



H.E. Lisa Phillips
Governor of St Helena
The Castle

Hon. Lawson Henry MLC
Seaview
Alarm Forest

DATE 22nd March 2016

Dear Governor,

AIRPORT PRESS RELEASE POLICY

You may recall that from an email dated 7th October 2016 it was apparent to myself and others that you had authorised St Helena Government's change in policy concerning updating press releases for the island's Air Access. Concerned that such policy change had not been referred to Executive Council I and fellow councillors met with you on 7th October 2016 and I at least corresponded on the matter subsequently.

You may know that I raised this and related matters in the Adjournment Debate for Legislative Council on 13th December 2016. I received in response a letter from the Chief Secretary dated 11 January 2017, which has since been published. That letter set out that, in the view of the Chief Secretary, the matter of press policy falls within the Governor's special responsibilities. It is thereby suggested that you were within your powers in not consulting with Executive Council in this matter.

I understand that it is accepted that the policy was adopted without consulting with Executive Council and of course in the time since October 2016 a general progress towards Air Access has been apparent. I do however wish to be clear as to the matters on which Executive Council is be consulted.

The Chief Secretary remarks that I had not set out the grounds by which I consider that Executive Council should have been consulted. The grounds stem from my reading of the constitution as set out below:

- (i) I accept that section 34(2) of our Constitution provides that, subject to the Constitution, executive authority of St Helena shall be exercised on behalf of Her Majesty by the Governor either directly or through subordinate officers.
- (ii) I accept also that section 43 of the Constitution requires that, subject to exceptions, the Governor in her functions, shall obtain and act in accordance with advice of Executive Council.

- (iii) By section 43(2) of the Constitution the Governor is relieved of the obligation to act in accordance with Executive Council's advice in any matter which is a special responsibility of hers; it appears however that the Governor must nevertheless consult with Executive Council in such matters.
- (iv) In his letter of 11th January 2017 the Chief Secretary suggests that the issue of contact with the press on matters of direct relevance to the reputation of St Helena is "*clearly included in the phrase of external affairs*". I doubt this can be quite correct. In their commentary on *British Overseas Territories Law* Ian Hendry and Susan Dickson suggest the use of the phrase 'external affairs' to be synonymous with 'external relations', 'international relations' or 'international affairs'. By my reading the commentary drives clearly to matters between states or otherwise on the international plane. As such I disagree that matters of the press, even the international press, can properly fall within the phrase of 'external affairs'.

In short, it appears to me that press policy is not within the ambit of external affairs. Further, as the policy was not in these circumstances otherwise a matter of law, of royal instructions, of urgency or of the Governor's own discretion or judgement the constitution required that Executive Council should have been consulted, albeit that council's advice, if any, could not bind the Governor. I would be glad to know if you agree with this conclusion, and if you do not agree I shall be glad to know where I am in error.

Yours faithfully

Lawson Henry

Hon Lawson Henry, MLC

Elected Member of Executive Council, St Helena

CC *Ag Governor*
Chief Secretary