Submission

to the Review of the

Rôles of the Crown Officers

chaired by

the Rt Hon Lord Carswell

by M C St J Birt, Bailiff of Jersey

Re: The Office of Bailiff

1. I propose to structure my submission as follows:-

(i) Introduction (paras 2 – 4)

(ii) A brief history (paras 5 – 12)

(iii) The current responsibilities of the Office (paras 13 – 23)

(iv) The practical details in terms of demands on time etc (paras 24 – 26)

(v) The legal position under Article 6 ECHR (paras 27 – 42)

(vi) Are there any difficulties in practice? (paras 43 – 50)

(vii) Consequences of a change (paras 51 – 62)

(viii) Conclusion (paras 63 – 66)

(ix) Schedule 1 – List of functions
Schedule 2 – Royal Court information
Schedule 3 – States information
Schedule 4 – Civic rôle information
Schedule 5 – Letter dated 14th February 2001 from the previous Bailiff re the Clothier Report

(i) Introduction

2. The Bailiff is the President of the Royal Court and also President of the States. In both of these rôles it is incumbent upon him to remain neutral in matters of political controversy. This is an aspect of the office which I take extremely seriously. I have endeavoured to be scrupulous in not expressing any public opinion on such matters.

3. As the debate on the establishment of the Review Panel showed, the future rôle of the office of Bailiff and Attorney General is a matter upon which differing political views may be expressed and therefore falls within the sort of topic upon which I would not normally express an opinion. However, it seems to me inevitable and indeed desirable that I should on this occasion provide information and express views on the matters to be considered by the Review Panel. I say this for three reasons. First, the Review Panel has made it clear that it expects a contribution on my part. Secondly, it seems to me desirable that the Review Panel should hear from the current holder of the office of Bailiff on matters such as what the office involves and what the potential implications might be of any change to the existing structure. Thirdly, the Bailiff has an important rôle to play in safeguarding the constitutional position of the Island. A change to the Bailiff's rôle would have an impact in this area and I therefore consider it proper for the Bailiff to express his views.

4. However, I accept unreservedly that the decision is ultimately one entirely for the democratically elected members of the States and they will decide, having placed such weight as they think fit upon any views expressed in the Report of the Review Panel, whether any change to the current position is desirable or not.

(ii) A brief history

5. I appreciate that the Panel will already be well aware of the history of the Island and of the development of the office of Bailiff. However, it is in my submission vital to consideration of whether there should be any change to

understand how we have arrived at the present position. I would like therefore to include a very brief summary.

6. There is evidence that the Dukes of Normandy appointed a "*Bailli*" (Bailiff) for each "*Baillage*" (Bailiwick). Jersey was of course part of Normandy from 911 to 1204. But when King John lost Normandy in 1204, the Channel Islands remained with the English Crown. The King appointed a warden (subsequently the Governor) with responsibility for the defence of the Island. However it was obviously not possible for one man to carry out all the duties of government and it is clear that by an early stage, there was a Bailiff with responsibility for civil administration. King John had issued a document which we now call "The Constitutions of King John", by which he ordered that the Island should elect their 12 best men to be sworn to administer justice. They were the Jurats. They, together with the Bailiff, formed the Royal Court and that remains the position to the present day. It is impossible to know when the first Bailiff was appointed but there has certainly been one since 1277. There is a board just inside the Members' entrance to the States Building which displays all the Bailiffs since 1277. I am the 87th.

7. Originally, the Royal Court was not only a law enforcing body, but also a law making body. If a change in the law was desired, the Royal Court would petition the King and the resulting Order in Council would become part of the Island's law. However, over a period of time, it became customary for the Royal Court to consult the Constables and the Rectors of the 12 parishes with the aim of evaluating public opinion before petitioning the King for a change in the law. By the end of the 15th century, this process of consultation had become more formal and a legislative body of the three estates, the Jurats, the Rectors and the Constables, had coalesced to form "*Les Etats de Jersey*" in imitation no doubt of the parliamentary assembly of Normandy "*Les Etats de Normandie*". By 1524 the minutes of the States Assembly were being recorded, although they were then still intermingled with the records of the Royal Court. It was not until 1603 that the minutes of the States were kept separately. Naturally, the Bailiff presided over both bodies as the one had emerged from the other. In 1617, the relationship between the Governor and the Bailiff was established by Order in

Council following a dispute. It was ruled that military affairs were the responsibility of the Governor and that the care of justice and civil affairs vested in the Bailiff. The Governor had precedence save in the States and the Royal Court, where the Bailiff had precedence.

8. 1771 is an important date. In that year it was established by Order in Council that only the States could pass legislation. The Royal Court's power to do so was brought to an end. At that stage the States was still composed of the three estates, namely 12 Jurats, 12 Rectors and 12 Constables presided over by the Bailiff. In 1856, 14 supplementary States Members, known as Deputies were introduced. They were elected by the various parishes.

9. In 1948, after the liberation of the Island from German occupation, there were major reforms following a report by a Committee of the Privy Council. The Jurats and the Rectors were removed from the States and they were replaced by 12 Senators and a greater number of Deputies. That remains the position today. There are therefore a total of 53 members, namely 12 Senators (elected on an island wide basis), 12 Constables and 29 Deputies (elected for a parish or district within a parish). The Bailiff remains as President of the States and President of the Royal Court. The Lieutenant Governor, Attorney General, Solicitor General and Dean remain as unelected members.

10. The fact that the Bailiff presides in both the Royal Court and the States has been considered on a number of occasions. The Royal Commissioners of 1861, the Privy Council Committee of 1946 and the Royal Commission on the Constitution in 1973 all recommended no change. I would quote only from paragraph 1527 of the report of the Royal Commission in 1973 as follows:-

"On the proposal put to us by private organisations in Jersey and Guernsey for splitting the office of Bailiff, we take the same view as the Privy Council Committee of 1947. Although an arrangement under which one person presides over both the Royal Court and the Legislative Assembly may be considered to be contrary to good democratic principle and to be potentially open to abuse, it appears in practice to have some advantages and not to have

given grounds for complaint; and as the office of Bailiff is an ancient and honourable one which the States in each Island wish to see continued with its present range of functions, we see no reason for recommending a change."

11. In the Report of the Review Panel on the Machinery of Government in Jersey, chaired by Sir Cecil Clothier in 2000 ("the Clothier Report"), a different conclusion was reached. The Clothier Report recommended that the Bailiff should cease to act as President of the States and that the States should elect their own Speaker. Three reasons for the recommendation were put forward at para 8.4 of the Report:-

- *"The first is that no-one should hold or exercise political power or influence unless elected by the people so to do. It is impossible for the Bailiff to be entirely non-political so long as he remains also Speaker of the States. A Speaker is the servant of an assembly, not its master and can be removed from office if unsatisfactory. The Bailiff, appointed by the Queen's Letters Patent to a high and ancient office, should not hold a post subservient to the States.*

- *The second reason is that the principle of separation of powers rightly holds that no-one who is involved in making the laws should also be involved judicially in a dispute based upon them.*

- *The third reason is that the Bailiff in his rôle as Speaker of the States, makes decisions about who may or may not be allowed to speak or put questions in the States, or about the propriety of a member's conduct. Such decisions may well be challenged in the Royal Court on grounds of illegality but, of course, the Bailiff cannot sit to hear and determine those challenges to his own actions."*

I shall comment later on those three reasons. Whilst many of the Clothier Report's recommendations were implemented, this particular recommendation was not pursued.

12. The Bailiff and Deputy Bailiff are appointed by the Crown. Until recently they held office at Her Majesty's pleasure, but their Letters Patent now provide that they hold office during good behaviour.

(iii) The current responsibilities of the office

13. I understand that the Review Panel has been provided with the Bailiff's Chambers Business Plan 2002 – 2003 and the Annual Report 2002. Both of these contained a list of the various functions of the Bailiff. They were divided into two columns, one relating to the Bailiff's judicial rôle and the other to his rôle as President of the States.

14. These documents are of course now some 8 years old and things have changed. I therefore annex as Schedule 1 an updated list of the functions listed in the Annual Report. The differences are:-

    (i) The rôle of editor of the Jersey Law Review is not really a function of the Bailiff. It happened that, when he was Bailiff, Sir Philip Bailhache fulfilled both rôles as he was the founding editor of the Law Review. Sir Philip remains as editor and the Bailiff of the day may or may not in future be the editor. I have therefore deleted it.

    (ii) The Bailiff is no longer Chairman of the Emergencies Council.

    (iii) The Bailiff is no longer chairman of Bureau de Jersey Limited.

15. The previous Bailiff elected to put all the functions under two headings, namely "Judicial" or "States". I fully understand why this was so; and indeed people regularly talk of the Bailiff's "dual rôle". It is also consistent with the point made by Sir Philip in his article in 1999 Jersey Law Review 253 to the effect that the "chief citizen" or "civic head" rôle is best regarded nowadays as an ancillary function of the Presidency of the States (although of course it originated from his rôle as President of the Royal Court) and that the Bailiff could not continue to be the civic head of the Island if he were no longer

President of the States. I do not dissent from his view, but when one examines the rôle in practice, I think it is more natural to think of it as being divided into three parts, namely the judicial rôle, the rôle in the States and the rôle as civic head of the island.

16. It may be helpful if I elaborate a little on what is involved in each of the three main areas of the Bailiff's rôle. The Royal Court comprises the Bailiff and 12 Jurats. The Bailiff is in effect the Chief Justice. However, the rôle of the presiding judge in Jersey is very different from that in most jurisdictions. The Bailiff is the judge of law and of procedure whereas the Jurats are the judges of fact and pass sentence. Criminal trials may be heard at an Assize trial before the Bailiff and a jury or before the Inferior Number comprising the Bailiff and two Jurats. In each case the Bailiff's rôle is very much the same as that of an English judge trying a case with a jury save that, in the case of the Inferior Number, he does not have to sum up on the facts (although he does on the law) and he retires with the Jurats because, in the event of disagreement between the two Jurats, the Bailiff has a casting vote. In the sentencing process, the Bailiff sits either in the Inferior Number (two Jurats) or, where the sentence is to be more than four years, the Superior Number (not less than five Jurats). Sentence is determined by the Jurats although the Bailiff has a casting vote in the event of an equal split. The Bailiff announces the sentence having agreed what he is to say with the Jurats.

17. In civil cases, the Bailiff sits with two Jurats. Once a decision is reached, the Bailiff will draft a judgment to reflect the findings of fact and law. He supplies a draft of the judgment to the Jurats in order for them to comment. The judgment is not released until its terms have been agreed. Extempore judgments are delivered by the Bailiff after agreeing their broad terms with the Jurats.

18. I have referred throughout to the Bailiff. The Bailiff's judicial rôle can be performed by the Deputy Bailiff or by any Commissioner and they therefore fill exactly the same rôle as the Bailiff when presiding in the Royal Court.

19. The Bailiff is President of the Court of Appeal and will sometimes sit in that court. However, most sittings of the Court of Appeal have to be arranged many months in advance for a week at a time, and in any given week, there may well be appeals from the Bailiff in the court's list. In practice therefore panels of the Court of Appeal usually consist of non-resident judges.

20. As to the Bailiff's rôle in the States, I would note that the expression President of the States may give rise to some misunderstanding as to the extent of his powers. This is the title which the Bailiff has and it is confirmed in the States of Jersey Law 2005. The expression almost certainly derives from many continental parliaments where the Speaker or Presiding Officer of a parliamentary assembly is known as the President. However, in reality, the Bailiff's rôle is that of a Speaker or Presiding Officer and it is important to bear this in mind.

21. Outside the States Chamber, the Bailiff's rôle involves considering draft propositions and draft questions. These must be allowed unless they are out of order and this involves the consideration of Standing Orders. On this the Bailiff is advised by the Greffier of the States as Clerk to the Assembly. In the Chamber, the Bailiff's rôle is to act as an impartial Speaker. He chairs question time and debates, calling upon members to speak and ruling on any points of order or procedure which may arise. As to the rôle of calling upon members to speak, debate in the States is not time limited save where, exceptionally, a notice of closure is carried. All members who wish to speak are able to do so. The debate ends when there are no more members to speak. The Bailiff calls members in the order in which they indicate to him that they would like to speak. In the circumstances of our particular assembly, I do not consider that there is any real prospect of the Bailiff being able to influence the outcome of a debate, even if – quite improperly – he sought to do so.

22. As to the Bailiff's civic rôle, this can be considered under a number of different headings. First there are those functions which are clearly related to his position as Chief Justice eg opening a legal conference, holding a dinner for a retiring Court of Appeal or visiting judges. Secondly, there are those which are clearly

related to the Presidency of the States, such as hosting dinners for visiting ambassadors. Thirdly there are important ceremonial occasions in the Island such as Liberation Day celebrations, Remembrance Sunday, Holocaust Memorial Day etc. Finally there is the largest number by volume, namely functions organised by charities (of which he may be a patron) or other community organisations. To give some idea of the sort of functions involved in this latter category, those which are in the diary for the next few weeks include Jubilee Sailing Trust reception, concert in aid of the Haiti Disaster Appeal, Jersey Funds Association dinner, RJA & HS Spring Flower Show, opening of St Helier Yacht Club training facility, Jersey Symphony Orchestra Spring Concert, visit to see the activities at The Bridge, Jersey Heritage launch of Blampied exhibition, Jersey Mental Health reception at Orchid Foundation, Green Room Club Easter musical, National Trust Annual dinner, Jersey Round Table Annual dinner, Hospital visit and opening of new A&E Department. Most of these would be in the evening or at weekends although some would occur during a weekday. At some, the Bailiff will be expected to make a speech. As can be seen, the Bailiff attends functions organised by or representing many sections of the community.

23. Most of the functions described in Schedule 1 are self explanatory but I would be happy to elaborate on any of them, either before giving oral evidence or when I attend before the Review Panel. There are however two points that I would wish to make at this stage:-

    (i) At the time of the Annual Report, the Bailiff had certain executive functions, including Chairman of the Emergencies Council. That has been brought to an end. The only remaining executive rôle could be said to be the granting of public entertainment permits. Suffice it to say that that is a rôle of which successive Bailiffs have asked to be relieved. Indeed that was the recommendation of a Working Party on Public Entertainment whose final report is to be found at RC 26 of 2002. However, no action has been taken to move the function from the Bailiff to some other body. I would agree that the Bailiff should have no

executive functions and I would be in favour of a transfer of his powers in relation to public entertainment.

(ii) (a) I would like to deal with the third and fourth items on the list of ancillary functions as President of the States listed in Schedule 1, namely dealing with constitutional matters for Jersey and administering the flow of official correspondence between Jersey and the UK.

(b) The Bailiff's oath of office requires him to *"....uphold and maintain the laws and usages and the privileges and freedoms of this Island and that you will vigorously oppose whomsoever may seek to destroy them...* ". The constitutional relationship between Jersey and the United Kingdom is unwritten and to some extent uncertain. It is based upon custom and practice over many centuries. It is therefore essential from the point of view of preserving Jersey's constitutional autonomy that practice is consistent with that autonomy. A decision taken by Jersey for short term advantage in relation to a particular matter may create a precedent which weakens Jersey's long term constitutional position. It is therefore essential that the Chief Minister of the day is alerted to any possible implications for the constitutional relationship when a particular matter arises.

(c) The Bailiff is particularly well suited to provide this advice. He will usually have previously been Attorney General. He will be steeped in the nuances and subtleties of the constitutional relationship. I wish however, to emphasise the very limited rôle which he plays. When correspondence is received from the Ministry of Justice via the Office of the Lieutenant Governor, it is passed on to the Chief Minister's Department, the Law Officers' Department and the Greffier of the States. The reply is drafted by the Chief Minister's Department after consultation with the Law Officers' Department and any Department with responsibility for the matter in question or, where there is a particularly legal aspect, by the Law Officers' Department after

consultation with the Chief Minister's Department or any other relevant Department. Either way an agreed draft is sent to the Bailiff's Chambers and this is signed by the Bailiff and forwarded to the Lieutenant Governor. In the vast majority of cases the Bailiff has no input, whether on the inward or the outward route. His rôle is simply to keep a watchful eye on the correspondence. Very occasionally, if he notes a concern from the constitutional point of view, he may alert the Attorney General and / or the Chief Minister to the point. But his rôle is limited to tendering advice. The decision as to how to respond is that of the Chief Minister or the relevant Minister. It may be argued that there is adequate protection for the constitutional relationship from the Attorney General. He is certainly the legal adviser to the Government and the primary responsibility is his. Nevertheless, an Attorney General may be relatively new to the task and not yet steeped in the constitutional relationship in the way that the Bailiff is. The Bailiff is an important additional protection to safeguarding the constitutional position of the Island.

(iv) The practical details

24. How does the Bailiff actually spend his time? My office has collated various statistics for the assistance of the Review Panel. These are contained at Schedules 2, 3 and 4.

(i) Schedule 2

This contains information concerning time spent in the courts for 2006 – 2009 inclusive. The figures include presiding in the Licensing Assembly, which is a judicial rôle. The figures are calculated by reference to time spent in court measured in half days. The figures do not include the considerable time spent reading case papers in advance or preparing judgments.

(ii) Schedule 3

This shows the figures for the States. The first part shows the number of days upon which the States actually sat. This does not mean that they sat for all of that day. On many occasions it may only have been part of a day. The second part shows the number of hours for which the Bailiff, Deputy Bailiff or others have presided. The third part seeks to convert those hourly figures into the number of equivalent days, so that they can more easily be compared with the figures for judicial work. This has been done simply by dividing the number of hours by 6.5, being the length of a full day's sitting in the States.

(iii) Schedule 4

This shows the number of civil functions undertaken by the Bailiff for the relevant years. Where possible we have sought to distinguish between functions which are clearly judicial in origin from those which are clearly related directly to States activities and those which do not obviously relate to either.

25. It may be helpful to comment on some of these figures.

(i) The figures for court days suggest that from 2006 to 2008, the level of business was fairly steady. 2009 showed a considerable increase but this was distorted by one extremely long civil case presided over by Commissioner Page (67.5 days) and a long criminal case presided over by Sir Richard Tucker (23.5 days).

(ii) The figures for days upon which the States have sat show a steady increase over the four years and this seems unlikely to reduce unless the States amends its procedures.

(iii) The Bailiff and Deputy Bailiff spend the majority of their time doing judicial work. Thus in 2006, between them, they spent 218 days in court compared with 24.2 days in the States; in 2007 176 days in court and 29.5 days in the States; in 2008 167 days in court and 36.7 days in the

States and in 2009 134.5 days in court and 31 days in the States. I must emphasise however that the figure for 2009 is potentially misleading. There was no Deputy Bailiff for four months from July to October inclusive. During that time, the States sat for many days to discuss the Business Plan and other matters and I presided for much of that time, although the Greffier also presided more than usual. As there was no Deputy Bailiff, it follows that little judicial time was being spent by a combination of the Bailiff and Deputy Bailiff and the bulk of the judicial work during that period was undertaken by Commissioners. This has therefore distorted the court figures for 2009.

26. If one deducts the time actually spent presiding in the States or presiding in court, the remainder of one's time is spent in three main areas; first judicial work comprising reading case papers, preparing judgments and dealing with administrative matters concerning the courts; secondly, States matters such as considering questions and propositions or discussing matters with the Greffier; and thirdly, work as civic head of the Island including drafting speeches and attending functions. My estimate would be that the great majority of my time outside the States Chamber and the Royal Court is spent on judicial work. Civic work comes second and States work third. The Deputy Bailiff will spend comparatively little of his time outside the States Chamber and the Royal Court on States or civic work. Almost all of his time when he is not in court or presiding in the States is spent on judicial work

(v) The legal position

27. As I understand it, the main ground relied upon by those who propose a change to the position is the need to avoid any appearance of bias. Put into legal terms "the question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased" (Porter v McGill [2002] 2 AC 357 para 103. This is to like effect as to the requirement under Article 6 ECHR that the tribunal must be

"objectively impartial" i.e. it must offer sufficient guarantees to exclude any legitimate doubt in this respect.

28. Ultimately, a decision on whether, in a particular case, the Bailiff's position would lead to an appearance of bias can only be made by a court with jurisdiction in Jersey, namely the Royal Court, the Court of Appeal or the Judicial Committee of the Privy Council, with ultimate recourse to the European Court of Human Rights. However, I appreciate that the Review Panel will wish to give consideration to the current jurisprudence in order to consider the risk of an adverse finding. In the circumstances I feel I should address the point although I shall endeavour to do so reasonably briefly. I am conscious from the issues paper prepared by the Chairman and made available to me that the Review Panel is already familiar with the cases in this area. Nevertheless, I must repeat some of what is referred to in the issues paper so that this submission is more easily understood.

29. The current position so far as judicial authority in Jersey is concerned, is clear. In Bordeaux Vineries Limited v States Administration Board 1993 Guernsey Law Journal 33, having discussed the exact nature of the rôle of the Bailiff of Guernsey in the States, Le Quesne JA, a judge particularly familiar with Jersey and Guernsey, giving the judgment of the Guernsey Court of Appeal, said this:-

"In my judgment the true view of the position is that the Bailiff is invested by law with duties in the Royal Court and in the States. The consequence of this dual function is that he has on occasion to take part in the exercise by the court of jurisdiction over the States. I do not think that on these occasions his responsibility in the States disqualifies him from discharging his responsibility in the court. He can properly discharge both responsibilities because although he is a member of the States his special position there means he is not responsible for the decisions of the States or acts of its agencies nor has he any pecuniary interest, or indeed other interest in those decisions or those acts. His connection with the States, therefore, is not such as to disqualify him from sitting in court on cases affecting the States.

Special cases may arise in which the Bailiff's position may be different. I have no doubt that in such a special case, the Bailiff of his own accord would arrange for someone else to take his place..."

30. This decision was followed by the Jersey Court of Appeal in two cases relating to the Bailiff of Jersey, namely Mayo Associates TA v Cantrade Private Bank Switzerland (CI) Limited 1998 JLR 173 and Eves v Le Main 1999 JLR 44.

31. One must accept that these cases predated the decision of the European Court of Human Rights in McGonnell v United Kingdom (2000) 30 EHRR 289 where it was held that the fact that the Bailiff of Guernsey had presided in the States when a detailed development plan was adopted meant that he did not have the required objective impartiality when sitting in the Royal Court on a planning appeal relating to that development plan. It may be noted that the decision of the Commission in McGonnell was on much broader grounds, namely that the fact that the Bailiff was President of the States and in addition a senior member of the executive meant that he could not have the requisite appearance of independence and impartiality as a judge. That ground was not supported by the Court, which based its decision on much narrower grounds; and the concurring opinion of Sir John Laws made it clear that he would dissent from the view that the Bailiff's multiple rôles of themselves meant that there was a breach of Article 6. It should be said that the rôle of the Bailiff of Guernsey, as described in the judgment, appears to have been somewhat wider than that of the Bailiff of Jersey, even at that time.

32. Both in McGonnell and in the subsequent case of Pabla Ky v Finland application no.47221 / 99 22nd September 2004, the ECt.HR emphasised that no particular structure, so far as separation of powers is concerned, is required by Article 6. Thus at paragraph 29 of its judgment, the court said:-

"The case also raises issues concerning the rôle of a member of the legislature in a judicial context. Although the notion of the separation of powers between the political organs of government and the judiciary has assumed growing importance in the Court's case law (see Stafford v The

United Kingdom ...) neither Article 6 nor any other provision of the Convention requires States to comply with any theoretical constitutional concepts regarding the permissible limits of the powers' interaction. The question is always whether, in a given case, the requirements of the Convention are met. As in other cases examined by the Court, the present case does not, therefore, require the application of any particular doctrine of constitutional law. The Court is faced solely with the question whether, in the circumstances of the case, the Court of Appeal had the requisite "appearance" of independence, or the requisite "objective" impartiality..."

In Pabla Ky, the court held that the mere fact that a member of the legislature was a member of the Court of Appeal did not infringe Article 6. There is no absolute prohibition on a member of the legislature being a judge – as of course was the case in the House of Lords until recently.

33. In two cases in the Privy Council and the House of Lords, it has been emphasised that careful attention must be paid to exactly what the judge, whose position is being challenged, did in the legislative body when considering whether his actions in the legislative body might give rise to an appearance of bias. In Panton and Panton v Minister of Finance and Attorney General [2001] UK PC 33 the appellants challenged the constitutionality of a Jamaican statute and failed before the Jamaican courts including the Court of Appeal. Rattray P had presided in the Court of Appeal. He had been Minister of Justice and Attorney General at the time the relevant legislation had gone through the Jamaican Parliament and had, as Attorney General, certified that in his opinion the statute which the appellant sought to challenge was not contrary to the constitution. It was further assumed that, as a member of Parliament, he may well have voted in favour of the Bill as a member of the government whose Bill it was. Nevertheless, the Privy Council said this at para 13:-

"... But there is nothing to show that he was actively engaged in the promotion of the Bill, indeed there is nothing to show that he took any part in the process of its passing at all. He may well have voted for it as a member of the government whose Bill it was but there is nothing on which the appellants

found as demonstrating any particular participation in the legislative process. Had he introduced the Bill, or campaigned for it, been responsible for securing its passage through Parliament, or adopted it as a particular cause which he was determined to promote, there might have been some material on which the appellant's could have founded an argument. But, apart from the matter of the certificate, they look only to the fact of his membership of the government and the Parliament when the Act was passed. That cannot be sufficient to constitute a disqualification from his sitting as a judge on the issue of constitutionality which has now arisen. His past political history is, as was pointed out in the passage in Locabail... quoted earlier, not ordinarily a ground for disqualification." (emphasis added)

34. Panton was quoted with approval in the subsequent case of Davidson v Scottish Ministers [2004] UK HL 34, which also considered McGonnell and Pabla Ky. In that case, Lord Hardie, when Lord Advocate, had piloted and promoted the Scotland Bill through the House of Lords and had advised the House that the Scottish courts would not to be able to make an order for specific performance against Scottish Ministers. He subsequently became a judge and sat as a member of the Extra Division of the Court of Session where this point was at issue. The House of Lords held that there was a risk of apparent bias because of the part which Lord Hardie had played in promoting the legislation which was at the heart of the subsequent litigation (see paras 4, 17, 23, 56, 57 and 81). I would refer in particular to two passages from the judgments. First, Lord Bingham at para 17 said this:-

"17. The judgment of the Board in Panton makes clear that it is difficult, if not impossible, to lay down a hard-edged rule to distinguish a case where apparent bias may be found from one where it may not. Much will turn on the facts of a particular case. But the judgment also holds, consistently with authority cited above, that a risk of apparent bias is liable to arise where a judge is called upon to rule judicially on the effect of legislation which he or she ***has drafted or promoted during the parliamentary process****. Since in the present case there is no issue as to the facts, no issue to the legal test to be applied and (in my opinion) no significant misdirection by any member of the*

Second Division, I should for my part be very reluctant to disturb its unanimous decision. I am however of the clear opinion that its conclusion was justified by the nature and extent of Lord Hardie's involvement in the passage of the Scotland Act. The fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that Lord Hardie, sitting judicially, would subconsciously strive to avoid reaching a conclusion which would undermine the very clear assurances he had given to Parliament." (Emphasis added)

35. Lord Hope at para 53 said this:-

"53. Applied to our own constitutional arrangements, Pabla Ky v Finland teaches us that there is no fundamental objection to members of either House of Parliament serving, while still members of the House, as members of a court. Arguments based on the theory of the separation of powers alone will not suffice. It all depends on what they say and do in Parliament and how that relates to the issue which they have to decide as members of that tribunal. The requirement which the Strasbourg Court stressed in para 30 of its judgment that the fear that the tribunal was not impartial must be justified objectively is an important safeguard against abuse of the objection. What is decisive is whether the fear is based on an objective appraisal: see Rojas v Berliaque [2004] 1WLR 210, 211, para 32 per Lord Hobhouse of Woodborough and Lord Rodger of Earlsferry. This enables account to be taken of all the surrounding circumstances. The need for a proper understanding of the issues that are involved is another safeguard. This is because, as the court explained in paras 29 and 34 of its judgment in Pabla Ky, the objection has to be justified on the facts of the case, not by relying on a theoretical principle. There must be a sufficiently close relationship between the previous words or conduct and the issue which was before the tribunal to justify the conclusion that when it came to decide that issue the tribunal was not impartial or, as the common law puts it, there was a real possibility that it was biased: see also Locabail (UK) Limited v Bayfield Properties Limited [2000] QB 451, 480, para 25."

36. It is vital therefore to consider the exact rôle of the Bailiff in the States. In my respectful submission, his rôle is very much less than the rôle of either Lord Hardie in Davidson or Rattray P in Panton. In the former case Lord Hardie was the person charged with responsibility for promoting and taking through the legislation in the House of Lords and he gave an opinion on its meaning which became relevant in the subsequent judicial proceedings. He failed the requirement for objective impartiality. In Panton Rattray P had been Attorney General and Minister of Justice. He was a member of the government promoting the Bill, he was assumed to have voted in favour of it as a Member of Parliament and he signed a certificate as to its constitutionality. Yet he was held by the Privy Council not to infringe the requirement for objective impartiality.

37. The Bailiff's rôle is completely different. He has no vote and he expresses no opinion on any matter before the States. He has no part to play in what legislation is brought before the States. He cannot be said to promote or be associated with any legislation or decision passed by the States. His rôle is confined to chairing the proceedings in accordance with standing orders, calling upon members to speak, and ruling on any points of order or procedure which may arise. As he has not voted or expressed any opinion on any matter which comes before the States, it is hard to see why he should be notionally attributed with some opinion and therefore thought not to fulfil the requirement for objective impartiality when sitting as a judge. In this respect it is significant to note that the position of the Bailiff of Jersey since 2005 is different from the Bailiff of Guernsey at the time of McGonnell. In that case the Bailiff did have a casting vote and, although it was normally cast in a conventional manner in favour of the status quo, there was evidence that former Bailiffs had indicated that, on a matter of conscience, they might not follow the convention. Furthermore, it is clear that the Bailiff of Guernsey had many more executive rôles than the Bailiff of Jersey in that he was the "Head of the Administration" and chaired a number of committees. Reverting to the examples quoted in Panton at para 33 above, the Bailiff of Jersey does not introduce a Bill, campaign for it, be responsible for securing its passage through Parliament or adopt it as a particular cause which he is determined to promote. Nor does he

fall into Lord Bingham's category in Davidson (para 34 above) of someone who has drafted or promoted legislation during the parliamentary process.

38. I would suggest that application of the principles described in Panton and Davidson (the latter of which took full account of McGonnell and Pabla Ky in the European Court of Human Rights) should lead to a conclusion that the Bailiff's very limited rôle in the States would not normally give rise to an Article 6 issue or an appearance of bias even when sitting in a case which is directly concerned with a decision of the States. In fact, many if not most cases are not concerned with such matters. On the contrary, the court is sitting to consider points of customary law or common law.

39. I have not forgotten the more recent case of R (Barclay) v Secretary of State for Justice where the English Court of Appeal held that the powers and functions of the Seneschal of Sark as an unelected member of the Chief Pleas and its President for life were such that the legislation governing his position was inconsistent with Article 6(1) of the Convention. It has to be said that the circumstances in which this case came to be decided were unusual. The English Court of Appeal has no standing in Sark at all. Decisions in relation to the law of Sark fall for decision by the courts of Sark, Guernsey and the Judicial Committee of the Privy Council respectively. One would have expected an Article 6 challenge to have arisen in the context of a particular case heard before the Seneschal where one of the parties took the point through the Sark judicial system and then to the Royal Court of Guernsey, Guernsey Court of Appeal and up to the Privy Council. An opinion by an English Court of Appeal that the Seneschal's position infringed Article 6 is in many ways much the same as a French Court proffering a similar opinion in respect of the former position of the Lord Chancellor. A further feature of the decision is that the Court of Appeal was prepared to reach a view on the application of Article 6 to the Seneschal's court in the absence of anyone from Sark arguing as to the Seneschal's position. One cannot easily understand why the Seneschal and the Seigneur were not convened to the litigation as interested parties. The Court of Appeal was entirely dependent on the Secretary of State for Justice to put forward the points on Sark's behalf. That procedural defect was compounded when the Secretary

of State decided not to appeal this decision to the House of Lords notwithstanding his being urged to do so by Sark and notwithstanding a judgment of the (lower) Administrative Court which had found that the Seneschal's position did not breach Article 6, which was also presumably the advice the Secretary of State had received from his own lawyers when deciding to recommend Royal assent to the Reform Bill.

40. As mentioned already, there is clear authority to the effect that the issue of Article 6 compliance is not to be determined on theoretical constitutional concepts but rather, as stated in McGonnell, whether in a given case the requirements of the Convention are met. Of course, in any given case the facts would include the structure of the courts. But the Court of Appeal appears to have reached a conclusion based entirely on the structure of the court and the Seneschal's position in the legislature and has therefore fallen into the trap of deciding the issue of Article 6 compliance by reference to theoretical concepts. I am not aware of any other case in which that approach has been adopted.

41. In any event, the facts surrounding the administration of the Royal Court and the functions of the Bailiff are quite different from those affecting the Seneschal. First of all, the Seneschal appears to exercise a wider power in the Chief Pleas than does the Bailiff in the States. The former produces the agenda for the meetings of the Chief Pleas; he is the returning officer for all elections; and he is one of the Trustees of the property in the island vested in the Chief Pleas. Furthermore it is clear that the court was influenced by the very small size of Sark (population about 600). This is very different from Jersey which has a population of approximately 90,000.

42. Secondly, the Bailiff's position in the court is very different from that of the Seneschal. The Seneschal's court is the sole court of justice in the island and is constituted by the Seneschal sitting alone. The Seneschal is not necessarily a lawyer by training; however there is a Deputy Seneschal and there may be legally trained Lieutenant Seneschals. By contrast, the Bailiff is always a lawyer; sits with Jurats who determine the facts and sentence; and there is a full time Deputy Bailiff and a number of part time Commissioners available to sit.

Until one saw the facts on which any prospective challenge is based, it is hard to be certain, but it does seem likely that, absent special facts, there would not be an Article 6 problem for the Bailiff generally unless the ECtHR were to depart from the principle that the question should not be decided by reference to theoretical constitutional concepts.

(vi) Are there any difficulties in practice?

43. I can only speak to matters from my perspective but my experience is that there are few. So far as the courts are concerned, the level of judicial business means that, as well as the Bailiff and Deputy Bailiff, we also have a number of Commissioners. At present there are two local Commissioners, namely Sir Philip Bailhache and Mr Julian Clyde-Smith, a retired advocate. We have also regularly called upon three Commissioners from England, namely Mr Howard Page QC, Sir Richard Tucker and Sir Christopher Pitchers, both of the latter being retired High Court judges. We occasionally call on others. I believe that the system of Commissioners is preferable to appointing any additional full time judge. It means for a start that they are only paid when required and no pension or permanent office facilities are necessary. It also means that we can call upon the appropriate specialist as and when necessary. The availability of Commissioners means that, even if there is a case where the Bailiff or Deputy Bailiff cannot sit, there are ample judicial resources.

44. In the vast majority of cases there is no difficulty in the Bailiff (or Deputy Bailiff) sitting in court simply because he is also the Speaker of the States. The vast majority of cases have nothing to do with the States. Even in those which do, such as judicial review, appeals against decisions of Ministers etc, I feel no difficulty in presiding given the very limited rôle of Speaker which I have described above. If a decision of a Minister is being appealed or challenged on judicial review, I have had no association with that decision, nor could I be perceived as having done so, merely because I am Speaker of the States. Statutory appeals against administrative decisions by a Minister (previously a Committee) have existed for a very long time. Bailiffs have traditionally sat in

the vast majority of such cases and I have never heard any concern expressed that they might wish not to overturn a decision simply because they are the Speaker of the States. On the contrary, I suspect that most Ministers (and Committees before them) would consider that the Royal Court has overturned their decision on too many occasions! The decision would usually be for the Jurats in any event. Judicial review has of course increased in recent years but the issues which it gives rise to are broadly similar to those on appeals.

45. There are a very few cases where it would be inappropriate for the Bailiff to sit if he has presided in the States unless the parties specifically waive any objection. For example, I recently presided over a debate as to whether the States should acquire the Plémont headland and return it to its natural state as a resource for the people of the Island. During the debate, there was discussion about the proposals for building on the site. In accordance with the decision in McGonnell, I would in those circumstances not sit on any appeal against a decision of the Planning Minister to grant or refuse planning permission for the site. However, such cases are few and far between. There would normally be no reason why the Deputy Bailiff could not sit if he had not presided in the States on the relevant occasion (or vice versa if the Deputy Bailiff had presided in the States) and certainly no reason why the matter could not be dealt with perfectly adequately by a Commissioner.

46. Viewed from the other perspective, there is the occasional debate in the States where I decide it would be better not to preside; for example, if a recent decision of the Royal Court in which I have sat is likely to be an important element of the debate. Again, such cases are few and far between.

47. This is perhaps a convenient moment to return to the three reasons given by the Clothier Committee at para 8.4 of its Report (as quoted at para 11 above) for recommending the removal of the Bailiff from the States. As to the first reason, the fact is that the Bailiff does not hold or exercise political power or influence. His views on any political matter are irrelevant and unknown. His sole rôle in the States is to chair the debate during which the elected members will take the decision. For the reasons indicated earlier, I do not accept that he is in a position

to influence the outcome of any debate. In the extraordinarily unlikely event of his, for example, refusing to call a particular member, that would rapidly become the subject of dissatisfaction and comment. It is not a practical reality.

48. As to the second reason, that is of course a perfectly arguable reason and I have dealt with the Article 6 concerns in the previous section. But, as outlined above, the ECHR does not require a complete separation and it is, I submit, stretching language to say that the Bailiff is "involved" in making laws when he has no vote and has expressed no opinions on them.

49. As to the third reason, the case of Syvret v Bailhache 1998 JLR 128 confirmed, if it needed it, that the courts have no jurisdiction to enquire into the internal workings of a parliamentary assembly such as the States. This is the only occasion I am aware of where any challenge to States proceedings has been brought before the courts. As a result of the decision, the chances of any future such action are even more remote. Nevertheless, should it occur, there is no difficulty in the Royal Court fulfilling its rôle with a Commissioner presiding, as was done in that case. The fact that the Bailiff could not sit on that very rare case seems a very weak argument for abolishing his rôle altogether.

50. By way of a further commentary on the reasoning of the Clothier Report, I attach as Schedule 5 a letter dated 14th February 2001 from the then Bailiff to the President of the Policy and Resources Committee. The letter was made public and indeed was published in the Jersey Evening Post. I would refer in particular to pages 10 – 14 concerning the position of the Bailiff and the need for caution before recommending change.

(vii) Consequences of a change

51. I would summarise these under three headings:-
    (i) The election of a Speaker
    (ii) Loss of the rôle of civic head
    (iii) Loss of constitutional guardian

52. As to (i) it is easy to assert that the States could simply elect a Speaker from amongst their number. However, careful thought needs to be given to the practicalities. Jersey is a small community with a small parliamentary body comprising only of 53 members, possibly less if the Clothier reforms were to be implemented in full. There is therefore a limited pool to choose from. Members tend to stand for election, quite naturally, because they feel strongly about political issues and wish to influence States policy to achieve the outcomes which they desire. This can be achieved by speaking and voting, by becoming a Minister or Assistant Minister or by being on Scrutiny. They would not be able to achieve these objectives as Speaker, as he must remain mute and impartial during debates. They would not therefore represent their constituents on these issues. Thus many members would simply not wish to become Speaker. As to those who might wish to do so, many would not be well suited to the rôle. The States consists of 53 strong minded individuals and presiding over it is not as straightforward as might at first appear. Thus, while in a large parliamentary assembly, one can expect to find a member with the requisite skills who is also willing to take on the rôle, this will not necessarily always be the case in a small assembly such as the States.

53. The election of a member who would otherwise have been a Minister or a leading member of Scrutiny would, I suggest, be a loss to the States and not in the Island's best interests. Conversely, the election as Speaker of someone not well suited to the rôle would, I suggest, lead to a loss of authority of the Chair and an adverse impact on the conduct of the proceedings of the States.

54. An alternative might be for States Members to be able to elect a non-member as Speaker. If such a person had never previously been a member, there would be a steep learning curve and a lack of familiarity as to what was required of the office. It would certainly place a much greater burden upon the Greffier and would probably require the appointment of legal counsel to the Speaker. An alternative might be to appoint a former member of the States as Speaker. However he or she might well have considerable "political history" with the

consequence that any decision which he made against a member who had previously opposed him or her might not be well received.

55. A further alternative might be for the Greffier to act as Speaker. The present Greffier presides with conspicuous ability when the Bailiff and Deputy Bailiff are not present, but this will not always be the case. I am not aware of any parliamentary assembly where the Speaker and the Clerk are one and the same person. The two rôles are very different and call for different skills. It seems to me it would be impossible in the long term to combine them.

56. I accept of course that these concerns are not insurmountable and other small assemblies manage their affairs thus. Nevertheless, one has to pose the question as to whether any change would amount to an improvement. The Bailiff should be in a position to be an effective and impartial Speaker. He will be a qualified lawyer and a judge. These attributes should equip him to rule on procedural matters and to preside with the requisite authority, dignity and impartiality.

57. I turn to the civic role. I believe that the significance of this role is not always fully understood by lawyers. Indeed I recall that when I was in private practice, I saw the Bailiff primarily as the Island's Chief Justice. I considered his other rôles to be a distraction from his duties as a judge. I suspect that may well be the instinctive approach of the two legal members of the Review Panel. However, on becoming Attorney General, I came to appreciate and understand the significance of the civic role. In particular, the Bailiff is able to represent the insular authorities within the Island at a variety of important community functions as well as those of greater ceremonial significance. The Lieutenant Governor is of course also able to attend such functions and people are extremely pleased to receive him; but he is not of the Island and cannot be regarded as representing the Island in the same way. People are of course innately courteous but it is my strong impression that people generally welcome the presence of the Bailiff at such functions in order to show his support. He is an apolitical figure who is a symbol of our history and represents the continuity of the Island's heritage.

58. So what would be the effect of replacing the Bailiff as civic head with, for example, an elected Speaker of the States? In certain cases, I expect there would be little difficulty. Thus visiting ambassadors could be hosted by the Chief Minister. Ceremonial functions would, however, have to be rethought. At present the Bailiff leads the proceedings on Liberation Day, Remembrance Sunday and other occasions. Both the Royal Court and members of the States play a part but it is perhaps the Court, being fully robed, which plays the greater part in the formality of the proceedings, no doubt as a result of our heritage and traditions. The Bailiff is the natural leader for the occasion as he is President of both the States and the Court. If there were to be a separation, careful thought would certainly have to be given as to how such occasions would be conducted in future.

59. As to more general community functions, the elected Speaker could take the place of the Bailiff but he would be more closely associated with the States than is the current position and he would not necessarily be able to represent the Island - which is after all a Bailiwick – in the same way that the Bailiff can, given the weight of history.

60. I do not mean to suggest that the Bailiff is indispensable and that no-one else could fulfil the civic role. But it would involve a considerable change which would be unlikely to represent an improvement and it would certainly involve a break with the past.

61. As to the rôle of constitutional adviser, if the Bailiff were no longer to be Speaker of the States, he could no longer be the channel for official communications with the Ministry of Justice. As merely a judge, he would no longer have any rôle as a constitutional adviser. In my submission, that would be a weakening of the present position in that it would take away an added protection against actions which might inadvertently adversely affect the constitutional position of the Island.

62. As to cost, it is difficult to be sure, but I suspect that there would be an overall increase. To the extent that the Bailiff and Deputy Bailiff could spend more

time judging in the event of their ceasing to have a rôle in the States, there would be a reduction in the need to employ Commissioners. Conversely, there would be a need to pay the salary of a Speaker together with the support staff and office facilities that he or she would need, whereas at present these are absorbed within the Bailiff's Chambers.

(viii) Conclusion

63. For the reasons I have given, I respectfully suggest that the only real ground in support of the removal of the Bailiff from the States is to avoid the risk of a challenge to his position in the Royal Court on the grounds of an appearance of bias (or a breach of Article 6 ECHR). As the terms of reference for the Review Panel imply, this is to be balanced against the nature of a small jurisdiction, the Island's traditions and heritage, the resources required, and the difficulties (if any) which have arisen in practice.

64. Naturally, if a Court having jurisdiction in respect of Jersey or the European Court of Human Rights were to rule that the Bailiff's position per se was inconsistent with the required absence of apparent bias in the courts, or that there were so many court cases in which he could not sit that his position as a judge was seriously impacted upon, the Island would have to respond. But unless or until that happens, there is merely a risk that it might. For the reasons outlined earlier, I would suggest that the risk is comparatively small and it is only in the occasional specific case that the Bailiff would be advised not to preside in the Royal Court. That can be satisfactorily managed within the existing system and can also of course be overcome by way of waiver of the parties. As indicated earlier, there are no real difficulties in practice.

65. Conversely, removal of the Bailiff from the States would be a major constitutional change. The Bailiwick of Jersey would no longer have a Bailiff as its head. It would have consequences in terms of who would fulfil the civic rôle in future and would such a person be as satisfactory; who would fulfil the rôle of Speaker and would a new replacement be as satisfactory; and the Bailiff's

position as one of those who is well placed to proffer advice on the steps necessary to protect the Island's constitutional position would be lost.

66. It is for others to undertake the necessary balancing task but I would suggest that it is by no means clear that the advantage of obtaining complete certainty in relation to a small number of cases in the courts outweighs the disturbance to our traditions and heritage and the potential disadvantages referred to above.

9th March 2010

President of the Royal Court and the Court of Appeal

Responsible for the administration of justice in Jersey

President of the Licensing Assembly

Preside over Civil and Criminal trials

Appoint Commissioners to preside over the Royal Court

Preside at ceremonial occasions e.g. swearing-in ceremonies and Assise d'Héritage

Make appointments to the Mental Health Tribunal and the Advisory Council on the Misuse of Drugs

Responsible for appointing the Viscount and Judicial Greffier and responsible for the Probation and After Care Service

Issue arrest and search warrants

Grant Orders of Justice and Provisional Orders for the seizure of assets

Grant liquor licence extensions

President of the Electoral College (election of Jurats)

President of Advocates and Solicitors Examining Board (DB)

President of Legal Services Forum

Chairman of the Jersey Legal Information Board

Chairman of the Royal Court Consultation Group (DB)

Chair Advocacy Training Group (DB)

President of the States of Jersey

Preside at sittings of the States Assembly

Advise States Members on procedural and constitutional matters

Deal with all constitutional matters for Jersey

Administer the flow of official correspondence between Jersey and the UK

Grant public entertainment permits

Excercise control over the public collection of money e.g. Flag Days and Busking

Represent Jersey at meetings of CPA, AIPLF and Commonwealth Speakers' and Presidents' Conference

Chairman of Royal Visit Committees

Instigate procedures for public elections

Patron of various charitable organisations

Deputy Governor of the Island in the absence of His Excellency, the Lieutenant Governor

Receive prominent visitors to Jersey

Host official dinners for prominent visitors

Instigate arrangements for and lead Liberation Day ceremonies

Instigate arrangements for and lead annual Remembrance Sunday ceremonies

Chairman of the Bailiff's Consultative Panel

Jersey joint chairman of Commission Amicale

Attend certain ceremonial occasions, as appropriate

Member of Honours and Awards Committees

Schedule 2

Royal Court Statistics – 2006 - 2009

	2009	**2008**	**2007**	**2006**
Royal Court sittings:	476 ½ days (breakdown attached)	348 days	359 days	362 ½ days
% of civil/criminal cases (in number of days sat)	Civil – 67% Criminal – 33%	Civil – 63% Criminal – 37%	Civil – 61% Criminal – 39%	Civil – 68% Criminal – 32%
Licensing Assembly sittings:	4 days	6 days	6 ½ days	5 ½ days
Warrants issued:	197	162	151	152
Production Orders issued:	105	68	97	122

Note – Sittings of the Licensing Assembly are additional to sittings of the Royal Court.

Schedule 2 continued

Presiding Judges

Days in Court	2009	2008	2007	2006
Bailiff (PMB)	36.5	53.5	67	99.5
Bailiff (MStJB)	33	0	0	0
Deputy Bailiff (MStJB)	44.5	107.5	102.5	113
Deputy Bailiff (WJB)	16.5	0	0	0
Mr F Hamon	23	33.5	29	24
Mr P Le Cras	0	0	3	4.5
Commissioner Bailhache	34.5	0	0	0
Mr J Clyde-Smith	133	103.5	61.5	0
Mr H Page QC	86	35.5	19	60
Sir Richard Tucker	41.5	11.5	7	38.5
Mr B Blair QC	0	0	2.5	3
Sir Geoffrey Nice QC	0	1.5	45.5	1.5
Miss P Scriven QC	2	0	17.5	0
Sir Christopher Pitchers	24	0.5	0	0
Sir de Vic Carey	0	0	2.5	2
Mr R Southwell QC	0	0	0.5	9
Lt Bailiff de Veulle	0.5	0.5	1	5
Lt Bailiff Le Brocq	1.5	0.5	0.5	2.5
Total Court days	**476.5**	**348**	**359**	**362.5**

Total days sitting in Court and Licensing Assembly by the Bailiff and Deputy Bailiff

	2009	2008	2007	2006
Bailiff	69.5	53.5	67	99.5
Deputy Bailiff	61	107.5	102.5	113
Total days in Court	**130.5**	**161**	**169.5**	**212.5**
Sittings in Licensing Assembly	4	6	6.5	5.5
Total days in Court and Licensing Assembly	**134.5**	**167**	**176**	**218**

Note 1 - The figures for 2009 are distorted by the fact that there was no Deputy Bailiff for four months due to the delay by the Ministry of Justice in making Crown appointments.

Note 2 - The figures for 2008 are distorted by the fact that the Bailiff was absent from the office for a period of six weeks due to illness.

Schedule 3

1. Number of States meeting days

	TOTAL	Ordinary business	Ceremonial, etc.
2006	**38**	35	3
2007	**45**	44	1
2008	**51**	50	1
2009	**60**	59	1

2. Presiding in the States (hours)

	2006	2007	2008	2009
PM Bailhache	108h 09m	135h 37m	112h 15m	28h 27m
MC Birt	49h 34m	55h 40m	125h 51m	172h 57m
M de la Haye	33h 22m	49h 32m	58h 28m	99h 01m
AH Harris	0	0	2h 16m	8h 17m
WJ Bailhache	-	-	-	42h 20m

3. Presiding in the States (days)

	2006	2007	2008	2009
PM Bailhache	16.6	20.9	17.3	4.4
MC Birt	7.6	8.6	19.4	26.6
M de la Haye	5.1	7.6	9.0	15.3
AH Harris	0	0	0.3	1.3
WJ Bailhache	-	-	-	6.5

Schedule 4

Bailiff's list of engagements

		2009	2008	2007	2006	
Annual ceremonial *		7	7	7	7	Holocaust Mem Day, Liberation Day, D Day, Visite Royale, Battle of Britain Service, Assise d'Héritage, Remembrance Sunday
Concerts/Shows		16	18	15	13	eg Panto, Music Concerts, BoF, RJA shows
Receptions/Exhibitions		37	31	22	25	Inc receptions hosted by Bailiff, Sw In receptions (Jurats, Advocates), Exhibitions launches, Queens Official B'day
Conferences	*Bailiff*	1	2	2	3	Eg Rotary District conf
	Judicial	5	3	2	3	Eg Domestic Violence, CMJA, Family Law, Rencontre du droit Normande, Criminal Law Review
	States	2	2	2		Eg AFP Conf, BIPRA
Dinners/ Lunches	*Bailiff*	42	23	26	26	Inc dinners hosted by Bailiff and dinners attended as Patron etc
	Judicial	11	8	5	8	Inc retirement dinners for judges, legal conferences, Law Soc Annual Dinner
	States	6	10	5	5	eg CPA dinner, APF dinner, BIC summit dinner, BIPRA dinner
Off Island Meetings	*Bailiff*	2	4	7	10	
	Judicial	6	7	4	2	Inc JGLR
	States			1		States meetings off Island are usually conferences
Sporting Events		1	2		1	eg Muratti, Jeux Intervilles, Swim Chmp
Royal Visits		1	1	2		
Local Visits		4	5	9	6	Eg Post Office, Hospital, Police HQ, Prison, JEP
Ambassador visits		2	2	4	2	
		143	**125**	**113**	**111**	

Schedule 5

S.11

14th February 2001

Dear Mr. President,

Thank you for your letter of 30th January 2001 inviting my views on the recommendations contained in the Report of the Review Panel on the Machinery of Government in Jersey. I have hesitated long before writing this letter. My purpose in writing is neither to support nor to oppose any of the recommendations. My purpose is twofold. First, it is to draw attention to the absence of any detailed examination in the report of other options for change. Secondly, it is to draw attention to some of the significant consequences of implementation, which again are omitted from the Panel's Report. I am conscious that members may well be aware of many of these issues. Nonetheless it seems to me that, as President of the States, I have a duty to articulate them. Some may criticize me for making any intervention. On the other hand, if I say nothing, and the recommendations are implemented without consideration of all the consequences, I shall in my view open myself more deservedly to criticism for maintaining a silence and failing to speak.

I wish also to make a declaration of interest. One of the recommendations of the Panel is that the Bailiff should cease to be the President of the States. I do not wish to, and I will not express a view on the merits of that recommendation. That is for the elected members to decide. Indeed, if the Panel had examined openly the arguments for and against this recommendation, I should have kept silent. But, as I explain later, the Panel has not done so. I am therefore placed in an invidious position. If I speak out, I may be accused of being partisan. If I keep silent, I may betray my office. I have tried to be true to myself in the knowledge that, at the end of the day, the decisions rest with elected representatives. I propose therefore to circulate copies of this letter to all members of the States and to release it also to the media.

Introduction to the Report

The introduction to the Report concedes that the Panel is recommending quite fundamental changes. This seems to me an under-statement. The Report recommends changes which amount to a total reconstitution of the States Assembly which has evolved gradually over the past 500 years. The Panel refers in its Epilogue to the importance of continuity with the past. It is difficult to see the removal of the Senators, Connétables and Bailiff, and the abandonment of the committee system of

government as other than a complete rupture with the past. If the Island were suffering from impending political or economic collapse, one could better understand such an approach. In fact, Jersey has full employment, significant financial reserves, extensive education, health and social services, and an absence of corruption in government or the public service. It is generally accepted that there are deficiencies in the machinery of government and no doubt, as the Panel suggests, some change, even major change, is desirable. But revolutionary proposals of this kind, as opposed to a more evolutionary approach, need careful and measured appraisal.

The Panel suggests that their plan should be implemented as a whole. For my part, I can see no compelling reason for treating the recommendations as an indissoluble package. This suggestion seems to me to be a denial of members' responsibilities. They are perfectly entitled, and indeed have a duty, to examine the recommendations on their respective merits and to decide which of them should be adopted and which should be rejected or accepted in part. The suggestion that the Panel's recommendations are so perfectly formulated that they must all without exception be embraced seems to me very questionable.

Scope of the Review

The Panel has defined the scope of its review as being restricted to the essential responsibilities of government. A deliberate decision was taken to avoid delving into detail so that the report would be easy to read and accessible. In this aim the Panel has succeeded admirably. Their recommendations are in general clear and concise.

The disadvantage of this approach in relation to the major recommendations is, however, that their process of reasoning is not disclosed. The Panel has received evidence, identified perceived defects, and set out its conclusions. No doubt the process of discussion revealed a number of options for change. But the reader is not told what they are. The reader is expected to take it on trust that the Panel's reasons for arriving at their conclusions are right.

This seems to me an impossible proposition for members to accept. There is virtually no analysis of the consequences of change. The Panel blandly expresses confidence that the reformed machinery will be capable of dealing with the consequential details of implementation. Members are expected to assume that the Panel has thought through all the consequences of their recommendations. In my view, this is an unfortunate approach. It places members in a difficult position. A constitutional arrangement and a system of government of such long standing should not be so casually discarded. Members could surely have been trusted with an examination of the different options for change so that they could weigh the advantages and disadvantages of each in the balance. Instead the Panel has produced a broad-brush blueprint for reform which requires members, if they do not like the

recommendations, to work out for themselves what more evolutionary options are open to them.

The Panel's approach may be contrasted with the approach of the Guernsey Panel charged with the same task in that Bailiwick. In the report of the Guernsey Panel, a number of different options for change are clearly set out together with the arguments for and against each option. As a result, the relevant information is available for those whose duty it is to take the decision.

The Electorate

Two significant recommendations here are that a Chief Electoral Officer should be appointed and that there should be a Central Register of Voters. The reason for those recommendations is said to be that the Panel received evidence that the Electoral Registers kept by each parish sometimes failed to record people clearly entitled to vote. It is true that at each election a small number of people are turned away because their names are not on the Electoral Register. This is often because the prospective voter has failed to send in his electoral form and failed, despite notices in the media, to check that his name is on the Electoral Register. Sometimes, there has been a clerical error at the Parish Hall when the form has been misfiled. The 1998 amendment to the Public Elections Law has however cured that last defect by allowing the returning officer to permit such a person to vote even though his name is not on the Electoral Register. My understanding is that further amendments are in prospect as a result of the work of the Franchise Working Group.

These minor, almost trivial difficulties raised by the Panel could be said to be a flimsy basis for sweeping away what is in general an efficient electoral system which has stood the test of time. At every public election the Royal Court appoints a returning officer (usually a Jurat) who has the responsibility of ensuring the integrity of the poll and of reporting the results in due course to the Royal Court. At the polling station, the returning officer avails himself of the assistance of the Connétable, whose duty is to ensure appropriate facilities and the observance of good order. The parish secretary and the parochial administrators are also there to help.

How would the proposed Chief Electoral Officer and Central Register of Voters relate to the existing arrangements? The recommendation would certainly involve the expense of creating a new central bureaucracy and diminish further the status of the parishes as the core of local administration. Who would then be responsible for each individual parish election? The Jurats of the Royal Court could not be accountable to a Chief Electoral Officer. Presumably, therefore, the Panel envisages a new breed of electoral official acting under the auspices of the Chief Electoral Officer. All the collective experience of the Jurats would be wasted. The authority and respect naturally accorded by Islanders to Jurats of the Royal Court would not necessarily be accorded to the new electoral officials. And what would be the advantage of a Central Register of Voters? Clerical errors would be just as likely,

if not more likely, to occur in the compilation of a central register for the whole Island as in the parochial electoral lists. The advantages of local organization and knowledge would be lost.

Most of all, responsibility would be taken away from the parishes for no good reason.

I hope that members will take all these matters into account in deciding whether there is justification for creating a Chief Electoral Officer and a Central Register of Voters. It may be noted that a decision not to implement these recommendations would have no effect upon other aspects of the Panel's Report.

The Connétables in the States

The recommendation that the Connétables should be removed from the States is of fundamental significance. The rationale for the recommendation is not however entirely clear. It seems to be that the Connétables are busy in the parochial administration, and the Panel was "left with the impression that some ..... felt uncomfortable .... in the States". It is suggested that they participated in debate to a lesser extent than the deputies, although elsewhere in the Report the Panel criticizes some members who feel impelled to speak "even if all the words that could sensibly be said ... have already been uttered more than once". It seems a little unfair to criticize the Connétables for speaking on fewer occasions than the Deputies when they may well have concluded that there was nothing left to contribute to the debate. The Panel suggests that, following their removal from the States, the rôle of the Connétables in the parish could be developed and "its dignity enhanced".

The arguments against removing the Connétables from the States are not set out in the report and ought at least to be articulated so that informed debate can take place. They include the following.

The report on policing, also produced by Sir Cecil Clothier, recommended that the policing rôle of the Connétables should be removed and that charge of the honorary police should be assumed by the Chef de Police, or senior Centenier in the parishes. Ironically, the reason for that recommendation was that it was inappropriate for policemen to sit in a legislative assembly. This recommendation was accepted by the States on 19th May, 1998 although it awaits legislation for implementation. If the Connétables are no longer in charge of their honorary police and no longer sit in the States, it is difficult to see how the dignity of the office will be enhanced. On the contrary, their standing would be greatly reduced. They would chair the parish assembly, but even there, their influence would be diminished. They could not carry forward the views of the parishioners. The ancient title "père de la paroisse" or "father of the parish", that is the protector of those in need of protection, would become empty of meaning. Their rôle would become relatively minor and secondary

to that of the parish deputy or deputies, who alone would have the power to represent parishioners in the States. The long tradition of the Connétables convening parish assemblies in order to gauge public reaction to significant matters under consideration in the States (the original reason for lodging propositions au Greffe) would come to an end.

This diminution in status of the office of Connétable could have a more serious consequence for the parishes themselves. The ancient parishes, supported by a pyramid of honorary officers with the Connétable at the apex, have an important part to play in local administration and in the life of the community. Suppose that the Council of Ministers (if this were introduced) were to envisage a shift of responsibility from the parishes to the States, for example, in relation to by-roads, or in relation to rating. Who would defend the interests of the parish? The Connétable has gone. The Panel is clearly conscious of this weakness and recommends that the Comité des Connétables should have "a more formal consultative rôle with the States". But that is hardly a substitute for the presence of twelve Connétables in the States. Their removal would not only diminish the standing of the Connétables but would also risk a severe weakening of the influence of the parish in Island life.

Some may feel that these arguments are outweighed by the desirability of having a single type of States member and allowing the Connétables to concentrate entirely on parochial administration. It may be worth noting, however, by way of conclusion, that the retention of the Connétables in the States is not inconsistent with the Panel's other recommendations, particularly the recommendation for a reduced number of members of the Assembly. The distribution of seats could be exactly as recommended by the Panel except that in each parish one seat would be held by the Connétable. Membership of a smaller assembly would indeed enhance the dignity of the office of Connétable.

An improved structure

The defects referred to earlier (lack of detailed reasoning and other options) are particularly striking in relation to the chapter entitled "an improved structure" which contains the heart of the Panel's recommendations yet is only nineteen paragraphs long. It would surely have been helpful for the Panel to have addressed some of the following issues so that members could be fully informed of the relevant factors in relation to this most important decision.

(1) Merits of committee system

The Panel analyses the current defects in the committee system in some detail but does not address its merits. The great advantage of the committee system is precisely that which is identified in the extract from the report of the Manx Select Committee which is quoted in the Panel's Report -

> "It is important in a small jurisdiction that the time and abilities of members are used to further the general well-being of the Island".

A system which binds members together and forces important decisions to be taken by consensus is in general more democratic than one which depends upon the will of an individual. The committee system gives all members of the States a stake in the executive by virtue of being collectively responsible for an area of the administration. Another advantage of the committee system is the opportunity which it affords for talented members of completely different political persuasions to become committee presidents. In a ministerial system, even if party politics have not developed, polarization is inevitable. The Chief Minister will include in his Council those who are of the same way of thinking. Gibraltar, which has a ministerial system, has witnessed in recent times substantial shifts between left and right. A committee system is capable of absorbing and of giving political responsibility to those of markedly different political views, and could be said to be more stable.

(2) Local government in England

The process of government in Jersey involves decision-making which in a larger jurisdiction would be taken partly at national level and partly at local government level. Local government in England mostly involves the committee system; national government of course involves a council of ministers or cabinet. The economic success which has propelled Jersey to the periphery of the international stage seems to be one of the principal reasons underpinning the recommendation of a ministerial system. Our political leaders need to be called "ministers" so that their responsibilities can be appreciated abroad. This is understandable, but it should not be forgotten that many activities of government in Jersey would be at the local government level in England, e.g. planning, housing, education and, to an extent, health. In England the Local Government Act 2000 has required local authorities with a population of more than 85,000 to change, except in relation to planning, to a ministerial or executive system. Those with a population under 85,000 can opt to retain a committee system. The Act has generated widespread cross-party criticism as being undemocratic and ill-considered. The Panel must have been aware of this controversy and it is surprising that the Report did not refer to it.

(3) *Party politics*

The Panel asserts that the proposed executive will be in a minority. As a result there will be a majority of members excluded from executive responsibility. That is quite different from the present position where all members of the States are on a number of committees and therefore form part of the executive. Because of this they tend to oppose proposals of other committees only where they genuinely believe that the proposal is wrong. There is no opposition simply for the sake of opposition as is so often the case elsewhere. If the sole function of these excluded members in future is to scrutinize the executive, this may well lead to an increase in opposition for opposition's sake. There may be a desire on the part of those who are not in the executive to be voted on to the executive. These factors could well lead to alliances and arguably in due course to formal political parties so that those who are not in power can increase the likelihood of defeating those who are in power and gaining

power for themselves. Conversely, there may be a similar pressure in relation to those in the executive. If the executive is in a permanent minority there is a risk that its proposals will frequently be voted down by the back benchers. The members of the executive will then wish to seek formal support from some of the back benchers which will increase the pressure for party systems, so that the executive is assured of support in the legislature. It is of course a matter of opinion as to whether party politics would be a good or bad thing for a small Island like Jersey. I express no view on that. But States members should at least be aware of the real possibility of a party political system developing from the Panel's proposals.

(4) *Isle of Man*

It is clear that the Panel has embraced enthusiastically the system of government currently in force in the Isle of Man. It is no part of this advice to detract from that system. Members should, however, be made aware that the history of Tynwald bears no relationship at all to the history of the States Assembly. This is not the place to consider the development of representative government in the Isle of Man. But it is relevant that representative government as we have known it in Jersey for hundreds of years has existed in the Isle of Man for not much more than three or four decades. Until the early 1960's, executive and legislative power was largely concentrated in the hands of the Lieutenant Governor. It was not until 1980 that the Governor ceased to be the executive head of the insular government and to preside over the Executive and Legislative Councils. It was the vacuum caused by the withdrawal of the Governor's executive functions which led in short order to the creation of the post of Chief Minister. The ministerial system itself has been in place there only since 1987. We need to take care before concluding too quickly that the Manx system is appropriate for Jersey.

(5) *Evolutionary options*

As I have said, it is unfortunate that the Panel offered no more evolutionary options. Having recited the defects in the present position, the Panel simply proposed its own revolutionary approach. It would have been helpful to discuss the advantages and disadvantages of evolutionary development. For example, the committee system might have been retained with a substantial reduction in the number of committees and in the number of members of each committee. The President of each committee could be styled "the Minister" and be given the power to appoint and to dismiss members of his committee, thereby introducing an element of discipline. The President of the Policy and Resources Committee could be styled "the Chief Minister"; the committee could be given statutory power to give directions to other committees on strategic issues; the responsibility for external relations could rest with this committee. The concern about giving too much power to the Chief Minister could be met by leaving with the States the power to appoint the Chief Minister and the presidents of committees (ministers). The States could appoint Scrutiny Committees so as to achieve the higher level of accountability suggested by the Panel. I emphasize that I am not putting forward an alternative proposal. That would not be for me. I am merely pointing out that it is unfortunate that the Panel did not consider, or alternatively did not see fit to share their thinking on other evolutionary options so

that members could more easily select an alternative if they felt unable to accept the Panel's recommendation.

The Bailiff

The Panel describes the rôle of the Bailiff as a "very important issue". It is perhaps regrettable therefore that it receives such slender consideration. One might have hoped for a summary of the arguments for change contrasted with a summary of the arguments in favour of the status quo, so that members could make an informed decision on this issue. Instead, the Panel begins with its conclusion that the dual rôle should cease and gives three reasons of principle. Of these reasons the first is arguable, the second is misleading and the third is wrong. The consequences of change, and the arguments in favour of the status quo are not mentioned at all.

Taking the Panel's reasons in reverse order, it is said that the Bailiff makes decisions about who may or may not be allowed to speak, or put questions, and about the propriety of a member's conduct. In fact, the Bailiff has no power to prevent any member from speaking, nor from asking questions. He determines the order of speaking and disallows questions which do not comply with Standing Orders, but can do no more. As to the propriety of a member's conduct, the Panel illustrates this by stating "the Bailiff recently found reason to suspend a member of the States from sitting ..." This is quite simply wrong. It is highly regrettable that the Panel should have neglected to ascertain the facts so as to necessitate the re-opening of a matter far better laid to rest. In fact, the member concerned was suspended by the States, not by the Bailiff, by 36 votes to 3 for a refusal to comply with the Standing Orders of the Assembly. The Panel continues by contending that the subsequent challenge to the States' decision in the Royal Court, (when clearly the Bailiff could not preside), is evidence that the Bailiff should not preside in the States. In fact that challenge, despite being struck out as disclosing no cause of action, did establish an important constitutional principle. That principle is that the decisions of the States in relation to the regulation of their own internal proceedings cannot be challenged in the Royal Court. In the unlikely event of the States suspending a member in future in similar circumstances, it is now settled that such a decision cannot be reviewed by the Court. Accordingly, the Bailiff's presidency of the States gives rise to no conflict in this respect.

The Panel then refers to the principle of separation of powers and quite rightly states that no one involved in making the laws should be involved judicially in a dispute based upon them. No mention is made, however, of the fact that the Bailiff is not in any real sense involved in the making of laws. His function as President of the States is that of a neutral umpire, ensuring the observance of the rules of debate. The Panel suggests that the introduction of Human Rights legislation is likely to lead to more frequent challenges to the Bailiff's presiding in the Royal Court and it refers to the Guernsey case of McGonnell. The Panel does not, however, state that the European Court of Human Rights expressly disavowed any constitutional theory such as the separation of powers. The Court found, in short, that there was nothing

inherently wrong with the Bailiff's dual rôle in the Court and in the States. Measures have already been taken to avoid any conflict arising in practice.

Finally, the Panel asserts that no one should hold or exercise political power or influence unless elected by the people to do so. But the Bailiff has no political power. He neither speaks nor votes on any motion unless he has to use a casting vote; but his casting vote is always exercised in favour of the status quo. To remove the casting vote would in practice change nothing and might well be a sensible amendment. The Panel does not draw attention to the House of Lords nor to the Senate in Canada nor to numerous other Commonwealth legislatures containing appointed members. In the United Kingdom, the Lord Chancellor and the Law Lords (the country's most senior judges) all speak and vote in the House of Lords, whereas by contrast the Bailiff is completely neutral.

There is no valid constitutional or legal reason preventing the Bailiff from presiding in the States. The question is rather one of perception.

Although not mentioned by the Panel, the arguments in favour of the retention of the status quo, with the Bailiff continuing to act as President of the States, were helpfully summarized in the report of the Guernsey Review Panel. They include the following:-

(1) The Bailiff will have a detailed knowledge of the island's machinery of government and of the constitutional relationships with the United Kingdom and the European Union, and is able to advise members accordingly.

(2) As a non-elected appointment, the Bailiff is seen to be independent of local political bias, and to be able to act impartially.

(3) Through his judicial experience the Bailiff will have a suitable bearing and expertise to command the respect of States Members, to maintain order, and to promote an appropriate image of the Assembly to the outside world.

(4) The available pool of States Members with adequate experience and expertise is likely to be comparatively small and there may be a lack of willingness amongst able States Members to accept such office as an alternative to active political involvement in the machinery of government.

(5) Contested elections for the position of Speaker in a small community might be seen to undermine that person's authority.

(6) Under the current arrangements, there is a person available to deputize for the Bailiff in the event of illness or unavailability in the shape of the Deputy Bailiff, who is equally qualified by training and experience.

(7) An elected Speaker would not necessarily be legally qualified and would therefore need legal support. A Speaker's Counsel would be necessary, unless it were made a requirement that the Greffier of the States was legally qualified.

The consequences of change should also be understood. If the Bailiff is no longer President of the States, he will have no authority to speak for or to represent the Island. The people could no longer look to the Bailiff to perform the representational rôle which he currently undertakes on ceremonial or public occasions. He could no longer make himself available to give impartial advice as a kind of constitutional long-stop. This public representational rôle derives from the presidency of the States. If one goes, so does the other. The influence which the Bailiff has as a Crown Officer would pass not to the elected Speaker nor to the Chief Minister, but to the Lieutenant Governor. The historical links with an ancient office and with the Royal Mace would both go.

None of these considerations was mentioned by the Panel. At the end of the day it is for members to weigh them in the balance against the issue of perception and the desire which members may have to choose their own speaker.

Conclusions

The Panel has likened Jersey's system of government to a machine. This is a convenient metaphor because it is possible to dismantle a machine completely and to re-construct it in a different way. I think however that the metaphor is inapt. A system of parliamentary government which has evolved slowly over a period of 500 years is not a machine. It is a living organism. It is possible to remove and to replace one or perhaps two vital organs. But if one treats an organism like a machine, and pulls great parts of it to pieces, it is likely to die, or at least to suffer serious harm. A constitution is a delicate organism. It is shaped by history, by tradition and by the character of the people. A community that ignores the weight of history does so at its peril. Its history and its heritage are part of its individuality and of its soul. It is relatively easy for academics to take out a clean sheet of paper and to draw up the ideal system of government. The Panel suggests that their blueprint could become a model for other democracies. This may not impress those who do not want Jersey to become an experimental prototype for emerging nations. Many will believe that we should remain connected to our past and concentrate on adapting our institutions for the future. There is nothing inherently wrong with being different. We do not have to re-name deputies because the Panel does not understand that they originated as "députés" in the French language, that is, persons deputed to represent their electors in the States.

The difficult task for the Policy and Resources Committee, in my respectful submission, is to disentangle the valid and appropriate recommendations of the Panel from those which would needlessly destroy our heritage and our character.

To accept the Panel's view that its recommendations are sacrosanct and an indissoluble package would be, I suggest, to deprive the Island of the political leadership which the Policy and Resources Committee is able to give on these important matters.

The Committee ought, in my respectful submission, to proceed in a measured and careful way. There should be no rush to judgment because reforms can take effect, and elections can take place in 2002, 2003 or whenever the legislative structures are in place. The Committee ought, having regard to all the views expressed during the consultation period, to take time to form its own conclusions. Those conclusions could be expressed in a series of propositions which, when lodged, should again be allowed to remain on the table for a reasonable time. This will allow other members to consider the propositions and to table amendments as they think fit. In that way, democratic and informed decisions will pave the way for legislation.

Finally, I should add that a draft of this letter has been discussed with the Deputy Bailiff and I am authorized to say that he agrees with its contents. This letter therefore expresses our joint views.

Yours sincerely,

Bailiff

Senator P. F. Horsfall, OBE,
President,
Policy & Resources Committee,
c/o States Greffe