

Guide for Witnesses:

**GIVING WRITTEN OR ORAL EVIDENCE
TO THE
PUBLIC ACCOUNTS COMMITTEE**

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Purpose of this guide

This is a guide to giving written or oral evidence to the Public Accounts Committee. The Committee was established by section 81 of the Constitution and is regulated by the Public Accounts Committee Ordinance 2009 (No.11 of 2009) which came into effect on 1 February 2010.

The Committee consists of two members of the Legislative Assembly, chosen by the Legislative Assembly, and the chairman and two members not members of the assembly appointed by the Governor.

The Committee is appointed to examine and report on all public accounts and audit reports that are required to be laid before the Legislative Assembly, to advise the Governor on appropriate arrangements for the auditing of accounts under section 80(1) of the Constitution, the respective priorities of audits under that subsection and the effectiveness of those audits. In practice this means that the Committee advises the Governor about the work of external auditors who are appointed to audit the Falkland Islands Government accounts as prepared by the Treasury and provides an additional level of scrutiny of these.

The Committee also has discretion to examine and report to the Assembly on the accounts of bodies that receive or deal with public money, bodies in which the Government is a shareholder and bodies in which a statutory body within the meaning of section 80(1) of the Constitution is a shareholder. So the Committee may examine the accounts of organizations such as the Falkland Islands Development Corporation, The Museum and National Trust, Falklands Conservation, the Media Trust essentially any body which in one way or another receives public funds or in which the Government has a shareholding.

All reports produced by the Internal Audit Department of Government are required to be produced to the Committee who must examine them and report on them to the Assembly.

In addition the Committee may also consider whether or not the arrangements made by the Governor in respect of the management of financial risk are adequate, and look at the value for money derived from the expenditure of public money.

The Committee is also to consider and report to the Assembly on the effectiveness of the regulation by the Government of bodies to whom the Assembly or the Government has granted franchises to provide services of a public nature. Government has granted franchises in the telecommunications, banking and fuel supply sectors of the economy.

Finally the Committee is to consider and report to the Governor on any other matter that the Governor may refer to the Committee.

It is important to understand that the functions of the Committee do not include the consideration of matters of policy or the examination of estimates of expenditure. So for example the Committee may well enquire as to what a particular Government policy was but it may not consider whether this policy was correct or reasonable, nor may the Committee consider budget projections.

The guide first sets out the conduct of a ‘typical’ committee inquiry. It then discusses submitting written evidence to the Committee, and giving oral evidence to the Committee. Finally it sets out some of the powers of the Committee which are relevant to the evidence gathering process and explains the privilege of immunity as it applies to committee witnesses.

Conduct of a Committee Inquiry

The Committee chooses its own subjects of inquiry and examination, subject to its terms of reference. The Committee is established by the Legislative Assembly and it is therefore required to report to the Assembly on the outcome of its inquiries.

Committee inquiries vary in their extent and duration. An inquiry may involve the committee taking evidence over several months and then making a report to the Assembly on the evidence, or it may simply consist of a single days’ oral evidence which the Committee publishes without making a report. The Committee may commission a third party to conduct an examination on its behalf and bring a report to the Committee which will form the basis of the Committee’s investigation and subsequent report. The committee may also choose simply to ask some written questions and publish these with the answers received without comment.

A committee inquiry progresses through some or all of the following stages

Submitting written evidence to the Committee

This section provides guidance on preparing written evidence to the Committee and submitting that evidence. It also discusses what happens to your written evidence once it has been submitted.

What information to include?

As a general guideline, written evidence should consist of a self-contained memorandum accompanied by a covering letter. Evidence should be presented as concisely as possible.

The covering letter should the name and contact details of the persons or organization submitting the evidence.

Confidential Written Evidence

Any request that the Committee treat the whole, or part, of the written evidence as confidential, with reasons for the request. It will then be up to the committee to decide, with reference to the Ordinance, whether to agree to such a request.

The memorandum should contain an executive summary of the main points made in the submission; a brief introduction to the submitter, perhaps explaining their area of expertise and any factual information the submitter has to offer from which the Committee might be able to draw conclusions, or which could be put to other witnesses for their reactions

Any recommendations for action by the Government or others which the submitter would like the Committee to consider for inclusion in its report to the Assembly.

You should be careful not to comment on matters currently before a court of law, or matters in respect of which court proceedings are imminent. If you anticipate such issues arising, you should discuss with the secretary of the Committee how this might affect the written evidence you can submit.

How to format your evidence

Paragraphs should be numbered, to assist the Committee in referring to the submission during oral evidence.

If you wish to include supplementary material with your memorandum – for example, leaflets, or articles from periodicals – ensure your memorandum is nevertheless self contained, as the Committee is unlikely to publish such supplementary material.

The Committee may receive a photocopy of your memorandum. Consequently, even if your submission uses colour, it should still make sense when reproduced in black and white.

If you are submitting your evidence electronically, your memorandum should be Microsoft Word format.

If you are submitting your evidence in hard copy avoid using any complicated binding.

How to submit your evidence

Evidence should be submitted to the Committee secretary prior to the deadline stated in the press notice.

The Committee prefers to receive evidence electronically. Attach your memorandum to an e-mail and send it to the Committee's mailbox – the address will be in the press notice announcing the enquiry and is shown on the committee's website.

Your memorandum can also be sent in hard copy. Send it to the Committee secretary, at the address given in the press notice. The Committee is not obliged to accept your memorandum once it has been submitted as evidence, nor to publish any or the entire memorandum if it has been accepted.

The Committee will publish most of the written evidence it receives. There are certain circumstances in which evidence may not be published. Such exceptions relate generally to evidence the disclosure of which may harm national security or international relations, evidence the disclosure of which would contravene Executive Council oaths of secrecy, and evidence, defined in Section 2 of the Committees (Access to Information) Ordinance 2000 as 'Exempt' information. This is generally related to information of a private or commercially confidential nature, or related to proposed expenditure or financial provision by Government or Public Bodies. This evidence may not be published without the permission of the witness concerned.

Giving Oral evidence to the Committee

Following discussion with potential witnesses, the Committee will issue a press notice announcing from whom it intends to hear oral evidence, and when.

Oral evidence sessions will take place, ordinarily in public. The focus is on the Committee putting questions to witnesses.

Transcripts of the sessions will be posted on the Committee's website.

This section provides guidance on what happens when you are scheduled to appear before the Committee to give oral evidence. It discusses what happens prior to the hearing, the conduct of the hearing and what happens to your oral evidence once you have given it.

The Hearing

Prior to the hearing

The Committee will issue a press notice in advance of the oral evidence session, announcing the date and time of the hearing and naming the witnesses from whom the Committee will be hearing.

How the Committee secretary can help you

The Committee secretary will contact you a few days prior to the oral evidence session. The secretary will let you know:

Where the session will take place

If other witnesses are appearing at the same session – if other witnesses are scheduled to appear prior to your appearance, it is helpful to the Committee if you can attend earlier and listen to the previous witnesses' evidence, so that you are in a position to comment on that evidence.

The Secretary will endeavour to let you know if the hearing might necessitate you gathering together some information or views. With the agreement of the Committee, the secretary may also be able to give you an informal indication of possible lines of committee inquiry, in order to assist you in preparing for the session. However, you should not expect the Committee to restrict itself to these lines of inquiry.

If you know that matter which may arise during oral evidence are currently before a court of law, or court proceedings are imminent. If you anticipate such issues arising, you should discuss with the Secretary of the Committee how this might affect the oral evidence you can give.

The Day of the Hearing

You should arrive at the venue at least ten minutes before you are due to appear before the Committee.

Every effort will be made to ensure all venues used have disabled access. Please let the Secretary know as soon as possible if you require disabled access or assistance.

Conduct of the hearing

The Hearings will generally take place in the PAC's offices on Dean Street.

Giving oral evidence to the Committee is generally a public process. The Committee almost always takes evidence in public, the proceedings are transcribed, representatives of the press may be present and the proceedings may be carried live on the internet and may also be broadcast on radio or television. However in appropriate circumstances, the Committee is able to take evidence in private. If you have particular reasons why you want to give some or all of your evidence in private, you should contact the secretary of the Committee as early in the process as possible.

The focus of the evidence session is on the Committee putting questions to witnesses. In limited circumstances, it may be appropriate for witnesses to make an opening statement before questioning commences, however the Committee will generally prefer to get questioning immediately underway. Witnesses should therefore consider whether material to be covered in an opening statement can instead be provided to the Committee in writing.

You may appeal to the Committee chairman if you consider that a particular question is unfair or that you are not the appropriate person to answer it, or you would like time to consider the answer or seek advice. However if the Committee, collectively, considers that the question is proper, you must attempt to answer it.

If you do not have the information to answer a question immediately to hand, you may offer to come back to the Committee in writing on a particular point. The Committee may also ask you to submit further written information to it.

After the Hearing of Oral Evidence

You will need to send any further information with which you have agreed to provide the Committee to the Committee Secretary as soon as possible. This information is ordinarily treated as written evidence and published alongside the other written evidence received by the Committee.

Transcripts of Evidence

A transcript of what was said in oral evidence will be available as soon as possible after the hearing. This uncorrected transcript will be published on the Committee's website, and sent to all Committee Members and Witnesses.

Witnesses are asked to correct the transcript and identify any supplementary information asked for by members of the Committee. The transcript will be accompanied by a letter giving details of the very limited sorts of corrections which are acceptable and the deadline by which such corrections need to be sent to the Committee secretary.

Corrected transcripts are then published with the Committee's report to the Assembly or, where there is no report, as a stand-alone publication.

Reporting to the Assembly

The Committee will agree any report it wishes to make to the Assembly on the inquiry. The report will be published and will include the written and oral evidence it has received.

Both report and evidence will be publicly available, on the Committee's website and in hard copy.

The Committee occasionally holds press conferences to coincide with report publication. Witnesses may attend, as can other members of the public. Details will be given in the press notice announcing the report's publication.

If you wish to discuss any of the points raised below in greater detail, please contact the secretary of the Committee.

Powers of the Committee

When gathering evidence the Committee has the power to summon any person to appear before it. This means that the Committee can insist upon the attendance of witnesses and the production of papers and other material. This formal power is rarely used. The Committee ordinarily simply invites the parties involved to attend or to provide the information requested.

When hearing oral evidence, the Committee has the power, subject to the provisions of any law, to require witnesses to answer questions and to provide information to it. In practice, evidence-taking before the Committee is conducted with a degree of informality and such powers are seldom used. The Committee also has power to take evidence on oath. This rarely happens, but, if the procedure is used, witnesses are liable to the laws of perjury.

If the Committee wishes to request a member of the Governor's staff to attend before the Committee the request or summons must be delivered to the office of the Governor. Similarly in the case of a member of Her Majesty's forces or of the civilian component of any of those forces the request or summons must be delivered to the headquarters of the Commander British Forces.

The Governor may certify in writing that the public disclosure of any specified evidence is not in the interests of national security, or is likely to adversely affect the Government's relations with the United Kingdom Government or any other government.

Privileges and Immunities

A person giving evidence to the Committee, whether or not on oath or affirmation has the same privileges and immunities as if he or she were giving evidence in proceedings in the Supreme Court.

This means that he or she cannot be required to answer any question the answer to which might incriminate him or his spouse. He cannot if he is a legal practitioner be required to answer any question which would require him to disclose any information received from a client in confidence for the purpose of giving legal advice. Similar privileges attach to the disclosure and production of documents.

Written evidence published by the Committee and oral evidence heard by the Committee attract what is known as absolute privilege. Absolute privilege protects freedom of speech in Committee proceedings by preventing such written and oral evidence from being used as evidence in court. Absolute privilege does not apply to written submissions which have been distributed or made available prior to being published by The Committee.

The protection which absolute privilege extends to those preparing written evidence and to witnesses must not be abused. In particular, witnesses should answer questions put to them by the Committee carefully, fully and honestly.

Witnesses to the committee enjoy absolute privilege in respect of the evidence they give, whether written or oral, provided that it is formally accepted as such by the committee. In practical terms this means that Committee witnesses are immune from civil or criminal proceedings founded upon their evidence, nor can their evidence be relied upon in civil or criminal proceedings against any other person.