee membership is a minimum of two States' Trading Supervisory Board Members plus Deputy Managing Director States Trading Group, Finance Business Partner States Trading Group, and the Lottery Manager.

All members other than the Lottery Manager and the Finance Business Partner are appointed by the STSB.

The quorum is the two States' Trading Supervisory Board Members.

The CILG sub-committee does not hold a fiduciary responsibility.

The CILG sub-committee will take into account the States of Guernsey's political direction with regard to the operation of the CILG, as directed from time to time by the STSB. It must ensure that the CILG operations and operational policies align with the wider strategy and policy framework of the States of Guernsey and/or the STSB. The CILG sub-committee may generate policy for endorsement by the STSB and onward to the States of Guernsey as required.

The STSB specifically confers the following responsibilities and delegated authority to the CILG sub-committee:

- To approve capital and revenue annual budgets in line with the long-term budgets approved by the STSB;
- To approve annual business plans in line with long-term strategy and planning approved by or directed by the STSB;
- To approve and issue annual reports; and
- To guide and steer the CILG.

In carrying out these responsibilities the CILG sub-committee is bound and enabled by States of Guernsey rules for financial and resource management and the rules, directives policies and procedures of the States of Guernsey, such as, but not limited to: Finance; Procurement; Property; Human Resources; Data Protection; Health and Safety Management; Risk and Issue Management; Managing Matters of Litigation and Relevant legislation. The CILG sub-committee has the authority delegated by the STSB to direct the Lottery Manager in the day-to-day operation of the CILG in line with approved budget and business plans.

States' Trading Supervisory Board Channel Islands Lottery, Guernsey

Corporate Governance – continued

The CILG acts as a political sub-committee of the STSB.

STSB can disband the CILG sub-committee at any time without notice or recourse to any other body.

In the event due process has not been followed, the CILG sub-committee must render itself unable to make a decision until such time process has been followed.

States' Trading Supervisory Board

Channel Islands Lottery, Guernsey

Operating Account Analysis

for the year ended 31 December 2020

	Notes	2020 £'000	2019 £'000
Revenue			
Sale of tickets	2	12,884	13,498
Forfeited prizes		<u>36</u>	<u>139</u>
		12,920	13,637
Expenses			
Contribution to prize fund		(8,987)	(9,388)
Distribution and handling costs		(1,604)	(1,855)
Game agents commission		(733)	(742)
Other operating and administrative expenses		<u>(220)</u>	<u>(197)</u>
		(11,544)	(12,182)
Bailiwick surplus		1,376	1,455
States of Alderney	1	(2)	(2)
Chief Pleas of Sark	1	<u>(3)</u>	<u>(4)</u>
Guernsey surplus for the year		<u>1,371</u>	<u>1,449</u>

States' Trading Supervisory Board

Channel Islands Lottery, Guernsey

Appropriation Account

as at 31 December 2020

	Notes	2020 £'000	2019 £'000
Balance as at 1 January	4 & 5	2,442	1,932
Net surplus transferred from Operating Account		1,371	1,449
Contribution towards Island games		(275)	(125)
Donation to Association of Guernsey Charities		-	(184)
Donation to SIF: Christmas Lottery Surplus		(155)	-
Transfer to Beau Sejour Centre		(1,045)	(605)
Donation to SIF: 2020 Scratch Cards surplus		(171)	-
Transfer to the Committee <i>for</i> Health and Social Care for Problem Gambling Review		-	(25)
Donation to SIF: appropriation account balance		(2,167)	-
Balance at 31 December		-	2,442

States' Trading Supervisory Board

Channel Islands Lottery, Guernsey

Notes to the Channel Islands Lottery, Guernsey Accounts

1. Bailiwick Share of Lottery Proceeds

The promotion of the CIL in the Bailiwick of Guernsey generated proceeds of £1.4m in 2020 (2019: £1.5m) (scratch cards and Christmas Draw combined), which was shared within the Bailiwick in proportion to the number of tickets sold on each Island as follows:

	2020 £'000	2019 £'000
States of Guernsey	1,371	1,449
States of Alderney	2	2
Chief Pleas - Sark	3	4
Totals	1,376	1,455

2. Analysis of ticket revenues

Ticket revenues since 2007 has been as follows:

Year	Scratch Card Revenue:		Christmas Draw Revenue	
	Bailiwick of Guernsey £'000	Jersey £'000	Bailiwick of Guernsey £'000	Jersey £'000
2007	822	1,144	600	900
2008	756	956	598	1,100
2009	686	864	760	1,240
2010	640	796	880	1,420
2011	891	795	927	1,380
2012	2,815	1,934	815	1,308
2013	4,199	2,014	1,177	1,785
2014	6,789	3,423	1,226	2,260
2015	7,726	4,518	1,232	2,199
2016	8,603	5,837	1,200	2,122
2017	9,648	7,949	1,077	1,954
2018	11,815	7,102	1,185	1,998
2019	12,478	7,050	1,020	1,684
2020	11,924	7,942	960	1,269

States' Trading Supervisory Board

Channel Islands Lottery, Guernsey

Notes to the Channel Islands Lottery, Guernsey Accounts – continued

3. Financial commitments

There are no outstanding commitments on the Lottery appropriation account.

4. Appropriation account

In the Billet D'Etat VII, 2020 the States of Deliberation agreed the establishment of the Social Investment Fund (SIF). A separately constituted body, acting as a States of Guernsey partner, it uses public and some private funds from a variety of sources to invest in the Bailiwick's charitable and community sector organisations. In the same Billet, it was also agreed to rescind existing resolutions relating to the distribution of CILG proceeds and replace them with a direction that any CILG proceeds are to be retained in the CILG Appropriation Account and to delegate authority to the Policy & Resources Committee to approve their use for the following:

- i) Funding initiatives designed to help and support individuals experiencing gambling problems locally;
- ii) Providing a ring-fenced annual grant to the Committee *for* Education, Sport & Culture specifically for funding Beau Sejour Leisure Centre; and
- iii) Transferring to the Social Investment Fund.

Furthermore, they agreed;

- iv) That a ring-fenced annual grant of a maximum of £700,000 per annum for the three years 2021 - 2023 be provided from the Channel Islands Lottery (Guernsey) Fund Appropriation Account to the Committee *for* Education, Sport & Culture specifically for funding Beau Sejour Leisure Centre (to be reviewed no later than December 2022);
- v) To approve the transfer of the uncommitted balance of the Channel Islands Lottery (Guernsey) Fund Appropriation Account as at 31 December 2019 to the Social Investment Fund, and
- vi) To agree that any balance of the Channel Islands Lottery (Guernsey) Fund Appropriation Account from 2020 onwards be transferred to the Social Investment Fund.

For the CILG this means that, effective from 2020, any Guernsey surpluses generated (after appropriations to Alderney and Sark) will be retained in the appropriation account for Policy & Resources Committee to appropriate as referred to above. CILG will no longer distribute the net proceeds of the Christmas Lottery to the Association of Guernsey Charities.

States' Trading Supervisory Board

Channel Islands Lottery, Guernsey

Notes to the Channel Islands Lottery, Guernsey Accounts – continued

5. Distributions from the Appropriation Account

Summary of all amounts distributed or retained since 2013, all retentions are accumulated within the Appropriation Account:

	AGC	Beau Sejour	Island Games	Liberation Day	Health Impact assessment on Gambling Addiction	Transfer to SIF	Retained
	£'000	£'000	£'000	£'000	£'000	£'000	£'000
Brought forward							242
2013	209	550					73
2014	389	550					132
2015	220	672		50			176
2016	213	651					298
2017	190	493	100				538
2018	218	616	100				473
2019	184	605	125		25		510
2020	-	1,045	275			2,493	(2,442)
	1,623	5,182	600	50	25	2,493	-

Appendix Report

Elizabeth College - Upper School

**Annual Report and Audited
Financial Statements**

**Year ended
31 August 2020**

Elizabeth College - Upper School

Annual Report and Audited Financial Statements For the year ended 31 August 2020

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**Annual Report and Audited Financial Statements
For the year ended 31 August 2020**

Information

Board of Directors

The Very Reverend Tim Barker (Chairman)
Deputy Lyndon Trott
Mr Mark Thompson
Mr Stephen Sharman
Mr Andreas Tautscher
Mrs Rosemary Bowyer
Mrs Michelle Galpin
Miss Katrina Bray
Advocate Mark Ferbrache

Address

Elizabeth College
The Grange
St Peter Port
Guernsey
GY1 2PY

Independent auditor

BDO Limited
Place du Pré
Rue du Pré
St Peter Port
GY1 3LL

Report of the Board of Directors For the year ended 31 August 2020

The Board of Directors submits its report and the audited financial statements of Elizabeth College – Upper School (the “College”) for the year ended 31 August 2020.

Elizabeth College, founded in 1563 by Queen Elizabeth I, is a day school located in St Peter Port in Guernsey. The College includes the Upper School which is reported in these financial statements. The Junior School is reported in separate financial statements as Elizabeth College – Junior School.

Directors' responsibilities statement

The Board of Directors is responsible for preparing financial statements for each financial year which give a true and fair view of the state of affairs of the College and of the surplus or deficit of the College for that period and are in accordance with applicable law and generally accepted accounting practice. In preparing those financial statements the Board of Directors is required to:

- select suitable accounting policies and then apply them consistently;
- make judgements and estimates that are reasonable and prudent; and
- prepare the financial statements on the going concern basis unless it is inappropriate to presume that the College will continue in operation.

The Board of Directors is responsible for keeping proper accounting records which disclose with reasonable accuracy at any time the financial position of the College and which enable it to ensure that the financial statements have been properly prepared in accordance with applicable law. It is also responsible for safeguarding the assets of the College and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

Principal activities

The principal activity of the College is the provision of education.

Results

The results of the College for the year are set out in detail on page 6.

Board of Directors

The Board of Directors of Elizabeth College who served during the year and to date were:

The Very Reverend Tim Barker (Chairman)	
Deputy Lyndon Trott	
Ms Anne-Marie Collivet	(resigned 5 January 2020)
Mr Mark Thompson	
Mr Stephen Falla	(resigned 5 January 2021)
Mrs Kate Ovenden	(resigned 25 February 2020)
Mr Stephen Sharman	
Mr Andreas Tautscher	
Mrs Rosemary Bowyer	(appointed 6 January 2020)
Mrs Michelle Galpin	
Miss Katrina Bray	(appointed 8 October 2020)
Advocate Mark Ferbrache	(appointed 5 January 2021)

Report of the Board of Directors (continued)
For the year ended 31 August 2020

Post balance sheet event

On 23 January 2021, due to an increase of cases of the novel coronavirus pandemic (COVID-19) in Guernsey, the States of Guernsey imposed a second lockdown of all non-essential businesses, including schools and colleges. During lockdown, pupils and staff were not allowed to enter the College and were required to stay at home. The first period of lockdown as a result of COVID-19 took place in Guernsey from 24 March 2020 until 1 June 2020. As a result of the first lockdown the College had a tried and test plan for future lockdowns and, whilst initially there was a period of adjustment, the College continued to operate by delivering education to pupils via remote learning. From 8 March 2021 pupils and staff were permitted to return to the College under conditions of social distancing and from 22 March 2021 restrictions were lifted.

Independent auditor

BDO Limited have expressed their willingness to continue in office.

Disclosure of information to auditor

Each of the persons who are directors at the time when this report of the Board of Directors is approved has confirmed that:

- so far as each director is aware, there is no relevant audit information of which the College's auditor is unaware; and
- each director has taken all the steps that ought to have been taken as a director in order to be aware of any audit information and to establish that the College's auditor is aware of that information.

Approved by the Board of Directors and signed on its behalf by:

.....
The Very Reverend Tim Barker
Chairman

.....
Mr Mark Thompson
Director

Date:

Opinion

We have audited the financial statements of Elizabeth College – Upper School (“the College”) for the year ended 31 August 2020 which comprise the Statement of Income and Retained Funds, the Statement of Financial Position, the Statement of Cash Flows and notes to the financial statements, including a summary of significant accounting policies. The financial reporting framework that has been applied in their preparation is applicable law and United Kingdom Accounting Standards (United Kingdom Generally Accepted Accounting Practice) including Financial Reporting Standard 102, ‘The Financial Reporting Standard applicable in the UK and Republic of Ireland’.

In our opinion, the financial statements:

- give a true and fair view of the state of the College’s affairs as at 31 August 2020 and of its surplus for the year then ended; and
- have been properly prepared in accordance with United Kingdom Generally Accepted Accounting Practice.

Basis for opinion

We conducted our audit in accordance with International Standards on Auditing (UK) (ISAs (UK)) and applicable law. Our responsibilities under those standards are further described in the Auditor’s responsibilities for the audit of the financial statements section of our report. We are independent of the College in accordance with the ethical requirements relevant to our audit of the financial statements in the UK, including the FRC’s Ethical Standard and we have fulfilled our other ethical responsibilities in accordance with these requirements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Conclusions relating to going concern

We have nothing to report in respect of the following matters in relation to which the ISAs (UK) require us to report to you where:

- the Directors’ use of the going concern basis of accounting in the preparation of the financial statements is not appropriate; or
- the Directors have not disclosed in the financial statements any identified material uncertainties that may cast significant doubt about the College’s ability to continue to adopt the going concern basis of accounting for a period of at least twelve months from the date when the financial statements are authorised for issue.

Other information

The Directors are responsible for the other information. The other information comprises the information included in the annual report, other than the financial statements and our auditor’s report thereon. Our opinion on the financial statements does not cover the other information and, except to the extent otherwise explicitly stated in our report, we do not express any form of assurance conclusion thereon.

In connection with our audit of the financial statements, our responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or our knowledge obtained in the audit or otherwise appears to be materially misstated. If we identify such material inconsistencies or apparent material misstatements, we are required to determine whether there is a material misstatement in the financial statements or a material misstatement of the other information. If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact.

We have nothing to report in this regard.

Matters on which we are required to report by exception

We have nothing to report in respect of the following matters where the Companies (Guernsey) Law, 2008 requires us to report to you if, in our opinion:

- proper accounting records have not been kept by the College; or
- the financial statements are not in agreement with the accounting records; or
- we have failed to obtain all the information and explanations which, to the best of our knowledge and belief, are necessary for the purposes of our audit.

Responsibilities of Directors

As explained more fully in the Directors' responsibilities statement within the Report of the Directors, the Directors are responsible for the preparation of the financial statements and for being satisfied that they give a true and fair view and for such internal control as the Directors determine is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the Directors are responsible for assessing the College's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the Directors either intend to liquidate the College or to cease operations, or have no realistic alternative but to do so.

Auditor's responsibilities for the audit of the financial statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISAs (UK) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

A further description of our responsibilities for the audit of the financial statements is located at the Financial Reporting Council's website at: <https://www.frc.org.uk/auditorsresponsibilities>. This description forms part of our auditor's report.

Use of our report

This report is made solely to the College's Board of Directors, as a body, in accordance with our engagement letter dated 27 November 2018. Our audit work has been undertaken so that we might state to the College's Board of Directors those matters we are required to state to them in an auditor's report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the College and the College's Board of Directors as a body, for our audit work, for this report, or for the opinions we have formed.

BDO Limited
Chartered Accountants
Place du Pré
Rue du Pré
St Peter Port
Guernsey

Date

Statement of Income and Retained Funds
For the year ended 31 August 2020

	Note	2020 £	2020 £	2019 £	2019 £
Income					
States' block grant			325,420		158,665
Fees receivable			6,216,496		6,208,396
Other income			662,827		331,044
			<hr/>		<hr/>
			7,204,743		6,698,105
Expenses					
School and departmental expenses	4,932,154			4,787,385	
Administrative expenses	1,583,659			1,426,580	
Maintenance of buildings and grounds	355,270			427,821	
		<hr/>		<hr/>	
			(6,871,083)		(6,641,786)
Operating surplus before interest			<hr/>		<hr/>
			333,660		56,319
Interest receivable			16,573		-
Interest payable			-		(7,963)
			<hr/>		<hr/>
Operating surplus for the year			350,233		48,356
<i>Restricted income</i>					
Grants from Elizabeth College Foundation	13		4,785,001		60,000
Other donations			-		451
			<hr/>		<hr/>
Surplus for the year			5,135,234		108,807
			<hr/>		<hr/>
Retained funds at 1 September			6,651,519		6,542,712
			<hr/>		<hr/>
Retained funds at 31 August			11,786,753		6,651,519
			<hr/>		<hr/>

All income for the year derives wholly from continuing activities.

The notes on pages 9 to 14 form an integral part of these financial statements.

Statement of Financial Position
As at 31 August 2020

	Note	2020 £	2020 £	2019 £	2019 £
Fixed assets					
Tangible assets	5		9,666,793		4,913,078
Current assets					
Stock		5,278		2,775	
Debtors	6	127,165		104,998	
Cash and cash equivalents	7	4,086,379		3,476,459	
		4,218,822		3,584,232	
Creditors - amounts falling due within one year	8	(2,098,862)		(1,845,791)	
Net current assets			2,119,960		1,738,441
Net assets			11,786,753		6,651,519
Represented by:					
Retained funds	10		11,786,753		6,651,519

Approved by the Board of Directors and authorised for issue by:

.....
Chairman

.....
Date approved by the Board

The notes on pages 9 to 14 form an integral part of these financial statements.

Statement of Cash Flows
For the year ended 31 August 2020

	Note	2020 £	2020 £	2019 £	2019 £
Cash flows from operating activities					
Surplus for the financial year		5,135,234		108,807	
Adjustments for:					
Depreciation	5	338,065		331,864	
(Increase)/decrease in stock		(2,503)		2,090	
(Increase)/decrease in operating debtors		(22,167)		6,995	
Increase/(decrease) in operating creditors		104,984		(106,229)	
Increase in current account – Elizabeth College Junior School		148,087		437,826	
Interest (receivable)/payable		(16,573)		7,963	
Net cash inflows from operating activities			5,685,127		789,316
Investing activities					
Tangible fixed assets acquired	5	(5,091,780)		(330,418)	
Interest received/(paid)		16,573		(7,963)	
Net cash outflows used in investing activities			(5,075,207)		(338,381)
Net increase in cash and cash equivalents			609,920		450,935
Cash and cash equivalents at the beginning of the year	7		3,476,459		3,025,524
Cash and cash equivalents at the end of the year	7		4,086,379		3,476,459

The notes on pages 9 to 14 form an integral part of these financial statements.

Notes to the Financial Statements For the year ended 31 August 2020

1. General information

Elizabeth College is a day school located in St Peter Port, Guernsey that was founded in 1563 and is governed by Statutes dated 1 January 2020 (previously 28 December 1852). The College is registered as a Guernsey Charity under the Charities and Non-Profit Organisations (Registration Guernsey) (Guernsey) Law, 2008. These financial statements only include the results of the Upper School. Separate financial statements are presented for Elizabeth College - Junior School as set out in the Report of the Board of Directors.

2. Significant accounting policies

(a) Basis of preparation of the financial statements

The financial statements have been prepared under the historical cost convention and in accordance with Financial Reporting Standard 102, the 'Financial Reporting Standard applicable in the UK and Republic of Ireland' ("FRS 102").

The preparation of financial statements in compliance with FRS 102 requires the use of certain critical accounting estimates. It also requires management to exercise judgement in applying the accounting policies (see note 3).

The following principal accounting policies have been consistently applied:

(b) Going concern

The Directors are satisfied that the College has adequate resources to continue to operate for the foreseeable future and will continue to meet its liabilities as they fall due for a period of at least twelve months from the date of approval of these financial statements and they have therefore prepared the financial statements on a going concern basis.

In making this assessment the Directors have considered the impact of the second COVID-19 lockdown referred to in the Report of the Board of Directors and note 14 taking account of current cash resources available and the projected.

(c) Income recognition

The States' Block Grant comprises a general grant from the States of Guernsey and is recognised on receipt of funds, or when entitlement of receipt by the College is certain. A new grant agreement was signed on 22 October 2018 which sees the general grant gradually increasing from 1 September 2019 until the end of the 7-year agreement on 31 August 2026.

School fee income is recognised as receivable on the first day of each term for which pupils are enrolled. Fees received in respect of future years are carried forward as fees received in advance within creditors and are recognised in income in the school term when the pupil attends or is otherwise refunded. Discounts given on fees are recognised in the same period as the associated fees and recorded within administrative expenses.

Other income, including the hire of facilities and catering income, is recognised in the period that the goods or services are provided.

Investment income is recognised when the College can measure the amount reliably; this is normally upon notification of the investment income receivable by the States.

(d) Expenses

All expenses are accounted for on an accruals basis in the period to which the cost relates and are classified under headings that aggregate all costs related to each relevant category. Costs recharged to the Junior School are offset against the College's expenses in the period in which the costs are incurred.

The costs of maintenance are charged in the period in which they are incurred.

(e) Pension costs

The College participates in a defined benefit multi-employer pension scheme and superannuation contributions are charged to the Statement of Income and Retained Funds to spread the cost of the pensions over the employees' working lives.

(f) Elizabeth College Foundation

Capital grants received from the Foundation are recognised in the Statement of Income and Retained Funds when received or when entitlement of receipt by the College is certain.

Notes to the Financial Statements (continued)

For the year ended 31 August 2020

2. Significant accounting policies (continued)

(f) Elizabeth College Foundation (continued)

Other donations received from the Foundation relate to capital or project expenses which were underwritten by the donor and are recognised in the year that the capital item or project relate to.

(i) Tangible fixed assets and depreciation

Tangible fixed assets are stated at cost, less depreciation and any provision for impairment. Only assets with a cost of £1,000 or more are capitalised as tangible fixed assets and this level is periodically reviewed by the Board, along with the need for a formal impairment review.

College buildings comprise the modern buildings on the main college site off the Grange, the modern changing room and groundsmen's buildings at the College Field and the pavilion at the Memorial Field.

The historic college buildings, being those situated at the College's original site in the Grange and in College Street, and the College Field playing fields and pavilion at King's Road, were gifted to the College at no cost. College buildings which have been held for 50 years or more have not been capitalised as they are considered to have been fully depreciated.

Depreciation is provided to write off the cost of the assets, less their estimated residual values over the period of their expected useful lives, on a straight-line basis at the following annual rates:

College buildings	- 2% - 10%
Furniture and computer equipment	- 10% to 33.33%
Plant and machinery	- 10%
Motor vehicles	- 20%
Perrot Court	- No depreciation charged

(j) Financial instruments

The College only enters into basic financial instruments transactions that result in the recognition of financial assets and liabilities. All financial instruments entered into by the College are measured at amortised cost.

Financial assets that are measured at amortised cost are assessed at the end of each reporting period for objective evidence of impairment. If objective evidence of impairment is found, an impairment loss is recognised in the Statement of Income and Retained Funds.

Financial assets and liabilities are offset and the net amount reported in the Statement of Financial Position when there is an enforceable right to set off the recognised amounts and there is an intention to settle on a net basis or to realise the asset and settle the liability simultaneously.

(k) Prepayments

A prepaid expense is an expenditure paid for in one accounting period, but for which the underlying asset will not be consumed until a future period. A prepaid expense is measured at the transaction price and carried on the Statement of Financial Position as a current asset at cost until it is consumed.

(l) Cash and cash equivalents

Cash is represented by current accounts, cash in hand and deposits with financial institutions. Cash equivalents are highly liquid investments that mature in no more than three months from the date of acquisition and that are readily convertible to known amounts of cash with insignificant risk of change in value.

(m) Creditors

Short term creditors are measured at the transaction price. Other financial liabilities are measured initially at fair value, net of transaction costs, and are measured subsequently at amortised cost using the effective interest rate method.

(n) Prize funds and bequests

Prize funds and other charitable bequests are not included in these financial statements as they do not constitute part of the day-to-day activities of the College, nor does the College have control over the associated bank accounts.

Notes to the Financial Statements (continued)

For the year ended 31 August 2019

3. Judgements in applying accounting policies and key sources of estimation uncertainty

In preparing these financial statements, the Directors have made the following key judgements:

Tangible fixed assets (see note 5)

Tangible fixed assets are depreciated over their useful lives taking into account residual values, where appropriate. The actual lives of the assets and residual values are reviewed annually and may vary depending on a number of factors. In reviewing asset lives, factors such as technological innovation and maintenance programmes are taken into account. Residual value assessments consider issues such as original assumptions, future market conditions, the remaining life of the asset and projected disposal values.

4. Taxation

The College is registered under the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 and has been granted exempt status under Section 40(k) of the Income Tax (Guernsey) Law, 1975. The College's income is therefore not subject to tax.

5. Tangible assets

	College buildings £	Perrot Court £	Furniture and computer equipment £	Plant and machinery £	Motor vehicles £	Total £
Cost						
At 1 September 2019	5,563,834	53,765	1,518,340	299,230	26,322	7,461,491
Additions	3,980	4,989,163	85,163	13,474	-	5,091,780
At 31 August 2020	5,567,814	5,042,928	1,603,503	312,704	26,322	12,553,271
Depreciation						
At 1 September 2019	1,591,707	-	770,233	160,151	26,322	2,548,413
Charge for the year	119,009	-	190,512	28,544	-	338,065
At 31 August 2020	1,710,716	-	960,745	188,695	26,322	2,886,478
Net book value						
At 31 August 2020	3,857,098	5,042,928	642,758	124,009	-	9,666,793
At 31 August 2019	3,972,127	53,765	748,107	139,079	-	4,913,078

Included within fixed assets is the building Perrot Court which was purchased on 7 January 2020 for the sum of £4,749,733 including costs associated with the purchase. At the time of purchase a bond was registered against the property for the sum of £3,000,000. The additional amounts capitalised on top of the purchase price, totalling £293,195, relate to professional fees.

The building is being developed to become part of the main school site and therefore no depreciation will be charged on the building until it is in use. It is anticipated that the building will be available for educational use from September 2022.

As an indication of the relative value of the College's freehold property assets, and the values at which they are included within the financial statements, the following table sets out (a) the cost values at which the properties are included within the accounts and (b) their estimated insurance values as at 1 March 2020. All figures exclude land.

Notes to the Financial Statements (continued)
For the year ended 31 August 2020

5. Tangible assets (continued)

	Cost At 31 August 2019 £	Cost Additions £	Cost At 31 August 2020 £	Insurance Valuation £
Main College site				
- Historic buildings	-	-	-	21,965,632
- Modern buildings	4,229,396	3,980	4,233,376	27,195,545
- Sixth Form Centre	388,470	-	388,470	522,991
College playing fields				
- CF - Old pavilion	-	-	-	678,017
- CF - Modern buildings	149,670	-	149,670	1,356,033
- MF Pavilion	796,298	-	796,298	2,834,332
	<u>5,563,834</u>	<u>3,980</u>	<u>5,567,814</u>	<u>54,552,550</u>

6. Debtors

	2020 £	2019 £
Fee debtors	44,405	60,221
Sundry debtors	74,006	28,280
Prepayments and accrued income	8,754	16,497
	<u>127,165</u>	<u>104,998</u>

7. Cash and cash equivalents

	2020 £	2019 £
Cash at bank and in hand	3,202,370	1,386,650
States' Treasury Cash Pool Deposit	884,009	878,188
Short-term fixed deposit	-	1,211,621
	<u>4,086,379</u>	<u>3,476,459</u>

Amounts totalling £14,181 (2019: £23,956) held by the Ernest Gardner Bursary Fund are excluded from these financial statements on the basis that they represent monies held on behalf of third parties.

Notes to the Financial Statements (continued)
For the year ended 31 August 2020

8. Creditors – amounts falling due within one year

	2020 £	2019 £
Creditors and accruals	139,908	181,438
Fee refunds	126,525	-
Payroll creditors	241,517	227,822
Fees received in advance	190,999	138,421
Other sundry creditors	94,617	128,697
Deferred income	-	12,204
Current account: Elizabeth College – Junior School	1,305,296	1,157,209
	2,098,862	1,845,791

Due to the physical closure of the school in 2020, as a result of the COVID-19 pandemic, a rebate of fees was made at a rate of 7% of one term's fee. This is disclosed as fee refunds above.

9. Pension costs

A majority of the employees of the College are members of the States of Guernsey Superannuation Scheme ("the Scheme"). This is a defined benefit pension scheme, funded by contributions from both employer and employee, at rates which are determined on the basis of actuarial advice, which are calculated to spread the expected cost of benefits to employees over the period of those employees' expected working lives.

The Scheme is a multi-employer scheme and the level of contributions made to the scheme by each employer will be affected by actuarial risks relating to the employees of other employers. It is not possible for the underlying pension assets and liabilities within the Scheme relating to the employees of the College to be determined on a reasonable and consistent basis, as required by FRS 102. In addition, the Board of Directors considers that the additional costs which would be incurred were it possible to do so, in providing such information considerably outweigh any benefit to the proposed users of these financial statements.

The last actuarial valuation of the Scheme was conducted at 31 December 2016. At that date the actuarial value of the assets relating to the "Combined pool" within the overall Scheme, to which the College's staff belong, represented 93% of the actuarial valuation of the liabilities relating to that group. The rate of employer's contribution remained at 14.1% in respect of all staff after the valuation.

The total amount of superannuation contributions payable by the College to the Scheme for the year ended 31 August 2020 was £555,044 (2019: £525,016). At 31 August 2020 the amount of outstanding contributions not paid over to the Scheme was £140,223 (2019: £131,817).

Further details relating to the funding of the superannuation scheme are provided in the Superannuation Fund section of the accounts of The States of Guernsey.

10. Retained funds

Retained funds represent accumulated surpluses which provide working capital and resources for the operation of the College.

11. Controlling party

Throughout the year the College was under the control of the Board of Directors acting in concert. In the opinion of the Board of Directors there is no single controlling party as defined by FRS 102 as no party has the ability to direct the financial and operating policies of the College with a view to gaining economic benefits from their direction.

Notes to the Financial Statements (continued)
For the year ended 31 August 2020

12. Related party disclosures

Elizabeth College operates a central accounting system administered by the Finance Bursar, elements of which cover both the Upper School and Junior School of the College's activities. The Junior School has its own bank account however, a majority of the operating receipts and some operating expenditure related to the College's activities, whether related to the Upper School or otherwise, pass through common bank accounts, all of which are included in the Statement of Financial Position within these financial statements. The net movement arising from cash transactions relating to non-Upper School activities are disclosed in the Statement of Cash Flows as a movement on the current account operated between the two Schools (note 7). Periodically and at each year end, account balances within the central accounting system, including individual debtor and creditor account balances, are allocated as appropriate into the financial statements of the different Schools.

Included in prepayments and accrued income is £186 (2019: £3,756) due from the Ernest Gardner Bursary Fund (note 7).

During the year ended 31 August 2020 an amount of £194,484 (2019: £187,060) was recharged from the Upper School of the College to the Junior School in relation to the employment expenses of administrative and accounting staff, a proportion of whose duties relate to the Junior School. At 31 August 2020 £1,305,296 (2019: £1,157,209) was due to Elizabeth College – Junior School and is included in creditors (note 8). The current account due to the Elizabeth College – Junior School is interest free, unsecured and payable upon demand.

Key management personnel includes all directors and a number of senior managers across the College who together have authority and responsibility for planning, directing and controlling the activities of the College. The Directors are unpaid. The total compensation paid to key management personnel for services provided to the College was £458,403 (2019: £458,264).

13. Elizabeth College Foundation

The Elizabeth College Foundation comprises two charitable trusts (one UK and one Guernsey) which were established in 2006 to raise funds, principally from parents and alumni of Elizabeth College, to enable Elizabeth College to undertake projects and activities which might otherwise be beyond the means of the school to finance from its own operations. The Trustees of the Foundation trusts, although initially appointed by the College's Board of Directors, are independent of Elizabeth College and are required to act in accordance with the terms of the relevant trust deeds.

The basis upon which donations to the Foundation have been requested from donors is such that all monies donated are to be retained within the Foundation until such time as they may be expended as grants towards the funding of specified projects or activities for the benefit of Elizabeth College.

Included within donations is £4,725,001 which was donated from the Elizabeth College Foundation and used to purchase the Perrot Court building (note 5).

Other than donations and interest arising on retained funds, the Foundation trusts have no other sources of income. Therefore, the Foundation is reliant upon Elizabeth College to meet a substantial proportion of its annual running costs, including the employment of Foundation staff involved with fund-raising, clerical support and project development. Included in administrative expenses for the year are costs of £68,997 (2019: £77,120) paid on behalf of the Foundation.

14. Post balance sheet event

The second COVID-19 lockdown referred to in the Report of the Directors is considered to be a non-adjusting event after the reporting date, and no adjustment is made in the financial statements as a result.

THE LADIES' COLLEGE, GUERNSEY

**ANNUAL REPORT AND
FINANCIAL STATEMENTS**

31 AUGUST 2020

THE LADIES' COLLEGE, GUERNSEY

ANNUAL REPORT AND FINANCIAL STATEMENTS

FOR THE YEAR ENDED 31 AUGUST 2020

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THE LADIES' COLLEGE, GUERNSEY

ANNUAL REPORT AND FINANCIAL STATEMENTS

FOR THE YEAR ENDED 31 AUGUST 2020

INFORMATION

MEMBERS OF THE BOARD OF GOVERNORS

Advocate Caroline Chan

Mr Brian Acton

Mr Peter Miller

Ms Cathy Perkins

Dr Mary Short

Deputy Heidi Soulsby

Mrs Catharine Walter

ADDRESS

The Ladies' College

Les Gravees

St Peter Port

Guernsey

GY1 1RW

INDEPENDENT AUDITOR

BDO Limited

P O Box 180

Place du Pre

Rue du Pre

St Peter Port

Guernsey

GY1 3LL

THE LADIES' COLLEGE, GUERNSEY

REPORT OF THE BOARD OF GOVERNORS

FOR THE YEAR ENDED 31 AUGUST 2020

The Board of Governors submit their report and the audited financial statements of The Ladies' College, Guernsey (the "College") for the year ended 31 August 2020.

BOARD OF GOVERNORS' RESPONSIBILITIES STATEMENT

The Board of Governors (the "Board") is responsible for preparing financial statements for each financial year which give a true and fair view of the state of affairs of the College and of the surplus or deficit of the College for that period and are in accordance with applicable laws. The Board have elected to prepared the financial statements in accordance with Financial Reporting Standard 102, The Financial Reporting Standard applicable in the UK and Republic of Ireland. In preparing those financial statements the Board is required to:

- select suitable accounting policies and then apply them consistently;
- make judgements and estimates that are reasonable and prudent; and
- prepare the financial statements on the going concern basis unless it is inappropriate to presume that the College will continue in operations.

The Board is responsible for keeping proper accounting records which disclose with reasonable accuracy at any time the financial position of the College and which enable them to ensure that the financial statements have been properly prepared in accordance with applicable law. It is also responsible for safeguarding the assets of the College and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

DISCLOSURE OF INFORMATION TO AUDITOR

Each of the persons who are on the Board of Governors at the time that this report is approved has confirmed that:

- so far as each Governor is aware, there is no relevant audit information of which the College's auditor is unaware; and
- each Governor has taken all of the steps that ought to have been taken as a Governor in order to be aware of any audit information and to establish that the College's auditor is aware of that information.

PRINCIPAL ACTIVITY

The Ladies' College, founded in 1872, is a girls' day school located in St Peter Port in Guernsey. The College includes the Senior School and Sixth Form which are reported on in these financial statements. The Ladies' College, Melrose and the Pre-Preparatory Department are reported in separate financial statements as The Ladies' College - Melrose.

The principal activity of the College is the provision of education.

RESULTS

The results of the College for the year are set out in detail on page 7.

THE LADIES' COLLEGE, GUERNSEY

REPORT OF THE BOARD OF GOVERNORS (CONTINUED)

FOR THE YEAR ENDED 31 AUGUST 2020

GOING CONCERN - COVID 19

As a result of the novel coronavirus pandemic (COVID-19) declared in March 2020, there has been a negative impact on the College's results due to the lockdown imposed by the States of Guernsey. The Board is satisfied that the College will continue to meet its liabilities as they fall due and have adopted a going concern basis of preparation in the financial statements for the reasons set out in note 3 to the financial statements.

BOARD OF GOVERNORS

The Board of Governors of the College who served during the year and to date were:-

Advocate Caroline Chan
Mr Brian Acton
Mr Peter Miller
Ms Cathy Perkins
Dr Mary Short
Deputy Heidi Soulsby
Mrs Catharine Walter

INDEPENDENT AUDITOR

BDO Limited have expressed their willingness to continue in office.

APPROVED BY THE BOARD OF GOVERNORS

Caroline Chan
.....
Advocate Caroline Chan
Chair

Peter Miller
.....
Mr Peter Miller
Governor

Date: 8 December 2020

INDEPENDENT AUDITOR'S REPORT TO THE BOARD OF GOVERNORS OF THE LADIES' COLLEGE

Opinion

We have audited the non-statutory financial statements of The Ladies' College, Guernsey (the "College") for the year ended 31 August 2020 which comprise the Statement of Income and Retained Funds, the Balance Sheet, the Statement of Cash Flows and notes to the financial statements, including a summary of significant accounting policies. The financial reporting framework that has been applied in their preparation is applicable law and including the Financial Reporting Standard 102, 'The Financial Reporting Standard applicable in the UK and Republic of Ireland' (United Kingdom Generally Accepted Accounting Practice).

In our opinion, the financial statements:

- give a true and fair view of the state of the College's affairs as at 31 August 2020 and of its surplus for the year then ended; and
- have been properly prepared in accordance with United Kingdom Generally Accepted Accounting Practice.

Basis for opinion

We conducted our audit in accordance with International Standards on Auditing (UK) (ISAs (UK)) and applicable law. Our responsibilities under those standards are further described in the Auditor's responsibilities for the audit of the financial statements section of our report. We are independent of the College in accordance with the ethical requirements relevant to our audit of the financial statements in the UK, including the Financial Reporting Council's (FRC's) Ethical Standard and we have fulfilled our other ethical responsibilities in accordance with these requirements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Conclusions relating to going concern

We have nothing to report in respect of the following matters in relation to which the ISAs (UK) require us to report to you where:

- the Board of Governors' use of the going concern basis of accounting in the preparation of the financial statements is not appropriate; or
- the Board of Governors have not disclosed in the financial statements any identified material uncertainties that may cast significant doubt about the College's ability to continue to adopt the going concern basis of accounting for a period of at least twelve months from the date when the financial statements are authorised for issue.

Other information

The Board of Governors are responsible for the other information. The other information comprises the information included in the Annual Report, other than the financial statements and our auditor's report thereon. Our opinion on the financial statements does not cover the other information and, except to the extent otherwise explicitly stated in our report, we do not express any form of assurance conclusion thereon.

In connection with our audit of the financial statements, our responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or our knowledge obtained in the audit or otherwise appears to be materially misstated. If we identify such material inconsistencies or apparent material misstatements, we are required to determine whether there is a material misstatement in the financial statements or a material misstatement of the other information. If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact.

INDEPENDENT AUDITOR'S REPORT TO THE BOARD OF GOVERNORS OF THE LADIES' COLLEGE (CONTINUED)

Responsibilities of the Board of Governors

As explained more fully in the Board of Governors' Responsibilities Statement, the Board of Governors are responsible for the preparation of the financial statements and for being satisfied that they give a true and fair view, and for such internal control as the Board of Governors determine is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the Board of Governors are responsible for assessing the College's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the Board of Governors either intend to liquidate the College or to cease operations, or have no realistic alternative but to do so.

Auditor's responsibilities for the audit of the financial statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISAs (UK) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

A further description of our responsibilities for the audit of the financial statements is located at the FRC's website at: <https://www.frc.org.uk/auditorsresponsibilities>. This description forms part of our auditor's report.

Use of our report

This report is made solely to the College's Board of Governors, as a body in terms of our engagement letter dated 4 October 2018. Our audit work has been undertaken so that we might state to the College's Board of Governors those matters we are required to state to them in an auditor's report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the College and the College's Board of Governors as a body, for our audit work, for this report, or for the opinions we have formed.

BDO Limited
Chartered Accountants
Place du Pré
Rue du Pré
St Peter Port
Guernsey

Date: 8 December 2020

THE LADIES' COLLEGE, GUERNSEY**STATEMENT OF INCOME AND RETAINED FUNDS****FOR THE YEAR ENDED 31 AUGUST 2020**

	Note	2020	2019
		£	£
Income	2(a)		
States grant		251,548	127,916
Fees receivable		4,284,247	4,389,005
Student registration fees		4,700	6,152
Miscellaneous income		38,047	33,855
		<hr/>	<hr/>
		4,578,542	4,556,928
Expenditure			
School expenditure	2(b)	(4,457,431)	(4,259,525)
		<hr/>	<hr/>
Operating surplus		121,111	297,403
Fundraising and other donations received	2(c)	36,896	93,390
Bank interest received		1,811	3,173
Interest payable	2(d)	(54,520)	(60,877)
		<hr/>	<hr/>
Surplus for the year		105,298	333,089
Retained funds at 1 September		4,376,177	4,043,088
		<hr/>	<hr/>
Retained funds at 31 August		4,481,475	4,376,177
		<hr/>	<hr/>

There were no recognised gains or losses other than the surplus for the year.

All amounts relate to continuing activities.

The notes on pages 10 to 18 form an integral part of these financial statements.

THE LADIES' COLLEGE, GUERNSEY

BALANCE SHEET

AS AT 31 AUGUST 2020

	Note	2020 £	2019 £
Fixed assets			
Tangible assets	4	6,794,026	6,638,882
Current assets			
Stock		2,891	2,551
Fee debtors		48,946	24,844
Other debtors and prepayments	5	142,010	180,275
Cash at bank and in hand	6	812,083	1,041,964
		<hr/>	<hr/>
		1,005,930	1,249,634
Creditors - amounts falling due within one year	7	(950,514)	(983,417)
		<hr/>	<hr/>
Net current assets		55,416	266,217
		<hr/>	<hr/>
Total assets less current liabilities		6,849,442	6,905,099
Creditors - amounts falling due after more than one year	8	(2,367,967)	(2,528,922)
		<hr/>	<hr/>
Net assets		4,481,475	4,376,177
		<hr/>	<hr/>
Capital and reserves			
Retained funds		4,481,475	4,376,177
		<hr/>	<hr/>

Approved by the Board of Governors and authorised for issue on their behalf by:

Caroline Chan

.....

Advocate Caroline Chan

Chair

Date: 8 December 2020

The notes on pages 10 to 18 form an integral part of these financial statements.

THE LADIES' COLLEGE, GUERNSEY

STATEMENT OF CASH FLOWS

AS AT 31 AUGUST 2020

	Note	2020 £	2020 £	2019 £	2019 £
Cash flows from operating activities					
Surplus for the financial year		105,298		333,089	
Adjustments for:					
Depreciation	4	294,813		260,003	
Loss on disposal of fixed asset		-		1,229	
Interest receivable		(1,811)		(3,173)	
Interest payable		54,520		60,877	
Increase in stock		(340)		(2,551)	
Decrease/(increase) in operating debtors		14,163		(138,877)	
Decrease in operating creditors		(35,594)		(59,393)	
Cash from operations		<u>431,049</u>		<u>451,204</u>	
Interest received		1,811		3,173	
Net cash generated from operations			<u>432,860</u>		<u>454,377</u>
Cash flows from investing activities					
Tangible assets purchased	4	(449,957)		(121,853)	
Net cash used in investing activities			<u>(449,957)</u>		<u>(121,853)</u>
Cash flows from financing activities					
Repayment of bank loan		(135,712)		(123,823)	
Interest paid on bank loan		(48,789)		(59,177)	
Decrease in account with Melrose		-		(250,000)	
Finance lease payments		(28,283)		(11,324)	
Net cash outflow from financing activities			<u>(212,784)</u>		<u>(444,324)</u>
Net (decrease) / increase in cash and cash equivalents			<u>(229,881)</u>		<u>(111,800)</u>
Cash and cash equivalents at the beginning of the year	6		1,041,964		1,153,764
Cash and cash equivalents at the end of the year	6		<u>812,083</u>		<u>1,041,964</u>

The notes on pages 10 to 18 form an integral part of these financial statements.

THE LADIES' COLLEGE, GUERNSEY
NOTES TO THE FINANCIAL STATEMENTS

FOR THE YEAR ENDED 31 AUGUST 2020

1. GENERAL INFORMATION

The College is established under The Ladies' College (Guernsey) Law, 1962 as amended. The registered address is set out on the information page and the principal activity of the College is the provision of education.

2. ACCOUNTING POLICIES

Basis of preparation

The financial statements have been prepared on the going concern basis, under the historical cost convention and in accordance with Financial Reporting Standard 102, The Financial Reporting Standard applicable in the UK and Republic of Ireland ("FRS 102") as elected by the Board of Governors (the "Board").

The preparation of financial statements in compliance with FRS 102 requires the use of certain critical accounting estimates. It also requires management to exercise judgement in applying accounting policies (see note 3).

The following principal accounting policies have been consistently applied:

(a) GOING CONCERN

As a result of the novel coronavirus pandemic (COVID-19) declared in March 2020, there has been a negative impact on the College's results due to the lockdown imposed by the States of Guernsey. The Board is satisfied that the College will continue to meet its liabilities as they fall due and have adopted a going concern basis of preparation in the financial statements for the reasons set out in note 3 to the financial statements.

(b) INCOME RECOGNITION

Fee income is recognised as receivable on the first day of each term for which pupils are enrolled since it is non-refundable. Fee income received in advance of the term is deferred and released on the first day of the applicable term.

The States' Block Grant relating to the General (Non Special Place Holder) Grant is recognised termly on receipt. Under a States Resolution of 28 September 2017, grant aid has been agreed for a further 7 year period from 1 September 2019.

Student registration fees and miscellaneous income are recognised on receipt. All other operating income is recognised on an accruals basis.

(c) SCHOOL EXPENDITURE RECOGNITION

School supplies and equipment including books and teaching materials are recognised in relation to the academic year in which they are to be used as designated by the school budget agreed by the Governors. All other expenses are recognised in the period to which they relate.

THE LADIES' COLLEGE, GUERNSEY
NOTES TO THE FINANCIAL STATEMENTS

FOR THE YEAR ENDED 31 AUGUST 2020

2. ACCOUNTING POLICIES (continued)

(d) FUNDRAISING AND OTHER DONATIONS RECEIVED

'Gift for learning' donations receivable for the phase three development of the College premises are recognised on a cash receipts basis. All other donations are recognised when entitlement to the funds is certain.

(e) INTEREST PAYABLE

Interest payable is charged to the Statement of Income and Retained Funds over the term of the debt using the effective interest method so that the amount is at a constant rate on the carrying amount.

(f) TAXATION

The College is registered under the Charities and Non-Profit Organisations (Registration) (Guernsey) Law, 2008 and has therefore been granted exempt status under Section 40(k) of the Income Tax (Guernsey) Law, 1975. The College's income is therefore not subject to taxation.

(g) TANGIBLE FIXED ASSETS AND DEPRECIATION

Tangible fixed assets are stated at historical cost, net of depreciation and any provision for impairment. Assets with a cost of £1,000 or more are capitalised as tangible assets and this level is periodically reviewed by the Board, together with a review of the need for any impairment reviews. Historical cost includes expenditure that is directly attributable to bringing the asset to the location and condition necessary for it to be capable of operating in the manner intended by management.

At each reporting date management assesses whether there is any indication of impairment. If such indication exists, the recoverable amount of the asset is determined which is the higher of its fair value less costs to sell and its value in use. An impairment loss is recognised in the Statement of Income and Retained Funds where the carrying amount exceeds the recoverable amount.

Freehold land is not depreciated. Depreciation is charged on leasehold property over the expected lease term of 50 years (see notes 3, 10 and 11). Depreciation on other tangible fixed assets is calculated to write down their cost to their estimated residual values over the period of their estimated useful economic lives, at the following annual rates: -

Leasehold improvements	- 10% straight line
Fixtures, fittings, and equipment	- between 10% and 33⅓% straight line
Computer equipment	- 33⅓% straight line
Assets held under lease	- 33⅓% straight line

The assets' residual values, useful lives and depreciation methods are reviewed, and adjusted prospectively if appropriate, if there is an indication of a significant change since the last reporting date. Asset under construction will be depreciated once they have been brought into use.

Gains and losses on disposals are determined by comparing the proceeds with the carrying amount and are recognised within 'School expenditure' in the Statement of Income and Retained Funds.

(h) FINANCIAL INSTRUMENTS

THE LADIES' COLLEGE, GUERNSEY
NOTES TO THE FINANCIAL STATEMENTS

FOR THE YEAR ENDED 31 AUGUST 2020

2. ACCOUNTING POLICIES (continued)

(h) FINANCIAL INSTRUMENTS (continued)

Financial assets that are measured at amortised cost are assessed at the end of each reporting period for objective evidence of impairment. If objective evidence of impairment is found, an impairment loss is recognised in the Statement of Income and Retained Funds.

Short term debtors and creditors are measured at the transaction price.

Financial assets and liabilities are offset and the net amount reported in the Balance Sheet when there is an enforceable right to set off the recognised amounts and there is an intention to settle on a net basis or to realise the asset and settle the liability simultaneously.

(i) CASH AT BANK AND IN HAND

Cash at bank and in hand is represented by cash, current bank accounts and deposits with financial institutions repayable without penalty on notice of more than three months and have insignificant risk of change in value.

(j) FINANCIAL LIABILITIES

Financial liabilities are classified according to the substance of the financial instrument's contractual obligations, rather than the financial instrument's legal form. Obligations for loans and borrowings are recognised when the College becomes party to the related contracts and are initially measured at the fair value of the consideration received less directly attributable transaction costs. After initial recognition, interest bearing loans and borrowings are subsequently measured at amortised cost using the effective interest method. A liability is derecognised when the contract that gives rise to it is settled, sold, cancelled or expires.

(k) PENSION COSTS

The College operates a defined benefit multi-employer pension scheme and superannuation contributions are charged to the Statement of Income and Retained Funds when they fall due. Once the contributions have been paid the College has no further payment obligations.

(l) RETAINED FUNDS

Retained funds represent cumulative surpluses and deficits net of any adjustments.

(m) PRIZE FUNDS AND BEQUESTS

Prize funds and other charitable bequests are not included in these financial statements as they do not constitute part of the day-to-day activities of the College.

THE LADIES' COLLEGE, GUERNSEY
NOTES TO THE FINANCIAL STATEMENTS

FOR THE YEAR ENDED 31 AUGUST 2020

3. SIGNIFICANT JUDGEMENTS IN APPLYING ACCOUNTING POLICIES AND KEY SOURCES OF ESTIMATION UNCERTAINTY

The Board of Governors have made the following significant judgements in the preparation of these financial statements:

Tangible fixed assets (note 4)

Tangible fixed assets are depreciated over their useful lives taking into account residual values, where appropriate. The actual useful lives of the assets and residual values are reviewed annually and may vary on a number of factors. The leasehold property is depreciated over 50 years since, in the judgement of the Board of Governors, the requirements will be met to allow the Board to exercise the option to extend the current lease from 25 years to 50 years (see also notes 10 and 11). The Board have therefore also recognised the financial commitment of the lease over that period (see note 11).

Going concern

As a result of the novel coronavirus pandemic (COVID-19) declared in March 2020, there has been a negative impact on the College's results due to the lockdown imposed by the States of Guernsey. The Board of Governors have produced the financial statements on a going concern basis as a result of the following:

- (i) A plan has been put in place to ensure that the College will be in a position to remain operational should any further lockdowns be required;
- (ii) A review of the budget and cashflows for the next 15 months demonstrates that the College will be in a position to continue to operate as planned; and
- (iii) The banking and loan arrangements currently in place will enable the College to continue to meet its anticipated cashflow requirements and its liabilities as they fall due.

4. TANGIBLE ASSETS

In 2015 the College entered into an agreement with the Treasury and Resources department of the States of Guernsey for a lease of the land and buildings used by the College. The lease runs through to 31 December 2039 with an option to extend to 31 December 2065.

Included within the leasehold property are capitalised interest and finance costs amounting to £33,000 (2019: £33,000).

The College is party to a finance lease agreement for office equipment comprising of multi function devices and printers. Capital and interest payments are payable quarterly over a 3 year period. Total interest of £10,506 will be paid over the term of the lease.

Assets under construction primarily relate to the refurbishment of an existing building to create a Food Technology facility and are expected to be brought into use during the year to 31 August 2021.

THE LADIES' COLLEGE, GUERNSEY
NOTES TO THE FINANCIAL STATEMENTS

FOR THE YEAR ENDED 31 AUGUST 2020

4. TANGIBLE ASSETS (continued)

	Freehold <u>land</u> £	Leasehold <u>property</u> £	Leasehold <u>improvements</u> £	Fixtures fitting <u>and equipment</u> £	Computer <u>equipment</u> £	Assets held <u>under lease</u> £	Assets under <u>construction</u> £	<u>Total</u> £
COST								
At 1 September 2019	1	6,340,510	66,496	576,530	224,553	73,224	-	7,281,314
Additions	-	-	-	94,965	55,216	-	299,776	449,957
At 31 August 2020	1	6,340,510	66,496	671,495	279,769	73,224	299,776	7,731,271
DEPRECIATION								
At 1 September 2019	-	380,337	6,411	133,156	118,461	4,067	-	642,432
Charge for the year	-	126,810	6,650	63,038	73,909	24,406	-	294,813
At 31 August 2020	-	507,147	13,061	196,194	192,370	28,473	-	937,245
NET BOOK VALUE								
At 31 August 2020	1	5,833,363	53,435	475,301	87,399	44,751	299,776	6,794,026
At 31 August 2019	1	5,960,173	60,085	443,374	106,092	69,157	-	6,638,882

THE LADIES' COLLEGE, GUERNSEY
NOTES TO THE FINANCIAL STATEMENTS

FOR THE YEAR ENDED 31 AUGUST 2020

5. OTHER DEBTORS AND PREPAYMENTS

	2020	2019
	£	£
Prepayments	121,136	148,710
Other debtors	20,874	31,565
	<hr/>	<hr/>
	142,010	180,275
	<hr/>	<hr/>

6. CASH AT BANK AND IN HAND

	2020	2019
	£	£
Cash in hand	506	1,171
Operating cash	593,706	850,395
	<hr/>	<hr/>
	594,212	851,566
	<hr/>	<hr/>
Gift for Learning	217,871	190,398
	<hr/>	<hr/>
	812,083	1,041,964
	<hr/>	<hr/>

The Gift for Learning funds relate to donations received for the phase three development of the College premises.

7. CREDITORS – AMOUNTS FALLING DUE WITHIN ONE YEAR

	2020	2019
	£	£
School and administrative expenses	462,897	408,530
Fees for autumn term received in advance	277,873	367,834
Bank loan (see note 8)	184,500	184,500
Net capital obligations under finance leases	25,244	22,553
	<hr/>	<hr/>
	950,514	983,417
	<hr/>	<hr/>

THE LADIES' COLLEGE, GUERNSEY
NOTES TO THE FINANCIAL STATEMENTS

FOR THE YEAR ENDED 31 AUGUST 2020

8. CREDITORS – AMOUNTS FALLING DUE AFTER ONE YEAR

	2020	2019
	£	£
Bank loan	2,347,612	2,483,324
Net capital obligations under finance leases	20,355	45,598
	<hr/>	<hr/>
	2,367,967	2,528,922
	<hr/>	<hr/>

The maturity of the bank loan is as follows:

	2020	2019
	£	£
Repayable in instalments:		
Within 1 year	184,500	184,500
Later than 1 year and not later than 5 years	738,000	738,000
Later than 5 years	1,609,612	1,745,324
	<hr/>	<hr/>
	2,532,112	2,667,824
	<hr/>	<hr/>

The bank loan with the Royal Bank of Scotland International Limited (trading as NatWest) (the “Bank”) was obtained to assist with the construction of Phase 3 including the Wessex Wing. The loan of £3 million is repayable over 20 years from January 2017 and interest is payable at 1.45% above the Bank of England Base Rate. The States of Guernsey has undertaken to assume The Ladies’ College’s obligations to the Bank under the loan agreement should there be an event of default under that loan agreement.

9. PENSION COSTS

A majority of the employees of the College are members of the States of Guernsey Superannuation Scheme (“the Scheme”). This is a defined benefit pension scheme, funded by contributions from both employer and employee, at rates which are determined on the basis of actuarial advice and which are calculated to spread the expected cost of benefits to employees over the period of those employees’ expected working lives.

The Scheme is a multi-employer scheme and the level of contributions made to the scheme by each employer will be affected by actuarial risks relating to the employees of other employers. It is not possible for the underlying pension assets and liabilities within the Scheme relating to the employees of the College to be determined on a reasonable and consistent basis, as required by FRS 102. In addition, the Board of Governors considers that the additional costs which would be incurred were it possible to do so, in providing such information considerably outweigh any benefit to the proposed users of these financial statements.

THE LADIES' COLLEGE, GUERNSEY
NOTES TO THE FINANCIAL STATEMENTS

FOR THE YEAR ENDED 31 AUGUST 2020

9. PENSION COSTS (continued)

The last actuarial valuation of the Scheme was conducted at 31 December 2016. At that date the actuarial value of the assets relating to the “Combined pool” within the overall Scheme, to which the College’s staff belong, represented 93.5% of the actuarial valuation of the liabilities relating to that group. The rate of employer’s contribution remained at 14.1% in respect of all staff after the valuation. The scheduled review for 2019 has been deferred for a year due to the novel coronavirus pandemic (COVID-19).

The total amount of superannuation contributions payable by the College to the Scheme for the year ended 31 August 2020 was £413,415 (2019: £399,175). At 31 August 2020 the amount of outstanding contributions not paid over to the Scheme was £104,672 (2019: £100,239).

Further details relating to the funding of the superannuation scheme are provided in the Superannuation Fund section of the accounts of the States of Guernsey.

10. CAPITAL COMMITMENT

In 2015 the College entered into an agreement with the Treasury and Resources department of the States of Guernsey for a lease of the land and buildings used by the College. Under the terms of the lease the College is required to invest an aggregate of not less than £10,000,000 on the property at Ladies College by 31 December 2035. The amount is subject to increase in line with the Guernsey retail price index and does not include finance costs. As at 31 August 2020 a total amount of £6,750,373 has been invested (2019: £6,750,373).

11. FINANCIAL COMMITMENT

The College has entered into a lease over the land and buildings occupied by the College. The lease runs to 31 December 2039 with an option to extend to 31 December 2065 provided that capital has been invested as outlined in note 10.

The total future minimum rentals payable under the leases:

	2020	2019
	£	£
Within 1 year	28,538	29,220
Later than 1 year and not later than 5 years	22,229	50,513
Later than 5 years	10,160	10,414
	<hr/>	<hr/>
	60,927	90,147
	<hr/>	<hr/>

THE LADIES' COLLEGE, GUERNSEY
NOTES TO THE FINANCIAL STATEMENTS

FOR THE YEAR ENDED 31 AUGUST 2020

12. NET DEBT RECONCILIATION

	1 September 2019	Cash flows	31 August 2020
	£	£	£
Cash at bank and in hand	1,041,964	(229,881)	812,083
Obligations under finance leases	(68,151)	22,552	(45,599)
Bank loan	(2,667,824)	135,712	(2,532,112)
	<hr/>	<hr/>	<hr/>
Net debt	(1,694,011)	(71,617)	(1,765,628)
	<hr/>	<hr/>	<hr/>

There are no formal restrictions over the use of the cash at bank and in hand which comprise cash at bank and in hand together with the Gift for Learning cash balance as detailed in note 6.

13. CONTROLLING PARTY

Throughout the year the College was under the control of the Board of Governors acting in concert. In the opinion of the Board of Governors there is no controlling party as defined by FRS 102 as no party has the ability to direct the financial and operating policies of the College with a view to gaining economic benefit from their direction.

14. RELATED PARTY TRANSACTIONS

Key management personnel includes all Governors and a number of senior managers across the College who, together, have authority and responsibility for planning, directing and controlling the activities of the College. The Governors are unpaid. The total compensation paid to key management personnel for services provided to the College was £523,105 (2019: £513,021).

During the year the College received £1,020 (2019: £1,020) in the form of donations from members of the Board of Governors and their close family members. These amounts have been disclosed within fundraising donations received in the Statement of Income and Retained Funds.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* ECONOMIC DEVELOPMENT

PUBLIC TRUSTEE ANNUAL REPORT AND AUDITED ACCOUNTS FOR THE YEAR ENDED
31 DECEMBER 2019

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

27th May 2021

Dear Sir/Madam,

The Public Trustee (Bailiwick of Guernsey) Law, 2002 sets out in Section 6(2) that the Committee *for* Economic Development shall submit the report and accounts on the exercise of the Public Trustee's functions for the preceding year to the States of Deliberation. I am pleased to enclose a copy of the Public Trustee's report and audited accounts for the year ended 31 December 2019.

I should be grateful if you would arrange to publish this submission as an Appendix to the next available Billet d'Etat.

Yours sincerely,



Deputy Neil Inder
President

OFFICE OF THE PUBLIC TRUSTEE

STATEMENT OF ACCOUNT

31ST DECEMBER 2019

LINCE SALISBURY

Chartered Accountants

Avenue House

St. Julian's Avenue

St. Peter Port

GUERNSEY

OFFICE OF THE PUBLIC TRUSTEE

Office holder

The position of Public Trustee ("PT") throughout the period, at the year end and subsequent to the year end was held by:

Mr L. Gonzalez (appointed 16 May 2018)

Statement of responsibilities for the preparation of financial statements

In accordance with The Public Trustee (Bailiwick of Guernsey) Law, 2002 the PT is responsible for the preparation of a statement of account for each financial year which gives a true and fair view of the state of affairs of The Office of the Public Trustee. To ensure a true and fair view is reported the PT has continued to:

- apply suitable accounting policies on a consistent basis;
- make judgements and estimates that are reasonable and prudent;
- state whether applicable accounting standards have been followed subject to any material departures disclosed and explained in the accounts; and
- prepare the statement of account on a going concern basis, unless it is inappropriate to do so.

The PT acknowledges responsibility for keeping proper accounting records which disclose with reasonable accuracy the financial position of The Office of the Public Trustee.

It is the responsibility of The Office of the Public Trustee to identify and install a system of internal controls, including financial controls, which is adequate for its own purposes. Thus The Office of the Public Trustee is responsible for safeguarding the assets in its care and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

The PT reports that so far as the PT is aware there is no relevant audit information of which the auditors are unaware and that the PT has taken all steps to make himself aware of such audit information and to establish that the auditors are aware of that information.

INDEPENDENT AUDITOR'S REPORT TO THE OFFICE OF THE PUBLIC TRUSTEE

We have audited the financial statements of The Office of Public Trustee for the year ended 31st December, 2019 on pages 4 to 8 which comprise the Statement of Income, the Statement of Financial Position and notes to the financial statements, including a summary of significant accounting policies. The financial reporting framework that has been applied in their preparation is applicable law and United Kingdom Accounting Standards, including Financial Reporting Standard 102 The Financial Reporting Standard applicable in the UK and Republic of Ireland (United Kingdom Generally Accepted Accounting Practice).

In our opinion the financial statements:

- give a true and fair view of the state of The Office's affairs as at 31st December 2019 and of its result for the year then ended;
- have been prepared in accordance with United Kingdom Generally Accepted Accounting Practice; and
- the financial statements have been properly prepared in accordance with The Public Trustee (Bailiwick of Guernsey) Law, 2002.

Basis for opinion

We conducted our audit in accordance with International Standards on Auditing (UK) (ISAs (UK)) and applicable law. Our responsibilities under those standards are further described in the Auditor's responsibilities for the audit of financial statements section of our report. We are independent of the office in accordance with the ethical requirements that are relevant to our audit of the financial statements, including the Financial Reporting Council's Ethical Standard, and we have fulfilled our other ethical responsibilities in accordance with these requirements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Conclusion relating to going concern

We have nothing to report in respect of the following matters in relation to which the ISAs (UK) require us to report to you where:

- the Public Trustee's use of the going concern basis of accounting in the preparation of the financial statements is not appropriate; or
- the Public Trustee has not disclosed in the financial statements any identified material uncertainties that may cast significant doubt about the office's ability to continue to adopt the going concern basis of accounting for a period of at least twelve months from the date when the financial statements are authorised for issue.

Other information

The Public Trustee is responsible for the other information. The other information comprises page 1. Our opinion on the financial statements does not cover the other information and, except to the extent otherwise explicitly stated in our report, we do not express any form of assurance conclusion thereon. In connection with our audit of the financial statements, our responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or our knowledge obtained in the audit or otherwise appears to be materially misstated. If we identify such material inconsistencies or apparent material misstatements, we are required to determine whether there is a material misstatement in the financial statements or a material misstatement of the other information. If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

INDEPENDENT AUDITOR'S REPORT TO THE OFFICE OF THE PUBLIC TRUSTEE

Matters on which we are required to report by exception

In the light of the knowledge and understanding of the office and its environment obtained in the course of the audit, we have not identified material misstatements in the information contained in page 1. We have nothing to report in respect of the following matters in relation to which The Public Trustee (Bailiwick of Guernsey) Law, 2002 requires us to report to you if, in our opinion:

- adequate accounting records have not been kept; or
- the financial statements are not in agreement with the accounting records; or
- we have not received all the information and explanations we require for our audit.

Responsibilities of the Public Trustee

As explained more fully in the Public Trustee's responsibilities statement set out on page 1, the Public Trustee is responsible for the preparation of the financial statements and for being satisfied that they give a true and fair view, and for such internal control as the Public Trustee determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error. In preparing the financial statements, the Public Trustee is responsible for assessing the ability of the office of the Public Trustee to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the Public Trustee either seeks to liquidate the Office or to cease operations, or has no realistic alternative but to do so (which in the absence of statutory commission or information under S.1(1) of the Public Trustee (Bailiwick of Guernsey) Law 2002 may not occur).

Auditor's responsibilities for the audit of the financial statements

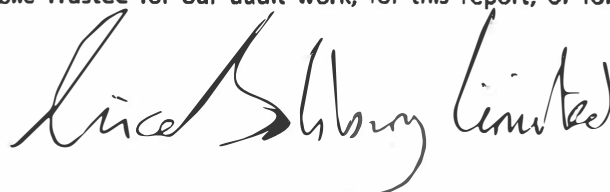
Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISAs (UK) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements. A further description of our responsibilities for the audit of the financial statements is located on the Financial Reporting Council's website. This description forms part of our auditor's report.

Use of our report

This report is made solely to the Office of the Public Trustee as a body, in accordance with Section 6 of The Public Trustee (Bailiwick of Guernsey) Law, 2002. Our audit work has been undertaken so that we might state to the Public Trustee those matters we are required to state to them in an auditor's report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the Public Trustee for our audit work, for this report, or for the opinions we have formed.

12th March 2021

**AVENUE HOUSE
ST. JULIAN'S AVENUE
ST. PETER PORT
GUERNSEY**



**LINCE SALISBURY LIMITED
CHARTERED ACCOUNTANTS**

OFFICE OF THE PUBLIC TRUSTEE

STATEMENT OF INCOME

FOR THE YEAR ENDED 31ST DECEMBER 2019

	Note	2019 £	2018 Adjusted £	2018 Original £
Receipts				
Grant from States of Guernsey	1(b)	103,974	(10,411)	(10,411)
Public Trustee Cost Recoveries	1(c)	74,025	52,835	708,652
		<hr/>	<hr/>	<hr/>
		177,999	42,424	698,241
		<hr/>	<hr/>	<hr/>
Expenditure	1(d)			
Audit fees		4,500	4,250	4,250
Bank charges		31	26	26
Office administration		1,654	3,844	3,844
Contracts for services		142,499	48,458	48,458
Legal fees		27,747	-	-
Trust and company administration fees		-	-	655,817
		<hr/>	<hr/>	<hr/>
		176,431	56,578	712,395
		<hr/>	<hr/>	<hr/>
Operating surplus/(deficit) before tax		1,568	(14,154)	(14,154)
Tax	2	-	-	-
		<hr/>	<hr/>	<hr/>
Surplus/(Deficit) for the year		£1,568	£(14,154)	£(14,154)

OFFICE OF THE PUBLIC TRUSTEE

STATEMENT OF FINANCIAL POSITION

AT 31ST DECEMBER 2019

	Note	2019 £	2018 £ Adjusted	2018 £ Original
Current Assets				
Debtors		2,402,121	1,499,322	1,877,944
Bank		11,871	22,691	22,691
		<hr/>		
		2,413,992	1,522,013	1,900,635
		<hr/>		
Current liabilities				
Potential liability - grants	3	2,306,115	1,499,322	1,759,213
Accruals	3	20,057	10,464	10,464
Creditors	3	74,025	-	118,731
		<hr/>		
		2,400,197	1,509,786	1,888,408
		<hr/>		
Net assets		£13,795	£12,227	£12,227
		<hr/>		
Funded by:				
The Public Trustee Fund	2, 4			
Opening		12,227	26,381	26,381
Surplus/(Deficit) for the year		1,568	(14,154)	(14,154)
		<hr/>		
Closing		£13,795	£12,227	£12,227
		<hr/>		

The statement of account was approved on 5 March 2021.



L. Gonzalez
Public Trustee

OFFICE OF THE PUBLIC TRUSTEE

NOTES TO THE FINANCIAL STATEMENTS

YEAR ENDED 31ST DECEMBER 2019

1. ACCOUNTING POLICIES

(a) Basis of Preparation

The financial statements have been prepared in accordance with United Kingdom Generally Accepted Accounting Practice including FRS 102 The Financial Reporting Standard applicable in the United Kingdom and Republic of Ireland ('FRS102') Section 1A for small entities issued by the Financial Reporting Council in September, 2015 and with The Public Trustee (Bailiwick of Guernsey) Law, 2002.

(b) Grants

Grants from the States of Guernsey Committee for Economic Development are included on a received basis. Grants have been recognised as revenue items where they are not expected to become repayable. Where grants have been received and a corresponding amount is considered recoverable in respect of the underlying transfers to which they relate the potential liability has been recognised.

(c) Public Trustee Cost Recoveries

Costs are recognised when services are delivered by the Office of Public Trustee in its capacity as trustee. Excluded from the statement of income are any costs for services provided by third party administrators or other parties including professional advisors appointed by the Public Trustee.

(d) Other income and expenditure

Other income and expenditure is included on an accruals basis.

(e) Financial Instruments

The Office of Public Trustee only enters into basic financial instruments that result in the recognition of financial assets and liabilities such as accounts receivable and creditors, and loans from or to banks and related parties. Debt instruments that are payable or receivable within one year (typically loans, accounts receivable and creditors) or that bear a commercial rate of interest and are payable or receivable after more than one year are measured, initially and subsequently, at the undiscounted amount of the cash or other consideration expected to be paid.

Bank balances are repayable on demand.

2. TAXATION

The Public Trustee fund was established for the purposes of:

- a) Paying fees or remuneration to the Public Trustee and his officers and servants; and
- b) meeting all other costs, fees, expenditure and liabilities properly incurred.

The fund and income thereof is not subject to Income Tax.

OFFICE OF THE PUBLIC TRUSTEE

NOTES TO THE FINANCIAL STATEMENTS

YEAR ENDED 31ST DECEMBER 2019

3. CREDITORS AND ACCRUALS

<u>Creditors</u>	2019	2018	2018
Other creditors		Adjusted	Original
	£74,025	£ -	£118,731

<u>Accruals</u>			
Audit fee	4,500	7,450	7,450
Contracts for Services	12,557	-	-
Other accruals	3,000	3,014	3,014
	£20,057	£10,464	£10,464

<u>Potential Liabilities - Grants</u>			
Grants from States of Guernsey	£2,306,115	£1,499,322	£1,759,213

Grants (or loans) from the Committee for Economic Development of the States of Guernsey are made in accordance with section 8 of The Public Trustee (Bailiwick of Guernsey) Law, 2002. Any amounts paid to cover expenditure and liabilities that are subsequently recouped from trust structures within the responsibility of the Public Trustee become repayable. The potential liability due represents the disbursements the Public Trustee expects to be recoverable from those structures. Disclosing this amount separately on the balance sheet reflects the understanding of the contingent nature of the corresponding debtor.

4. THE PUBLIC TRUSTEE FUND

	2019	2018	2018
		Adjusted	Original
	£	£	£
Balance brought forward	12,227	26,381	26,381
Surplus for year	1,568	(14,154)	(14,154)
Balance carried forward	£13,795	£12,227	£12,227

5. GENERAL INFORMATION

The Office of Public Trustee is an unincorporated entity established under The Public Trustee (Bailiwick of Guernsey) Law, 2002. Its address is Raymond Falla House, Longue Rue, St Martin, Guernsey, GY1 6AF.

6. NUMBER OF EMPLOYEES

The Office of the Public Trustee was created by The Public Trustee (Bailiwick of Guernsey) Law, 2002. The holder of that office is known as the Public Trustee. During the year there were no employees (2018: nil).

OFFICE OF THE PUBLIC TRUSTEE

NOTES TO THE FINANCIAL STATEMENTS

YEAR ENDED 31ST DECEMBER 2019

7. CHANGE IN ACCOUNTING POLICY

Previously the accounting policy as noted in note 1(c) permitted the inclusion of third party disbursements in the Statement of Income (being fees raised for services provided by third party administrators or other parties including professional advisors appointed by the Public Trustee).

The recovery of these disbursements is now not shown as OPT income, nor the incurring of the disbursement as an OPT expense. The payment the third party disbursements and the associated recovery remain on the Balance Sheet of the OPT.

Previous to the change in accounting treatment disbursements incurred and subsequently disbursed where the Public Trustee was appointed as Trustee on a particular matter were reported as expenses and subsequently income (2018: £655,817).

Where these disbursements have been incurred in the capacity of Trustee they are now reported when settled.

Similarly disbursements incurred on matters where the PT acted as Trustee where previously accrued by the OPT in its own accounts. In the current year the accounting treatment has been amended so that these disbursements are only shown in the OPT's financial statements when they are paid. As the disbursements incurred by the PT acting as Trustee remain recoverable the impact of the change in treatment has a net zero impact on the net working capital of the OPT.

The net effect of the above changes is also nil in relation to the balance of the Office of Public Trustee Fund, the table below illustrates the above:

	2018 Previously stated £	Net change £	2018 Adjusted £
Public Trustee cost recoveries	708,652	(655,817)	52,835
Trust and company administration fees	(655,817)	655,817	-
	52,835	-	52,835
Debtors	1,877,944	(378,622)	1,499,322
Potential liability - grants	(1,759,213)	259,891	(1,499,322)
Creditors	(118,731)	118,731	-
	-	-	-