

REPORT ON ROLES AND REMUNERATION OF
LEGISLATIVE ASSEMBLY MEMBERS.

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6TH JUNE 2013

TERMS OF REFERENCE:

1. The panel to have regard to the role of MLAs and the scope of their responsibilities, together with the scheme of their remuneration and allowances
2. The panel to consider whether there are any financial hindrances to standing for election and suggest options that would maximise the pool of potential election.
3. To evaluate the options for remuneration approaches and recommend the most appropriate remuneration option/s and the level of remuneration which should apply.
4. The panel to review whether the current list of politically restricted posts was appropriate.

THE CONSULTATION PROCESS:

The Panel consists of Richard Cockwell (Chair) Lewis Clifton and Justin McPhee. A number of consultations were held: with the general public, the younger members of the community, the Chamber of Commerce and each MLA individually plus a number of individual meetings. During the CPA Regional meeting the opportunity was taken to discuss roles and responsibilities with the Clerks to parliaments who attended which was very useful. During this consultation we have avoided any issues which might involve a change in the Constitution although some recommendations may require changes in the Electoral Ordinance and Regulations or additions to Standing Orders.

During the consultation process it became very clear that the electorate wished to be able to see their elected members not only being full time but also to be taking more individual responsibility for their involvement in the process of decision making.

At this moment the electorate see decisions as being made by all members of the Assembly despite the fact that some members may have actually disagreed with the final consensual decision. This does not encourage the electorate to understand the decision making process or be able to make informed choices of preferred candidates when called on to vote in an election. The electorate should be able to vote for candidates based on their performance rather than solely on their manifesto and persona.

Decision making has to be seen to be democratic which does not necessarily mean consensual even though the outcome may be the same. The issue of scrutiny within the process of decision making also needs to be addressed as it is a major element in the democratic process. At present there is no forum open to the public -other than occasionally within the Legislative Assembly- where any scrutiny of Exco decisions, policy and strategy or other decisions can be seen to be undertaken. We wish to recommend improved systems which will enable the general public to have a better understanding of the processes and decision making of their elected representatives.

Despite the fact that it is inevitable that members will -and should- on occasions, meet in private, it is obvious to the Panel that the non statutory GPC meeting in it's present form is not popular with the electorate in general who would like to see more debate in public over issues that will effect their future. When forming our recommendations these issues have been very much at the forefront of our minds and it is on this basis that we have produced recommendations which amongst others, we intend should help to solve the issue of almost all decision making delivered as being apparently consensual.

The Panel are concerned that during their consultations it became apparent that many of the Government's processes of administration are still processes previously established when the Falkland Islands were a Crown Colony. Although the Constitution has been revised, the underlying administration processes do not always reflected the present constitutional role of Elected Members or modern practice. As considering this issue is not under the terms of reference of the Panel it has not been addressed however we believe that this issue should be reviewed as a matter of urgency.¹

The panel recognises that the recommendations set out below will create a considerable increase in the running costs of the Legislature, however it is deemed necessary if we are to be seen as having an Assembly which is up to date, fit to purpose and democratic. The Assembly's role must be recognised not only within the Islands but also around the world.

We have to stress that the conclusions and recommendations that we are making should not be considered criticism of the dedicated work of either the present MLAs or the Administration but rather an effort to make the organisation of the Assembly business more efficient and fit for purpose for the Falkland Islands in the future while also trying not to increase the workload of Legislature staff any more than necessary.

ROLE AND RESPONSIBILITIES OF MEMBERS.

Members of the Legislative Assembly are the democratically elected representatives of the Falkland Islands electorate and as such are required to govern the Islands. This being the case they are the leaders of the Falkland Islands Community and worthy of the recognition and respect that this position deserves.

It should be recognised that a successful period as a member of the Assembly can enhance the career for a politically and energetic minded young person. The experience of taking an active part in the running of ones country coupled with the management experience, portfolio responsibility, representing one's country around the world, with unprecedented opportunities to meet with politicians from across the globe, public relations experience etc. can only enhance the CV of a successful ex Legislative Assembly member.

Other than the Standing Orders and Code of Conduct documents which lay out the debating procedures and behaviour of members, it has not been possible to find a document describing

1

(when discussing our systems with the Clerks attending the Regional CPA Conference, the comment was made that we are "still in the 1950's using the Colonial systems"!)

the actual role of MLAs. After consultation with various bodies both within the Islands and with similar small Parliaments overseas The panel has produced the following list of what we believe to be required of a MLA:

PROFILE OF RESPONSIBILITIES:

1. To participate constructively and effectively and openly in the good governance of the Falkland Islands and represent the Falkland Islands Assembly at all times and in any place
2. To be a full time member of the Falkland Islands Legislative Assembly and be available at what ever times and follow regulations set out in the Assembly Standing Orders and Code of Conduct.
3. To be aware of, and understand the Falkland Island Constitution and to conform with the requirements laid out within the Constitution, Standing Orders and Code of Conduct.
4. To be a effective member of the Assembly -which is collectively the ultimate policy-maker for the government of the Falkland Islands-, by contributing actively to the formation and scrutiny of the Legislative Assembly's policies, budget, strategies and service delivery including the Island Plan and other national strategies.
5. To champion causes which best relate to the interests and sustainability of the present and future of the Falkland Islands and campaign for improvement of prosperity and quality of life in the community in terms of equity, economy, and the environment.
6. To represent effectively and impartially the constituency to which he or she is elected as well as the Falkland Community in general.
7. To deal with individual constituency enquiries and representations and act as advocate in resolving particular concerns or grievances, while recognising and understanding the correct channels within FIG to deal with such issues.
8. To participate effectively as the Chair or member of any Committee, Sub-Committee, Working Group or other body to which he or she is appointed and to develop and maintain a working knowledge of the Government's services, powers, duties, policies and practices and promote a good working relationship with officers of the Administration.
9. To work closely with the Heads of Department of all their portfolios, to be fully involved in policy and strategy making and understanding the operation of their portfolio in order to act as leader of the Assembly in any decision making committee or board and leading any discussion on the portfolio issues in Legislative Assembly.
10. As Chair of any Advisory Committee; fully consult the lay members of that Committee on policy issues and ensure that the lay members views are reflected in any report.
11. To represent the Legislative Assembly effectively on any outside body to which they are appointed, providing two-way communication between the organisations and presenting to Legislative Assembly a report on the work of that body.

12. To develop and maintain a good working knowledge of all departments and services within the Falkland Island Government Administration.
13. To contribute constructively to open government and generally encourage all sections of the community to participate in the democratic process.
14. To represent the Falkland Islands in what ever fora, conference, interview or political arena that may be required.

SECTION 1 (FINANCIAL ISSUES)

FINANCIAL CONSIDERATIONS:

The issue of Members' remuneration can be contentious. However the quality of Falkland Island's Democracy depends on the ability to attract able people from across the community to serve as Legislative Assembly Members.

Financial reward should not be the main motivation for holding office as an Assembly Member, however the remuneration has to be at a level which makes it achievable for people from as wide a range as possible across the community to stand for election.

In order to attract able people from across the electorate, the salary has to be sufficient for an able and politically minded person to feel confident that he or she might leave their current career and be elected to the Legislative Assembly for at least four years.

OPTIONS FOR REMUNERATION:

After consultation with the public and Elected Members it has become clear that the position of MLA has become too complex to be treated as a part time position. There is increased overseas travelling added to the workload brought about by the increasing economic activity within the islands and expectations of the electorate. It is the opinion of the large majority of people consulted that the post of MLA should be made full time and have the same pension rights as FIG employees during his or her period of office.

CURRENT POLITICALLY RESTRICTED POSTS

If the post of MLA is to become full time, the issue of politically restricted posts will be removed. It is proposed that anybody who has an occupation which requires him or her to work during the period that MLAs are expected to be available will be have to resign that occupation.

RECOMMENDATIONS.

a) Remuneration.

1. Current fixed allowance and variable daily allowances should be discontinued.
2. Members remuneration should be on a full time basis.
3. Members should be paid an annual salary of **£40,000.00** per annum.
4. Members will also receive a tax free allowance of **£4,000** per annum (payable

quarterly) to be considered for use for expenditure arising from their Membership. (appropriate attire, the occasional use of personal telephone and internet connection, accommodation not allowed for when travelling within the Islands, overseas and local entertainment etc..) *(If any member wishes to claim more than £4,000 in any one year for expenses other than allowable and claimable expenditure, a detailed list of all expenses must be produced to justify this claim.)*

5. The remuneration package should be the same for all Members.
6. No extra allowance should be made for MLAs travelling overseas but properly receipted and allowable expenditure should be reimbursed.
7. Members should be considered self employed but receive the same pension package as FIG employees. *i.e.* RPC and OPC
8. In the event of a Member not being returned after standing for re-election a resettlement grant of one month's pay will be credited to the unsuccessful candidate's account.
9. It is not proposed that sabbaticals should be required for successful candidates.
10. Formal professional training should be provided and undertaken by newly elected members in order to familiarise them in the organisation and procedures of Government. This training should also include public relations training.
11. Camp members -if not normally resident in Stanley- should have all travelling expenses to and from Stanley reimbursed. Members will be expected to use the most economic means of travel.
12. Camp members who do not have accommodation in Stanley must have a realistic accommodation allowance for days spent on Assembly business in Stanley or have suitable Government accommodation supplied.
13. Camp members should have financial support for Assembly related travel within their constituency. They should be expected to hold regular meetings individually or collectively on both East and West Falkland.
14. Camp members who need to use FIGAS to attend the Assembly, should have priority first flights to Stanley on Monday morning and from Stanley on Friday morning (irrespective of whether there are prior bookings)

b) **Working times etc:**

1. Members will be expected to attend business in Stanley from mid-day Monday until Thursday evening.
2. All formal meetings requiring Members attendance should be held between Monday pm and Thursday evening.
3. There should be formal recess periods -amounting to 30 working days based on a five day week- one of which should take place during the Christmas period, One during the school winter holidays and ten working days to be taken at any time during the year. These days can only be taken after prior arrangement with the Assembly Office.
4. Members when travelling overseas need to be supplied with a suitable portable

computer (tablet?) a smart phone and a credit card. *(the current situation where a MLA when travelling has to pay certain bills from his own account and then claim back on return is old fashioned and not in keeping with the status that a MLA deserves)*

5. Members who have an occupation or business interest that requires them to work during the established Assembly business hours should have to resign this occupation.
6. No extra payment for work outside the three and a half day per week statutory attendance in Stanley will be made as it is deemed that the position is full time.
7. Members whose ordinary career requires CPD (*Continuous Personal Development*) should be allowed to carry out this obligation but must not use Assembly attendance hours.
8. Friday shall be deemed as a surgery/consultation day.

OTHER RECOMMENDATIONS REQUIRING FINANCIAL CONSIDERATION:

1. Gilbert House is no longer suitable for the Assembly Offices and new premises must be identified. Members will need a personal desk, computer, phone and file system if not a dedicated office. Further, besides a suitable sized conference room, there needs to be rooms available for extra staff also for confidential meetings with members of the general public and other interviews.
2. The time has come for the Falklands to own an Assembly building sufficiently prestigious to reflect the standing of the Falkland Islands. In view of the need for more frequent Assembly meetings and the potential clash with the Court sittings; serious consideration should be given to a new well appointed Council Chamber to be included in this building. This chamber could be used for all Assembly meetings both formal and informal and also Exco meetings. *(It has been suggested that the availability of the Court and Council Chamber issue could be resolved in the future. However in view of the real possibility of an increase of population and commercial activity the panel do not consider this realistic. It has to be recognised that a suitable Council Chamber should be available for Members to meet at any time and not at the convenience of the Court.)*
3. It is recommended that the staffing of the Legislature Office be reviewed to reflect the increase in work load created by having full time MLAs.

SECOND REPORT (ORGANISATIONAL ISSUES)

ELECTION ISSUES

As the recommendation is that any person who has an occupation or business which requires him or her to be absent during Assembly hours including Constituency time, shall be expected to resign that position; the issue of politically restricted posts will not apply.

Recommendation 1: There should be no politically restricted posts..

The issue of resignation of employment prior to election has caused much discussion but in view of the small size of the workforce, and to prevent resignations being accepted before a candidate is or is not elected, it is not proposed that candidates should have to resign their previous position when standing for election except in certain circumstances. (*Arrangements need to be made to recognise termination of employment terms members might have with previous employers after being elected.*)

Recommendation 2: Persons standing for election should not need to resign their current employment until after they are elected. The only exception is for senior Officers in the Public Service who, if wishing to stand for election, should be required to take leave during the hustings period.

EXECUTIVE COUNCIL

The need for a reorganisation of Exco procedures has been pointed out by all Members: They all emphasised the need for more frequent meetings with less non policy content. The deadline system and Exco paper process needs to be reviewed to simplify the work of the Legislature Department, speed the process and allow more frequent and shorter meetings.

Recommendation 3: A more frequent and simplified Exco process needs to be established.

The publication of non confidential Exco Papers after the meeting is useful. However it has been pointed out that the lack of any indication of the decision restricts the usefulness of the published paper.

Recommendation 4: an indication of the outcome of Exco's decision should be included with the published paper.

LEGISLATIVE ASSEMBLY:

The Electorate have made it very clear to the panel that they wish to see debate in public on non confidential issues. Public debate would help to to replace much of the discussion of non confidential matters within GPC although in no way would it prevent Members meeting in private. An example was given that after the public

consultation over a suitable memorial to Margaret Thatcher, Members stated at a public meeting that a decision would be made within GPC.

The issue of scrutiny and public debate needs to be addressed: The Panel proposes that Legislative Assembly should meet monthly with new sections in the Assembly Agenda: Over and above questions for oral reply there should also be questions allowed without notice on policy and strategy issues which can be addressed to Exco Members, Officials and Portfolio holders (Question Time). These questions should be more along the lines of PMQs in Westminster except questions are addressed to Members and Officers themselves and debate should be allowed.

In the absence of an Opposition, and operated properly, this would help to create a solution which the electorate have stated they want to see over the present lack of a scrutiny process. These meetings would be conducted under Legislative Assembly Standing orders which will have to be amended to allow such a question process. Portfolio Holders being full time, and involved with strategy, will have a good understanding of their portfolios and thus should be able to answer general questions on policy and strategy without reverting to their Head of Department. This would enable the Members to express their position on controversial issues and thus allow the electorate to understand the individual's views.

Recommendation 5: Legislative Assembly should meet monthly with a new agenda item where Members are able to ask questions without notice to Officers, Exco Members and Portfolio members. Debate on answers should be allowed.²

New or revised strategy issues should also be brought to this Assembly for debate after being discussed in Advisory Committee and prior to the production of an Exco paper. This would also enable Members to express their views on strategy issues in public debate. The public would benefit from being able to understand what new or altered strategy is being advocated.

Recommendation 6: Prior to Exco Papers on new or revised strategy being written, the strategy, but not the implementation of strategy, should be presented before Legislative Assembly for debate. This debate should be led by the appropriate portfolio holder.

In the interests of clarity, a proper Hansard system should be established. If this system is outsourced, it should lessen the duties of the Legislature Office which would otherwise be increased due to the increased frequency of Legislative Assembly meetings and the needs of full time members.

2

The reason for this recommendation is to enable members of the electorate to assess the contribution and effectiveness of their individual elected representatives and overcome the widely felt public distrust of GPC meetings. At this moment most decisions are deemed by the public to have been made and approved by all MLAs

Recommendation 7: A proper Hansard based system to record all Assembly meetings needs to be established.³ (This report will be made available to the public both in a written and electronic form.)

The practice of most bills being presented by the Chief Executive is old fashioned and a relic of the Colonial past. Portfolio holders must be expected to be involved in the production of the strategy behind bills and Exco papers and therefore should take responsibility for the content of the Bill and be able to present it to the Assembly.

Recommendation 8: Portfolio holders should present bills within Legislative Assembly and be held accountable for the policy content.

At present motions for the adjournment take longer than the business of the day. In view of the fact that members will be able to address issues during the question time it should not be necessary for long written statements read out during the motion for adjournment.

Recommendation 9: Due to the fact that it is proposed that Legislative Assembly is held monthly, consideration might be given to restrict the length of motions for the adjournment. Motions should be presented under Standing Orders regulations.

GENERAL ORGANISATION:

It is clear that the custom of changing the chair of the Assembly every month causes confusion not only with the community and the Administration but also within the FCO and Westminster. Coupled with this we are informed that the post of a long term Chief Minister - as established in most Overseas Territories - was not popular with most Members.

Recommendation 10: If members are not willing to elect a long term Leader of the Assembly in order to create some clear continuity; it is proposed that members should rotate as Leader of the Assembly of the Assembly every six months. (arrangements for stand-ins during the absence of the leader of the Assembly need to be established)

There is no documentation stating the role of an Assembly Member. It was made very clear during our public consultations that the electorate wish to be able to see MLAs role published for all to understand.

Recommendation 11: Over and above the Profile of Responsibilities, additions to the Assembly Members' Standing Orders may need to be made to reflect their new status. (this Profile of Responsibilities has already been proposed in section one -Financial Issues- of the report)

³ The Isle of Man has a Hansard system in place and they provide the same service to the Parliaments of Gibraltar and Guernsey who highly recommend it. This should improve the general public's understanding of Assembly processes and lessen the work of Legislature staff:

A recent email from the IOM states: "In terms of cost, the current rate is £128.12 per hour of audio processed (revised on an annual basis in line with IOM RPI). What is produced is more than 'just' a transcript, as also inserted are question headings, motions, amendments, or other non-spoken text, all pagination, checking of references, quotations and legislation, together with a full editing service in accordance with an agreed Hansard style."

The present system where members take various portfolios which may not have any relation to each other causes confusion and does not enable the portfolio holder to be involved with issues which might cross their portfolios. When allocating portfolios Members need strive to ensure that this does not happen. As well as creating better continuity this would help members of the public understand the Portfolio system better.

Recommendation 12: The Portfolio allocation needs to be rationalised so that each portfolio holder has responsibility for group related departments.

The need for formal professional training was highlighted not only by potential candidates for election but also by some members who cited their difficulties when first elected.

Recommendation 13: Formal professional training must be provided and undertaken by newly elected members in order to familiarise themselves in the organisation and procedures of Government, meeting procedures, strategic planning, public speaking, media relations, public relations and taking into consideration issues particular to the Government of the Falkland Islands.

Ongoing training should be provided to Members throughout their appointment.

In view of the increased amount of time that members will be expected to devote to Assembly business and be available in the office, proper provisions to accommodate them has to be made.

Recommendation 14: Members must be supplied with suitable personal office facilities including an up to date computer and filing system etc. New up-to-date IT equipment should be supplied to members after every general election.

Some Members pointed out to the panel that the software that they are permitted to use on their computers restricts their ability to work from home or when overseas.

Recommendation 15: Members should be able to utilise any software which may be required for Assembly business including Skype.

Recommendation 16: Members should be able to access the FIG Intranet system even when working from home or overseas at no extra charge.

The Administration and others have pointed out that the lack of an integrated diary system causes confusion and is time consuming. An electronic diary must be established, administered by the Legislature Office. This diary will be accessible not only to Members but also the Heads of Administration and their PAs and keep them informed of the movements and appointments of Members. This should also help to lessen the work of the Legislature office. *(There is no reason why individual Members should not keep their own hand written diary)*

Recommendation 17: Members diaries must be included within a Government wide electronic diary system.

It was pointed out to the panel that the quality of stationery etc. supplied by the Legislature Office is not in keeping with the status required.

Recommendation 18: The quality of stationery etc. used by the Legislature should be improved and made to be in keeping with the image of a quality organisation. The Legislature Office should also have it's own logo.

During our consultations with other Parliaments the issue of Members voting their own increases in salary and conditions was discussed. The most acceptable system we found was where an independent Remuneration Panel was established which set Members salaries and conditions. Members would not have any input in the process.

Recommendation 19: Arrangements should be put in place to have a permanent Remuneration Panel to review remuneration at regular periods.

FURTHER COMMENTS:

The formal relationship between the Chief Executive and Members needs to be clarified. At present the Constitutional position is that the Chief Executive is answerable to the Governor and does not take instruction from Assembly Members. If Members are to be held accountable for strategy, policy and decision making it will be necessary to review this position. Although at present this issue appears to be handled realistically, under different administrators difficulties could arise.

Under the present process, the point that the Chief Executive being solely answerable to HE the Governor, perpetuates an underlying suspicion -if not the reality- that it can be said that as MLA's have no authority to issue instructions to the Chief Executive they are not in full control of Internal Self Government.

Recommendation 20: The formal relationship between the Elected Members and the Chief Executive needs to be reviewed in order to create clarity and ensure that Elected Members are in control of Internal Self Government while recognising the Constitutional role of the Governor.

Members of the Legislative Assembly are the lawmakers and policy makers of the Falkland Islands. They are responsible for the policies which guide the Administration, but without a ministerial system they are not part of the Administration.

Recommendation 21: It must be recognised by all concerned that portfolio holders are accountable for the process of policy making within their portfolio, and the presentation of that policy, but not the administration of the policy .

There is a need to clarify the role of MLAs as problem solvers: many members of the general public are using MLAs as the first point of contact when requiring action

over a problem. The process of what or who is the first point of contact regarding a problem needs to be clarified with departmental heads and MLAs and also the public.

Recommendation 22: It must be recognised that although MLAs are responsible for strategy they are not responsible for implementation and should be the last point of contact for the general public and not the first.

When requiring advice on a problem the general public are not always aware of the correct process of approaching the administration.

Recommendation 23: Departments should be more proactive and approachable in responding to reasonable requests from the public and ensure that the public are aware of the correct procedures for queries and complaints.

There seems that there are differences within Departmental Heads regarding their relationship with their Portfolio holders and their committees. This needs clarifying.

Recommendation 24: It is essential that both Department Heads and Portfolio holders understand the established process where Portfolio holders are fully engaged with Departmental Heads regarding any policy change or new policy and the usual practice is that any changes must be discussed within the Advisory Committee where one is established.

The Panel was informed by more than one Committee lay member that when reports to Exco were made, the views of the committee were ignored and not recorded despite the fact that all the lay members had disagreed with the content of the paper.

Recommendation 25: All policy changes reported to Exco must have been reviewed by the relevant advisory committee and the report must include comments from that committee.

Recommendation 26: As Members will all be full time an approved list of penalties for contravention of Standing Orders and Code of Conduct by Members needs to be established.

It has been suggested that the actual number of MLAs needs revising, the panel has considered this issue and in view of the fact that all members will be full time we do not consider this will be necessary at this time. Further more, as this would require a change in the Constitution the panel has not considered this issue further.

The issue of adopting a Ministerial system was discussed, however this would also involve a change in the Constitution and thus it is not proposed that this should be the case in the short term, however this should be the long term goal. It is more important that all the procedures of administration are brought up to date and are streamlined to speed the process of decision making.

The panel would like to thank all concerned who have taken the time to talk to us and help us formulate the recommendations that we have set out. We would also like to thank Una Wallace for the help in note taking and power-point creating at the start of our Consultation period. Finally we would also like to recognise the help and information that we have from other CPA Parliaments, their help in informing us of their systems has been extremely helpful.

We should apologise for the delays in producing the two reports but this was unavoidable due to the fact that two members have extremely busy workloads and it has been difficult for us to find times all three were available for meetings.

Richard Cockwell

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6th June 2013