

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

Date: 29th March 2010

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

Witnesses: Deputy F J Hill BEM

**LORD CARSWELL:** May I welcome you, Deputy Hill, and thank you for your contribution to the workings of the review. We have received a written submission from you, a fairly summary one, and we would be very glad to receive anything more that you would like to put before us. Would you like to make an opening statement yourself?

**DEPUTY HILL:** Yes. Thank you very much, and thanks for allowing me to come. It might be helpful, actually, having listened to Deputy Le Hérissier, so we get a feel of how it is, if I quickly give a quick CV about myself, so we know where I come from, because you mentioned things about the English system of charging, where I do have an understanding.

I am a Jerseyman, lived here until I was 20. I left Jersey as a 20-year-old, went to Hendon Metropolitan Police Force; went from Hendon to East End for Whitechapel, Wapping, first nine years, the days of the Krays, and then the next 22 years I served in Lambeth. So I was in Lambeth throughout the times of the riots, and I came back to Jersey in October 1991 and was elected to Deputy of St Martin in 1993, and I have been the Deputy of St Martin ever since.

I have served on any number of States committees. I did vote for - and almost feel now I regret - the change to ministerial government and have been a member for a very short time of Scrutiny, and I am very much a freelance States Member who I find can give a lot more time to dealing with things which I think probably may well get an end product where one does spend the time. You spend most of the time on Scrutiny and not getting very far. But if I could start from that premise, at least you know what my background is.

Also, it was my proposition that got this Panel into being. One of my reasons has been, really, I have been concerned for any number of years about the lack of accountability, the

lack of the right of appeal and also the human rights aspects of the way in which we as an Assembly function.

I also come with considerable experience of having put forward a number of propositions and amendments, oral questions, et cetera. Obviously you are always going to get disagreement, and I make it clear that I have crossed swords with the Officers, but there are no grudges; I feel I am doing a job, and I am sure they feel the same.

But there are problems where conflicts are clear, and my first conflict came when soon after being elected as a member of the States and we had a big debate on the sixth form college. And I felt really that there was an opportunity here for us to have an overall sixth form college, and I tried to lodge an amendment to include Victoria College as part of the sixth form college system, and it was refused. But, of course, I did argue with the Bailiff and said, "Well, with respect, sir, you are Chairman of the Governors of Victoria College as well". He said, "Well, that doesn't come into it" and I said, "You allow me to put an amendment in about the ladies' college, but not allow me to put an amendment in". He said, "Well, I make the final decision".

Sir, I learnt at an early stage that there was no right of appeal, because that is the situation. You make your application to the Bailiff, and the Bailiff says you can have something or you cannot. That is the same for amendments and propositions in questions so, if one wants to ask a question, at the end of the day, it is the Bailiff that has the ultimate decision as to whether you can ask it or not.

**MR CRILL:** But is that actually correct? Do not the Standing Orders provide that the question or the proposition, "Shall be permitted unless" such and such and such and such?

**DEPUTY HILL:** That is it. But the ultimate decision is still the Bailiff's. If the Bailiff agrees with it, you can have the question; if he does not agree with it, you cannot. But the point is that there is no appeal mechanism, so --

**LORD CARSWELL:** Do you know of any legislature where there is an appeal mechanism?

**DEPUTY HILL:** Well, if there is not, then I am arguing that maybe if there is not one elsewhere that we should have one here and maybe there should be one elsewhere. Just because it does not operate elsewhere does not mean to say that it should not operate here, and that is the point I am making.

**LORD CARSWELL:** But all the legislatures in all the important states of the world have the speaker's ruling final. May it tend to show that that is the most acceptable position?

**DEPUTY HILL:** It may well be, but again if indeed the speaker is conflicted, is there not a case then --

**LORD CARSWELL:** That is a different matter. Yes.

**DEPUTY HILL:** Maybe that person should not be making a decision; that decision to be made by someone else, but if there is no one else, how do you do it in a jurisdiction as small as Jersey?

**LORD CARSWELL:** Well, taking a hypothetical case, let us say the presiding officer, the Speaker or Bailiff holds shares in a company that is directly concerned in some proposed

legislation. It would obviously be incorrect for him to preside, but there are other people he can ask to do it, and one would expect that he would. There is a mechanism for dealing with conflicts, it is only a question of whether it is being done properly or not. It is not really our function. We are looking at mechanisms and principles.

**DEPUTY HILL:** Could I just come back on that one? We are slightly at variance here. What I am talking about, I do not dispute the issue about when the Bailiff becomes the speaker. There are occasions, in fairness to them, they have declared an interest and they have not sat, and I do not have a problem with that, because generally speaking that happens. But when you lodge a question or you want a proposition and there is a conflict, there is no mechanism for dealing with it. That is what I am saying. Or if there is, it has not been apparent.

**LORD CARSWELL:** If you proposed a right of appeal from the ruling of the President of the States, to whom would the appeal go?

**DEPUTY HILL:** Sorry ...

**LORD CARSWELL:** To whom could you appeal? Who would you set up as the appeal tribunal?

**DEPUTY HILL:** It may well be that you would have to ask the Deputy Bailiff. It is just, again, this is the opportunity this morning, that if there are areas of concern, they are here to be aired.

**MR CRILL:** Are you comfortable with the President as being the determinant of questions

and legislation? You are concentrating on the right of appeal, but are you happy that it is the President who actually decides?

**DEPUTY HILL:** I do not have a problem with whoever I ask, and I do not have a problem with the issue. Go to the Bailiff and ask; there has to be someone to ask. But what I do ask, actually, there is a mechanism that either the person is conflicted in making that decision or you disagree with him - and you may have sound reasons for disagreeing - maybe I can go to -- I made a list.

If I could look at an issue I did raise with you, and that was the seeking leave to make a personal statement, which is Standing Order 16. It is the seeking leave to make a personal statement, and maybe by using this as an illustration you can see the difficulty one has. If it is any help, Lord Carswell, I brought a copy for you to see how it goes. I can give you three, there we are. But really all you need is the article 16 and see how it works.

I had occasion, in fact, I have had a couple of occasions, to want to make a personal statement on an issue and, as it stands, if you can see article 16 in front of you:

“A Member of the States who wishes to make a statement during a meeting to explain a matter of a personal nature shall seek leave of the Bailiff no later than 5.00pm on the working day preceding. The content of the statement must be personal in nature, and the Bailiff may grant a Member of the States leave to make a statement, although the Member has not given the requisite notice, if the Bailiff is satisfied that the nature of the statement is such that it is urgent.”

If, indeed, I use myself, because I have had that position, but you make an application to

make a statement and the Bailiff says, "Well, you can't make it". If you look at standing order 17, that does not follow. If you are a Minister, a Chairman of PPC [Privileges and Procedures Committee] or Chairman of PAC [Public Accounts Committee] or Chairman of Scrutiny Panel or President, one can make it, and the same proviso does not stand for an individual person making a statement.

I challenged the situation, and I said I felt I was entitled to make a statement, and I did not think, as Standing Orders read, that it was necessary for the Bailiff to know what the content was. After all, he does not need to know the content if it is a Chairman or Minister, so why should there be a need to know the content of what it is? Quite clearly, the content was obviously something which was very much in the public eye; I was making a resignation statement. But he insisted on having the right to see what I was saying, and so I could not make it.

I challenged the issue and, two weeks later, I made a request for a written question to the Chairman of our Privileges and Procedures Committee, and the Bailiff ruled that out of order. So one can understand the frustrations of a States Member saying again, "Okay, I respect the right of the Bailiff", who may well have been right, but there was no means of appeal, and that is what I am getting at. I think it is important.

**LORD CARSWELL:** Does it vary, in essence, from the procedure in the House of Commons for a personal statements? I have not dealt with those myself, so I am not really up to it, but I understand that you have to seek the speaker's leave.

**DEPUTY HILL:** Yes, you may well do. But does it mean you need to seek the speaker's leave to speak or his leave to give consent for the content of what you want to say? I

maintain, as this has read, it does not say that. It says you can leave -- then again, if necessary, this PPC should tighten up this particular Standing Order.

But as it stands, and I challenged it as it stands and I was not allowed to make the statement, but I also was not allowed to seek --

**LORD CARSWELL:** You know, it strikes me, Deputy Hill, this is maybe a very interesting and contentious point, but is it not for the States to deal with the Standing Orders rather than ourselves?

**DEPUTY HILL:** No. Well yes, you may well be right. But I am speaking again from the position where the speaker is the Bailiff, and we are here to talk about the role of the Bailiff. I am just showing you, as I said in my --

**LORD CARSWELL:** Would it make any difference, though, if a President had been elected or appointed from somewhere else, would he or she not have the same problem exactly to decide on the meaning of the Standing Orders and whether the States want to amend them? This point maybe does not take us a lot further in the question of the Bailiff and his position as such.

**DEPUTY HILL:** I can understand that, yes, all right. Again, I am just showing it would happen, of course, with whoever it is.

**LORD CARSWELL:** Yes, I think it would.

**DEPUTY HILL:** Whether it was Bailiff or not, but we are here talking about the role of the



particular bailiff, and if we go on then to move on with the role of the Bailiff as an unelected member of the House, so again one could say, well, with what authority does he speak from?

**MRS BACKHURST:** Could I just pick up on that, then? You say because he is unelected?

**DEPUTY HILL:** He is unelected, yes.

**MRS BACKHURST:** Would you be interested in seeing a President of the States who was elected?

**DEPUTY HILL:** Yes.

**MRS BACKHURST:** Who by?

**DEPUTY HILL:** I have listened to Deputy Le Hérissier; there are a number of issues I would agree with him on, and maybe one or two we disagree on. I have always felt, actually, that in a small legislature like we are here, or anywhere, people should be elected to those positions, and I do not have a problem with having a speaker, whatever his or her background is, providing that person is elected. I do not personally think the speaker should come from within the 53 members of the House. I am quite straight on that.

I would like to see that we could have someone who was elected from outside, anyone from within the Island who felt that they could be there as a speaker to chair the meetings, in other words, to referee what goes on. I think, again having had the benefit of listening to Deputy Le Hérissier, quite clearly that person has to have a certain amount of knowledge of how to manage people. You want a good chairman, and there will be rough and tumbles in any

legislature, and there are one or two in Jersey we get; from time to time it gets a bit heated, but that is the nature of politics.

I would see their chairman being --

**MRS BACKHURST:** Who would they be elected by?

**DEPUTY HILL:** He would be elected by the people.

**DR MOUNTFORD:** By the people, not the States?

**DEPUTY HILL:** Yes, well, there are two ways of looking at it, and I have looked elsewhere how it happens. Either you get the people are elected - you get applications; you can have it that way.

I think that probably the best way would be that you would make applications for someone to stand as a speaker, and then you would have an independent body to select that person to be the speaker, or else that speaker could be elected like we elect our Chief Minister at the moment. So you would have your -- I hate to use the word beauty parade, but that would be a short list of maybe half a dozen people and three or four people who would consider themselves would like to be that position. They would then be elected for that position or chosen. That is the way I would like to see it.

The detail obviously would have to be looked at; as always, we say the devil is in the detail. But I think personally there is no reason as to why a speaker could not come from the general public. Applications for the job; that person could be selected either by an

appointments commission or maybe by a set of States Members who are elected to find whoever they would deem to be suitable, and if that person was then deemed to be suitable, it would then be appointed by the States. There would be a process of coming down. So I think there is a way of overcoming --

**LORD CARSWELL:** The Members of the States would have the final say, yes or no, for the person put up, would actually elect that person themselves.

**DEPUTY HILL:** It could be, yes. That would be one way. Again, having come from the general public narrowed down to your short list and your short list then selected. I think there has to be a mechanism put in place. How that mechanism would be put in place, again, is down to detail, but I do not think it is an impossible task.

**MRS BACKHURST:** I am interested in what you say, because I have just been doing some work on Guernsey. They are called the States, but they are actually called the States of Deliberation, and they are called the States of Election as well. They sit in two different ways. Jersey, it is just called the States, and there are not those two functions. I am just interested to hear you say whether this might therefore be a case where the States would sit as a States of election rather than a States of deliberation.

**DEPUTY HILL:** Yes. I think it could be a States election for when we need a speaker. I am not quite sure how the Guernsey -- is the Guernsey Bailiff appointed like the Jersey Bailiff?

**MRS BACKHURST:** Yes. I am just trying to tease out the ways, because obviously any President of the States, whatever method you choose, has got to be as open and transparent as possible. They have then got to be accountable to somebody; somebody has got to be

able to dismiss them. There are all those sorts of things that one has got to take into account as well.

**DEPUTY HILL:** That is why I think, again, we use the word accountability, and it is one of my key words, and it is one of the reasons why I wish for the review. Who is the Bailiff accountable to? This is the difficulty I have, and I will expand a bit more when we come to the Solicitor General and the Attorney General. Who is he accountable to? If indeed - it may well be a lady, whoever that person is, that person ought to be accountable to somebody. It could be argued that if she is accountable, she is accountable to the States members. That person must remember, at the end of the day, those people are in a position to remove him. That may well be an uncomfortable situation, who knows.

It may well be better that the person, whoever is elected to do the job, is answerable, yes, to the House, but maybe answerable to another body as well. Again, these are the finer details we have got to get to. Before you remove something, you have got to make sure that whatever you are going to replace it with is going to be effective. There is no point just removing someone and putting another system in which is not effective. But I do not think it is impossible. Other jurisdictions are able to find someone who is elected to be a speaker, and I would not have thought it was difficult for Jersey.

**DR MOUNTFORD:** Can I go back to your concerns about conflict of interest, and it happens in a smaller community? Does it have to be a member from our local community, or would you go the avenue which a lot of Departments are going, to have independent people, say perhaps from England? Because what you are talking about is someone with skills and appropriate knowledge.

**DEPUTY HILL:** Are you talking about bringing someone in from outside the Island?

**DR MOUNTFORD:** An independent speaker, which would address your concerns you have highlighted about conflict of interest.

**DEPUTY HILL:** To be fair, and I have been a member of the States now for 16 years, I think the way in which our speakers have presided has not been a problem. There has been the odd occasion, I am sure, he has deliberately not called me out to ask a question when I want to ask a question or have not spoken when I have wanted to speak, because quite often in a debate it is important you can get in when there is a turning point, you are able to get in; But that happens, that happens. I have chaired meetings, and sometimes you do not catch someone's eye or someone does not catch your eye. But generally speaking, that is it.

But it is the area of conflict in a small community, and also the area of accountability. Those are the two areas, as I say. As to conflict, generally speaking, the conflict is not too much of an issue, because I have had occasions when the Bailiff has said, "Look, I do feel I have a conflict here", and he has moved out.

I have also had the experience some years ago when we had two or three States members chairing when we did not have anybody available to chair, we have had a member. Personally, going back on what you said, but I would rather that it was not a member of the States. If we find someone to do that task, I do not think it would necessarily come from outside; I am sure there are people with enough real integrity would know when they are conflicted, and again providing you have that mechanism for accountability and appeal system, again I think it could work.

**MR CRILL:** On the question of accountability, there was a vote of no confidence in the Bailiff and, as I recall, that motion expressed no confidence in the Bailiff and requested the Crown to remove the Bailiff from office. If that had been passed, would that have appropriate accountability?

**DEPUTY HILL:** It may well have been. I did not particularly support that.

**MR CRILL:** No, but irrespective of that, I was just thinking of it as a process.

**DEPUTY HILL:** Yes. I am conflicted, in a way, because I took part in the debate. Whilst I could share some of the sympathy for the proposer, I thought it was a pretty difficult subject for us to get into when, personally, I did not think there was sufficient evidence to justify it. But if there was sufficient evidence, I have no doubt it would go back to whoever it is, and I do not know who it is who appoints, is it the Crown or who is it?

**MR CRILL:** Yes, the Bailiff is appointed by the Crown, and then the Crown --

**DEPUTY HILL:** Who is the Crown?

**LORD CARSWELL:** The Queen acting on the advice of her Ministers.

**DEPUTY HILL:** Yes. I recently went to a meeting, I think it was Alan Beith came over from the UK, looking at issues, and this is an issue we raised with him. It was rather sort of grey; there was a certain element of mist about it. One was not sure, really, where the final decision was made, and as has been mentioned, it almost is like seeming to be a ladder that you are going to go one up. Does one apply to be a Bailiff? Does one apply to be a Deputy

Bailiff? One applies to be an Attorney General; one applies to be a Solicitor General, but I do not know whether one applies to be a Bailiff or Deputy Bailiff.

**LORD CARSWELL:** Yes is the answer to that, I am told. Now, the position is advertised and applications are invited. I have been told that that is so. I hope I am correctly informed.

**DEPUTY HILL:** You are telling me something I did not know. But it was a question that --

**LORD CARSWELL:** That has been a change, obviously, from the way things were done, but that is becoming pretty universal for fairly senior posts all around the world.

**DEPUTY HILL:** Yes. I was not aware of it for the Bailiff. One assumed that because --

**LORD CARSWELL:** I think, to answer your question in a way, if you have a motion of no confidence in, let us say, the Bailiff, and it passed heavily, the Bailiff's position is intolerable, and if the Bailiff is like most people, he would then resign. If he was being completely impossible and refused to resign that, I think, would be a very good reason for the Crown to come in. It would go up, presumably through the Lieutenant Governor to the Ministry of Justice and recommendations would be made, and that would resolve it one way or the other.

**DEPUTY HILL:** When I first came home back to Jersey, the issue was then about the removal of the Deputy Bailiff there, and again, as someone coming fresh into it, it seemed to be a whole messy process. It did seem it could have been a cleaner process, and it became almost like a personality match, really. Everyone liked Mr Tomes, and it may well be that he probably was not up to it, but it did not seem to be a very clean cut way of doing it. I just feel,

actually, that again the process may be wrong and we have not got the process, simply because it has been handed down by convention. We have not challenged it enough.

**LORD CARSWELL:** Have you any affirmative suggestions about the process that should be substituted, if you would like to help us with that?

**DEPUTY HILL:** That is why I believe that we should have an independent speaker, so thereby if you did, you could then put the whole process in place.

**LORD CARSWELL:** But does it solve the whole thing? Suppose the Bailiff became only a chief of the court, and heaven help us, he misbehaved dreadfully and obviously could not stay but was hanging on. The processes would not be any clearer than what you say it is now.

**DEPUTY HILL:** Well, I would hope it would be. Again, one of the reasons I did not support the motion on removing the Bailiff was because, when you remove him, what are you going to replace him with? I think if you are going to get rid of something, you should ensure you have got something more effective replacing it or you are replacing it with something more effective.

**LORD CARSWELL:** Because the Crown Officers in all parts of the UK hold office during good behaviour, and if a Lord Chief Justice, say, misbehaves terribly seriously, then there is a mechanism for the Crown to remove that person. Horrid, messy, but it is there. I think probably at the end of the day the same would be with the Crown Officers here.

**DEPUTY HILL:** It may well be, as we did find it became messy when the Deputy Bailiff went



about 18 or 20 years ago.

**LORD CARSWELL:** You did mention, if I may just touch on it again, you were concerned about the human rights aspect of the Bailiff presiding in the States. Would you like to enlarge upon that?

**DEPUTY HILL:** Well, again, I am talking about the role of the unelected person in the House. I believe everyone who is in there, who is entitled to speak because, when you speak, one hopes you influence; that is the whole purpose of speaking. If you have influence, I think you should be accountable. Therefore if you are unelected, either as the Bailiff or the Deputy Bailiff or the AG or SG, I did include --

**LORD CARSWELL:** That is a perfectly understandable political point, but how is it a human rights point? I was not clear on that. Are you using it rather in an untechnical sense?

**DEPUTY HILL:** Yes, again on everyone being accountable, and I just want to know, I was raising the question would it be human rights because, having looked at what has gone on in Sark, where they held there - even Guernsey as well - that the speaker's role might not be human-rights compliant. I am not an authority; I have an interest, but I am not an authority. One of the things for me to suggest, but I will mention it, is that either as a body you might consider looking to see whether getting an opinion on whether --

**LORD CARSWELL:** I hate to be technical. It was Article 1 of the Third Protocol to the Convention on Human Rights, is that right?

**DEPUTY HILL:** Sorry, you cannot?

**LORD CARSWELL:** It was Article 1 of the Third Protocol was the issue there, and the Court of Appeal in England, which does not govern the matter but its opinion has got to be looked at, they said it was not a breach of that Article, but it was a breach of Article 6 for the Seneschal to preside in the court which is another matter, obviously, we are going to consider here.

Do you want to deal with that, or are you going to leave that to other people, the question of the Bailiff's presiding in court when he has been sitting as presiding in the States?

**DEPUTY HILL:** I would have thought there were reasons of serious concern. It has got to be, because the fact is that he has a conflict, and I do not feel that I am legally minded or have the legal expertise to go into the detail, other than to express a view which no doubt you might consider yourself.

**LORD CARSWELL:** We want to hear it, yes.

**DEPUTY HILL:** And then ask someone else for it. But I think it is an important issue to be raised, if only for you to consider it, how you wish to deal with the position I am raising.

**LORD CARSWELL:** Well, we certainly shall be looking at it very carefully and in depth.

**DEPUTY HILL:** That is comforting, thank you. Could I move on, then, to the role of the Attorney General, and again, of the three hats, and again speaking from personal experience. Again, I do understand there are occasions when we do ask questions in the House of the Attorney General, and quite recently we were up for a debate on a matter, and I

did speak to the Attorney General. I said, "Look, when we do have the debate, I am going to raise an issue", so gave him an opportunity to check up rather than being caught on the floor.

I do feel very sorry, quite often, for the Solicitor General and Attorney General if someone springs up and asks a question, and there he is; he is trying to give an opinion on the floor, off the cuff, and it cannot be the easiest thing in the world. I think sometimes we can give a little wink and say, "Look, I am going to ask this question"; he can go away, and I think we get a better answer that way.

Again, it could be argued here that I do not think we need the Attorney General in the States, for two reasons: one, I think he is not elected. The other thing is that if we are going to discuss a matter on a health issue, we do not ask the Medical Officer of Health to come in. It could be on another issue, the airport debate, we do not ask someone to come in from the airport so we can ask them questions.

For that very reason, one should ask, well, why should we have someone discuss a point of law? If we need a point of law, either we could raise it beforehand so we could get that, you know, this is an area that you might want an opinion on, or else if it was that important, you would ask the Attorney General to come in and give a view, and then carry on with your debate, but I do not think it is necessary there. I do feel sorry for them, quite often. They are sitting away there because they think they ought to be in there because they may be asked a question, and I feel that so much of their valuable time could be spent elsewhere. And again, are we making the best use of their resource?

**LORD CARSWELL:** We shall be speaking to the Attorney General this afternoon, and it will be certainly one of the points that we will be interested in from his perspective. The Attorney

General in the States has another function apart from advising the States and answering questions, and that is being accountable for his own sphere of activity in prosecutions, so that, however it is done in other jurisdictions, whether there is an Attorney General who is in Parliament or whether it is a director of public prosecutions who answers through a Select Committee to the Parliament or some means like that, there is always some way whereby the legislature can hold the work of the Attorney General to account.

That is done in Jersey by the fact the Attorney is a member of the States, and you can ask questions to your heart's content about his work. Would you change that?

**DEPUTY HILL:** I think one has got to look to see if you are going to replace, if you are going to say, "Right, we don't need the Attorney General". But what are we going to replace it by, if we need that advice? And I was saying earlier that either you can lodge a question which is on law before you go into the debate, or if something does come up during the course of debate, you can ask for someone to come in and give you that opinion.

But again sometimes I do feel that we are asking questions of the Attorney General which I do not know if they are really necessary. Probably because the person is there, we think it is important to ask the question, but probably if that person was not there, we would get on, and sometimes I just wonder whether the answer we get is really going to satisfy anyone anyway.

When one gives a legal opinion, certainly there are occasions when one will argue and say -- certainly if you ask for an opinion, and Deputy Le Hérissier mentioned about a human rights opinion, and you can get two different people giving you two different opinions. But quite often they will say, "Yes, but I've arrived at that decision because I've looked at this, all the stated cases here", whereas the other one has arrived at and looking at a different one. But

again I go back, is there a need for the Attorney General in the House?

**LORD CARSWELL:** Well, if he is not a member of the House, what mechanism would you want to see put in place for him to account to the House for his work of instituting or not instituting prosecutions? He cannot be unaccountable, in modern constitutional theory. How would it be done best, would you say?

**DEPUTY HILL:** The difficulty we have in Jersey with the Attorney General is that he does wear the three hats. He is the head of the prosecution; he is also head of the Honorary Police and also adviser to the States. I think in fairness to, certainly I know Mr Bailhache, I have spoken to him about it, and he was quite relaxed. He said, "I have to work within the system". Indeed if this, as a result of your Panel coming up with a conclusion that maybe he is only down to one job, I am sure he will be happy. I do not think he wants all three.

**MR CRILL:** How does the States presently assess whether the Attorney General and the Law Officers' Department generally is doing a good job and providing value for the States money?

**DEPUTY HILL:** I think most of them would think it is okay until they actually have a problem.

**MR CRILL:** But how do they assess it?

**DEPUTY HILL:** I think, generally speaking, we would all say, even the Bailiff, you cannot say that he is doing a bad job. But you could say that of the Attorney General. However, if you have a problem and you are trying to get to the bottom of that problem, that is where you have the difficulty. Maybe because throughout my States career I have been prepared to

challenge and look at ways of getting things maybe changed, and maybe sometimes for the better because, when you get that, then you find that you are speaking to the same person.

Maybe it might be useful to give a little example. Sometime ago, not that long ago, I had someone who contacted me; he had been stopped for a motoring offence, warned to attend a Parish Hall and, when they got to the Parish Hall, a deal was asked for and they said, "Plead guilty to this and we will let you off with a caution". The chap said, "But, I have not done it". He left the Parish Hall and he contacted me and I wrote the Attorney General saying I felt, "Really, the officer has it wrong, the arrest is wrong. The person was quite clear", it was not that person.

It went on for six or eight months and eventually this person was actually charged with the offence. I did not want to interfere with the process because it was not right, all I was looking after was my constituent to see, at the end of the day, if he had got satisfaction. That person was found not guilty at court but, prior to that person going to court, his lawyer had written to the Crown Officers saying, "Look, you have got the wrong person, you are wasting everybody's time", yet the Crown officers went ahead and charged, and the Centenier charged, and it is quite clear that people had not done all the homework in arriving -- because, had they done that, they would have soon found out they were arresting the wrong person.

I made a complaint about the role of the Honorary Officer and the Attorney General, who was the Head of Prosecution and also the Head of Honorary Police, said he was satisfied that the officer had carried out his role properly and I just did not know how he arrived at it; he could not have if he had followed it the way through.

We felt that, at the end of the day, we wished to make a complaint against the Attorney General because, as Head of the Prosecution, he was responsible for the person who made a decision from the Crown Officers to charge and also, as he was Head of the Honorary Police, the Centenier had also done. We asked, "Who can we complain to?" and the Attorney General very helpfully wrote to us and said, "Well, you complain to the Ministry of Justice". I wrote to the Ministry of Justice to complain and I got a letter back saying, "After careful consideration of the matter, the Ministry of Justice considered it would be inappropriate to intervene". Basically saying, really, at the end of the day that it was not their role and so I took the matter to the States.

**LORD CARSWELL:** Yes, that is where it should be, I would have thought.

**DEPUTY HILL:** Okay. Yes, but of course, when I took the matter to the States, saying well, really, I felt that, "The law has been wrongly interpreted, who should give the advice to the States?" The Attorney General. You know, I had gone round the full circle and, needless to say, I did not win the debate. Now we have an area --

**LORD CARSWELL:** Deputy Hill, that sounds like an example of the system going wrong, rather than the system being wrong. It may be, if the Centenier makes a very bad decision, if the Attorney General has not stopped it, that is the system going wrong. The system should be then you can go into the States and kick up a fuss about it; you are quite within your rights in doing that and then the States can debate it and they can say they are very displeased with the Attorney General or they can say, "Well, with all the facts, maybe it was all right after all". That is exactly what the States are for. Whether the Attorney General should have given advice is another matter. It may be that he made a mistake in doing that but, surely, the system is all right, is it not?

**DEPUTY HILL:** I would argue it is not because, if you had a separate person, and again we are talking about a CPS, we do not have a Crown Prosecution Service. I did bring the report and proposition to the States. We had something called Rutherford, the Review of Criminal Justice in 2002, and I brought a proposition to the States asking that at least we carry out -- because Rutherford had, in one of his recommendations, that we did look at the situation of separation of a Crown Prosecution, so we have a separate Crown Prosecution. You mention Deputy Le Hérissier's question there, that we have moved away in the UK, and I certainly know as a sergeant that I would make a decision to charge someone, and I felt uncomfortable about that. It is okay when you have something quite black and white, but there were areas that you were told of certain guidelines, and provided those guidelines --

**LORD CARSWELL:** Then you referred --

**DEPUTY HILL:** -- you charged them but now, of course, that decision is taken away. A lot of it, having worked in Brixton --

**LORD CARSWELL:** But for years and years that was done, both in England and, certainly, in Northern Ireland when I was a young counsel; the police investigated and prosecuted all minor crimes and I used to fight the piece out with them in court. Some of them were very effective prosecutors, so it was only fairly recently that has been removed from them, and not for any basic reasons of principle, it was more a question of administrative effectiveness that it was done, I think.

**DEPUTY HILL:** Yes, and also, is it right to be a prosecutor and judge at the same time, and this is the difficulty you have.



**LORD CARSWELL:** They are not judging, they are only prosecuting, and somebody has to decide whether to prosecute. An experienced police officer might be perfectly good at that, but --

**DEPUTY HILL:** I do not dispute that and, at the moment, the system we have here is that a Centenier makes a decision to charge and --

**LORD CARSWELL:** The Attorney General can reverse that; he is entitled to, is that not so?

**DEPUTY HILL:** He can, yes.

**LORD CARSWELL:** Yes. Is that satisfactory? You feel that that works all right, do you? That the Attorney General oversees the Centeniers and can say, "No, we will not prosecute that" or, "Yes, you must prosecute X"?

**DEPUTY HILL:** But what hat is the Attorney General wearing when he is making that decision?

**LORD CARSWELL:** Public Prosecutor.

**DEPUTY HILL:** Yes. If there is an Honorary Police officer involved, he is also the Head of the Honorary Police. Again, I think perception is very important and this is part of the reason you are sitting before --

**LORD CARSWELL:** I think we are interested in this aspect from the point of view of the

situation of the Honorary Police. Could you maybe spell it out for us; how you feel it is undesirable that he should stay as Head of the Honorary Police?

**DEPUTY HILL:** Again, having had experience from being a police officer, I think it is helpful actually that the police are involved with the decision to arrest, the decision to be charged. Even though I have been a policeman for 30 years and I am sure I have charged a lot of people correctly, for the right reasons, I just feel there is the need for separation of responsibilities and that would also go for the Attorney General. Again, perception is very important and --

**MR CRILL:** Does that apply then in relation to the Attorney General's function as a prosecutor and also advisor to the States and the Executive in relation to, for example, breach of health and safety, or water pollution, or all these other sort of quasi-criminal type offences for which the public, as an employer for example, could be held to account?

**DEPUTY HILL:** Yes, this is the difficulty you have, you know. I do not know how we resolve it. Either we leave things exactly as they are, or we say, "Okay, they are fine, we will leave the person having three; however there will be safeguards in the future". Or else it may well be that we will employ three different people for three different jobs.

**MR CRILL:** If you had a separate prosecution service, to whom would it be accountable?

**DEPUTY HILL:** I am not quite sure where we are with the UK. There is no doubt about it, you have the system. I am not sure.

**LORD CARSWELL:** There are two possible models. The English model is that the Attorney

General supervises, and that is interpreted very differently between different Attorneys and different DPPs, but the DPP acts as prosecutor, makes the decision under the supervision of the Attorney General. If there is some outrageous decision by the DPP, the Attorney General then has to answer in Parliament for it. But they are now refining that by proposing to take away the Attorney General's power to consent to certain prosecutions because there is a perception that the Attorney General may be politically motivated. That is less so in Jersey without political parties.

The other model is the Director of Public Prosecutions has the final say. The Attorney General cannot tell the DPP, "Look, I am not happy with that decision, I think you should think again about prosecuting X for grievous bodily harm". Then there is a Parliamentary mechanism whereby the DPP may be called up at intervals to answer for his or her performance of the job. Would you see either of those being useful here?

**DEPUTY HILL:** What I would hope, as one of the reasons for getting the Panel up and working, is that one would look to see how, in fact, effective our present system is and, in fact, whether, if you are happy with it, leave it as it is, or suggest, "Well, yes, we are happy with it, but I think it would not do any harm if we think of it the other way". I think that is one of the benefits of having your good selves here listening to people like myself so that you can hear some of the issues we raise and then for you to draw them to a conclusion and say, "Well, you know, I think the Deputy of St Martin has made a good point there, and another one I did not care much about", and you ignore that one. But there will be things coming to your attention and it may well be that you say, "Well, having listened to all, I think the system works well in Jersey, we will leave it exactly as it is". We will have satisfied everyone and at least you have looked at the issue. I think that one of the strengths of today, and indeed other days, will be looking at it and seeing how it works, and are we happy with it.

**LORD CARSWELL:** We have had a gratifying number of written submissions already and we will be talking to a lot of people and this is exactly why we are here, Deputy Hill.

**DEPUTY HILL:** Exactly. That is the point of me trying to get the States to agree, first, to look at it because it was mentioned about Clothier 1, looked at the issue about the role. I think there it was said that, in Clothier 1, that is 1996, that the role of Attorney General, as titular head should be looked at. I know, certainly, having spoken to them, because of the dealings I had with them, they are quite relaxed. Certainly, I am sure, the new one will be in the same position. It has given them a lot more work and one would almost say, "Well, how do they find enough time to do all their roles they have got?"

Could I just pick up on one thing that was mentioned before?

**LORD CARSWELL:** Yes, please do.

**DEPUTY HILL:** It was about the way our Police Complaints Authority works in Jersey. It does not work the same as it does in the UK. Our police authority, and I will stand corrected but I think I am pretty right on this, what the Police Complaints Authority does in Jersey, it oversees a complaint, it does not investigate the complaint. As long as the complaint has been -- in the opinion of the person overseeing it, is happy whether the police officers have done the right things in their -- that is what their remit is, it is not actually to look at --

**LORD CARSWELL:** There is a sliding scale in these things. I do happen to have had some contact with it through my wife's work on police complaints. The top model is investigation by the Police Complaints Authority engaging their own investigators, possibly ex-police officers

and so on, and then reaching their conclusions.

You can have, at the other end, every now and again you take a look to see if the police are keeping their files in order and going about things in a proper fashion. Or you can have somewhere in between, whereby they direct where the police should be investigating, look at the results and say, "We would like to see something more on this, this, and this", or, "You are going the wrong way about that and the other". That is the intermediate model which, I think, is probably the same as the English model; it is the Northern Ireland practice. Is Jersey more to the lower end than the upper end?

**DEPUTY HILL:** It is very much to the lower end and, in fairness to them, they work to the guidelines that are in place so they are really overseeing that the police have carried out the necessary checks and balances when investigating. I do not know whether we are in a position here in Jersey yet. I think there are occasions where it may be useful to get someone having oversight of an actual investigation itself but, at the moment, as it stands, we are at the lower end; they are really overseeing.

**LORD CARSWELL:** It is an interesting topic and a whole issue in itself, but I do not think it falls into the area for us to look at --

**DEPUTY HILL:** No, I agree, it is not a remit, I am just correcting -- just to make sure that we were clear. That is it, then.

**LORD CARSWELL:** Does that cover all that you would like to put before us, Deputy?

**DEPUTY HILL:** Yes, I think so. I think I have raised the issues.

**LORD CARSWELL:** Do any members have any further questions?

**DEPUTY HILL:** Just one other thing, actually. It was the human rights and, again, listening to Deputy Le Hérissier, I did take it to the States, because I do feel that, under the Jersey Human Rights Law, again, it has changed in the UK, I am pleased to say, and I am minded to come back with a proposition asking the States to reconsider the decision it did not reach two years ago, and that is that, when a statement of compatibility is made, they do actually give the reasons for it.

I took it to the States a couple of years ago and I did not succeed but I have maintained close contact with the UK Government and now it has become standard. Again, I think it is useful, particularly as so many States members -- well, I suppose that Parliament is the same but, in Jersey, we do get pretty close to the scent here because we are a small community, we are also independent. It is useful to know that, when something is coming, that you do have the right to know why a piece of legislation is human-rights compliant. I think it would help States members, help Scrutiny, and even those who are not part of Scrutiny. But that is not the remit.

**LORD CARSWELL:** Again, that is quite an interesting point but I am not sure that it is for us. But we will think about it anyway, thank you very much.

**DEPUTY HILL:** Yes, it is part and parcel, thank you, and I thank you for your time.

**LORD CARSWELL:** We are most grateful to you, Deputy Hill, for the time and trouble you have taken, and we are going to take everything into account. We have a lot of people to

listen to and a lot of things to read before we come to any conclusions at all but, when we do, we will then produce a report and a recommendation to the States.

**DEPUTY HILL:** Good luck with it.

**LORD CARSWELL:** Thank you very much.

**DEPUTY HILL:** Thank you.