

Event: **Public Hearing**
Review of the Roles of the Crown Officers

Date: **10th June 2010**

Review Panel: **Lord Carswell, Chairman**
Mrs M-L Backhurst
Mr G Crill
Dr S Mountford
Mr I Strang

Witnesses: **The Very Reverend R F Key**
Dean of Jersey

Lord Carswell (Chairman): Mr. Dean, you are very welcome to a sitting of the Panel set up to review the roles of the Crown Officers at the request of the States. The members of the Panel, you possibly know all of them, but I just introduce them formally: Mrs. Backhurst, Dr. Mountford, Mr. Crill and Mr. Strang; and the secretary and project manager, Mr. Millow. We have the function of looking at the way in which the roles are defined of the Bailiff, Attorney General and Solicitor General. We are looking at them as a matter of principle, not as to how they have been performed over different periods. We will take your evidence in public; as requested by the States, we have been doing so with very few exceptions. For sensible reasons, we have made some. We will continue to take evidence until we have completed this. We shall then reach our conclusions and set them out in a report, and present them to the States, who will then decide what they wish to do in the light of the report. We have your letter of 15th March in which you set out your views, and we are grateful to you for that. Is there anything you would like to add to that before I ask the members of the Panel if they have any questions?

The Very Reverend R.F. Key, B.A., The Dean of Jersey: I think my first thing would be an observation that, rereading it, it seems to me no matter how many times you proofread things you still realise spelling and grammatical errors, so I apologise for those. That on one side, I think the only thing I really wanted to add was I have been reflecting on the priorities that people express to me about changes they would like to see in the life of Jersey, or even what they think is wrong with life in Jersey. I was trying to grade in my mind, prioritise in my mind, the sort of things that people say. I can honestly say that in the 4 and a half years I have been here, no one has ever said to me that, really, Jersey would be just wonderful if only we could transform the role of the Bailiff and the Law Officers. They have talked about the relative merits of the committee and ministerial government

system; certainly talked about how we engage members of society who tend not to come out to vote. That, for me, is still the greatest challenge that our democracy faces. I live in a district called St. Helier No. 2, and the voting turnout there is not great, which means that whoever is elected there, no matter how good they are - and the Deputies there work very hard - it cannot really be said that they have a mass public mandate for their roles, which concerns me. But the idea that loads of people on the Connex omnibus, at least those that come anywhere near me - and I do think I keep my ear to the ground of the community at large - the idea that if only we got the Bailiff's or the Attorney General's, Solicitor General's roles better, then all would be well with the Island, or even that it would make a great contribution to improving the lot of Islanders, I can honestly say I have just never heard that. I have heard it argued by one or 2 constitutional purists, or folks who bring presuppositions from other jurisdictions, but that has been much more by way of academically tinted argument than it has actually about improving the life of the 95,000 people who live here. I think that was the only thing I really wanted to add that perhaps I did not make clear enough in my submission.

Lord Carswell: I think we have heard from quite a number of respondents that the system has worked in practice, the function of the Bailiff has been carried out by a number of distinguished Bailiffs in an exemplary fashion, and that it does not require a change. That is a perfectly tenable and understandable view, but we have to look a little beyond into matters of constitutional principle, and where we get to it is not possible to say yet. But the fact that it has not caused practical problems may not be the whole answer.

The Dean of Jersey: No, I understand that, but as I think I hinted at in my letter, there is more than one constitutional theory of how you organise a state. It does seem to me that

the idea that every office that has any degree of influence is always elected, in whatever way, just simply does not hold water. I realise of course, that there has been a general election since my letter, so I might now, instead of mentioning Lord Mandelson, talk about (if I get her name right) Baroness Warsi, is that the right lady?

What I am saying is that in every democracy not every role is elected directly, and it seems to me in an island of 100,000 people, I think it is, frankly, just silly to assume that what works in the United States or what works in the United Kingdom must be transferred here. Certainly, when I have heard people say: "Oh, but the European Union recommends ..." I do not think many people would hold up the European Union as a model of a well-functioning organisation, or even a value for money organisation. It certainly is not something that constitutional theorists would agree on, because there are those who see it federally, there are those who see it as a market with some administration on top of it. All I think I am trying to say is that it seems to me that principles that are right for one jurisdiction may not be right or may not be directly applicable in others, even if one were to agree that there is one model constitutional theory, which I think would fly in the face of the way in which the world operates and human history.

Lord Carswell: There are, as you quite rightly say, very many models, a lot of which are quite different and which function perfectly satisfactorily. The question which has exercised a number of commentators rather than the question of whether the Crown Officers should be elected (which is a different issue) is whether it is right in principle for the same person to preside in the legislature and preside in the court which deals with the legislation. Have you any thoughts you would like to tell us about that?

The Dean of Jersey: In preparation for coming here, I was reflecting on that again, and it does seem to me that the conflict ... I do not think it is a conflict. Remember, I am not Jersey born, I do not come here with a huge “please change nothing about Jersey” mandate. I am here for a while, and will no doubt go on somewhere else in due course. But it does seem to me that that argument would really only hold water if the Bailiff were a political person, and the last thing that, certainly, the Bailiffs I have seen have been is any kind of political person. I have not seen any debate where any of those chairing, from the Assistant Greffier at one end to the Bailiff himself at the other, have had any influence on the outcomes of debates. I think that is to misunderstand the role of whoever is presiding over the Assembly. As I say, it seems to me to be the sort of thing that, were one writing a P.P.E. (philosophy, politics and economics) essay in Oxford, you might well say: “Here is how you construct things”, but that does not seem to me to be (I have not observed it to be) any kind of conflict in the real world.

Lord Carswell: How much time, in practice, do you find yourself attending the States?

The Dean of Jersey: I attend every sitting if I am in the Island. I normally spend at least half a day of every sitting in the States. It is my practice always to open with prayers; I always stay for the question time. I sometimes ask the odd question, but rarely. I then stay for debates that either have particular social and ethical input, where either I might want to say something or I might be asked for specialist advice in the same way that the Law Officers are. I think I see a pretty good amount of the States in operation.

Dr. S. Mountford: Are you able to ask any questions, not just in the area that you are representing?

The Dean of Jersey: I do not think I am representing an area. I sit in the States by virtue of Crown mandate. I have 3 roles there. I sit as the person who presides when the States worships, whether it is the services or the prayers, so I have to brush up my schoolboy French to say the prayer. I have a role as the chaplain to the States, which means that, I guess, most of my ministry in the States is conducted in the coffee rooms, which can be anything from talking to States Members about issues in personal life or, when G.S.T. (Goods and Services Tax) was being considered, I was asked by some Members to write a paper on the ethics of taxation and the right balance between direct and indirect taxation as that benefited rich or poor, or where were the ethical questions. You might not instantly think of that as being the sort of thing that would come for an ethical view but it does, and I am the only professional ethicist in the States, so there is some area of expertise. I never have spoken in a narrow, Anglican way. If there is a moral issue, as there have been, it is my practice to consult the head of the Catholic Church here, to consult the head of the Jewish community, to consult the Imam, so that I can say: "Here are the views of those communities." Also, frankly, to say that if you take an atheist point of view, these are actually the sort of things you might be thinking through to help you get to that particular question.

Dr. S. Mountford: So, like the other Crown Officers, you respond to questions, but you can also ask them?

The Dean of Jersey: I can ask questions, I can speak.

Dr. S. Mountford: I was really curious about in your submission you talked about working with the Law Officers on the revision of the Canon Law, and you actually said: "Which I hope to take through the States later this year." Are you able to take things through the States?

The Dean of Jersey: Theoretically, yes. Do you remember I said there were some things, despite having written it with, I hope, great care, that on rereading it this week in preparation for today I thought perhaps I could have expressed that better? What has happened on that thing is this is the first revision of Canon Law in this major way since 1623. It has to go through the States, that is ... In England, I suppose, the bishops in the Lords would give some guidance on this. It would not (it could, but it would not) fall to me to propose the legislation. After discussions with the Chief Minister, he tells me that he would like to do that himself, which is, to me, the far better way. What I would do is I would run a briefing seminar before the event to say: "This is what ..." It has taken 15 years to bring this to anywhere near fruition, and it may still run into the sand. But I would then (as, again, the only theologian in the place) be able to say: "This is why we are doing this. You might like to consider, as those responsible for Jersey, the following 2 or 3 areas which are significantly different from England, and here are the reasons why." But no, if I ask questions, which is rare but I do ask them, it would tend to be for the moral cause. The last question I asked, if you want an illustration, was 2 weeks ago to the Minister for Transport and Technology, because there were issues around road closures on Sundays for marathons and cycle races that could have clashed with people wanting to get to town centre churches. So my question was about freedom of worship and the principle that has held good here for a thousand years or more. It is that kind of thing; I do not stand up and say: "Why does the Minister for Home Affairs not increase sentences for drug mules?" or

that kind of thing. That is not my remit. Anyway, sorry, this inquiry is not about me, but I am glad you asked.

Mr. G. Crill: But it is interesting, though. Your position as a Member is not constrained by convention, except perhaps your own self-imposed convention, in the same way that convention with the Law Officers, as Members, have.

The Dean of Jersey: I suppose all I would say is that it seems to me that the convention is that the role is not constrained. If you ask what I do in practice, I have very good relationships with, I think, pretty much all the States Members. I have said to a number of them: "Please, if you think I ever cross an imaginary line into something that might be construed political, will you please come and tell me." I think it has only happened once, but that was absolutely fine.

Mr. G. Crill: Whereas the impression that I have got over many years is that Members are very quick to jump on the other unelected Members if they cross that line, because there is that convention.

The Dean of Jersey: You might be right. I have not been in the House when it has ever been thought that a Law Officer acting in the States, for example, had crossed a line. There have been occasions when States Members have questioned actions of Law Officers outside the States - decisions whether to prosecute or not - but that is not a matter that arises from the Law Officers' role in the States, that arises from their role.

Lord Carswell: You did refer a few minutes ago to the comparison between different officers presiding in the States (Bailiff, Deputy Bailiff, Greffier, Deputy Greffier) and you said that none of them had influenced the policy or the decisions that you had ever seen. Looking at another aspect, the Bailiff is obviously a figure of considerable authority in Jersey, and when he is presiding that authority would be of considerable effect. However, do you find there is any noticeable difference in the atmosphere in the House when the others are presiding?

The Dean of Jersey: I am pausing because I am thinking about the word “atmosphere” that you use. I do not think there is any perceptible difference in the effectiveness of the chairing of debates.

Lord Carswell: That is really what I am asking, yes.

The Dean of Jersey: That is really very clear to me. All of the 4 (Bailiff, Deputy Bailiff, Greffier, and Deputy Greffier) would have different nuances of style, slightly different places in which they might inject humour, all that seems to me to be a positive good. I think the only difference in atmosphere, as opposed to efficacy, would be it is only when the Bailiff or Deputy Bailiff presides that the mace is present, because it is the Bailiff's mace. There is something for those, I think, who have (and I confess, I do have) a love for a sense of history and what shapes a people to be a people that is ... it is not an essential, it is a “nice to have”. I think when there are debates when the Greffier is presiding, which he does extremely well, and I really enjoy it when the Deputy Greffier presides too, I think she is excellent, it is only that one is aware that, looking forward, there is something missing from the picture.

As I say, that does not matter a jot in terms of how the debate is handled. What matters for that is that the chair commands respect and that the Standing Orders are so well known that it is clear that they are interpreted correctly. I think each of those, as Sir Phillip before, just because you put a red robe on and have Queen's authority does not necessarily automatically get you the respect of the House. It might get you their acquiescence, but that is not the same thing. It seems to me that the respect of the House still has to be won by whomever assumes the chair.

Lord Carswell: You feel that it is satisfactorily obtained by the other people, apart from the Bailiff, who preside from time to time?

The Dean of Jersey: That is my observation, that relationships are not just unavoidable, they are important in this Island. It is an intimate place, you are very likely to meet the Greffier or the Bailiff in the street, and therefore I think for somebody simply, as it were, to be someone who arrives in a limousine and goes away again (not that we do that) would really be very odd because it is not the way in which the Island operates. Having said that, it is incredibly important, therefore, that all those who chair debates are demonstrably not in the pocket of any of the actual or perceived groupings in the House. I think that is absolutely essential.

Lord Carswell: It is perhaps not unknown in other legislatures for the Speaker to have a firmer grip upon Members who might be trying to push their luck a bit. Naturally, that is why that person is the Speaker, and that, if other people are presiding, there may be a little less willingness to toe the line properly. You have not observed that?

The Dean of Jersey: I think what I have observed is that the House itself has an invisible way of collectively exercising its own conventions, its own way of showing that what a Member has done, or looks as if they might do, crosses the line. That is really very clear and that does exert pressure, of which I thoroughly approve. I spent many happy years refereeing, and it always seemed to me that if you got to the stage of having to send somebody off, that was a great sadness. A word in the ear earlier down the line might have prevented that. I think I feel that about the debates in the House as well, that there is a collective ... It is not a “yaa-boo” assembly for the most part; it is not a gentlemen’s assembly either, thank goodness, but for the most part it operates with a fair amount of decorum and ... I was going to say “gentleness”, I suppose I mean that in the sense of gentle-ladyness or gentlemanliness.

Lord Carswell: You set out some views on the question of advising Scrutiny Panels, and we have just had Senator Shenton talking to us from the aspect of President of the Chairmen of Scrutiny Panels, and we have had the benefit of his experience and views. Do you sit on any of these Panels yourself?

The Dean of Jersey: No, I do not. I think that that is a political thing. I was asked by one of the chairs of Scrutiny if I would sit on the Sub-Panel looking at lower income groups and so on, which is a subject close to my heart. There is nothing to stop a Scrutiny Sub-Panel bringing in people from outside the States, and they do. I suggested he ask, as he did, one of my Vice-Deans to do that, precisely because I wanted to keep my own role absolutely clear; that I have a role, it is definitely not a political one; therefore, I did not want to sit on a Scrutiny Panel or Sub-Panel.

Lord Carswell: The opinion which you expressed in your letter was that it seems to be wasteful and unnecessary to withhold the advice received by Ministers from Scrutiny Panels. Have you any specific examples in mind? Would you like to enlarge on that at all?

The Dean of Jersey: I cannot ... I remember being there, for Scrutiny Panels, for occasions in the States when this came up. I have wracked my brains trying to remember which event it was, but I cannot. It did just seem to me that if the Law Officers are Law Officers under Her Majesty for the Island, and therefore for the States, and Scrutiny was not meant to be, or ever devised to be, an opposition ("critical friend" I think is the phrase that has been used), and that this Island tends to try and spend money wisely - it does not always succeed but it tries to - it did seem to me to be quite strange to be paying 2 sets of legal bills. One, as it were, for the advice from the Attorney or the Solicitor General, and then for a Scrutiny Panel on exactly the same subject to have to go and commission another lawyer to get another lot of advice. I am not a lawyer, I preside over the ecclesiastical court, but that is a different thing. It did just seem to me to be quite strange. I have discussed this with some of the lawyers involved, and I think their starting point is that: "Well, Mr. Dean, you do not quite understand the things of the law", to which I would plead guilty. But still, as an outsider, it just seems to me to be, if I am being honest, wasteful and unnecessary. There may be very good technical reasons, legal reasons, why it has to be like that, but they presently elude me.

Lord Carswell: I think we are entirely conscious ourselves that unnecessary obtaining of advice is, exactly as you say, unnecessary and wasteful. It is quite a complex question, to

what extent advice can be shared, but we take your point entirely, and I think on the general principle of the undesirability of duplication we would be entirely with you.

The Dean of Jersey: I think, if I may say so, my perception is that even for somewhere like Jersey, there are clearly difficult choices to be made in terms of finance and spending in the years that lie ahead. Many of us would love to see greater provision made for those in the more impoverished end of Jersey society. As my mother used to say, you cannot spend the same 10-bob note twice. Therefore, I think ... Two things, one was the spending thing, the other was (and I know there would be others in the States, and outside the States, who would profoundly disagree with this), I think, as recent events in the U.K. (United Kingdom) are showing, you can get more out of a legislature when people learn to work together across ideological and grouping divides than you can when they simply sit behind those barricades and lob verbal grenades at each other. I do not think, on an island of this size, we have got time or energy or money or manpower for that.

Mr. G. Crill: Can I just ask one thing? Your position as a Member of the States, do you feel any accountability to the States?

The Dean of Jersey: Yes.

Mr. G. Crill: How is that exemplified?

The Dean of Jersey: This is not a good answer, but I give it because it is the nearest I know to be true. I go out of my way to have regular or irregular meetings with a number of States Members, certainly with the Chief Minister. Not to influence him, but really to say:

"Here are matters of concern to me, here are matters of concern to the other religious leaders in the Island. I just want to leave those things with you." In the last 3 or 4 years, we have said we have concerns about the inspection or otherwise of non-qualified housing. Nothing about how you arrive at the rent, that is a market matter, but just what inspections take place, if any, to make sure people have dwellings fit for human habitation. It is not my place to suggest: "Oh, by the way, I've got in my briefcase here a wonderful inspection scheme you might like to put on the table", but it does seem to me to be part of my role, and part of what Her Majesty's Letters Patent set out for me to do, to have a duty of care for the whole of the Island, and therefore to bring that to their attention. I say in those meetings to the Chief Minister and to the previous Chief Minister: "And this would be a good moment for you, Senator, to tell me if there are ways in which I should be doing my job better or differently. Not my role in the States particularly, but across the Island, are there things I should be doing?" I am accountable in a number of different ways. I am accountable to Her Majesty through the Lieutenant Governor, so I have regular meetings with him; I am accountable to the Bishop of Winchester as his Commissary-General, and I see him at least once a month; and I think I am accountable to the people of Jersey, whose Dean I am, and I do that through meeting as many of their elected representatives as often as I can. They are usually not backward in coming forward, in telling me: "There is something else you should be doing." I think that is my accountability channels, and I try to work very hard at them.

Lord Carswell: Is there anything else? Mr. Dean, we are very grateful to you, thank you very much. We are very pleased to see you and glad to have the opportunity to talk to you. Thank you for the trouble you have taken to give us your views. We will put them into the mixer along with everything else, but we will, of course, give them full weight.

The Dean of Jersey: Thank you, Sir, very much indeed. I think my parting word would be, obviously, to thank you for the time you have given me, but also the time you are giving the Island in all of this. I think that the thing I have learned since coming here (we honeymooned in Jersey, but it was not a place I knew intimately) is that the greatest mistake folks can make is to think this is a bit of Hampshire that has got lost. It seems to me to be wonderfully different, oddly quirky, none the worse for that, and it should certainly, it seems to me, be allowed both to learn best theory and practice from anywhere else in the world, while not feeling obliged to let go of those things that make it the unique place that it is. Thank you very much.

Lord Carswell: Thank you. That is a factor we will have clearly in mind. Thank you, Mr. Dean.