

Crown Officers Review.

March 2010

Submission from Michael Dun

The public is invited to comment on proposals to reform the role of certain “Crown Officers” in Jersey.

1 It is a great pity that the Lieutenant Governor and Dean have been excluded by the States from this examination because these two offices are an integral part of the whole and all the Crown appointments should have been considered together. Hopefully, their day will come soon.

2 My comments are restricted to limited areas of concern. I do not have the resources to make submissions on all aspects of the Crown appointments and I would stress that there are other defects which I hope others will comment upon. If I find that I have the time to return in the future, to address some of the gaps in this submission, then I will do so, if there is an opportunity.

3 With regard to all the Crown appointments, as with any other public offices, it should at least, be totally clear:

How and by whom the officers are appointed
what their duties and responsibilities are
who pays them, their conditions of employment and salary scales
to whom they are answerable and how they might be disciplined
under what circumstances and by whom they might be removed from office?

4 I don’t propose to consider in detail the shortcomings in the existing system but suffice to state that it does not satisfy any of the above requirements in para 3. At the root of the problem, in large part, is the mystery that attaches to the term “Crown” itself – because this is a word used to describe an imprecisely defined institution which does not exist in Jersey at all, but is an integral part of the UK administration and government.

5 Thus, Jersey’s most senior public servants are obscurely appointed by an obscure institution in another place for employment in Jersey under obscure conditions. All these obscurities need to be removed from the process. The simplest reform would therefore seem to be that all the officers are appointed wholly within the Island, in accordance with terms agreed and understood by Islanders. There is no need to be engaging the “Crown” at all, whatever that term might actually mean, because the whole process should be of concern to Island residents only, and no others. The people of Jersey are perfectly capable of selecting their own Judges and legal advisers etc.

6 The fact that Jersey is a Bailiwick of ancient pedigree should not be allowed to disguise the need for reform or serve to perpetuate the office of Bailiff beyond its useful time. Nothing can be immune to change just because it is of ancient pedigree. Useful purpose and preservation in this context needs to be proven.

7 The role of Bailiff as President of the States of Jersey is no longer acceptable. It isn't just the matter of the potential conflict of the officer as judge or the many other duties that attach to the office. The simple democratic truth is that if the people of Jersey need a political President to serve in or over the States of Jersey, then he or she must be an elected person, chosen by the voting public of the Island. There is no need to waste time discussing the merits of the conflict of dual or many sided roles – a political president must be subject to democratic election. A Crown appointed Bailiff is not democratically selected.

8 Jersey is also in danger of having too many people with presidential roles. The Lieutenant Governor, Bailiff and Chief Minister are three - and they are already two too many.

Democratic development in Jersey will inevitably reduce this to just one "president" in the fullness of time but the process can usefully be hurried along.

Both the Lieutenant Governor and Bailiff should be removed from any presidential pretensions as soon as possible.

Jersey's Chief Ministerial office should be encouraged to develop as quickly as possible so that the Island might be represented politically both locally and internationally by a person properly elected by the population.

9 Good-bye to the Bailiwick?

Of course, if the Bailiff ceased to be President of the Government etc then it would presumably not be appropriate to call Jersey a Bailiwick – but this is not an important issue. The world will survive without such an outdated form of administration and it can be consigned to the history books where it belongs. There is no need to shed tears or be afraid of this change.

I do not propose to waste any time dreaming up another title for Jersey instead of Bailiwick. The word Island seems to suit other places well enough.

10 The question of who might chair the States Assembly is often raised.

In fact, the Greffier and his team already undertake this role perfectly well and there is simply no need to change this arrangement.

It might be useful to appoint an extra assistant Greffier because the proper running of that department already needs one – but so far as chairing the States Assembly is concerned the existing officers are more than adequate for an assembly of 53 elected representatives. Jersey's government assembly is not to be confused with the London Parliament and local appointees should not be encouraged towards any delusions of grandeur.

11 As happens now, in exceptional circumstances, an elected and designated member of the States can chair the proceedings when other appointed officers are sick or temporarily indisposed or absent and this is a perfectly reasonable arrangement and is appropriate in such a small jurisdiction.

12 The Attorney and/or Solicitor General would continue to sit in the States as now and be available to give legal advice to the proceedings when invited.

13 Whither the Bailiff?

Jersey desperately needs a properly organised **Department of Justice** which is clearly separated from political government.

Locally chosen Judges could usefully have a senior role in such a body and this would be the basis for a properly structured and resourced department of public law, based upon certain legal knowledge and procedures and providing a clear career structure for those employed.

14 Such a Department of Justice would incorporate the Judicial Greffe and Viscount's Department, the management of the Courts and a properly funded Legal aid system, publication of legal information and law drafting services.

The Judges, magistrates and Jurats would be employed and managed within a division of the department whilst ensuring appropriate separation from non-judicial duties

15 Another sub-department would provide legal advice to government departments under the authority of the Attorney/ Solicitor General.

These "Crown Offices" would be abolished in their current form and would be local appointments.

They would not advise the UK Government unless invited to do so by the Jersey administration.

They would not serve as prosecutors and a distinctly separate prosecution division should be created.

16 Unfortunately, it is not possible to consider the roles of the Crown Officers in Jersey without looking at their context within the local legal system and Jersey's own legal profession.

17 There are currently about 250 "Jersey lawyers" and they enjoy a total monopoly in the provision of legal services and the giving of advice on Jersey law in the Island.

This is a very small profession and Jersey is a tiny jurisdiction. The "Crown Officers" are the most senior lawyers among the local profession and have considerable powers to influence all matters legal arising in the Island.

18 It is necessary to consider that Jersey has developed very rapidly from a farming and fishing community into a finance centre with international dimensions – but the legal institutions of the Island have failed to be reformed accordingly.

19 The resistance to change is very much led by the Crown Officers.

20 So far as the general public of this Island are concerned, such everyday matters as access to affordable legal advice, whether through legal aid or otherwise, is a lottery.

Lawyers who in any other small town would be charging appropriate rates - in Jersey demand City of London fees. The Finance Sector has become a distorting and destructive influence and Jersey lawyers seem to be mesmerised by it.

21 Coupled with absurdly high fees, Jersey lawyers do not show much interest in normal everyday social issues or representation. There are no visible champions of the underdog among Jersey lawyers.

There is only one elected Jersey lawyer in the States and he is the retired senior Magistrate and former Judicial Greffier.

In other words, the best legal talent is not directed towards public service in Jersey under the current system but is rather directed at serving those people in Timbuktu and other far away places who seek to mitigate their tax liabilities.

22 A properly structured Department of Justice would encourage the recruitment, training and employment of lawyers in the public service for the public good.

It might be of benefit to people in far away places too.

23 Jersey lawyers have a deplorable record when it comes to writing and publishing books on Jersey law.

In recent years there have been some improvements with the publication of Jersey Court judgments and the Law Review. There is even now a training course in Jersey Law that relies upon published texts rather than ancient, hand-written and secret “in office” manuscripts.

However, for the general public, there is still a dearth of published volumes on everyday aspects of Jersey law and no study courses at the local Highlands College and even the local CAB is not supposed to give Jersey Legal Advice – because it is contrary to the local lawyers’ monopoly.

24 The current review of the “Crown Offices” needs to take place with this information in mind and it is necessary to consider also, how self-important, wealthy and dominant Jersey’s 250 lawyers have become in this little community.

How absurd, therefore, that the most senior public official – the Bailiff – might only be chosen from this super-privileged group and how necessary it is that the office of Bailiff should be abolished as soon as possible?

25 Although it strays beyond the current terms of reference, I would suggest that substantial reforms in the roles of the Crown Officers must inevitably have dramatic results elsewhere.

26 So far as Jersey’s tiny legal profession is concerned I would hope that an end of their local monopoly would soon be achieved.

The public of Jersey should be permitted to consult lawyers of their own choice and the local courts and institutions opened up to lawyers from other jurisdictions.

27 Non-Jersey lawyers are deemed competent to sit in Jersey courts or to chair important committees of enquiry – even to consider the roles of the Crown Officers! So why cannot the general public consult and be represented by lawyers who are outside of the local obsessions and prejudices?

28 If Jersey would form a proper Department of Justice, the employment of lawyers from other places in the public service would be wholly desirable. They would surely bring an understanding of international standards and cause many other reforms to be initiated in Jersey which are evidently resisted now as they have been through history, under the control and influence of the Crown Officers.

END