

Dear Lord Carswell,

please find below my submission in relation to matters on which your Panel has been asked to take evidence and form views. You will see the first part of my paper relates to the role of the Bailiff, which is by far the most important of the concerns you have been asked to consider. In a sense, all the other issues flow from this key question and I believe answers in relation to the other Crown Officers will fall more easily into place when the role of the Bailiff has been determined.

## **1. The Bailiff**

**1.1** There are a number of powerful and, in my view, compelling reasons why the roles of Principal Judge of the Royal Court and President of the States of Jersey should be separated. Conversely, there seem only two reasons, neither of them convincing, why the roles should remain conjoined.

**1.2** When previously this issue has been raised for discussion the arguments for maintaining the status quo have fallen under two headings, (i) "If it ain't broke don't fix it" and (ii) Tradition. Neither seems sustainable against the arguments in favour of change.

**1.3** The main and overriding reason for change is that no one should be in a position to exercise political authority unless elected so to do. It will be argued that the Bailiff, in his role as President, or Speaker, of Jersey's parliament is above politics and that it is a non-political role. This is manifestly not the case.

**1.4** In his role as President of the States, the Bailiff has the power to allow or disallow a proposition to be brought by an elected member before the Assembly; similarly, he has the authority to disallow questions in the Assembly. The Bailiff decides who to call to speak, and in what order, during debates and, when the Assembly is sitting he makes judgements on the conduct of members, interpreting the less-than-comprehensive Standing Orders. Such actions are not only perceived to be political, which is reason enough for change, they are in fact political in that they bear upon the ability of the elected Assembly to determine outcomes.

**1.5** The second, and almost equally compelling reason for change is the principle that no person with responsibility for

presiding over judgements based in law should be involved in the process that created or amended the law. There is a clear conflict of interest in the duality of the Bailiff's role as head of the judiciary and head of the legislature. There exists the potential for the accusation (whether or not reasonably founded) that the Bailiff, sitting as Judge, may be inclined to interpret laws as he would wish them to be as distinct from the way the Assembly intended. The removal of the Bailiff's involvement from the political process is an important step in restoring confidence in both Jersey's judiciary and its legislature.

*(It is reasonable to assume the Panel is fully briefed on recent allegations of corruption within the judicial system. I give no credence to these allegations, which seem wholly unsupported by evidence and may be based in nothing more than vindictiveness. Nevertheless, it is impossible to deny there is a 'no smoke without fire' view, which is quite widely held; this is corrosive and, under the present arrangements, those who seek quite properly to restore due regard for the judiciary face a very difficult task.)*

**1.6** It would not be difficult to rehearse a number of instances in which a Bailiff has been seen to cross the boundary and interfere in the political process; there is even an example of a Bailiff's ruling (subsequently supported by the Assembly) being challenged in the Royal Court – a practical example of conflict. However, it is important to concentrate on principles and not be deflected or unduly influenced by the actions of individual holders of the office of Bailiff; suffice it to say some Bailiffs have been more political than others. The point is no Bailiff should be in a position to influence the affairs of duly elected members of the States of Jersey.

**1.7** The elected members of the States of Jersey should appoint their own Speaker (or President or Chairman, the title is not a particularly important issue). It is customary in other parliamentary democracies for members to elect a Speaker from among their number, but this does not seem essential. The important consideration is that the Assembly should not have a Speaker imposed on it; rather it must have the ability, the absolute right, to make its own choice.

**1.8** You are required also to consider the civic role of the Bailiff. This does not seem to pose any great difficulty and it is certainly not as controversial as Bailiff's other roles. With the responsibility for liaison with the government of the United Kingdom now largely, and properly, passed to the Chief Minister, the remaining duties of the Bailiff are substantially ceremonial. It is an ancient and noble office and will continue

to have an important place in Jersey life. So, just as the Lord Chancellor has precedence over the Prime Minister in the United Kingdom, so the Bailiff should continue to have precedence over the Chief Minister on all 'State Occasions' and at all times when the order of precedence is required to be observed.

**1.9** There is one other, admittedly minor, matter that should be considered. The phrase, "By Permission of the Bailiff" is still attached to all manner of public events and occasions. Today the task of approving such events is, in practice, delegated, but the authority still attaches to the office of Bailiff. Again, it is inappropriate that the holder of an unelected office should determine which events are or are not to be experienced by the people of Jersey. This anachronism needs to be tidied up.

*(In the unlikely event that this has not already been pointed out, it is worth noting the Report of the Review Panel on the Machinery of Government in Jersey, published December 2000, included, as required under its terms of reference, a chapter on the role of the Bailiff.)*

## **2. Other Crown Officers**

**2.1** For the purposes of commenting on the role of the Deputy Bailiff, Attorney General and the Solicitor General, I should like to include the other non-elected member of the States of Jersey, the Dean (though it is noted this position is neither included, nor specifically excluded, in your terms of reference). The Deputy Bailiff deputises for the Bailiff in all matters, so the views set out above apply equally to both positions. Similarly, I shall deal with the roles of the Attorney General and Solicitor General as one.

**2.2** First, just as it is important to uncouple the Bailiff from the legislature, so it is equally important that other non-elected officers should no longer be members of the States. This does not mean that the elected members should be denied their legal advice, but that input should be made outwith membership of the Assembly.

**2.3** The Attorney General is said to be 'titular' head of the Honorary Police service, but the role appears to be rather more extensive than merely holding the title; he is *de facto* head of the service and this holds the potential for a conflict with another of his roles, that of head the Prosecution Service. The Honorary Police service is held in high regard by many, almost certainly most of the people of Jersey; from time to time it finds itself in conflict with the States Police

service (or 'paid police' as they are still frequently called) which is sometimes held in less high regard. Both services are vital to the wellbeing of the community and should work closely together at all times. In order for the Honorary Service to maintain its place it needs to be seen to be led by someone in a position of high authority. Were the Attorney General not head of the Prosecution Service his would be the appropriate office to remain head of the Honorary Police in name and in fact.

**2.4** In the alternative, were it deemed inappropriate for the Attorney General to be Head of the Honorary Police under any circumstances, a new figure would have to be found. In this situation it would be appropriate to look first for an honorary head of an honorary service. The role of Jurat is, rightly in my view, considered the highest expression of the tradition of honorary service in Jersey. Of course, the Jurats' role as judges would also place them in potential conflict with task of heading the Honorary Police. However, it might be possible for the Jurats to select one of their number to head the Honorary Police for a period of, say, three years during which time that Jurat would not sit on the bench nor take any role in judicial proceedings.

**2.5** Recent events tend to point toward the setting up of an independent Prosecution Service, separate from the 'judicial establishment' and completely separate from the legislative function. It may be that removing the Crown Officers' *ex-officio* position as non-elected States members will provide a sufficient barrier, but the perception of undue crossover between the legislature and the judiciary may well remain.

**2.6** It is understood that there is some difficulty arising from the requirement for the Attorney General to give advice both to Ministers (and the Council of Ministers collectively) as well as to Scrutiny Chairmen and their panels. The basis of this difficulty seems to lay in the fact that Scrutiny is perceived by many (including some scrutineers) automatically to be in opposition to the Council of Ministers. The practical outcome is that the party not in benefit of the Attorney General's advice is required to buy alternative advice in the market place.

**2.7** At the heart of the problem is the belief, articulated by some Ministers, that the Council of Ministers is the 'government of Jersey'. Presumably this notion is based on the House of Commons/United Kingdom parliamentary model where those appointed to ministerial office are regarded as The Government. There is no logic to support this connection. In the United Kingdom it is the Party with the greatest

number of elected representatives that is invited to form a government; in almost all cases this ensures that the government of the day will have sufficient support in the House for its policies to be carried. The Jersey system is structured in such a way that the Council of Ministers is always in a minority and has to rely on its powers of persuasion to ensure its policies are carried. Thus it is true to say that the States of Jersey (as a whole) is the government of Jersey.

**2.8** The system of formal scrutiny was designed to test policies put forward by the Council of Ministers. It did not get off to a particularly good start with Scrutiny Panels largely, though not entirely, populated by those who were politically and ideologically opposed to those who had been elected to ministerial office and so it was not surprising that they tended to interpret their role as one of opposition. In these circumstances the Attorney General was put in a particularly difficult position. However, it should be remembered the ministerial/scrutiny system is not five years old, yet there are already signs that the process is maturing and a better understanding of the respective roles is beginning to emerge ultimately, one hopes, to the benefit of good government. It may therefore be that the perceived conflict between advice to one side or the other will evaporate in time. Meanwhile, it is appropriate that neither the Council of Ministers nor Scrutiny Panels should be disadvantaged and a mechanism should be found to equalize the delivery of legal advice.

**2.9** It is not clear how much of the Attorney General's time is taken up in conveyance, but the States of Jersey is a very substantial property owner and there is political impetus to dispose of property assets; it is likely the time involved will increase significantly in future. This would appear to be an obvious area for change. There is considerable skill of the highest calibre in this area among local law firms and conveyancing seems an obvious case for outsourcing, thus releasing more time for the Attorney General's principal role of advising the States.

**2.10** The role of the Dean as a non-elected member of the States must not be overlooked. It is an anachronism, the residue of an ancient decision to remove parish rectors from the Assembly and as such evidence of the sort of compromise that affects public life in Jersey to this day. It is sometimes said that as a Crown Dependency (and as the Monarch is head of the established church as well as titular head of state) it is appropriate that the established church is represented in the Jersey States. This thinking is completely out of date and out

of synch with the flow of public sentiment. The people of Jersey are, happily, represented by a number of Christian faiths of which the Anglican Church is but one; it also has communities holding non-Christian beliefs, but, in truth, Jersey is much more secular than it has ever been. As much as one may regret this state of affairs, against this background it is wholly inappropriate to have as part of the States an individual – who is entitled to seek to sway the Assembly - unelected by the people and representative of a mysterious and secretive process that appointed him Head of the Anglican Church in Jersey.

I am grateful for the opportunity to express my views on these matters and I wish your Panel well in its important task.

Yours sincerely,

John Henwood.