

THE DEPUTY BAILIFF OF JERSEY  
MR WILLIAM BAILHACHE



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Mr W Millow  
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Dear Mr Millow

When I attended before Lord Carswell a couple of months ago, I agreed to write with further information about Parish Hall enquiries. I am sorry that that has been delayed, but I have noted that the Committee has heard from Centenier Scaife and appears to have a better understanding already of the way in which the Parish Hall enquiries work.

I am not sure how much more is necessary from me, but in case it helps, I have prepared two organisational charts. The first deals with the prosecution process generally and the outcomes of Parish Hall enquiries. The second is a personnel management chart showing how in practice the prosecution/Parish Hall enquiry work is accomplished.

Perhaps I can now add the following comments.

1. The investigation of offences is mostly done by the States of Jersey Police. A small amount of investigation is done by the Honorary Police, and these are routinely in respect of minor offences. Article 6 of the Police Force (Jersey) Law 1974 provides that where a member of the Honorary Police on investigating any occurrence has cause to believe that any prescribed offence has been or is about to be committed, the member of the Honorary Police shall immediately request the assistance of the States of Jersey Police. The States have prescribed offences by the Police Force (Prescribed Offences) (Jersey) Order 1974, which lists numbers of common law and statutory offences, all of them of the more serious kind. In practice therefore the Honorary Police do not tend to investigate serious offences. When I was Attorney General, I made changes to the guidelines for the holding of Parish Hall enquiries to ensure that where a Centenier had been responsible for the investigation of an offence, he was not to hold the Parish Hall enquiry, wherever possible.

Investigations are also carried out directly by the Attorney General's office using the powers conferred upon the Attorney under the Investigation of Fraud (Jersey) Law 1991. Typically, these investigations are carried on in close liaison with the States Police. They are generally cases which involve serious fraud or money laundering, where there is a need for legal input from the outset and where there is a sophistication to the alleged offending which makes it desirable that the Attorney is involved at an early stage. The jurisdiction which is being exercised is comparable to that exercised in England and Wales by the Director of the

Serious Fraud Office, and indeed under the relevant English and Jersey legislation there are mutual direct links between the two offices for the purposes of making requests for mutual legal assistance. Cases come to the Attorney's attention generally speaking in one of two ways – either the Police refer a suspected money laundering or serious fraud matter to the Attorney for investigation or because the Police wish to share information with another jurisdiction following receipt of a suspicious activity report; or the Attorney had received directly from a foreign jurisdiction a request for mutual legal assistance which when actioned triggers the need for a local investigation. The provisions by which the Police are required to refer potential disclosures of suspicious activity reports to the Attorney General arise out of Article 31 of the Proceeds of Crime (Jersey) Law 1999 which enable disclosure, with the Attorney's consent, to competent authorities outside Jersey for the purposes of the investigation of crime outside Jersey or of criminal proceedings outside Jersey. Whilst Attorney General, I issued guidelines to the Police as to the occasions upon which it was necessary to refer suspicious activity reports to me, and otherwise gave a general consent for the disclosure of such information to competent authorities.

In my opinion, the different functions which the Attorney exercises in this connection – mutual legal assistance (under the Investigation of Fraud (Jersey) Law 1991, or the Criminal Justice (International Co-operation) (Jersey) Law 2001, where the Attorney is named as the competent authority for these purposes), the Serious Fraud Office powers under the 1991 Law, the supervisory powers in relation to the exchange of information under the Proceeds of Crime Law and the legal advice obligations to the Police which I mention later combine to prevent silos where information about criminal conduct is not shared, and action can be taken appropriately. Indeed, for my part I have no doubt at all that the very positive endorsement from the International Monetary Fund at the time of its last inspection was, insofar as anti-money laundering defences and measures are concerned, very largely due to the present structural system which enables, and perhaps even dictates, close co-operation between the Police and the law enforcement authorities in the Law Officers' Department. Jersey's record is second to none, worldwide, in this respect. That is partly down to the fact that we have such a small jurisdiction and so co-operation is that much easier between the relevant authorities, and partly down to a determination on the part of the authorities to make the best of it, but it is also reliant upon to having a system which is structured to require that co-operation. If one looks across the water to what happens in the United Kingdom, it is very apparent how much more difficult it is, especially in England to bring agencies together effectively.

2. I wish to add a few comments now about the Attorney's powers over Centeniers. The Attorney is known as the titular head of the Honorary Police. As Attorney, I always wondered precisely what that meant. One does not find the term defined anywhere, nor the powers that go with that ostensible position. I think it is more that the Attorney is regarded with great respect by the Honorary Police, and as a source of support, notwithstanding that the exercise of his other powers from time to time will bring him into conflict with individual Honorary officers. Those other powers are the disciplinary powers available under the Police (Complaints and Discipline) (Jersey) Law 1999, which puts the Attorney in the position of being the enforcement arm for Honorary Police discipline; the powers conferred on the Attorney in relation to the Honorary Police Association found in the Honorary Police (Jersey) Regulations 2005; and the powers in relation to prosecutions. In connection with prosecutions there are three particular powers which are important. The first is the prerogative power to grant a *nolle prosequi* in relation to any prosecution. In effect this gives the Attorney the power to direct that a prosecution should cease. Secondly, the Attorney has the power conferred by Article 3(4) of the Police Force (Jersey) Law 1974 to give such directions to such persons as the Attorney thinks appropriate if a Centenier declines to charge any person. In effect this allows the Attorney to direct a prosecution. Thirdly, although charges are brought by the Centenier on behalf of the Connétable under the *Loi (1864) sur la Procédure Criminelle*, the Attorney General has the right to indict an accused directly before the Royal Court. This right was recognised after the passage of the 1864 Law either by judgment of the Royal Court or by an Order in Council – I regret I

cannot at present recall which – and is given statutory recognition in Article 5 of the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949 which provides:

"Nothing in this Law shall derogate from the powers of the Attorney General to institute proceedings before the Royal Court in respect of any events".

It is in effect a combination of these various provisions which gives the Attorney General the power to control prosecutions in the Island and therefore the ability to fulfil his function as superintendent of the prosecution process. That is necessary because though experienced, Centeniers are lay people. But there would be a considerable resource implication if Centeniers were to lose their right to charge, and indeed if they did, it would in my view be a terminal blow for the Honorary Police as we know it.

3. As you will see from the chart, there are a number of possible outcomes of a Parish Hall enquiry. One outcome is the putting of a charge in order that the case comes before the Magistrate's Court. At the other end of the spectrum, the Centenier may determine to take no further action. Between those two ends of the spectrum, there are administrative powers which the Centenier has. One of them is the power to inflict and levy fines summarily. This arises out of different pieces of legislation, but is almost invariably in the same terms. Article 89 of the Road Traffic (Jersey) Law 1956, for example, says this:

"(1) Subject to the provisions of this Article, where a person is charged with any offence under this Law or under any order and accepts the decision of a Connétable or Centenier having jurisdiction in the matter, then that Connétable or Centenier may inflict and levy summarily a fine up to either an amount not exceeding 1/5 of level 2 on the standard scale or the maximum fine provided for that offence, whichever is the lower" (emphasis added).

The administrative power to levy a fine is dependent therefore upon the accused person accepting the decision of the Centenier. Both in theory and in practice it is open to a person to choose not to accept such a fine, in which case it is likely that the Centenier would charge the person and take him or her before the Magistrate's Court. Closer to the other end of the spectrum, where the Centenier might decide to take no further action, would be an administrative decision to defer taking a decision for up to three months. Usually, that course could be followed, particularly with young offenders, where the Centenier has some action which is to be taken by the young offender in the interval – that may be working on a voluntary basis with a probation officer (who will usually be present at the enquiry), or making restitution in some form or other to the victim, or making an apology, or generally just being of good behaviour in the interval. Once again, the person who is the subject of such an order from the Centenier has a choice. He can either agree with the Centenier's proposed exercise of administrative power, or he can refuse. If he refuses, the Centenier has a choice between no further action or bringing a charge so that the offender comes to Court.

The exercise of all these powers is governed by directions which the Attorney has given in the conduct of Parish Hall inquiries and which are available on the Law Officers' Department website. The powers themselves in some respects look very much like judicial powers. They are not, because a judge has the ability to ensure that his orders are enforced. The Centenier has no such ability, because if the offender does not accept the orders which are being made, the Centenier has only the power to charge. It is for this reason that we categorise the exercise of these administrative powers, whether they arise from statute or whether they arise out of an exercise of discretion as to whether or not to charge, as part of the prosecution process. Occasionally, of course, there is some criticism of Centeniers in their conduct of Parish Hall inquiries. It may well be said that no-one particularly wants to be taken to Court, and therefore there is a strong incentive to accept whatever the Centenier says. At the end of the day, however, that is a choice for the offender who is before the Centenier at the Parish Hall enquiry.

What is clear is that the Centenier does not for a number of reasons conduct an enquiry as an Article 6 convention compliant tribunal, and there is no doubt at all that one would not seek

to justify the conduct of Parish Hall inquiries from that perspective. We do see the matter as part of the prosecution process, because they are exercised as an alternative to a charge before the Court.

4. I have produced the organisation chart only by way of illustration of the fact that the Law Officers conduct a superintendence of the prosecution process and do not generally take decisions directly in relation to criminal matters except where there is some special sensitivity which makes it appropriate they do so. In practice, the Police in their investigations and the Centeniers, in their consideration of Police material as to whether or not to charge, do refer to the lawyers who are part of the Law Officers' Department but work at the Police station. A very small minority of cases are referred to the central Law Officers' Department. When they are so referred, they would be dealt with by the Director Criminal in most instances. Although that position did not exist until the last 18 months or so of my tenure as Attorney General, we did previously have something similar albeit less well structured in that one of the principal legal advisers, Advocate Cyril Whelan, was known for his expertise in criminal matters, and in practice many inquiries from the Police station lawyers would be referred to him for a view, when they felt that was necessary. Different Attornies will undoubtedly have their own view as to the priorities which they attach to the superintendence of the prosecution process. For my part, I considered that it was important for me to be aware of any cases which were likely to come directly into the public eye. Prosecutions of States Members, of lawyers and other public figures and of the administration were instances of the sort of cases which I wanted to have referred to me, most frequently not for the purposes of taking a first instance decision, but for the purposes of a review to ensure that I was in a position to defend the decision taking process if there were to be a political problem.

In the last two years of my tenure as Attorney General, I was closely involved in the historic child abuse enquiry. The international publicity given to this enquiry, which was such as to have the potential for serious conflict with the then Justice Secretary, was such that I regarded it as my duty to be aware of and within the constraints which I set myself, to approve the prosecution decisions. That approval was limited to cases where the external Crown Advocate who was retained to deal with the cases took the view that no prosecution was justified on the evidential test or for public interest reasons. I had previously announced that if the external Crown Advocate decided a charge was appropriate, I would not overrule him – this decision was taken to show that there would be no corrupt interference with the prosecution decisions notwithstanding the false and malicious claims made by some. Nonetheless the superintendence of the process was necessary to ensure that decisions not to prosecute were properly reviewed.

Finally, I issued directions at some point in my tenure as Attorney General for the reference to the Law Officers' Department of offences committed by States Departments. There are potential offences under the Water Pollution (Jersey) Law 1999, and under Safety at Work Legislation and the like where it seemed to me to be important that someone who was independent of the States would be aware of the investigations which took place. These investigations would generally not be Police run but would be made by departments having

responsibility for the legislation in question. Thus there is a unit at the Employment and Social Security Department which deals with health and safety at work, which would if unsupervised by the Attorney, be capable of deciding which States Departments did or did not get prosecuted simply by only referring to the Attorney those cases which they thought should be prosecuted. Again the guidelines to States Departments should be on the Law Officers' Department website but if not, will be available from the Chief Clerk to the Law Officers' on request.

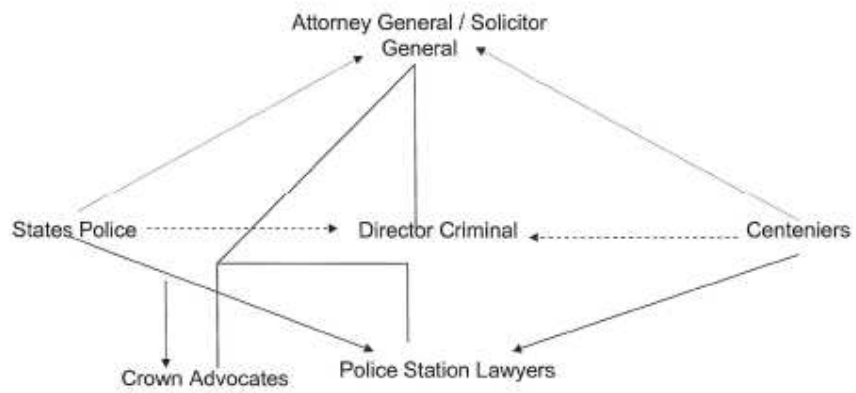
These are all illustrations of my own approach to the Attorney's role as superintendent of the prosecution process. Different Attornies will have different priorities and take different views. There will always be mistakes in the prosecution process as in all parts of the administration, but in terms of structure, particularly with the creation of the new post of Director Criminal, my own view is that the system works well. Any objective and dispassionate review of prosecution decisions would show that there is no systemic favour or partiality which is applied in the Law Officers' Department to the taking of those decisions, and the ability to refer to the Law Officers any suspicion that such partiality has existed lower down the chain is an important protection within the overall system.

Please let me know if I can be of any further assistance.

Yours sincerely

A handwritten signature in blue ink, appearing to read "William Bailiff".

**Deputy Bailiff**



- > regular advice line
- - - - -> occasional references for case specific advice
- > rare references for case specific advice

