

Dear Sir,

Submission to Review on Roles of Bailiff and Crown Officers

The focus of my submission is the ‘career ladder’ leading from Crown Officers to Deputy Bailiff and Bailiff which I respectfully submit is relevant to the ‘roles’ referred to in your terms of reference. The disadvantages to this chain system can be summarised as follows:

i) The objectivity of the Bailiff and Deputy Bailiff sitting as judges is questionable because they have a career history, normally spanning decades, of looking at every matter which crosses their desks from a government/prosecution/establishment viewpoint. This is particularly so in criminal cases, but also when the States are a party to litigation, such as in planning matters. My concern goes back to 1985 when I wrote informally about this to the then Bailiff, the late Sir Peter Crill, and to my uncle, the late Senator Ralph Vibert. Those august persons took the view that all incumbents possessed such intellect and integrity that they could always exercise their judicial functions impartially. Similar sentiments are expressed in several submissions to yourselves, but good governance cannot rely solely on individuals of high calibre, although of course it seeks to appoint such. Further, it is part of human nature to see any issue from a familiar and known viewpoint; submissions to yourselves are immediate examples: centeniers see the question from a centenier’s experience, a jurat from a jurat’s etc. My own perspective as a lawyer is summarised below¹. The need for an impartial judiciary is particularly important if Jersey wishes to maintain its finance industry and also in the context of 21st century human rights laws.

i) While this ‘career-ladder’ is not written into Article 2(1) of Departments of

¹ I was born and brought up in Jersey but after qualifying as a barrister in London spent most of my adult life overseas. I have been a legal adviser in industry in the U.K., worked briefly in the family firm in Jersey, passed Droit Normand at Caen University, practised as a barrister in Hong Kong and am presently practising as an attorney in South Africa. I have always kept an eye on Jersey’s current affairs, mainly through the Jersey Weekly Post, as well as contacts here, and plan to return to live in Jersey.

Judiciary and Legislature (Jersey) Law 1965 it is an 'expectation'² which in practice excludes senior members of the legal profession from becoming Bailiff. Some of those people are clearly willing and able to serve in a judicial capacity as they are appointed as commissioners to do so; it is probable that their wider experience in non-government law brings additional value to their role on the bench. In order to become Bailiff, a person must apply for Solicitor General at an early stage in his career, which is a potential loss of wisdom and knowledge to the island as well as of personal opportunities to those who choose to stay in private practice when the SG post happens to become vacant.

iii) The career-ladder practice also gives rise to questions of transparency of appointment and criticisms of the 'close-shop' nature of governance, such as those expressed by Derek Barnard in his submission to you. Unlike Mr Barnard, I respectfully submit that the process of selection is within your terms of reference because the method of appointment and the roles of the incumbents are intertwined. If, for example, your recommendations were that someone other than Bailiff should preside over the States in deliberation then the roles of the Bailiff and Deputy Bailiff would change and the method of selection and appointment would be moot.

iv) The recent situation of the Crown Officers advising both Ministers and Scrutineers, which is subject to much criticism, further exacerbates the problems, real and perceived, caused by the 'career-ladder' system.

More generally, I do not think that the strict separation of legislative and judicial powers is necessary in Jersey, but it seems inefficient to have the 'chief justice' spending time in the States, and the 'speaker' who presides in the States changing from Bailiff to Deputy Bailiff to Greffier from time to time because of other commitments. The job of presiding over the States in deliberation is a specialist one, it needs continuity and probably a legal mind. It should not be undertaken by an elected member because this politicises the position and also the electors lose their representative. My suggestion would be that the Greffier or some other similar long-term appointee, performs this function, leaving the Bailiff to his judicial duties, with the Bailiff also continuing to perform his leadership role.

Yours faithfully
Vivien Vibert