

1) Ever since the separation from Normandy in 1204 the law of the Channel Islands has been uncertain and confusing.

Complaints have been sent with monotonous regularity from the residents of Jersey and Guernsey to London about the obscurities of the law and the unfairness and inadequacies arising in the relevant legal and judicial systems and those who administered them.

2) This current invitation to comment is nothing new – it has all happened before.

From the Assize Rolls and Extentes of the 13<sup>th</sup> century to the present day the record books are stuffed with complaints of confusion and injustice yet, for the most part, the basic faults remain.

3) The system has never been subjected to the radical review and reforms that are needed.

Always there have been powerful people with vested interests who prefer things to remain unchanged.

Central throughout most of the past thousand years or so have been the lawyers who by their conduct have allowed and encouraged the retention of legal systems and practices that favour the few at the expense of the many.

4) Today it is the Finance Sector that distorts and dominates the way of life in the whole of the Channel Islands and the tiny legal professions of Jersey and Guernsey dance to its every tune.

5) Thus in Jersey, "Law" is now a very big business in a small community.

The wealth generated by the tiny legal profession is out of all proportion to the size of the Island population of 100,000 because it is largely derived from an internationally based, super wealthy, clientele. The Island's self regulating and monopolistic legal profession has been captured by a £multi-billions business so that it can no longer even claim to serve the best interests of the resident community.

6) The **JEP Business Section** for 30 April 2014 proudly featured a Jersey Legal Group as *"the first to be granted a license to provide off-shore legal advice in mainland China."*

The article continued;

*"The firm's Greater China team includes over 15 partners and fee-earners and has offices in Hong King as well as Shanghai".*

7) But what is the benefit to the local, resident Jersey population of such developments?

8) In fact, to a very large extent, the Jersey legal profession has exported the provision of its services to people and businesses resident outside of the very Island which still provides and protects the professional status of its members.

This is at least undesirable and raises questions about the profession's true allegiance and purpose.

9) Obviously, the nature of services provided to wealthy clients, on an international basis, is not the same as those that might be required by "ordinary" local residents of Jersey.

10) Not only are the fees scales charged in the Finance world astronomically inflated but the legal expertise offered has little relevance to most Island residents and their "legal" needs.

In other words, the profession has become divided between those few practitioners who provide local services for residents and those who do not.

11) Yet, all Jersey lawyers in private practice claim similar basic qualifications and abilities and offer their services as members of the same professional body – **The Law Society of Jersey** – which retains very extensive powers of governance and supervision over Jersey lawyers and a great deal of influence in the wider community including government.

12) This professional self governance would in any circumstances be worrying – but in Jersey, where the profession is so small and other restraints upon its behavior are so few – the public interest is not best served.

13) I would suggest that the “conspiracy against the laity” in Jersey is much worse than G. B. Shaw could ever have imagined.

14) Other “professions” operating in Jersey have outside bodies that ultimately control and monitor the conduct etc of their members but the self-serving Jersey law community is simply not capable of acting in a sufficiently independent way.

The more so since a few lawyers, such as the Bailiff and other Crown Officers, seem to exercise excessive and conflicting powers and duties with regard to fellow lawyers and their relationship with the general public and the courts etc.

15) But who really protects the “public interest”?

16) Greater separation of duties and powers is necessary in so many aspects of the judicial and legal service provided in Jersey.

17) In my view, for example, the ultimate responsibility for lawyers’ training, supervision and regulation etc should be taken away from the “**Law Society**” and brought within the remit of a totally new **Department of Jersey Justice** (described elsewhere).

18) The teaching of Jersey law should be entrusted to an outside institution too – possibly a south coast English university.

19) Although the recently established **Institute of Law** in Jersey is a welcome innovation, it remains too closely intertwined with the local profession’s hierarchy.

20) There is no reason why **Highlands College** should not offer facilities for anybody wanting to study Jersey law – whether for professional or other purposes – and be linked to a UK University as necessary (as it is currently for some degree courses).

A reconstituted **Institute of Law** might also provide the local link but would need to open its doors much more widely to the general public.

21) I would also suggest that the Jersey law profession in private practice should be divided into separate and distinct divisions.

The one should be for those providing Finance Industry services and the second for those lawyers who primarily offer legal services for Jersey residents.

(In the historic past there was a body of Ecrivains who appear to have fulfilled a mostly clerical/legal role locally).

22) Only the latter division of lawyers should have a responsibility for providing "legal aid" under a scheme properly financed from public resources as part of a newly created **Department of Jersey Justice**.

23) Coupled with that reform I would also propose that "outside" lawyers should be enabled to offer legal services in Jersey. They too would be able to provide "legal aid" services, funded publicly where necessary.

24) In other words the Jersey Lawyers' monopoly should be abolished. The general public should be permitted to employ any lawyer of their choice to represent them or to advise them in Jersey – in or out of court.

25) It is significant that **Alan Collins**, a UK based Solicitor-Advocate with Slater & Gordon (UK) LLP, currently represents 59 victims of Jersey child abuse within the States Compensation scheme. His role is doubly important.

26) Firstly because he stepped in (along with an Irish lawyer) about six years ago where Jersey lawyers, apparently, feared to tread. In other words, he has been providing legal representation and advice to victims because virtually all Jersey lawyers were not prepared so to do.

27) Secondly, it is especially relevant that **Alan Collins** is being paid from Jersey public funds for his work.

Thus he is a lawyer from another jurisdiction and is in effect, acting on a "legal aid" basis. His work continues now with the **Jersey Child Abuse Inquiry** and he will appear as a witness and as an adviser to some of his clients.

28) Video interviews with **Alan Collins** have been posted on [www.tomgruchy.blogspot.com](http://www.tomgruchy.blogspot.com) I would urge the Review Panel to look at these; 6 April 2014, 23 August 2013, 15 December 2012 and 16 August 2012.

29) Furthermore, I would propose that the general public might engage with anybody of their choice to assist them in court, or to advise them out of court and that the role of lay helpers such as **Mackenzie Friends**, should also be officially acknowledged and encouraged as an integral part of the judicial system.

30) Moreover, I would suggest that litigants in person should be able to claim and/or be awarded realistic costs for their own time spent in legal actions and that **Mackenzie Friends** should also be able to claim realistic expenses.

31) It may be desirable to restrict the activities of "lay" advisers with regard to the drafting of legal documents and such like but the importance of encouraging the public to be able to access legal information and to represent themselves cannot be overstated.

32) We are hopefully emerging from the dark ages of secrecy so far as understanding law is concerned and revealing the activities of government departments etc through Data Protection and FOI laws and policies. This trend must be encouraged.

33) Information Technology is challenging many prejudices and the presumption that only qualified lawyers who are members of a tiny privileged "club" should enjoy a monopoly in the provision of legal services is not supportable in the 21<sup>st</sup> century.

34)The immense potential for release of information and guidance to the public, through the Internet and other media or published sources, cannot be resisted by Jersey's entrenched governmental or legal establishments.

35)My working life was that of a naïve building designer.

It is my strong belief that the general public should be enabled, so far as practicable, to choose freely, those people who might be employed or consulted in such areas as the provision of simple design or legal services. Even medical research carried out "on-line" by a patient is now often proving a challenge to doctors' knowledge and their "professional" status.

This is both inevitable and desirable.

36)All professions must be reformed to meet the challenges and needs in a changing world.

37)During the past forty years the Jersey legal profession has grown from about sixty members to about two hundred. The precise number is not now clear because many lawyers who retain their membership of the Society are really retired or undertake little work.

Others are employed in the **Crown Officers Department** and apparently not required to be members.

38)In an interview with **Advocate Barbara Corbett** – posted on my [www.tomgruchy.blogspot.com](http://www.tomgruchy.blogspot.com) site in March 2013 – she claimed that about 140 Jersey lawyers were "active".

I would urge the Review panel to view that interview which discusses many issues relevant to this Review.

39)By any standards Jersey has a very small profession to service a unique jurisdiction with its own laws and judicial system and I doubt that it could do the job properly in any circumstances.

But, with so many practitioners mesmerized by the dominant Finance sector, I would suggest that the provision of an adequate legal service for the 100,000 residents of Jersey is impossible.

40)At least one senior Jersey Advocate - **Philip Sinel** – supports some of my contentions and has published his critical views on several occasions. I understand he will be submitting them afresh to this Review so therefore, it is not necessary to quote from him at length. But in his submission to the **Review of the Roles of the Crown Officers** (the so called Lord Carswell review) he wrote;

*"4.1 Jersey's legal system is, in its entirety, fundamentally incompatible with the Convention for the Protection of Human Rights and Fundamental Freedoms".*

41)It is significant that **Advocate Sinel** claims to have suffered retribution and attack from the "legal system" in Jersey because of the views he has expressed and also for the way he has defended certain people. Furthermore he claims to have lost many £thousands in fees as a result of his actions.

42)He makes the point – and I would support his view – that those who speak out in Jersey are liable to suffer intimidation in many ways.

In some cases people with valid complaints are effectively silenced for fear of retribution. This is particularly so in everyday cases of dispute over such matters as tenancy, employment and Social Security issues – all areas where most Jersey lawyers seem to show very little interest in representing or advising complainants.

43)Advocate Sinel also appears in a two part interview on the current [www.voiceforchildren.blogspot.com](http://www.voiceforchildren.blogspot.com) which I would urge the Review panel to study.

44) If a senior Jersey lawyer such as **Advocate Sinel** fears intimidation – what hope is there for the general public?

45) **Advocate Sinel's** complaints are unusual but not unique among Jersey lawyers. During the recent (2013) trials and court appearances re **Curtis Warren** his Jersey **Advocate Stephen Baker** expressed the strongest criticisms against other Jersey lawyers, saying that the tiny profession was self protective, unchallenging and not Human Rights compliant. He also alleged perversion of the course of justice, a deliberate plan by the AG to "throw the Police to the wolves", **Crown Officers** deliberately misleading the Police and otherwise "acting wholly improperly" etc. As a result of such behavior the Advocate had made an application to the Lt. Governor alleging "abuse of process".

46) But what process, procedure or body generally protects "the public interest" in Jersey? Certainly not the Law Society of Jersey which does not even have – for example - any supervisory or disciplinary powers over lawyers serving in the Crown Officers Department.

47) The lack of ready access to lawyers and denial of the protection of the legal system are very real barriers experienced by many people. The structure of the legal profession and its distorted priorities in the Finance sector work against the needs of local residents with their everyday quest for legal knowledge and support.

48) Whilst a few lawyers do offer "pro bono" advice from time to time – either to individuals or through the CAB – this is hardly justification for the more generally inadequate service offered.

49) That Jersey lawyers cannot offer a "no win - no fee" service to potential clients may have its policy supporters in the **Law Society** but it seems especially perverse in an Island where the options for obtaining legal information are so limited.

50) The more so since the CAB is still apparently not allowed to offer legal advice, except when it is given by a volunteer Jersey lawyer.

51) The problem is not just about cost.

Finding a Jersey lawyer with relevant expertise can also present problems and there is no public register of lawyer's professional competence to consult.

It is not at all unusual either to be referred to London for an English QCs opinion whereas the local lawyer might be expected to advise on all matters.

Such referrals add to expense, diminish the credibility of the local practitioner and argue in favour of ending the local lawyers' monopoly.

52) "Ignorance of the law is no defence" is an often cited maxim in court cases.

But in Jersey such ignorance is the historic norm.

Traditionally, local publication of law text books and commentaries has been almost non-existent and there have been numerous pleas over the centuries from Islanders to London seeking clarification of the laws of the Island.

Unfortunately, the tradition has been for Jersey lawyers to keep the law as secret and obscure as possible to maintain their control on legal knowledge.

53) Until recently, prior to the establishment of the **Institute of Law**, lawyers' practices had handed-down manuscripts which were made available to trainees for study purposes. The Institute has at least now produced some more accessible, printed texts for students to study and other lawyers too

have produced a few volumes or WEB sites on some aspects of Jersey law – mostly commercial or property related.

54) For the general public the published information on Jersey law and policy still remains remarkably limited.

Published guidance – written by lawyers - on such everyday matters as Planning Law, Tenants and Landlords rights and obligations, Social Security issues, Employment, Human Rights, Discrimination, Consumer rights, Family Law, Privacy, Police practices, Parish Proceedings & Enquiries, Motor traffic law, Education etc is scarce.

55) This scarcity should be compared critically with the vast output of legal information published in the UK and other jurisdictions. Any public library in the UK boasts shelves of modern legal publications on every subject but in Jersey the limited material is mostly ancient, written in French, deals with obscure topics or is “legally lightweight” or, at the other extreme, too “academic”.

56) Much legal information available in Jersey is misleading since it is concerned with the law of other jurisdictions. The output of the “national” media is especially problematic but the Internet is also of concern.

57) For those seeking legal guidance in Jersey, all roads almost invariably lead to a lawyer’s office.

58) Of course, small jurisdictions such as Jersey have special problems.

It is not generally economically viable to produce legal information – even if suitable authors come forward – without substantial subsidies or sponsorship.

I say that the publication of legal information is another task that should be undertaken or promoted through a fully funded Department of Justice.

(Notably, in Guernsey, the Judicial and States Greffe have been combined historically.)

59) I have in the past tried to encourage the publication of such information and to have Jersey law taught at **Highlands College** – but with very limited success. In fact, my efforts have been generally resisted by the legal establishment.

60) That the **Jersey and Guernsey Law Review** and **Jersey Judgments** are now published is another step forward but these are not freely available to the public nor in a format that encourages access to specific laws and obligations.

61) Access to the lawyers own “Law Library” is, so far as I am aware, still restricted to lawyers.

62) The “**Code of Laws of 1771**” was just one feeble attempt to provide a statement of the laws – for the general public - at that time. But that only came about, by Order of the Privy Council, in response to the **Jersey Revolutionaries call of 28 September 1769**. It was a small, inadequate volume and largely written in English but not subsequently updated as a living document.

63) **Le Traite du Coutumier de L’Ile de Jersey** by **Vicomte Charles Le Gros**, was originally published (in French) during the Occupation and re-published recently by the **Jersey & Guernsey Law Review** with updates (in English).

But “apart from the 17<sup>th</sup> century works of Le Geyt and Poingdestre it is the only published text which purports to treat the whole of Jersey Customary Law” according to a recent note in the Review.

And “It is no longer in all respects an entirely reliable statement of the Law....”

64) Significantly, Charles Le Gros, born in 1867 the son of a sea captain, studied Norman law at Caen and commenced as an Ecrivain in Jersey but he truly belongs to history so far as modern, useful information on Jersey law is concerned for the general public.

65) No longer should access to legal knowledge be the private domain of lawyers. It is an essential part of everyday life for all. Ignorance is not bliss.

66) Access to knowledge is one thing, but access to the various courts and tribunals can be difficult in Jersey too.

Hearings are supposed to be heard but in spite of my years of protesting, the acoustic standards are generally very poor for the public in most court rooms.

67) I am not a lone complainant.

A UK Commissioner complained at least three times about being unable to follow proceedings, over a short period, in Royal Court number One during a case in 2013 (AG v Breckon).

The Commissioner wondered, if she could not hear, how about those in the public gallery?

Nothing has improved since.

Even the newly built Magistrates' courts often have deficient acoustic systems as do almost all public rooms used for Employment and Social Security Tribunals, Complaints Boards and Scrutiny Panels.

68) Coupled with this inability to hear is the lack of a published list of court cases and proceedings that might be attended by the general public. I understand that "improvements" are planned but they are very slow in arriving.

69) Can the Society of Jersey Lawyers membership have been so unaware of these practical problems over the centuries?

I have written repeatedly to the Bailiff, Judicial, States and Court Greffiers, besides States Members, regarding these simple faults.

If there were a **Department of Jersey Justice** I would expect remedial action to have been taken quickly.

70) A simple form of **Department of Jersey Justice** has been proposed by Senator Farnham but I believe that a more radical proposal is called for with much greater powers and duties.

71) I believe that a Department, headed by an elected Minister, should be responsible for all judicial and legal activities in Jersey. This should include the appointment of all judges, law officers, Greffiers and Court officials, the publication of legal information, the supervision of all legal services providers and their training, a publicly funded legal aid scheme, a prosecution service, law drafting, and the management of all courts and tribunals etc.

Such a Department would be enabled to recruit staff for the public service offering supportive career structures, training and employment with security.

72) Crown appointments, including that of Bailiff, should be abolished. All Judges and Law Officers would be recruited within the Island and be accountable to the Department of Justice for their professional behaviour.

I welcome the opportunity to make this submission to the Access to Justice Review but recognise that I should not attempt to undertake an entire or comprehensive review myself.

Therefore, I have terminated at this point although there are many outstanding matters that deserve

critical attention or further explanation. The system of Justice and the provision of legal services in Jersey need comprehensive reform. There is virtually nothing that warrants retention in its present form.

I have been preparing submissions, writing articles, lobbying and campaigning for the reform of Jersey's judicial and legal services for decades.

To supplement the information provided now I am also submitting as an appendix the following articles etc written since 1976. These include some information about aspects of the Jersey system that have already been improved but also include a great deal about things that remain ripe for change.

The appendix articles etc should be considered as an integral part of my current submission to the Review body.

**Michael Dun**

Jersey 16 June 2014

#### **APPENDIX articles etc by Michael Dun**

Letter to Commissioner Scriven QC re Representation regarding Access to court proceedings  
3 June 2014

Submission to the UK Select Committee concerning the Crown Dependencies  
24 June 2013

Submission to the UK Ministry of Justice  
Parliamentary Select Committee on Crown Dependencies 9 May 2013

Bringing the Professions into Disrepute  
Blog text 20 September 2012

Jersey Law Sick as a Parrot  
Blog text March 2012

Crown Officers Review (Lord Carswell Review) Part Two  
15 April 2010

UK Treasury Select Committee  
Review of Tax Havens 9 July 2008

Letter to Jersey Evening Post  
12 July 2004

Memorial in Response to Human Rights Report (FCO)  
8 December 2004

Legal Information in Jersey  
3 July 1976



FAO Commissioner Scriven QC  
Royal Court Building  
Jersey

**Re Representation regarding Access to court proceedings**

From

Michael Dun – a member of the public.

By Hand. Tuesday 3 June 2014

Today – Tuesday 3 June - I attended at the Old Library Court to observe the proceedings in the case **Sinel v Stadden** at which you were advertised to preside with two Jurats.

Notice of this hearing appeared on the electronic notice board in the lobby entrance to the Royal Court Building. There was no indication that the hearing was in private.

Another hearing referred to only as "S v S" was listed on the same board as a child hearing in private. I do not know if it was a related matter.

Yesterday I had noted that both the cases were scheduled and asked the Usher to enquire about my access to the **Sinel v Stadden** hearing. After contacting the Bailiff's office he advised me that no directions had been issued and that I should attend at the court today at the scheduled time.

I did so and was ordered to leave the court by another usher at about 10.25 am.

I protested that this was contrary to the information given and that I wished to address the court on the matter of access as a member of the public. The usher said that I could not do so, that this case concerned children and that you had confirmed this advice out of court and I must leave.

I left.

This follows a previous ejection from the same court by a court greffier – about one week previously - who had also claimed that I could not be present because the case involved children. Then I protested and asked to be able to address you on the matter but was refused. I left.

It is my understanding that attendance at hearings where children are "involved" is subject to the Childrens Rules of the Royal Court and this includes a presumption that hearings shall be in private. However, I do not believe that this is an absolute bar and indeed would argue that such a total prohibition would be against the public interest and contrary to standards of public access as they are now developing in jurisdictions such as the UK.

It is my submission that the public should be allowed access so far as possible to ALL court hearings and that it is unhealthy for a policy of secrecy to be accepted as a norm.

Justice as they say must not only be done, but it must be seen to be done, and I would submit that the best interests of all parties – but most importantly any affected children – will generally be best secured through hearings which are open in the "public interest".

**Michael Dun**

208 Le Marais  
JE2 6GG

Tel 862929

**A further submission from Michael Dun to the UK Justice Select Committee considering the Crown Dependencies - following the meeting at St Helier, Jersey on 24 June 2013**

- 1 During the week before the three UK Select Committee MPs arrived in Jersey (on 24 June 2013), HM Inspectorate of Prisons released into the public domain its latest Report on "HM Prison La Moye" aka the States of Jersey Prison.
- 2 The inspection had been carried out, supposedly "at the invitation of the Jersey authorities" in accordance with UK international obligations under the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).
- 3 OPCAT has not been ratified directly on behalf of Jersey and Guernsey but the UK is obligated to carry out inspections to satisfy its own reporting undertakings and for its "dependent territories" (the Isle of Man apparently has its own obligation).
- 4 This was the first inspection of La Moye by the UK Inspectorate since 2005 when serious shortcomings and many breaches of international human rights standards were identified.  
That report followed an earlier very critical UK report and a visit from the UN Committee on Inhuman and Degrading Treatment which was also scathing.
- 5 During the 1960's substantial faults had been identified externally at both the Jersey and Guernsey prisons and the latter - built in 1811 - was the subject of a particularly critical Parliamentary Report.
- 6 Jersey's former prison had been built in 1837 following a campaign led by reformer Elizabeth Fry.  
Elizabeth, a Quaker from a banking family, had settled in Jersey in 1830 and was so appalled at the conditions for prisoners that she embarked upon a personal battle through the London Parliament which resulted in the construction of the then new facility.
- 7 Ironically she especially identified the poor treatment of people with mental illness, the lack of separation of young offenders from adults or proper facilities for female prisoners. All defects which still prevail today in the Jersey prison opened in 1975 (in accordance with UK standards of the time) - and now much improved - but featured in the still critical UK Report issued just a few weeks ago.
- 8 This single example serves to illustrate how there is no clear demarcation between so many matters that are wrongly termed as "internal" issues for Jersey government to deal with. The fact is that there is a relationship of very ancient pedigree which requires direct and widespread "interference" in the affairs of all the Dependencies.  
Without that very active involvement - which now engages many outside bodies such as the UN, Council of Europe, IMF and OECD etc - the Islands' governmental standards can only degenerate even further.

9 At the meeting with the three MPs in Jersey the conflicting roles of the Bailiff were discussed.

Just a week or so before 24 June, HM Bailiff for Jersey was in Madeira helping to recruit nurses for the Jersey Health service and other duties wholly incompatible with the office of a judge. Such an activity might seem quaint to an outside observer but they are indicative of an office that does not fit within 21<sup>st</sup> century concepts.

10 That the ancient office of Lord Chancellor in the UK has been substantially reformed following a decision of the European Court of Human Rights in a case arising in Guernsey about the conflicted role of HM Bailiff in that Island should be especially noted.

11 The Select Committee should note also that such matters as HM Bailiff refusing to renew an alcohol licence to *Pizza Express* restaurants in Jersey recently, on the basis of some simple procedural omission – further illustrates the anachronistic nature of this office.

Whilst the Bailiff's refusal to permit the Constable of St Helier to display helium filled balloons at a festival (by virtue of his role as the arbitrary authoriser of entertainments) must be considered absurd.

12 That these relatively trivial administrative matters might occupy the time of such a highly paid person as HM Bailiff when there is such a shortage of money and legal expertise available for the public service in Jersey ought to cause any reasonable person to call for reform of the office.

13 As I have previously observed, it is the obscure "Royal" appointments that create so many of the constitutional difficulties arising in these Islands. Thus even though the senior Jersey Magistrate had been convicted of criminal offences in Jersey it was not constitutionally possible to remove him from office within the Island.

14 When the Commission of HM Dean of Jersey was suspended by the Bishop of Winchester recently doubts were expressed at the highest level about the legality of this action and he has now been re-instated to office.

15 Such ambiguities and uncertainties are incompatible with good government or democratic standards and I would urge the Committee to undertake the fullest possible review and by engaging directly with the residents of the Islands.

**Michael Dun**  
Jersey

3 July 2013

Letters  
JEP  
Five Oaks  
St Saviour

12<sup>th</sup> July 2004

The pimple on the end of my nose is unique but that is hardly reason enough to have it preserved and developed as the Bailiff suggests (JEP 9<sup>th</sup> July) is treatment appropriate for "Jersey's unique legal system".

For the past 800 years, residents of the Channel Islands have been complaining – usually to London – about the unfairnesses and obscurities of the legal systems here and in Guernsey. The problems started immediately following the break with Normandy in 1204 – as if we needed another reminder - and Channel Islands lawyers and governments have done remarkably little to instil certainty and clarity over the centuries.

Of course, the Bailiff's enthusiasm for the system of which he is the head is understandable but as is so often the case, I find myself questioning the views he expresses.

Undoubtedly, Jersey's legal system is unique to this Island but does this uniqueness, with all its obscurities, actually benefit residents going about their everyday business? Or, is this just another example of a system that needs to be preserved only because it suits the Off Shore Finance Industry?

When Sir Godfray Le Quesne QC and his Committee reported in 1991 on Jerseys Judicial and Legal Services they drew attention to the lack of accessibility of Jersey law (even though it was outside their terms of reference) and observed; "it is undesirable for society to live under a system of law, many of the rules of which are undiscoverable by a layman except by reference to a lawyer". The Committee urged that, if Jersey law was to be preserved, considerable resources would be needed to rectify the ancient problems, especially the researching and publication of legal information and text books

I don't think that adequate resources will ever be devoted to such projects and they certainly won't be adequately addressed as casual spin-offs from a Jersey Law School.

Significantly, the "Le Quesne" Committee (to which I submitted evidence) also put forward the suggestion (Para 5;15) that Jersey Law might be abandoned entirely and another system adopted in its place (the law of England for example). Not surprisingly, this sensible suggestion has not been picked up by the Bailiff nor does it seem attractive to his Jersey lawyer colleagues.

Perhaps a simple and low cost means to stimulate reform would be the abolition of the monopoly enjoyed for too long by Jersey lawyers? This would enable the public to have a wider choice and encourage a much more lively interest in promoting knowledge and progressive policies and standards of service.

**Michael Dun**

The Woods  
La Route des Issues  
St John.

Background

The legal system in Jersey is unique to the Island. The Jersey Legal profession has 52 Advocates and 12 Ecrivains and they have a total monopoly in the provision of legal services. No other advocates, except those of the Jersey Law Society, may appear to plead in the Jersey Courts.

The law and the legal profession and a great deal more in the Island is built around the office of the Bailiff. The Island is termed a "Bailiwick"; the Bailiff (or Deputy Bailiff in his absence) being the Island Judge, the Lord Chancellor, Head of the Legal Profession, Prime Minister, Censor and controlling authority for entertainments and licenced premises. The office is a Crown Appointment - yet it is the duty of the Bailiff to defend the rights of the Islanders and even in a dispute with the Crown, must present the view of the Island. The Bailiff must be a lawyer.

The Jersey Law Society publishes no information about itself, the services offered by its members, fees charged, the laws that are in force or about the legal aid scheme. There are no active groups of lawyers pressing for reform in any areas, as far as I am aware. If 1% of the English Legal Profession were active in pressing for reform, then there would be sufficient to form an action group. In Jersey, the same percentage would not even be one lawyer!

From my own experience, the Law Society is hostile to anyone asking questions about the service provided by its Members.

Jersey Law is based on ancient (French) Norman Law with subsequent Acts of the English Parliament, Orders in Council, Judgments of the Privy Council, Ordinances of the English Kings and Edicts from the French ones and various Statutes etc etc thrown in. English law does not run in the Island, but where local law is lacking, then English laws and precedents may be followed, if it suits the Jersey Courts to do so.

The Law is written mostly in French. There have been no text books published in this century - even for lawyers. There has never been a book published for the use of the general public as a guide to Jersey Laws - civil or criminal. New Legislation is usually now drafted in English but amendments to existing French laws are usually in French to avoid translation problems. Some Triennial Regulations are in French (even though they have to be approved every 3 years by the Jersey government). The language of the Island is English.

Legal Aid and Advice.

Under the terms of their oaths (sworn in the Royal Jersey Court) Jersey lawyers undertake to represent the 'poor and widowed etc' - i.e. those people of limited financial means. This is the legal aid system and is administered by 'Le Batonnier', a senior member of the Law Society. There is no published information on the system, but from a rota of the 'new members' of the Society (those of less than 15 years service) - Le Batonnier will select a lawyer to represent someone with no cash to pay for a lawyer. The person will have no choice in the matter and the lawyer will receive no payment for his services. However, if the person has some assets (savings or goods) then Le Batonnier may require some contribution for the legal service provided. I don't know what happens to the money thus collected. Le Batonnier also has the duty to appoint a lawyer for someone who is

(2)

unable to find a lawyer prepared to act for him (unpopular causes etc). It is Le Batonnier who decides whether or not you have a cause which warrants a lawyer being appointed. Of course, if your dispute happens to involve a party represented by 'Le Batonnier' or one of his partners (in his legal practice) - then you have a real problem !

There is no Legal Advice Centre or even a Citizens Advice Bureau in Jersey. The Town Hall of St Helier is supposed to be opening an information centre - but this will not provide legal advice. There is a 'Samaritans' Group and various groups helping Alcoholics and others with social problems. Many of these groups are allied to parent UK organisations (like MIND) - but the parent organisations are of little use in obtaining specific local advice, since the rules that apply in Jersey (e.g. Mental Health Law) are entirely different from those in the UK. Generally too, the people actively involved in running local advice groups are the very same people who control the legal services. (The Bailiff, for example is involved in many groups like MIND). Thus, it can be very difficult to use local 'advice' groups for information - the people who would have the specialist knowledge required are very often the same people against whom a person might want to complain !

The States of Jersey (the government) publishes very little information about the law or individuals rights in law. The States' Greffe (the local equivalent of the UK HMSO) publishes all laws and ordinances and regulations of the States. Also, the Greffe publishes a few free leaflets on such matters as social security benefits, how to present a petition to the States and an 'Introduction to Jersey'. But there is a complete and absolute lack of published information on the Rights of a Tenant' or Landlord, or Fair Rents, or racial Discrimination, or Home Improvement Grants. In the main - the reason is quite simple - there is no Legislation on these subjects in Jersey.

It is essential to understand a little of the government system in Jersey. The Island is divided into 12 Parishes and each has a Constable, elected by the ratepayers for a 3 years term. He (there has never been a woman) is something like an English small town Mayor - except that he also has an automatic seat in the main government Assembly (the States) and he is also the head of the (unpaid) 'Honorary Police' in his Parish.

The Honorary Police have extraordinary Police and Magistrates powers and duties ; the 12 Constables plus 44 Centenier assistants have unlimited and sole rights to search without warrant and to arrest and charge suspects, within their Parish.

There is also a more normal paid and uniformed States Police Force like any other in the UK, under the control of the Home Office - but the officers in this force are denied the right to charge or arrest or to search premises without special warrant (unless in the company of an Honorary Policeman of course !).

The Honorary Police have the Magistrates' type authority to impose small fines at their own discretion - or to suspend further action against a person. Most of their activities in this area are confined to minor offences like motoring or shoplifting or domestic incidents and recent regulations have 'regularised' certain aspects of their organisation (like retirement at 65). All Honorary Police Officers are elected by Parish ratepayers for a 3 years term and H. M. Attorney General (of Jersey) is the Head of the Honorary Police System.

It may thus be seen, that the Jersey legal, judicial and government and administrative systems all have considerable areas of overlap. The same people must wear many different hats - the Bailiff ( or his Deputy), the Attorney General and Solicitor General ( the Crown Officers) all have seats in the States Assembly. Only the Bailiff has a vote - yet the Bailiff is Island Judge, the Attorney General is Prosecuting Counsel and Head of the Honorary Police and 12 of his 'Policemen' ( the Parish Constables) are also present in the Government, with full voting rights. This defect, of the same people making and enforcing the law was condemned in 1848 ( Report on Criminal Law in the Channel Islands for the Privy Council), along with many other aspects - yet still the system is retained.

Outside the States Chamber, the Constables have a very strong voice in the running of their Parishes ( where they can and do veto all sorts of matters like Planning permissions for building development) and the lower ranks of the Honorary Police ( through their Centeniers Association) put forward all sorts of 'political' policies on such issues as 'housing controls' and 'immigration'.

<sup>Within</sup>  
~~Against~~ this very strong ' pro establishment' structure and without any effective pressure groups existing, the Jersey Legal Profession operates and one point must be fully understood ; the main source of income in Jersey is from the 'tax Haven' business. The role of the legal profession, the Law Society and its Members, is essential and integral to this business - without its full cooperation the 'tax Haven' business would fail. It is the policy of the Jersey Government to maintain this business success and the reform of the legal profession or even of outdated social laws and policies is just not compatible with continued 'success'. It is certainly no part of the policy of the Jersey Government to publish information likely to stimulate change or interest in change. Ignorance is indeed bliss in Jersey.

#### Where is information needed ?

Social Rights and Benefits. As already indicated, where no laws exist, then there is not much that can be written about them. So, there simply is no unemployment benefit payable in Jersey but under 'Poor Law' Regulations, 'parish Relief' may be claimed by certain ' natives' of the Island. The terms and rates of the benefits available vary from Parish to Parish and appear to be fixed by the overworked Constables. There also seems to be some doubts about who is a 'native' ; I believe that anyone who had worked here for 5 years was classed as a 'native' in the past but recently, I noted a French farmworker, who had lived here for 10 years being deported as 'destitute'. Usually, such people are deported and banished for the next 3 years - a fate which awaits immigrants who make a nuisance of themselves in other ways too. Even local born people, can in theory, be 'banished' from their Island ;

Housing is a weeping sore and a minefield of confused and misleading information. The Island has a traditional policy of discrimination against 'immigrants' - which means anyone not born here, whether British citizens or otherwise. In 1949 the present Housing Law was introduced "to prevent further aggravation of the Housing shortage". Its purpose was really to control immigration - but it has failed because in 1949 the Island population was 50,000 and it is now 72,000 and the States policy is to allow for further expansion to 80,000 persons. Yet the Planning Policies for the Island do not seem to allow for all the extra houses that will be needed or take into account the backlog of people, already living and working in Jersey but classed as 'non residentially qualified'.



Under the terms of the 1949 Law, a person (not being born in Jersey) would obtain residential status after working in the Island for 5 years. After that time the person would be allowed to rent or buy proper living accommodation. In 1969 and over the following years, the rules have been changed. For a while, the time was increased to 10 years - then the door was closed completely so that 'non natives' would never achieve the necessary residential status. This restriction was relaxed in 1974 and a recent housing dispute brought forth the following clarification of the present situation; after 10 years working in Jersey an immigrant will be able to rent a property, then after renting a property for a further 10 years (i.e. total 20 years) that person will be allowed to buy a property. This information is now available in a document called 'An Interpretation of the Housing Law' from the Jersey Housing Dept - but the document is only available to Estate Agents and Lawyers! There is no information on the subject readily available to the general public.

At a recent hearing, the Housing Officer revealed that it had been the 'deliberate policy of the States of Jersey to deprive many thousands of people of their residential status' when the residential requirements were increased.

Very rich immigrants are of course, exempt Housing Controls - provided that they undertake to buy a very expensive property (£100,000 plus) and pay £10,000 p annum into the local income tax fund! Also, exempt in part are certain 'essentially employed persons' like teachers, who have to be recruited outside the Island. These people are granted a disguised work permit to occupy a house as long as they remain in the job - tied accommodation. If they leave the job, then they must lose the accommodation too.

The Housing Law is not generally understood, even by lawyers and members of the Jersey Government. It is certainly not understood by immigrants.

Rent Acts. In theory, all persons living in rented accommodation, can appeal against unfair rent to the Rent Tribunal. In theory, they also enjoy protection from eviction too - but their rights are not published or advertised by the authorities or any other body. This is part of a general plan on the part of the Jersey Government because the Island economy depends upon a pool of imported labour to survive. Some, about 5,000 persons p annum come to Jersey as seasonal workers in the Tourism and Agricultural Industries. This number includes several thousands of French and Portuguese workers tied to particular jobs and employers with accommodation included. Most of the remainder are from the UK - mostly young people with no knowledge of law and prepared to 'rough it' for the summer. They will find only the worse end of the housing accommodation in Jersey, often sub standard, overcrowded and at a very high price. 'Sleeping Only' accommodation this year - it means the use of a bed only - no cooking facilities and probably a shared room - is about £10,00p per week per person. Complaints will guarantee eviction. A person without accommodation is unlikely to obtain a job - destitutes are deported. Even among 'local people' there is a great reluctance to appeal to the Rent Tribunal against unfair rents - the fear of being blacklisted, of seeing their appeal details in the local newspaper, of annoying the landlord and being evicted. Few local properties have controlled rents and even higher rents can be obtained by leasing illegally to people without the proper (Housing Law) residential qualifications. An ex Bailiff is currently chairman of the Rent Tribunal. Many 'non residentially' qualified people (many thousands - the number is not known) live and work in Jersey all the year round. During the winter months many move into cheaper 'Tourist' accommodation or into cheap lodging houses. In such accommodation they have no protection from eviction and are under the control of the Tourism Dept with regard to fair rents etc.

The French government complained about 10 years ago about the low standards of accommodation for French nationals working on Jersey Farms. A few years later they complained again - virtually nothing has been done. This season has been marked by the death by burning of 2 English farmworkers in their farm shed accommodation. Once again, the authorities look like ignoring the problem.

There is no local legislation on redundancy payments, little to protect a persons job, no appeal against unfair dismissals, no Office and Shops Acts, no anti racial or sex discrimination Acts. The UK authorities present little information to show seasonal workers the problems that might be encountered in the Channel Islands - some of the little information I have seen at the UK Job Centres, is indeed not correct. People living in the Islands receive a diet of confusing and contradicting information through the UK national media - the newspapers and the TV - which does not apply in Jersey. There is no local Consumer Protection legislation, the Trading Standards Dept is virtually impotent.

The Island is not part of the EEC. Legislation which will apply in the UK does not automatically apply in the Channel Islands. This must lead to more and more confusion in the future.

Being a small Island with a unique system of government and law it is not easy for residents to know whether or not they receive a 'fair deal'. In the UK, any unfair treatment in one town can be compared with a better deal elsewhere. In Jersey this does not apply - there can be no such comparisons - the system here is unique. Therefore, it is even more important that full information should be available about the services available - defects and all.

I have not touched upon Criminal Law. Jersey still retains hanging and birching - in theory - the intervention of the Home Office has prevented their use ! Abortion Law, Homosexuality Laws, Commercial Laws, Matrimonial and Domestic Laws - all these areas are different from the UK. Nobody - apart from the local Evening Newspaper - publishes anything about them as far as the majority of the public is concerned. The resident native population are very ignorant on the background to their history, their Constitutional Relationship with the UK and the rest of the world and they understand little of their system of laws. Immigrants ( and they are now the majority group in Jersey) know even less.