



MONTSERRAT

COMMONWEALTH PARLIAMENTARY ASSOCIATION
RECOMMENDED BENCHMARKS FOR DEMOCRATIC LEGISLATURES

FINAL REPORT



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INTRODUCTORY SUMMARY

The undertaking of this report is timely as the Legislative Assembly celebrates its 70th Anniversary in 2022. It is therefore not only an appropriate juncture to look back at its impressive achievements but to also consider what the future might look like. Overall, the legislature fulfils its basic mandate, to legislate, scrutinise the executive and represent the people. The Clerk and her team should be commended for the tremendous efforts in the administrative support provided to the Assembly. The current and former Speaker should also be praised for the great strides taken to proactively engage with the public and especially young people on the role of the Assembly. However, it is extremely concerning that the Assembly fails to meet the majority of Recommended Benchmarks for Democratic Legislatures, which are the minimum standards any Commonwealth legislature should seek to adhere to. The Assembly has no permanent home, remains handicapped by its limited access to financial and administrative resources, outdated Standing Orders, significant gaps in legal, procedural, and regulatory rules and mechanisms and little to no transparency or independence. In general, there is agreement that things need to improve, but there is also a sense of historical apathy and resignation that such change is unachievable and far from being a priority. Whether the Assembly must cater for nine elected Members for a population of four thousand, or 650 Members for a population of millions, the role and functions of a parliament remain the same. Its size is not a factor and should not be considered so. Nevertheless, the people of Montserrat, with the right motivation, innovation and determination could create a Legislative Assembly that in the medium to long term, becomes an institution of excellence, a forum to air concerns and share constructive ideas, and equally important, be an Assembly the people of Montserrat can be proud of.

In reading this report, stakeholders in Montserrat might question if the issues affecting the Legislative Assembly as enumerated in this report matter at all. There are more important and pressing issues facing Montserrat, and consequently, the Legislative Assembly is low on the list of priorities. However, it could be argued that the wider issues historically impacting Montserrat stem, to some degree, in there being deficiencies in good governance and by extension deficiencies in the Assembly. A preoccupation with fighting political fires, or in a real sense keeping the lights on, has traditionally overridden the consideration that greater efforts should be made in fire prevention. In this case, institution-building. If Members do not have access to adequate research and technical advice, they cannot robustly question, challenge and improve policies, processes and ultimately laws. If there are habitual concerns by the populace about poor conduct, corruption, or malpractice, how can they be resolved if there is a lack of transparency and openness emanating from their representatives and public officers. There is inevitably significant resentment of the Governor's Office when they, by constitutional mandate, necessity, or public demand, are forced to police the public service for perceived or actual failings. When in practice, that responsibility could be falling to an effective and capable Legislative Assembly. Questions were raised as to what is the point of a Supreme Audit Institution if reports are not consistently scrutinised and reported on? How can the legislature educate and advocate for change if it never has a general debate on national and international issues? How can all the important matters facing society be legislated for, if the burden solely sits with a resource-poor Executive? How can the people of Montserrat be proud of their Island nation if the supreme and sovereign institution of parliament has to rent out a building which is in need of repair? Who will ensure the large infrastructure projects from the Port to the Hospital are undertaken to the highest standards and fully meets the people's expectations and demands? The view that 'this is how it has always been' is not necessarily the right answer.

Governments in Montserrat have arguably remained short-sighted in not appreciating that their reign in office is temporary, and they are likely to become the opposition at the next election. Therefore, by not investing in an Assembly that can support them in their roles and responsibilities in opposition will handicap them in the long term. The cycle is then repeated in perpetuity. Ministers are Ministers by

virtue of the fact that they are Members of the Legislative Assembly, and their loyalty should ideally be first and foremost to that institution. The Legislative Assembly is theirs and is intended to assist them in fulfilling their democratic mandate, as opposed to being in theory or reality just another ministry of the government-owned and controlled by the Premier. The burden of responsibility for the institution's well-being is not the Premier's, Speaker's, or the Clerk's alone, but every Member. But a Speaker must be empowered and supported to be a figurehead for the institution, to have the powers, mandate and support to pursue change without going cap-in-hand to the FCDO, Premier and Deputy Governor to pursue reform. It is therefore essential that attention, focus and interest should be taken by all Members and more importantly the public in how the Assembly is run. It is also essential that the Legislative Assembly is given greater independence. Like the National Audit Office, the Assembly must have its own staff, its own budget, which is controlled and overseen by its own Members. It is an anathema of parliamentary democracy, the Latimer House Principles, these CPA Benchmarks to have an Assembly so controlled by the Executive. The people of Montserrat need to honestly ask themselves, what is the point of having an Assembly at all if it is nothing more than a rubber-stamp of the Cabinet?

The majority of the people interviewed for this Assessment expressed concern that the ongoing trend of one-term governments hampers the sustainable development of the Island. The reason for this trend has been repeatedly highlighted. The people of Montserrat are in reality given only one opportunity to be heard, and that is at the election. There is a clear sentiment that individuals who speak out will be ostracised and victimised. Their views will be misconstrued as an attack or criticism of government and senior public servants¹. One programme on a radio station² or a rare legislative consultation is woefully insufficient. If an individual's political party does not win the election, it might be significantly detrimental to promotions, contracts, or access to other public services. Half the population will effectively be gagged for five years. There are many well-informed and educated individuals who have honest motivations for the constructive betterment of Montserrat that should be heard and listened to without fear of social, economic, or political reprisals. No amount of recommendations outlined in this report will count for much if there is not an active drive to change the political culture for all Montserratians. The Legislative Assembly can, with the right support and resources, be a forum for the people to be heard. When people feel listened to, they feel empowered and in control of their destiny and feel that they have the ability to contribute to their community and society.

Montserrat is small and beautiful in many respects. Small is often considered a handicap by many on the Island, however in a political sense it can also be an enormous asset. In Montserrat, you don't have to travel thousands of miles at considerable expense to hear people's views. Montserrat should seek to use more 'direct democracy' through Citizen Assemblies³, have problem-solving collective discussions, fully utilise petitioning, or establish a Legislative Assembly Committee⁴ that provides a place for Montserratians to offer their views and insights. These could be on issues affecting Montserrat on big infrastructural or other service-provision issues. Providing a forum for listening, but also educating. Larger jurisdictions have hundreds to thousands of people to call on for views and advice in the development of policies. Determining policy based on a handful of officials will inevitably result in 'Group Think'⁵. Thus, insight, views and opinions garnered from more people with an interest might result in better decision-making. Young people, 'foreigners' in the broader public service, civil society and many other minority groups should be welcomed to such discussions. The Legislative Assembly with its core mandate of oversight, accountability and representative functions should be given the

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1. Although there is an Integrity in Public Office Act 2013 and a scheduled Code of Conduct, there has never been a Commissioner appointed to implement the Act's intentions.
 2. ZJB Radio show 'What's on your mind'.
 3. <https://citizensassemblies.org/>
 4. The Constitution 2010 63. (1) stipulates that there should be at least two Standing Committees. The Assembly is therefore acting unconstitutionally by only having one.
 5. Groupthink is a phenomenon that occurs when a group of individuals reaches a consensus without critical reasoning or evaluation of the consequences or alternatives. Groupthink is based on a common desire not to upset the balance of a group of people. <https://www.psychologytoday.com/us/basics/groupthink>

latitude to pursue such approaches. The Legislative Assembly can be an asset to the government, providing advice and guidance, as opposed to the preconceived notion of being a distraction and threat.

This Assessment Report is presented to Members of the Assembly and the wider Montserratian community to encourage a stock-take and hopefully wide-reaching reforms. The Assembly and senior stakeholders in Montserrat should be praised for undertaking an Assessment at this time. The CPA Headquarters Secretariat expresses its thanks to all the stakeholders who took the time to input into this report and offer such warm hospitality throughout the official's time in Montserrat. Special thanks are given to Speaker White, Ms Judith Jeffers-Baker, Clerk of the Assembly and her team for her time and dedication in supporting the Assessment. The CPA stands ready to offer assistance to the Legislative Assembly, as part of existing work being offered by wider entities, in the fulfilment of listed recommendations, should that be desired.



Current home of the Legislative Assembly at the Cultural Centre at Little Bay

BACKGROUND

In 2018, the CPA completed a consultation and review process that resulted in the adoption of updated Recommended Benchmarks for Democratic Legislatures⁶. The benchmarks, which were adopted by all Commonwealth legislatures, provide a minimum standard and a guide on how a Parliament should be constituted and how it should function. They play an important role in developing the effectiveness of parliamentary institutions across the 180 Parliaments and Legislatures of the CPA and contribute to the implementation of the Sustainable Development Goals (SDGs⁷).

In July 2022, the Legislative Assembly of Montserrat, a Branch of the CPA, became the fourteenth Commonwealth legislature to use the framework to conduct an Assessment and the third UK Overseas Territory. The overall objective of the exercise was for local stakeholders to measure the progress of their legislature in achieving democratic and good governance standards by comparing their practices to the benchmarks that have been developed and adopted by Commonwealth parliamentarians and by extension the CPA.

The Assessment was approved by the Speaker and organised by the Clerk and her team. The actual Assessment took place from 5-8 July 2022. In advance of the Assessment, the Clerk of the Assembly undertook a review of the technical and legal benchmarks in consultation with Members and staff of the Assembly. One official from the CPA Headquarters Secretariat, Matthew Salik, Head of Programmes facilitated the Assessment and met with stakeholders including the Speaker, Government Ministers, Leader of the Opposition, Members of the Assembly and former Members, Deputy Governor, Attorney General, Acting Auditor General, Supervisor of Elections, civil servants, civil society, unions, the media and youth groups.

A review of key documents was also undertaken including the 2010 Constitution, Standing Orders for the Assembly, Election Observation Reports (2014⁸ and 2019⁹), existing Elections Act, and other related laws, estimates and expenditure, pre-launched Assembly website, sample committee reports as well as other materials.

The following report does not mention all 136 Benchmarks, although all of them have been considered as part of the Assessment exercise. The report deals with those benchmarks which are not being met and the issues which have been identified by stakeholders on the ground. Where a benchmark has been referred to, the specific benchmark reference number is included for cross-referencing.

GENERAL

Political Context

Montserrat is a UK Overseas Territory and is internally self-governing, with executive powers invested in the British Crown through an appointed Governor. The Governor Chairs the Cabinet, which has general control of the direction of Government. The Legislative Assembly comprises nine elected Members, two ex-officio – Attorney General and Financial Secretary, and the Speaker. The Montserratian Government comprises a Premier and three Ministers, each with a broad range of ministerial portfolios. There is also a Parliamentary Secretary who also acts as the Deputy Speaker. The Governor has reserved powers in respect of legislation and is responsible for external affairs, security and aspects of public service. Unlike other UK Overseas Territories, the Deputy Governor is not an ex-officio member of the Assembly.

In November 2019, when the last election took place. MCAP secured victory in the ensuing ballot, winning five of the nine elected seats, while the PDM retained only three seats with one seat to an independent who is the former Premier, Donaldson Romeo. Turnout was 62.5%. MCAP leader Joseph Easton-Farrell was sworn in as Premier, and a new Cabinet was appointed. In April 2022, Sarah Tucker was inaugurated as the Island's new Governor.

6. CPA Recommend Benchmarks for Democratic Legislatures - <https://www.cpahq.org/media/10jjk2nh/recommended-benchmarks-for-democratic-legislatures-updated-2018-final-online-version-single.pdf>

7. In particular, Goal 16.6 Develop effective, accountable and transparent institutions at all levels and Goal 16.7 Ensure responsive, inclusive, participatory and representative decision-making at all levels.

8. http://www.caribbeanelections.com/eDocs/election_reports/ms/ms_CPA_2014.pdf

9. <https://www.uk-cpa.org/media/3375/cpa-bimr-montserrat-eom-final-report.pdf>

The Island of Montserrat has been beset by numerous devastating occurrences in the last 35 years. The most significant was Hurricane Hugo and worst of all the Soufrière Hills volcanic eruptions which, forced the rehousing of most of the population. Since that time, the Island has faced several hurricanes and of course most recently the COVID-19 pandemic. Combined, these events continue to place a significant burden on all areas of Island life. No Assessment of this kind can be undertaken without such issues being a key consideration, especially since Montserrat remains reliant on aid from the UK to fully advance its economic agenda. A five-year spending programme, the Capital Investment Programme for Resilient Economic Growth, worth £30m., was agreed upon in 2019. The Programme was to fund ongoing and new infrastructure projects, including road improvements, harbour and airport upgrades, and work on a new hospital. All of which are now in development. GDP growth of 7.0% was registered in 2019, although the outbreak of the COVID-19 pandemic in 2020 resulted in a 5.3% contraction in the economy in that year. The tourism industry was particularly affected by COVID-19, as the Government was forced to impose travel restrictions. Real GDP grew by 8.0% in 2021, driven by increased construction activity and a nascent recovery in the tourism sector as the island slowly began to reopen. Renovation work on the airport was conducted during 2021–22, and, in a boost for the cruise tourism industry, the redevelopment of the port at Little Bay has now commenced.¹⁰

Before the volcanic eruption and the mass relocation of the population, Montserrat had multiple constituencies under a first-past-the-post system. However, in 1999, as a result of the displacement, a single constituency system was introduced. This was partly due to the reduction in the population from 11,314 in 1991 to 4,000 in 1999, as well as to voters being spread across the remaining two and a half constituencies in temporary shelters. Recently, there have been ongoing debates on the Island as to whether there should be a return to a multi-constituency system. However, there are no concrete plans to do so. Nevertheless, the debate is perhaps reflective of a degree of dissatisfaction by some on the Island to the state of politics, and in particular, a frustration that the electorate do not have an individual parliamentarian accountable to them.

A significant consequence of the volcanic eruption and the move of the Capital to Brades was the loss of a parliament building. Since that time, no designated parliament house has been available. Sittings of the Assembly are located in the Cultural Centre at Little Bay, which is independently owned and rented by the Government. The Cultural Centre is becoming less suitable as a location for the Assembly and is in a state of disrepair. The Office of the Legislative Assembly is located in a separate office at the Farara Plaza. This office is shared with the secretariat of the Electoral Commission and the Complaints Commission. As mentioned at greater length in this report, the lack of a designated parliament building is unsuitable and unsustainable from a logistical, security and inclusivity standpoint. Fortunately, in July 2022 it was announced that the Foreign, Commonwealth and Development Office have committed to provide funding for a building, which is scheduled for 2023/4.¹¹

Elections

Montserrat fails to meet basic international standards and the CPA Benchmarks when it comes to electoral best practice, specifically those in relation to transparency. The Executive (current and former) remain reluctant to implement any political party or campaign finance regulations, contrary to repeated calls by the public and Election Observation Missions 2014 and 2019. As stated in the CPA BIMR Election Observer Mission Report 2019: *“While the Constitution acknowledges the right to form or to belong to a political party, law has yet to be introduced to provide any guidance as to how these rights are to be exercised. Political parties are non-existent for the purposes of candidate nomination, and they do not appear on ballot papers. There would be benefits both for political parties themselves and for democracy more generally from the introduction of political party legislation. It is important that they have legal personality.”* Furthermore, *“Political parties are not subject to any regulation in the area of political or campaign finance. Parties and candidates can receive donations and incur expenditure for their*

10. www.europaworld.com. Montserrat Country Profile – Economic Affairs

11. Press Release issued by the Speaker of the Legislative Assembly, <https://www.zjbradio.com/news/2022/7/7/montserrat-to-get-new-parliament-building>

campaigns as they wish; there are no disclosure requirements. The law is silent on potentially contentious issues such as foreign donations and the participation of non-Montserratian nationals in the campaign.” Considering there are currently substantial sanctions against Russia, there are no guarantees that wealthy Russians are not contributing to campaign financing or other political donations, however unlikely that maybe. The Supervisor of Elections, the Electoral Commission and by extension the Cabinet should be commended for committing to implement the Mission’s recommendations in drafting election law reforms. However, this draft law remains silent on some of the more egregious issues. It is not clear why these ongoing issues are not being tackled. As well as not meeting Benchmarks 1.1.2 and 1.1.4, Montserrat is also not meeting SDG Target 16.5 which seeks to ‘substantially reduce corruption and bribery in all its forms’. Although Montserrat should be commended for having an Electoral Commission in the first instance, it fails to meet Benchmark 1.1.5 as it is not independent (administratively or financially) and it does not monitor election expenses or political parties. This is particularly problematic as the Constitution specifically makes reference to political parties in relation to other governance areas¹².

Recommendation 1

Political party and campaign finance regulations should be legislated for immediately. All other recommendations of the 2014 and 2019 CPA BIMR Election Observation Missions should be implemented before the next election.

Candidate eligibility does meet with benchmark 1.2.1 as there are no restrictions in place based on religion, gender, ethnicity, race, or disability for individuals to stand for election. Nevertheless, stakeholders expressed concern that the Montserratian qualification (51 (2) a)¹³ stipulated in the Constitution, is perhaps restrictive considering the number of young people on the Island who are engaged and enthusiastic about Montserratian politics, but who will never be able to stand at the election because of their parentage. Similar views were expressed by the Election Observation Missions.

More concerning was the intensity of feelings expressed by stakeholders around the ability of public servants to stand at the election with the necessary protections in guaranteeing re-employment. Despite the Eastern Caribbean Court’s 2019 ruling, it makes no sense for the most educated, experienced, and well-informed people, especially those that constitute the majority of the working population, to be so hampered when standing for election. In particular, this approach discourages women in standing for election. The law that exists is ultimately counterproductive because in most circumstances there is not the availability of alternative qualified people to replace most public servants that have to resign. If a nurse or teacher have to resign, the chances are that they would have to be re-employed anyway because there might not be anyone to replace them. Consideration should be given to offering leaves of absence with a guaranteed right of reinstatement, applying any requirement to leave office to coincide with nomination day, or even to ensure that the most rigorous restrictions apply only to those of ‘Senior Civil Service’ level or those that work closest to Ministers¹⁴. An alternative approach could be to re-establish Nominated Members, an approach which predates the current Constitution¹⁵. A certain number of positions could be created in balance with the wider Assembly, which is predominantly allocated to public servants or extended to other representatives of civil society. They could be appointed as before, or an Appointments Committee (which could be the Electoral Commission) could select individuals based on an educational or experience-based criteria, using the UK House of Lords Appointments Commission¹⁶ approach as an example. By increasing the size of the Assembly in this way, more Members could be available to man Committees, quorums would be easier to achieve, and the wider society could feel better represented. Should Constitutional Amendments be adopted to re-establish multi-constituencies, this approach could also be considered alongside that reform.

Recommendation 2

Steps should be taken in advance of the next election to make it easier for public servants to stand for election with guarantees for reappointment to their existing roles. This should include a broad consultation with relevant unions and the broader public.

12. Constitution’s reference in the Public Service Commission clauses around being a member of a political party.

13. Qualifications to be able to be elected as a Member of the Assembly require candidates to be Montserratian by citizenship and by birth to a mother or father who was Montserratian at the time of birth.

14. The UK Civil Service Management Code 2016 (section 4.4 on political activities). https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/566900/CSMC_November_2016.docx

15. Many Commonwealth parliaments which are unicameral have elected and nominated Members. For example, Dominica and St Kitts and Nevis.

16. <https://lordsappointments.independent.gov.uk/>

Incompatibility of Office

Montserrat is compliant in benchmark 1.3.1 as Members can make affirmations instead of just oaths to take up their seats as stipulated in the Constitution. However, it does not meet benchmark 1.3.3 because law officers and civil servants (namely ex-officio public servants) are Members of the Assembly. Stakeholders expressed mixed views around whether such individuals should be allowed to be Members and whether they should be allowed to vote. Some felt that as the Deputy Governor is responsible for the entire public service, they could be given more opportunity to attend sessions. However, as the rules allow for the Assembly to summon any public servant (excluding the Deputy Governor) to the Assembly to assist in its deliberations, perhaps there is not a need for the ex-officio role in the first place.

Freedom of Speech Immunity

One of the most concerning, if not disturbing, issues identified as part of this Assessment is that Members of the Assembly have no enumerated privileges or immunities (1.4.1, 1.4.2). In particular, freedom of speech immunity. The Constitution simply states that *“77. The Legislature may by law determine and regulate the privileges, immunities and powers of the Legislative Assembly and its members, but no such privileges, immunities or powers shall exceed those of the Commons House of Parliament of the United Kingdom or its members.”* Unfortunately, since 2011, no laws have been produced which protect Members of the Assembly. The matter is of course open to legal interpretation, but the likely consequence of which is that Members have no protection by the freedom of speech immunity. This means that they are not protected from legal liability for anything said or done while participating in or directly facilitating the Legislature’s proceedings (both in a physical or virtual/remote setting). For example, they could face litigation for defamation, and recordings of their speeches could be manipulated for the purposes of miscommunication and mockery. The latter of which has already occurred, and the Clerk is not empowered to challenge or reverse such actions on behalf of the Assembly. In terms of the Latimer House Principles, this opens the Legislature to encroachment by the courts into its business, something that should be rigorously opposed. Some urgency should be given to rectifying this gap. There are examples of legislation which could be replicated, such as the Anguilla House of Assembly (Power and Privileges) Act 2000. Certainly, a review of Erskine May¹⁷ would be essential in considering the extent of privileges and immunities which should exist in Montserrat. Updated Standing Orders should also tighten up any potential loopholes.

Recommendation 3

Urgent steps should be taken to enact laws and regulations that clearly establish and enforce the privileges and immunities for elected Members of the Assembly as outlined in the Constitution 2010.

Remuneration and Benefits

The Assembly is compliant with benchmark 1.5.1 in that fair remuneration and reimbursement is provided to Members, although stakeholders had differing views as to the definition of ‘fair’. No stakeholder took the view that levels of remuneration or reimbursement for Members should be increased. The matter of Ministerial or Parliamentary Secretary remuneration levels sits outside of this report. Montserrat should also be praised that it does have a body to determine remuneration and benefits through the Electoral Commission. However, questions can be asked regarding the extent of its independence.

17. Erskine May’s Treatise on the Law, Privileges, Proceedings and Usage of Parliament (25th edition, 2019), online and free to use. <https://erskinemay.parliament.uk/browse/?part=2&chapter=12§ions=4572>

Professional Development

Benchmarks 1.6.1 and 1.6.2 raise the matter of whether the Assembly takes measures to ensure that Members are assisted in understanding how the Legislature works and its rules of procedure. In discussions with current and former Members, there was a unanimous view that it does, primarily through the auspices of the CPA (HQ and CPA UK). The Assembly should be commended for its consistent approach to this. However, some suggested more could be done through a 'how to' guide produced for Members to refer to. In questioning stakeholders, there were clear gaps in understanding by Members which would justify more regular ongoing support. Although not raised by stakeholders, there is an argument that if other senior external stakeholders, from the Governor to the Financial Secretary are going to have such influence and arguable control over the affairs of the Assembly, directly or indirectly, in the short to medium term, they too might benefit from special training around the workings of the Assembly. Some might argue that these historical gaps in understanding the nuanced nature of a Legislature, might explain how numerous deficiencies have come about.

Recommendation 4

A needs assessment should be conducted by the Assembly to identify what learning and development requirements exist for internal and external stakeholders. It should develop an annual curriculum in coordination with the CPA and CPA UK to assist in that provision on an ongoing basis. More technical staffing provision is also required to provide such assistance.

Natural Justice

The Legislature has no rules in place around natural justice, as outlined in 1.8.1 and 1.8.2. Natural Justice is the legal principle that there are fundamental procedures that must be followed in order for a decision to be made that reflects an unbiased approach. Such procedures include notice in a timely manner, the opportunity to present one's case in defence and access to an impartial decision maker. If Members were to breach any of their privileges (see section on Freedom of Speech Immunity) this will be important to institute. At an Assembly level, this gap in rules and procedure should be rectified as part of reforms of Standing Orders.

Recommendation 5

A coordinated and consolidated approach should be taken to examine the policing of Members by the Assembly, related Commissions, the Courts, and the Constitution to ensure that there is clarity and natural justice for Members. This should be undertaken alongside the establishment of any development of privileges and immunities (see recommendation 3 and 24).

Infrastructure

It is certainly positive to note that a new Parliament Building has been given financial backing, and the Speaker with the support of her colleagues should be praised for getting this off the ground. However, in terms of the current situation, it is fair to say that the Assembly does not meet benchmark 1.9.1 to a considerable degree. For example, there are no research facilities, inadequate space for working and antiquated IT equipment. Both the Office of the Legislative Assembly and the Office of the Opposition are poorly located to the Cultural Centre which is also inadequate for Members to fulfil their duties, especially with recurrent power outages.

Recommendation 6

The design and development of any new parliament building must ensure that it provides all the essential needs of Members and staff. At the forefront of any designs should be accessibility for all.

ORGANISATION OF THE LEGISLATURE

Procedures and Sessions

There is unanimous agreement that the existing Standing Orders which originate in the 1970s with minor amendments made up until 2011 are not reflective of current practice and fail to meet the needs of Members (2.1.1). Whereas the Assembly has the powers to adopt and amend its rules of procedure¹⁸ (2.1.2) in reality this does not happen. Nor are decisions taken with near unanimity of the Membership (2.1.4), but through a simple majority. Although great strides have been taken to review them with the support of the CPA UK, since 2014 little has happened to progress reform. Further delays, although reasonable, are expected to incorporate outcomes from this Assessment. There is perhaps a lack of ownership and responsibility from the Members of the Assembly to ensure their rules are workable for now and in the future.

Yes, Members can raise points of order (2.1.5), but the Standing Orders are lacking in so many other areas. These range from being gender biased (only referring to 'he' and 'Chairman'), continuous reference to a non-existent Legislative Council and Executive Council, vagueness on rules around supplementary questions (which was an area of extensive debate on the Island), whether sittings are monthly or every two months, who should present which papers, how Petitions should work in reality, the constitutional requirement for a second Standing Committee, etc. The list is far too extensive to cover here.

There is a general lack of understanding of the rules within the Assembly, for example, there is no such thing as a 'point of clarification'. Members need greater knowledge and familiarity with the rules. Commitment by the Office of the Legislative Assembly to print and make permanently available copies at every session will go some way to improve the situation. However, a great concern expressed is a lack of understanding by the public and the unfortunate habit of erroneous and inaccurate information being shared by Members with the public via radio. It is suggested that following every sitting, the Speaker and the Clerk go on the radio or produce a social media post to explain what has happened at that session and elaborate on the rules where decisions from the Chair were taken to accurately educate the public. Furthermore, the Standing Orders should be published on the new Assembly website at the earliest juncture.

Recommendation 7

The process of updating and enacting the new Assembly's Standing Orders should be concluded before the end of 2022 and all Members should proactively ensure this is achieved. Once complete, the Assembly should establish a mechanism to enable continuous review and updating. Furthermore, training and communication around the new Standing Orders will be essential for Members and other stakeholders (see recommendation 4).

Presiding Officers

Seldom is there an occasion when parliamentarians across the world express the view that their Speaker is not biased towards the government or opposition. Montserrat is no different. Stakeholders repeatedly expressed concerns that the Speaker was partisan towards the government, but also the opposition, creating frustration in both camps. It is perhaps telling that there are no benchmarks associated with this matter of perception because it is so subjective. Whereas Speakers should keep an eye on Members' and the public's perception, it should not be a determinant of decision-making and rulings. Ultimately it comes down to education and communication in explaining why a decision has been taken, that may indirectly favour one side or another. What is essential, and is a benchmark, is that the Speaker must maintain order so that the Assembly can conduct its functions effectively (namely getting through the business of the day) and ensure that Members have full opportunities to participate and be heard

18. Constitution 2010, 72.

according to the rules. On occasion, that may mean that one Member is unable to dominate proceedings with lengthy interventions at the expense of other Members and the overall business of the day.

Overall, the Assembly meets all but one benchmark in this area. In terms of 2.2.3, the Assembly does not keep (and does not ever seem to have done so) a record of rulings from the Chair. It is important that where the Standing Orders are silent, and the Speaker has made a ruling based on his or her judgement, such a ruling becomes precedent. Such rulings should be upheld in the future, unless there are exceptional circumstances that overrule such precedent. Had such rulings been recorded, such 'Common Practice' could now be incorporated into the new Standing Orders. Ultimately, this has come about due to a lack of resources and capacity to go through each session. Staffing is therefore a genuine issue for consideration if the Assembly can function effectively.

The idea that the primary responsibility of a Speaker is to just sit in the Legislative Assembly once a month and then go home for the remaining 29-30 days might have been an acceptable school of thought in the 1970s. But in 2022, the Speaker must do so much more. It is a full-time job and a commitment. Across the Commonwealth, regardless of the size of the legislature, a Speaker should as a minimum:

- Oversee the administration and finances of parliament,
- Oversee the physical precinct of parliament, ensuring it is fit for purpose,
- Represent and defend the interests of parliament and its Members,
- Enforce the powers of parliament,
- Protect the parliament from judicial and executive interference and ensure a robust separation of powers,
- Conduct education and outreach with the public of Montserrat,
- Seek to increase the diversity of representation in the Assembly,
- Undertake ceremonial and protocol activities as required,
- Represent the parliament regionally and internationally, undertaking parliamentary diplomacy activities in Montserrat and abroad,
- Chair ad-hoc Committees and Commissions as determined by the parliament,
- Enable the continuous improvements of the Assembly and facilitate such reviews as required,
- Build effective and collaborative relationships with key stakeholders (governmental, public officers, civil society, the media, etc).

Recommendation 8

The Speaker should be given greater powers, resources, and administrative support to enable them to fulfil their entire mandate. There should be a Speaker's Secretary appointed to assist with education, outreach and engagement. There should be an independent body established to govern the Assembly which the Speaker should Chair.

Agenda and Debates

Again, in terms of the benchmarks, the Assembly is compliant with the key provision which enables Members to amend the Agenda (2.4.1). Where there is room for improvement, is that time could be clearly put aside in the Agenda to encourage the opposition to propose and lead in debates (2.4.3). Members of the Opposition clearly see Question Time as the only viable opportunity to raise issues or scrutinise the Government. But under the current Standing Orders, provisions are made to have motions, even urgent motions, which should be more actively utilised. It may be that Members simply do not know they have this opportunity or don't feel they have the technical support to undertake research on the related topic of concern. This will then demand more technical support and or training on what motions are and how they can be used. It is essential that there are debates and motions on key issues impacting Montserrat. Motions provide valuable opportunities to educate the public, have a national debate, air concerns and grievances, and if necessary challenge the Government's approach. Ministers and Members alike should be using the Chamber to make a statement or explain a policy rather than via the radio, as ultimately that is why the Assembly exists in the first place. There should be an investment by Members in making the Assembly relevant and a forum for national discourse. One way in which the Speaker and officials of the Assembly could assist in enabling the Assembly to be a forum for debate is to have a published parliamentary calendar (2.4.4). There is a calendar, which is incredibly positive and valuable in terms of transparency, but it is not clear who can see it. The Clerk should make efforts to include it on the new Assembly website.

There are provisions in the Constitution to allow for Members to initiate legislation¹⁹, beyond just the Government (2.4.2). However, stakeholders highlighted that no Member has ever taken up the opportunity to draft and present Private Member's Bills. It seems clear from conversations with stakeholders that 'legislating' only goes as far as submitting amendments to Bills. Although this is positive, to never use the ability to present legislation, other than what is issued by the Attorney General, seems a wasted opportunity. It cannot be the case that all the Government-led legislation covers the needs and wants of Montserratian society. Whereas the Attorney General's Chambers may not have the capacity to support ordinary Members to draft legislation from scratch, she has commendably committed to offering advice should such requests for support be made to her. Furthermore, Members should be willing to use existing legislation from other jurisdictions as templates for drafting legislation as well as using private legal advice, international and regional organisations, academia, and civil society to assist. For example, if Bills need drafting around renewable energy, International Renewable Energy Agency (IRENA) would provide assistance or the Alliance of Small Island States on areas like Climate Change and Sustainable Development.

Recommendation 9

The Opposition should utilise all legislative opportunities to hold the executive to account and to advocate and educate the public on key domestic and international matters. Members should encourage petitioning, legislate using Private Member's Bills, and exploit opportunities for general debates and committee hearings.

Recommendation 10

The Assembly should consistently publish annually a business and legislative calendar for public consumption.

Petitions

It is positive to note that Montserrat does meet benchmark 2.7.1 as the Legislative Assembly does have rules that allow for the meaningful consideration of petitions within their Standing Orders. However, in discussions with stakeholders, it seems that petitions have never been presented to the Assembly. In fact, all stakeholders did not seem to know of the existence of petitions as a way to engage with the Assembly and seek change. Consequently, much more needs to be done to communicate the petition process and to make it easier for the public and community to use petitions. This yet again highlights the need for greater opportunities for the public to have their voices heard outside of an election period.

Recommendation 11

The Assembly should proactively seek to educate and explain to the public via all available communication channels what petitions are and how they can be utilised.

Records

Although the Assembly does have a 'Hansard' or Minute of each Assembly session, there is a slight backlog of two months in publishing them. The Minute is not technically publicly available and so to increase transparency and accountability these should be published on the new website as soon as Members have approved the record at the following meeting of the Assembly.

The recording of Minutes is a lengthy, laborious, and costly process for the Assembly. An audio recording is taken (by the local radio station²⁰) which is then given to a court stenographer to type up and then manually corrected by an officer of the Assembly. It is, therefore, reasonable to appreciate that there is a delay. It seems odd that the recording is provided at a cost by the radio station, and there have been questions raised about who owns the recording. Again, this relates to the powers and privileges of the Assembly. The recording should be done by the

19. 2010 Constitution, 70 (1) ... Any Member of the Legislative Assembly may introduce any Bill or propose any motion for debate (unless it is a money bill, which would require Cabinet approval).

20. ZJB Radio

Assembly, and it should be 'owned' by the Assembly with restrictions on its use by third parties. Restrictions that should in no way hamper accessibility to the public²¹. An archive of records should be created and uploaded to the Assembly website and backed up by the Assembly. The Assembly could consider using free-to-use software such as Google Drive, Office 365 dictate²² or Otter²³ to provide an accurate audio dictation at a faster and more affordable rate.

Questions were raised about the use of visual as well as audio broadcasting. As mentioned in later sections, the Assembly needs to consider accessibility and transparency. Having the Assembly broadcast live on radio only, precludes access by the deaf community, younger people who might not use the radio to get their information and those that are working when the Assembly sits. Recordings are available via the Montserrat Echo²⁴, but most of the stakeholders spoken to did not know of its existence. There are also no guarantees that such a service might continue in the long-term, and it would be beneficial to have such recordings on a firmer, more secured footing. The Assembly should consider video recording the sessions and streaming them live on social media (via YouTube or Facebook). This can be achieved at a lower cost and can have the benefit of autogenerating closed captions for people with audio impairments²⁵. Although it was felt by some stakeholders that there was a reluctance by the Government to pay for video recording equipment, the CPA would be willing to fund such equipment and training for the Assembly as part of its CPWD Capital Investment Fund²⁶.

Recommendation 12

The Assembly should have greater ownership over the official and unofficial records of legislative proceedings to protect the rights of Members and the institution. The Assembly should also utilise modern technology to document, data manage and communicate the Assembly record using visual as well as audio streaming and broadcasting.

COMMITTEES

Organisation

Whereas the Assembly does have the right to establish standing committees (3.1.1) it does not have anywhere near sufficient resources to support the functioning of those committees. There is insufficient staffing, technical expertise, and funding for field visits or organising public consultations. More concerning, that with such a small legislature, it is unlikely that there will be a quorum of Members to sit on it. On a positive note, the Assembly via the Speaker does have the powers to appoint lay-members to the Public Accounts Committee²⁷ and that power should be extended to other committees once established. However, the Constitution does unfortunately undermine this capability which should be amended in the future²⁸. The CPA has produced a helpful handbook to assist smaller legislatures in using lay-members and is worth utilising²⁹. As it stands, the Assembly is already in breach of the Constitution by not having a second standing committee³⁰. Another committee should be established as soon as possible to complement the work of the Public Accounts Committee by looking proactively and forward-looking at policies. Committees also need to meet, conduct enquiries, report, and follow up regularly and often (3.1.4). To meet current and future capacity needs, the Legislative Assembly should, as a minimum, have a designated Committee Clerk to support the work of the Assembly in its oversight, accountability, and scrutiny role. Stakeholders had little

21. For example, the Assembly is credited, that it is used for educational purposes and materials cannot be edited and republished without the permission of the Assembly. Also, some clarity about its use by the courts.

22. <https://support.microsoft.com/en-us/office/dictate-in-microsoft-365-eab203e1-d030-43c1-84ef-999b0b9675fe>

23. Otter.ai is an audio transcription system

24. Montserrat Echo WordPress site - <https://montserratradiodioecho.wordpress.com/>

25. It would be helpful for the Assembly to review the CPwD's Disability Inclusion Guidelines - Facilities of Inclusion to ensure they are taking actions which are fully inclusive for persons with disabilities. https://www.cpahq.org/media/u2rgjzem/disability_communication_guidelines_facilities-1.pdf

26. The CPA offers a £10,000 fund to support parliament's accessibility for persons with disabilities. <https://www.cpahq.org/our-networks/commonwealth-parliamentarians-with-disabilities/>

27. 65.(2)(b) The Public Accounts Committee shall consist of...one member chosen by the Speaker from outside the Legislature form among persons with commercial or accounting experience

28. 2010 Constitution 63.(2) Each Standing Committee shall consist of members of the Legislative Assembly who are not members of the Cabinet, and at least one Committee shall be presided over by a member of the Assembly in opposition to the Government (if there is any such member).

29. CPA Small Branches Handbook on Lay Members of Parliament -https://www.cpahq.org/media/rkddrwrk/cpa-handbook-on-lay-members_final.pdf

30. 2010 Constitution states that "63.(1) The Legislative Assembly shall establish at least two standing committees of the Assembly..."

idea what the Public Accounts Committee was doing and those that did were concerned that it was not seeming to achieve very much. The Chair should do more work to promote the PAC and communicate with the public. Being Chair of such a committee can be an effective and influential role if used to maximum effect.

Recommendation 13

The committee functioning of the Assembly should be urgently strengthened and expanded. The Assembly should have a Committee Clerk appointed at the earliest juncture to assist with the running of existing and future committees.

Recommendation 14

Another Committee should be established as soon as possible to comply with the Constitution and to provide an additional scrutiny and accountability mechanism.

Powers

Importantly, the Public Accounts Committee does have powers to summon persons, papers, and records, and this is extended to witnesses and evidence from the executive, including officials (3.2.1). Yet staff in the Assembly highlighted concerns that there was a lack of awareness by public officials of this power, and there were occasions when officials refused or procrastinated in providing information (7.1.2). These rules should be added to General Orders and a memorandum should be issued by the Assembly to all officials highlighting this provision. Should that prove inadequate, the Assembly should be prepared to summon officials to a full Assembly session to demand answers. The ability to hold an individual in contempt of the Assembly would be difficult to establish and should only be considered in extreme circumstances. There is also inconsistency in the rules between the Constitution and Standing Orders as to whether a committee can summon the Deputy Governor³¹ to give evidence. Clarification should be incorporated in any review of the Standing Orders to remove any doubt.

Standing Orders and any legislation on immunities or implementation of laws around integrity in public office should provide protection for informants and whistleblowers (3.2.8). Currently, no such regulations or protections exist. This again has a negative effect on transparency and openness in Montserrat. Accountability and oversight should not just apply to extreme cases like Commissions of Inquiry. Overall, stakeholders felt that the committee functioning of the Legislative Assembly is weak in a legislative and broadly thematic sense. One Committee which sits infrequently cannot realistically meet the needs of Montserratian society to provide effective scrutiny and accountability of the executive or other entities utilising public money or providing key services. The public are clearly frustrated by a lack of openness and opportunity for public engagement and input into challenging decisions or providing insightful advice and expertise.

Recommendation 15

The powers of the Assembly, and in particular committees, need to be placed on a clearer footing through the updating of Standing Orders. Such powers need to be clearly communicated and enforced where necessary.

Recommendation 16

The work of committees and their results should be promoted and communicated to all stakeholders in Montserrat. This will go a considerable way to building confidence in the Assembly and the Public Accounts Committee.

31. Standing Orders provision 65.(4)(d) vs Constitutional provision 50.(1-3)

POLITICAL PARTIES, PARTY GROUPS AND THE OPPOSITION

Political Parties and the Opposition

As mentioned earlier in this report, Montserrat fails to meet benchmarks relating to the formal establishment in law of political parties and party groups and how they are funded (4.1.1, 4.1.2, 4.2.1 and 4.2.2). This affords political parties no protections, rights, or privileges in law other than those enumerated in the Constitution³². On the other hand, Montserrat should be highly commended for the support afforded to the Opposition in providing facilities and resources. Although some expressed the view that support should be increased, the Opposition, including the Leader of the Opposition and the independent member, are given funded use of an office building, staff, and other expenses (4.4.1). Accountability for the accessing and use of such financial support is provided by the Clerk of the Assembly who is the 'Accounting Officer'.

PARLIAMENTARY STAFF

Organisation and Management

The Clerk of the Legislative Assembly is also the Director of the Electoral Commission and Complaints Commission. The Office of the Legislative Assembly sits as part of the wider Constitution and Commissions Directorate. Therefore, the Clerk must divide her time between a number of distinct roles. Of the 180 parliaments and legislatures of the Commonwealth, this is both unique and genuinely concerning. This is doubly so, as the Clerk also must administer the Public Accounts Committee and would have to Clerk an Integrity Commission and any other Commissions or Committees as well. The Clerk is a public service appointment, who is required to report to the Deputy Governor, Financial Secretary, Speaker, Supervisor of Elections, and the Complaints Commission. This brings into serious question the independence of the Assembly and the administrative support it receives. Simply put, the Legislative Assembly does not have a full-time Clerk assigned to support its functioning. It is exceedingly rare across the Commonwealth to have just one individual fulfilling this role, but to not have at least one single full-time Clerk is astonishing, and it is surprising that the legislature can function at all. It is more concerning that if other Commissions are established that the role of the Clerk will be further split, thus dedicating even less time to her legislative duties. Overall, Montserrat fails to meet all benchmarks that relate to parliamentary staff.

Although the Clerk's duties are numerous and of significant seniority, the Clerk is not paid the rate of a Permanent Secretary, which is the norm across other Overseas Territories and her remuneration is not set by an independent body (5.4.2). This perhaps demonstrates that the Government and public service consider the Assembly less important than that of a Ministry. The Clerk's position is not protected by the Constitution or other legislation (5.4.1) which should be the norm. Little consideration has been given to legacy planning should the Clerk transfer to another role, leave or retire from her post. Although Officers in the Directorate have deputised for the Clerk at times, there is perhaps a mistaken assumption that they would wish to follow in that role. This leaves the Assembly at significant risk in the medium to long-term, especially considering the considerable expertise that the Clerk has accumulated over her years of service. A Committee Clerk who could double as a Deputy Clerk might rectify this issue in the future.

As stated above, the Clerk must wear many hats and have many masters. Although the Deputy Governor and other senior officials offer a light-touch oversight to the Clerk in her day-to-day duties, there is no guarantee that future Deputy Governors may take a similar approach. This might result in further governmental encroachment into the administration of the Legislative Assembly. The Clerk also has the potential to be transferred out of the post at any time without any recall by Members of the Assembly. Although such actions are unlikely, the Assembly should put in place rules and procedures to prevent such actions in the future. From an external perspective, it does seem unusual for a Speaker to have virtually no say in how the Legislative Department is run. Unfortunately,

32. Section 13 and 14 of the 2010 Constitution on freedom of expression and protection of freedom of assembly and association.

33. CPA Model Law for Independent Parliament: Establishing Parliamentary Service Commission for Commonwealth Legislatures - https://www.cpahq.org/media/usdnwcqp/model-law-for-independent-parliaments_final.pdf

the Constitution and Standing Orders are silent on the role of the Speaker outside of the Chamber, especially as proceedings in the Chamber are the tip of the iceberg when the entire work of the Legislative Assembly is taken into consideration.

The benchmarks and general good practice stipulate that there should be a corporate body established which is responsible for the services and funding of the Assembly to provide adequate governance and services to Members (5.4.3). Furthermore, the Assembly should have the resources to recruit staff and that pay should be broadly in line with the general public service (5.2.1). The Cayman Islands have now taken steps to increase their parliament's independence, and their law should be looked at as a potential example to replicate in Montserrat. In addition, the CPA's Model Law for Independent Parliaments³³ is also a valuable resource to refer to in these deliberations. A draft constitutional amendment and draft bill have been included as an appendix to this report.

It is important to highlight that by giving the Assembly greater Independence will not equate with less control by the Government or a burdensome financial imposition. Any Administration Committee or Legislative Assembly Service Commission would still have to reflect the political balance of the Assembly. But it will enable all Members, including the Speaker and Opposition, to have a say in the Assembly's functions, and importantly its performance. It would ensure that Members, and not the Deputy Governor, Financial Secretary, or others, who arguably do not have a legitimate right to interfere in the 'Member's Assembly' have control over their needs and wants on a permanent and sustainable basis. Furthermore, individuals with a technical understanding of the nuances and uniqueness of what a legislature is and does will be better placed to make decisions as opposed to officials whose expertise and specialism lay elsewhere.

The Office of the Legislative Assembly, as well as the Clerk, includes two officers as well as some minor support from the staff allocated to the other Commissions. Moving forward, serious consideration should be made to upgrading the two Commission staff-members to the level of a Clerk and that they should report directly to their respective Commission(ers). This will streamline reporting mechanism, ensure greater independence of those Commissions and free up more time for the Clerk of the Legislative Assembly to dedicate to the Assembly functions.

Although the Legislative Assembly does not take active measures to ensure women are represented at all levels of administration (5.1.5) this is far from being an issue. The Assembly should be proud of the fact that all staff employed in the Directorate are women. But there is a concern that marginalised groups, such as persons with disabilities, would be restricted in working at the Office as there is no access for wheelchair users. Hopefully, any new Legislative Assembly building which houses staff will overcome that constraint.

As well as an inclusivity strategy, the Assembly should have additional policies and strategies in place including, but not limited to; Multi-year Strategic Plan, Annual Business Plan, Communications Strategy, Risk Management Strategy, Financial Management Strategy and a Monitoring and Evaluation Plan which should interlink with performance management indicators linked to spending. All of which are essential in the running of a modern legislature, and all of which require sufficient and qualified staff to formulate and implement. Something which is seriously lacking in the Office of the Legislative Assembly.

Recommendation 17

The administration and financing of the Complaints, Electoral and (eventual) Integrity Commissions should be separated out, with staff directly reporting to their respective Commissioners.

Recommendation 18

There should be a full-time Clerk of the Legislative Assembly in place, paid at the level of a Permanent Secretary, provided with sufficient staff to manage all the key functions of the Assembly. In line with recommendations 8 and 13, the service of the Assembly should be expanded by at least two additional members of staff to meet current requirements.

Recommendation 19

There should be a Legislative Assembly Service Commission established as an independent corporate body with the necessary financial and administrative autonomy.

Recommendation 20

The Assembly should, in consultation with Members, develop corporate governance strategies, policies and plans to improve the functioning of the Assembly and to ensure that Members and the public can scrutinise its performance.

FUNCTIONS OF THE LEGISLATURE

Legislative Procedure

Whereas Montserrat is not compliant with several benchmarks in this area (6.1 and 6.2), this is down to the nature of Montserrat as an Overseas Territory, the role of the Governor and not having significant resources. Nevertheless, there should be some long-term consideration around post-legislative scrutiny (6.2.4). It would be of considerable value to Montserrat to see how effective laws have been implemented and where there may have been failures or mistakes, they can be rectified. A review of the Integrity in Public Office Act 2013 might raise valuable questions as to why a law which has been on the statute books for nearly a decade has not resulted in the establishment of an Integrity Commissioner or for any of the legal requirements of that law to be implemented. A question that is on the minds of many individuals in Montserrat. The Westminster Foundation for Democracy (WFD) has done impressive work in the field of Post-Legislative Scrutiny, which might assist in further deliberations³⁴.

There were questions asked by some stakeholders as to who has ownership of legislation. As the name might suggest, once a Bill is laid in the Assembly, it should be the Legislative Assembly which owns that Bill and takes responsibility for its management through all stages. Ministers and the Attorney General should support that process. Members of the Legislative Assembly are legislators, and therefore how they choose to scrutinise, consult, question, amend and pass laws is ultimately up to them. Acts on the other hand are for the government to manage and implement. The practical issue that has arisen is who should publish such Bills and where. Bills once laid in the Assembly should be published by the Assembly and be made widely available via the Assembly's website, media outlets and social media platforms.

Recommendation 21

Bills once laid in the Assembly should be owned by the Assembly and be made widely available via the Assembly's website, media outlets and social media platforms.

OVERSIGHT FUNCTION

General

The Assembly should be more proactive in providing oversight of Montserrat's commitments to international treaties and human rights instruments (7.1.5). Although it is up to the UK Government to extend such commitments to Montserrat, many important ones such as Convention on the Rights of Persons with Disabilities (CRPD) have not been extended, and Montserrat stakeholders are keen to understand why. There has been, and will be, a Sustainable Development Plan in Montserrat, but there is no oversight of it by the Assembly or an examination of whether Montserrat is aligned with the Sustainable Development Goals. Similarly, the Assembly should also be providing oversight of state-owned enterprises or those agencies or entities that are funded or subsidised by the people of Montserrat (7.1.4).

34. WFD – A Guide to Post Legislative Scrutiny - <https://www.wfd.org/what-we-do/resources/guide-post-legislative-scrutiny>

Stakeholders had mixed views around the level of consultation which went into legislation. The majority felt that consultation on draft laws only applied to subjects which were considered by the Government to be highly controversial. Benchmarks (3.2.4 and 5) infer that Bills at Committee stage should be an opportunity to seek public input into laws. As such, there should always be two entry points for public engagement, at the draft stage and the committee stage. It was also highlighted that consultation rarely garnered much attention. Nevertheless, there should be a gesture of willingness, time and interest from the Government and Assembly in seeking views.

Recommendation 22

Long-term consideration should be given to expanding the scrutiny functions of the Assembly by examining delegated legislation, international commitments, and post-legislative scrutiny. Greater efforts should be made in encouraging public consultation and input into laws.

Finance and Budget Oversight

Like all other areas of performance by the Assembly, effective financial oversight is hampered by inadequate resources and access to technical advice (7.2.6). This means that the Assembly requires more time to undertake financial scrutiny, both at a budgetary and financial level. Consequently, there is a view that there is insufficient time available to review and scrutinise the Budget of Montserrat. There is also no ongoing in-year review or oversight of spending updates or budget strategies by the Assembly (7.2.4 and 7.2.5).

Montserrat should be commended for its current undertaking to establish a fully independent National Audit Office (NAO), ensuring greater compliance with related benchmarks. However, concerns were raised, namely that not all reports were scrutinised by the Public Accounts Committee (7.2.9), the NAO, like the Assembly are starved of resources and skilled staff (7.2.8), there was a lack of understanding by Members of the work of the Auditor-General's Office and there is need for ongoing training in that area. Additional concerns were expressed around who should have responsibility for laying Audit Reports in the Assembly (7.2.7). Currently, that responsibility falls to the Financial Secretary, but there is a perceived conflict of interest when those reports are intended to scrutinise and challenge the performance of the Financial Secretary. There was a desire that reports should be laid in the Assembly by the Speaker. This would require an amendment to the current Standing Orders.

Recommendation 23

Greater clarity and consistency should be applied by the Public Accounts Committee and wider Assembly about its work with the National Audit Office and their reports. Greater resources, especially technical support, should be made available to Members to have adequate financial and budgetary scrutiny functions (see recommendation 13).

REPRESENTATIONAL FUNCTION

General

Benchmark 8.1.1 stipulates that the Legislature shall be organised to enable the substantive representation of women (in terms of Members). The number of elected women to the Assembly was reduced to one at the 2019 election, which is down by half from the 2014 election. Stakeholders expressed disappointment in this trend, but there were no real concerns raised that the Constitution or the structure of the Assembly is a barrier to women being elected. Instead, most people felt that the issue stemmed from the fact that political parties were not putting enough women forward as candidates.

Benchmark 8.1.2 states that the Assembly should provide adequate resources to enable legislators to fulfil their constituency responsibilities. This was difficult to evaluate as there is one Island-wide Constituency, so any support provided would have to cover the entire Island. As mentioned previously, there are sufficient resources provided to the Opposition to undertake their work. But should Montserrat revert to multiple constituencies, current resource provision would not be sufficient.

VALUES OF THE LEGISLATURE

Accessibility, Openness and Engagement

In recent years, the Legislative Assembly has moved leaps and bounds in public engagement (10.1.1). The Speaker's Chair radio show³⁵, school visits, Newsletter, Youth Parliament, and the newly developed website³⁶ are evidence of proactive and committed approaches to engage and educate the public on the work of the Assembly. The development of the standalone website is unique across the Overseas Territories and should be an example to others (10.1.7). Time and resources will need to be allocated to ensure it is kept up to date and that papers and reports are regularly uploaded. Work will also need to go into raising awareness of the website's existence to those across Montserrat once it is launched.

The production and public access to the Gazette, is arguably a waste of time and resources. There are only thirteen subscribers to the Gazette which generates approximately \$2,000 EC per year. Considering this insignificant take-up, the Gazette should be freely available and uploaded on the Assembly website, which will free up staff time and availability. Stakeholders also expressed a desire for the Gazette to be rewritten into simple English to ensure it is accessible to a broader domestic audience.

The Assembly has a productive and positive relationship with the media. The media does have access to the Assembly when they sit, and engagement is non-partisan in general. Members of the press did express concerns around timely access to Bills and other legislative information, which should be shared by the Assembly at an earlier juncture. The Assembly should have a Communications Strategy developed to plan and organise how they will share information in the short, medium and long term. The CPA developed an Engagement, Education and Outreach Handbook for Commonwealth Parliaments which provides several handy resources the Assembly can utilise and replicate³⁷. This will go a long way in ensuring information is shared effectively. The Media also wanted a greater sense of what happens at the end of the legislative process and after reports are produced.

The public still require a significant increase in their understanding of the Assembly and what it does. Members should be more engaged in supporting this work. Members of civil society praised Members for always showing a willingness to attend events they have been invited to, but there was no evidence to suggest that Members are proactive in going out into the community and running outreach events individually with minority groups or organisations to educate and engage on the work of the Assembly.

The Assembly should also look to hire apprentices and establish a Speaker's Apprenticeship Scheme to encourage more youth engagement and provide them with work experience³⁸. Such work might also have the benefit of augmenting staffing around basic administrative tasks.

Questions were raised about the accessibility of the Cultural Centre in terms of disabled access (10.1.3). The police have also expressed concerns over their ability to provide sufficient security due to the layout of the building. All these things need to be considered as part of the new building development.

35. Montserrat Echo recording - <https://montserratradioecho.wordpress.com/2022/06/29/wednesday-june-29-2022-the-speakers-chair-with-host-hon-charlena-white-speaker-of-the-legislative-assembly-of-montserrat/>

36. www.parliament.ms

37. CPA Engagement, Education and Outreach Handbook for Commonwealth Parliaments.- https://www.cpahq.org/media/sbif14kt/engagement_education_outreach-handbook_final.pdf

38. <https://www.step.org.uk/speakers-parliamentary-placement-scheme/>

ETHICAL GOVERNANCE

Transparency, Integrity, and Freedom of Information

Montserrat fails to comply with all benchmarks related to this section, in that although laws and regulations exist, they are not implemented nor complied with. The people of Montserrat need to be vocal in demanding action in this area. As mentioned earlier in this report, there is an Integrity in Public Office Act 2013 and a scheduled Code of Conduct, but Act's intentions have never been implemented. This same Act, is reinforced by the 2010 Constitution which states that the *"Legislature shall maintain the highest standards in public life by enacting appropriate laws"*³⁹. There should be a high bar set in terms of transparency and the integrity of elected representatives. Overall, this seriously hinders transparency and openness and generates distrust and suspicion. The smallness of Montserrat does not imply less rumour, gossip, and accusations around the conduct of individuals in public office, especially around election time. Politics in Montserrat is highly personal, as such, greater importance should be placed on individuals' reputations and integrity.

Until the Integrity Commission has been fully established and the full Ministerial Code and Code for public officers can be enforced, Members of the Legislative Assembly should voluntarily publicly sign up to the Nolan Principles⁴⁰. The seven Principles of Public Life were developed in 1995 and have been utilised by many organisations and countries across the world. They call on individuals in public life to demonstrate:

- **Selflessness** - Holders of public office should act solely in terms of the public interest.
- **Integrity** - Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
- **Objectivity** - Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
- **Accountability** - Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
- **Openness** - Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
- **Honesty** - Holders of public office should be truthful.
- **Leadership** - Holders of public office should exhibit these principles in their own behaviour and treat others with respect. They should actively promote and robustly support the principles and challenge poor behaviour wherever it occurs.

Some praise should be extended to the Assembly in that there is a functioning Complaints Commissioner, and although there is no Code of Conduct for the public service, there are many rules and regulations in General Orders for members of staff to adhere to.

39. Constitution 2010, 106

40. More information on the Principles can be found here - <https://leadinggovernance.com/blog/the-nolan-principles-25-years-on/>

CONSOLIDATED LIST OF RECOMMENDATIONS

RECOMMENDATION 1

Political party and campaign finance regulations should be legislated for immediately. All other recommendations of the 2014 and 2019 CPA BIMR Election Observation Missions should be implemented before the next election.

RECOMMENDATION 2

Steps should be taken in advance of the next election to make it easier for public servants to stand for election with guarantees for reappointment to their existing roles. This should include a broad consultation with relevant unions and the broader public.

RECOMMENDATION 3

Urgent steps should be taken to enact laws and regulations that clearly establish and enforce the privileges and immunities for elected Members of the Assembly as outlined in the Constitution 2010.

RECOMMENDATION 4

A needs assessment should be conducted by the Assembly to identify what learning and development requirements exist for internal and external stakeholders. It should develop an annual curriculum in coordination with the CPA and CPA UK to assist in that provision on an ongoing basis. More technical staffing provision is also required to provide such assistance.

RECOMMENDATION 5

A coordinated and consolidated approach should be taken to examine the policing of Members by the Assembly, related Commissions, the Courts, and the Constitution to ensure that there is clarity and natural justice for Members. This should be undertaken alongside the establishment of any development of privileges and immunities (see recommendation 3 and 24).

RECOMMENDATION 6

The design and development of any new parliament building must ensure that it provides all the essential needs of Members and staff. At the forefront any designs should be accessibility for all.

RECOMMENDATION 7

The process of updating and enacting the new Assembly's Standing Orders should be concluded before the end of 2022 and all Members should proactively ensure this is achieved. Once complete, the Assembly should establish a mechanism to enable continuous review and updating. Furthermore, training and communication around the new Standing Orders will be essential for Members and other stakeholders (see recommendation 4).

RECOMMENDATION 8

The Speaker should be given greater powers, resources, and administrative support to enable them to fulfil their entire mandate. There should be a Speaker's Secretary appointed to assist with education, outreach and engagement. There should be an independent body established to govern the Assembly which the Speaker should Chair.

RECOMMENDATION 9

The Opposition should utilise all legislative opportunities to hold the executive to account and to advocate and educate the public on key domestic and international matters. Members should encourage petitioning, legislate using Private Member's Bills, exploit opportunities for general debates and committee hearings.

RECOMMENDATION 10

The Assembly should consistently publish annually a business and legislative calendar for public consumption.

RECOMMENDATION 11

The Assembly should proactively seek to educate and explain to the public via all available communication channels what petitions are and how they can be utilised.

RECOMMENDATION 12

The Assembly should have greater ownership over the official and unofficial record of legislative proceedings to protect the rights of Members and the institution. The Assembly should also utilise modern technology to document, data manage and communicate the Assembly record using visual as well as audio streaming and broadcasting.

RECOMMENDATION 13

The committee functioning of the Assembly should be urgently strengthened and expanded. The Assembly should have a Committee Clerk appointed at the earliest juncture to assist with the running of existing and future committees.

RECOMMENDATION 14

Another Committee should be established as soon as possible to comply with the Constitution and to provide an additional scrutiny and accountability mechanism.

RECOMMENDATION 15

The powers of the Assembly, and in particular committees, need to be placed on a clearer footing through the updating of Standing Orders. Such powers need to be clearly communicated and enforced where necessary.

RECOMMENDATION 16

The work of committees and its results should be promoted and communicated to all stakeholders in Montserrat. This will go a considerable way to building confidence in the Assembly and the Public Accounts Committee.

RECOMMENDATION 17

The administration and financing of the Complaints, Electoral and (eventual) Integrity Commissions should be separated out with staff directly reporting to their respective Commissioners.

RECOMMENDATION 18

There should be a full-time Clerk of the Legislative Assembly in place, paid at the level of a Permanent Secretary provided with sufficient staff to manage all the key functions of the Assembly. In line with recommendations 8 and 13, the service of the Assembly should be expanded by at least two additional members of staff to meet current requirements.

RECOMMENDATION 19

There should be a Legislative Assembly Service Commission established as an independent corporate body with the necessary financial and administrative autonomy.

RECOMMENDATION 20

The Assembly should, in consultation with Members, develop corporate governance strategies, policies and plans to improve the functioning of the Assembly and to ensure that Members and the public can scrutinise its performance.

RECOMMENDATION 21

Bills once laid in the Assembly should be owned by the Assembly and be made widely available via the Assembly's website, media outlets and social media platforms.

RECOMMENDATION 22

Long-term consideration should be given to expanding the scrutiny functions of the Assembly by examining delegated legislation, international commitments, and post-legislative scrutiny. Greater efforts should be made in encouraging public consultation and input into laws.

RECOMMENDATION 23

Greater clarity and consistency should be applied by the Public Accounts Committee and wider Assembly in relation to its work with the National Audit Office and their reports. Greater resources, especially technical support, should be made available to Members to have adequate financial and budgetary scrutiny functions (see recommendation 13).

RECOMMENDATION 24

The Assembly and Government should implement the long-overdue Integrity in Public Office Act. Establishing and enforcing a register of interest and code of conduct which would bring Montserrat in line with international best practice. It would also provide an important reference point for Members and Ministers alike to signal to the public that the Assembly is an institution committed to regulating itself and preventing the abuse of power.

**A DRAFT BILL FOR
LEGISLATIVE ASSEMBLY SERVICES COMMISSION, 2022**

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PART 1 – PRELIMINARY

Interpretations

1. In this Bill -

“Assembly” means the Legislative Assembly of Montserrat

“Legislature” means the Legislative Assembly of Montserrat

“Commission” means the Legislative Assembly Services Commission

“Service” means the Legislative Assembly Service

PART 2 – LEGISLATIVE ASSEMBLY SERVICES COMMISSION

Incorporation

2. (1) There shall be a body corporate named the Legislative Assembly Services Commission to perform the functions conferred on it by this Bill. The Legislative Assembly Service is not an instrument of the executive government.

Composition of the Commission

(2) The Commission shall consist of –

- (a) The Speaker of the Legislative Assembly who shall be the Chairperson
- (b) A Member of the Assembly from the governing party,
 - (i) who shall not be a member of the Cabinet, and
 - (ii) who is nominated by the Premier
- (c) A Member of the Opposition, who shall be Vice-Chairperson
 - (i) nominated by the Leader of the Opposition
- (d) An external lay-member appointed by resolution of the Assembly
and
- (e) An official of the Assembly Service who shall serve as Secretary to the Commission,
 - (i) who is appointed by the Chairperson,
 - (ii) but who shall not have voting rights

(3) A member of the Commission shall vacate office –

- (a) Upon the dissolution of the Assembly (preceding an election) during which the member was appointed to the Commission:
 - (i) Provided that upon the dissolution of the Assembly, appointed members of the Commission shall continue in office until new members are appointed in their place by the next Assembly.
- (b) if the member of the Commission ceases to be a Member of the Assembly other than by reason of the dissolution of the Assembly.

(4) If the office of chairperson of the Commission is vacant or the chairperson is for any reason unable to exercise the functions of their office, then, until a person has been elected Speaker and has assumed the functions of chairperson, or until the person holding that office has resumed those functions, as the case may be, the vice-chairperson or, if the office of vice-chairperson is vacant, or the vice-chairperson is for any reason unable to perform the functions of the office of chairperson, such one of the other appointed members as the Commission may elect shall act as chairperson; and the vice-chairperson or the other member shall, subject to subsection (3), continue to act until a person has been elected to the office of Speaker and assumed the functions of chairperson or, as the case may be, until the person in whose place they are acting has assumed or resumed those functions.

(5) If the office of an appointed member of the Commission is vacant or if such member is acting as chairperson under subsection (4), or is for any reason unable to exercise the functions of his office, the Assembly may appoint a person who is qualified to be appointed to be a member to act in place of that member; and a person so appointed shall, subject to subsection

(1), continue to act until a person has been appointed to the office in which he is acting or has assumed the functions of that office or, as the case may be, until the person in whose place he is acting has resumed those functions.

(6) Past service is no bar to nomination or appointment as a member of the Commission.

(7) No person shall be appointed as an external lay-member to the Legislative Assembly Service Commission if he or she is or has been for the preceding five years in Montserrat –

- (a) An elected Member of the Legislative Assembly
- (b) The holder of any office in a political party
- (c) Deputy Governor
- (d) Financial Secretary
- (e) Attorney General or
- (f) A public officer of the rank of Permanent Secretary

PART 3 – FUNCTIONS AND POWERS OF THE COMMISSION

Independence and delegation of powers

3. (1) In the exercise of its powers or the performance of its functions under this Bill, the Commission shall not be subject to the direction or control of any other person or authority

(a) other than through a resolution of the Assembly

(2) Subject to this section, the Commission may by regulations or otherwise regulate its own procedure and, with the consent of the Cabinet, as may be appropriate, may confer powers or impose duties on any public officer or authority for the purpose of the discharge of its functions.

(3) The Commission may, by directions in writing, delegate any of its powers under this section to any one or more of its members or to any officer in the Assembly service.

Powers over the Assembly Service

4. (1) The Commission shall have the powers to appoint all staff in the Assembly, and shall determine their numbers and their remuneration and other terms and conditions of service.

(2) The Commission shall ensure that the complementing, grading and pay of staff in the Assembly are kept broadly in line with those in the public service so far as consistent with the requirements of the Legislative Assembly, the other conditions of service of staff in the Assembly are also kept broadly in line with those in the public service.

(3) Notwithstanding anything to the contrary appearing in this section, the Commission may -

(a) engage persons under individual contracts of service upon such terms and conditions as the Commission may determine;

(b) commission any person, who in its opinion possesses expert knowledge or is otherwise able to assist in connection with the exercise of its functions, to make such inquiries or to conduct such research or to make such reports as may be necessary for the efficient and effective carrying out of its functions;

(c) appoint competent persons, whether members of the Commission or not, to be a committee or committees to assist the Commission on such matters within the scope of its functions as are referred to them.

(4) The Commission shall ensure that the pensions and other similar benefits of staff of the Assembly are kept in line with the provisions of the public service, but need not do so in the case for whom provision for such benefits was made under another scheme before they entered service in the Assembly continues to be so made in respect of such service.

(5) Subsection (1) does not apply to those individuals appointed by Members of the Assembly for their own service, such as for political campaigning or staff assisting with constituency matters.

(6) The Commission shall have the powers to exercise disciplinary control over those in the Assembly services, including the powers to remove those persons from the Assembly service

(7) The Commission shall ensure there is a staff performance appraisal system in place that shall be like that used by the public service and shall set objectives for those in the Assembly service to meet on an annual basis.

(8) The Commission shall promote the welfare of Members of the Assembly and members of staff and the dignity of the Legislative Assembly

(9) The Commission shall have responsibilities to review from time to time the Standing Orders of the Legislative Assembly and to make recommendations to the Assembly

Financial Provisions

5. (1) The Legislative Assembly Service Commission shall have the power —

(2) to provide such services and facilities as are necessary to ensure efficient and effective functioning of the Assembly;

(3) to direct and supervise the administration of the services and facilities provided by, and exercise budgetary control over, the Service;

(4) to cause to be prepared and laid before the = Assembly in each financial year estimates of expenditure (which shall be a charge on the Consolidated Fund) of the Assembly service for the next following financial year;

(5) The Commission will determine, without prior consent from any authority other than the Legislative Assembly, an amount appropriated under an annual appropriation Act in respect of the Assembly service

(6) to cause to be audited and a report thereon laid before the Assembly at least once every year, the accounts of the Commission (also known as the accounts of the Clerk of the Legislative Assembly).

(7) The Commission may appoint a member of the staff in the Assembly service to be the officer (" the Accounting Officer ") responsible for accounting for the sums paid out of money provided by Assembly for the service of the Assembly.

(8) All fees and other sums payable to the Assembly shall be paid into the Consolidated Fund.

(9) The Commission is to pay the salaries and allowances and benefits (such as pensions) of Members of the Assembly in accordance with the relevant resolutions of the Assembly and the recommendations of the Electoral Commission.

(a) That is subject to anything done in exercise of the disciplinary powers of the Assembly;

(b) payments are made in a fair and equitable manner

(c) To be reviewed on an annual basis.

Limitations on the Commission

6. (1) The Commission does not have a role in relation to—

(a) business transacted at meetings of the Assembly or meetings of committees of the Assembly; or

(b) any other proceedings in the Assembly; or

(c) any matter for which the Clerk of the Assembly has responsibility, as set down in the Constitution of Montserrat (and amendments)

PART 4 – THE ASSEMBLY SERVICE

7. (1) There is established by this Bill a Assembly Service, referred to in this Act as "the Service"

(2) The Service shall comprise such officers and departments as may be prescribed by regulations of the Commission.

Clerk of the Assembly

8. (1) There shall be a Clerk of the Legislative Assembly who shall be the Head of the Assembly Service and shall be responsible for the day-to-day business of the service and shall report to the Commission

(2) The Clerk of the Assembly shall be appointed by the Governor on the recommendations of the Public Services Commission, the Speaker of the Legislative Assembly, the Premier and the Leader of the Opposition.

Principal duties of the Assembly Service

9. (1) The principal duties of the Service are—

(a) to provide administrative and support services to the Assembly, its Members and any committee or agency of the Assembly for the purpose of ensuring the full and effective exercise of the powers of the legislature; and

(b) to provide such other services as the Assembly may by resolution determine

(c) to administer the payment of salaries and other expenses as approved by the Commission under regulations.

Transitional Provisions

10. (1) The person who, immediately before the commencement of this Act, was in the Assembly service shall be deemed to be appointed to the Assembly service,

(2) Persons shall have the option to remain in the Service or to be redeployed into the public service.

(3) A person who fails to exercise the option conferred by subsection (2) within a period specified, shall be deemed to have opted to retire from the Service.

DRAFT



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