

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

Date: 30th March 2010

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

Witnesses: Mr D Warcup, Deputy Chief Officer – States of
Jersey Police

THE CHAIRMAN: May I welcome you, Mr Warcup, to our review. I think you know the members of the Panel, do you?

MR WARCUP: I have not met them personally, no.

THE CHAIRMAN: Mrs Backhurst, Dr ...

DR MOUNTFORD: Mountford.

THE CHAIRMAN: Mountford. Sorry, one of those moments.

Mr Crill and Mr Strang.

We are grateful to you for coming to assist us with our inquiry. We are, as we have made clear to people before, interested in principles, not personalities or performance of the roles, simply whether there should be any change in the constitutional roles in Jersey, and, if so, what that might be by way of recommendation to the States.

I appreciate that you, as Acting Chief Officer of the States of Jersey Police, are concerned only with your own force and the Honorary Police are a separate entity altogether and therefore I can understand if what you say necessarily has to be limited and appreciate that entirely. But I shall find it helpful to find out some of the practical questions of the structure which may be important in the future. I hope my colleagues will bear with me if this is something they all know completely.

But before I start, we have a letter from you - thank you - of 26 February, which we have read

and considered. Is there anything you would like to add to that before we go into any questions?

MR WARCUP: No, thank you. I am happy to assist the Panel this afternoon in any way that I can.

THE CHAIRMAN: Thank you very much.

If there were to be changes, can you give me the up-to-date position? The Police Complaints Authority is now in being, is it?

MR WARCUP: It is, yes.

THE CHAIRMAN: Yes. It is performing the usual functions of a complaints authority, is it?

MR WARCUP: It is. The position is that the Police Complaints Authority within Jersey is constituted under the law here to have independent oversight and arrangements in respect of complaints from members of the public regarding the conduct of the States of Jersey Police and inspect the -- sorry, the States of Jersey Police.

THE CHAIRMAN: Yes. Do they have any function in respect of the Honorary Police as at present constituted?

MR WARCUP: Their primary function is in relation to the States of Jersey Police, as I believe that the Attorney General is the authority for the Honorary Police.

THE CHAIRMAN: Yes.

MR WARCUP: There will be some overlap if issues of public complaint do overlap between States of Jersey and Honorary Police officers. But, however, I'm saying that there is an overlap because we have a situation where, if a member of the public complains and the Attorney General receives a complaint, that complaint normally in the first instance is referred to the Professional Standards Department within the States of Jersey Police and they conduct the investigation on behalf of the Attorney General and report back to the Attorney General.

THE CHAIRMAN: In the ordinary course of events the Police Complaints Authority will consider a complaint, will have whatever investigation carried out it regards as desirable and come to a conclusion at the end, which would be a recommendation to the Chief Officer?

MR WARCUP: In the first instance following a public complaint it will be normally for the Deputy Chief Officer of Police to determine and appoint an investigating officer.

THE CHAIRMAN: Yes.

MR WARCUP: With the agreement of the Police Complaints Authority, they agree the appointment of that investigating officer and they will subsequently agree the terms of reference for that inquiry. At the conclusion of the inquiry, the investigating officer will report back to the Deputy Chief Officer, will make recommendations from which the Deputy Chief Officer will then decide what action he or she feels is appropriate to that particular case.

But before proceeding in relation to that in terms of whatever action is going to be taken, it's necessary for the Police Complaints Authority to issue a letter of satisfaction - it's almost a certificate of satisfaction - that the inquiry has been conducted properly and that they agree with

the recommended outcome.

So if the disposal is one of recommended disciplinary action, then that recommended disciplinary action has to be agreed by the Police Complaints Authority before the force can proceed with that.

THE CHAIRMAN: At that stage then it becomes a disciplinary matter within the force, for which you are ultimately responsible, and the disciplinary proceedings are conducted according to a proper pattern within the force and a decision made whether a sanction is required or whether it is not?

MR WARCUP: That's correct sir, yes.

THE CHAIRMAN: And what it should be? Yes. That is the usual pattern. I just wanted to confirm that it went with that.

Within the Honorary Police, we have been informed that the questions of discipline ultimately are dealt with by the Attorney General. Questions have been raised whether he should continue to act as titular head of the Honorary Police.

If a police authority comes into being, and I know from the newspapers it is sort of halfway stage at the moment, that would not have a disciplinary function, not in the ordinary way, would it?

MR WARCUP: Strictly speaking it would not. The disciplinary function would be as I have described. And its role, I would envisage, would be to oversee the effective management of complaints within the force, not the oversight of the complaints that the Police Complaints

Authority currently have.

However, from the force point of view we are recommending that the police complaints procedure is reviewed and is modernised in line with the changes which would be required to bring in legislation which would support the establishment of a police authority.

THE CHAIRMAN: But that, again, accords with the usual function of police authorities or police committees in other parts?

MR WARCUP: Yes.

THE CHAIRMAN: So, if the Attorney General ceased to be titular head, a police authority, if it were seen fit to have them in charge of the Honorary Police - and that's not for us - but if that were the case, would still not be able to fulfil all the functions because somebody else would have to deal with the discipline. There would have to be somebody in charge to determine offences and carry out the disciplinary procedure.

MR WARCUP: That's correct. Yes.

THE CHAIRMAN: Yes. I was pretty sure that was the case but I am glad to have it confirmed that that is the situation.

Somebody would have to decide who should do that. I am not going to ask you because I know that that is not your problem.

MR WARCUP: That's right. No. I think your observation's correct.

THE CHAIRMAN: Now, ladies and gentlemen, please?

DR MOUNTFORD: Can I ask a “what if” then because I am fascinated why, if -- am I right in that the police authority has not got any functions; there is no disciplinary action?

To me, it must be a neutral body where there is the opportunity to have a fair investigation because there is no worry about outcome. It is quite neutral.

Why could any complaints about the Honorary Police not be included in that? Because it is not as though they have to go to the police to be actioned. They could go another route.

The Honorary Police are policemen who are carrying out duties and can in the same way -- the public could have problems with the behaviour of the police. They would go back, I assume at the moment, to the parish? If there was an issue with an honorary policeman, would it go back to the Connétable of the parish that the honorary policeman was located in?

MR WARCUP: It could do, depending on the severity of the outcome of the investigation into the complaint.

But to go back to your earlier point, the role of the police authority normally as constituted, would be to have oversight for the good and efficient and effective running of the police service. Their role in relation to discipline matters would normally be restricted to the role in relation to the chief officers of Police, and in Jersey that is the Deputy Chief Officer and the Chief Officer of Police, whereas under the Police Force Complaints Law, the roles and responsibilities of investigating public complaints are the responsibility of the States of Jersey Police and overseen by the Police

Complaints Authority, as I described earlier.

So there is a distinction between the two. And that distinction would need to be made clear as well, as described earlier again, in relation to the role of the Honorary Police, as to who ultimately is the person responsible and accountable and has the governance and oversight in relation to each of the separate bodies or parties.

DR MOUNTFORD: What has become very clear from speaking to the AG is that he does not have an operational role. So what procedures are in place for the Honorary Police? Who determines them? Are there 12 different procedures. I do not know whether you are familiar with --

MR WARCUP: I am reasonably familiar but certainly wouldn't in any way express any expertise in relation to it. And probably, I'm sure, many colleagues from the Honorary Police would be in a much better position to answer.

THE CHAIRMAN: We shall be seeing representatives of them. Yes.

MR WARCUP: But with the 12 parishes and there are 12 Chefs de Police; there is the Comité des Connétables. And between the Comité des Connétables and the Chefs de Police, the organisation of policing across the parishes is determined.

But I think, constitutionally in law, they are still 12 separate entities, and, as I say, they would be in a much better position to describe what sort of common features there are in relation to policing.

But there are 12 and the States of Jersey Police are a separate entity again, to that.

DR MOUNTFORD: In your experience- because I know you have not been in Jersey that long - have you had any experiences of the purely honorary system running alongside a policing system like in Jersey? In England?

MR WARCUP: No, I've never had any experience of any, and I've experienced and worked in many different places from time to time, and I haven't.

One of the basic tenets that I am used to is the singular or single accountability and governance arrangements because one of the key aspects in delivering operational policing is to have a single line of accountability and responsibility for issues. And recognising however, that Jersey is different, then we have to work within those arrangements and work with colleagues from the Honorary Police to manage that situation.

DR MOUNTFORD: So if the AG was not the titular head, there would be no way of the Honorary Police system linking up in any way with the States of Jersey Police?

MR WARCUP: Well, your observation before was that the Attorney General, I think, was largely the titular head as opposed to the operational head? And in my experience - in my short experience here, really - I haven't come across a situation where the Attorney General has actually even spoken to us about an operational policing matter.

There have been some discussions or dialogue that have taken place in relation to complaints and management of complaints. But as for operational policing, I'm not aware of any dialogue between the Attorney General and the States of Jersey Police concerning an operational policing

matter.

I do make a distinction there, and I'm sure you appreciate it, in terms of legal advice being a different issue.

MRS BACKHURST: Could I pick up on that?

I understand that the Attorney General's - the Law Officers' Department has slightly changed recently. They now have Director, Criminal and they have legal advisors based at police headquarters?

MR WARCUP: Yes. That's correct, yes. That's been the case for some time, with the legal advisors.

MRS BACKHURST: Okay. And they are giving advice directly to the States of Jersey Police?
Or ...

MR WARCUP: Only on criminal matters.

MRS BACKHURST: On criminal matters.

MR WARCUP: And, again, the role of the Law Officers who work, largely for convenience, at police headquarters because of the interaction which takes place, is around the investigations and prosecutions which take place. And they are quite distinct and separate from the police inasmuch as they work directly to the Attorney General's office and they are fulfilling their advice and prosecuting role, really, and as a separate issue. I make a distinction because that is quite

clearly distinct from the role of advice that the force needs in order to fulfil its business of being a police force, which is different to the criminal matters.

MRS BACKHURST: That you would also get from the Attorney General but not from his legal advisors, obviously?

MR WARCUP: That's correct, yes. We would seek that from the Attorney General's office and we would either get it from the Attorney General's office or the Attorney General would appoint somebody externally who would provide us with that advice.

MR CRILL: Is the police advisor involved in advising in relation to the investigation or just the charging and prosecution?

MR WARCUP: The charging and the evidential basis. In fact, it can become something which is very, very close in terms -- but I see the role of the police to investigate. It is our duty and our responsibility to investigate crime.

It is the Law Officer's duty to advise us on the law in relation to those investigations. And, in fact, it's good practice now that there is a very close liaison between law officers and the police officers investigating, to ensure the collection of evidence and the evidential tests that are required are properly assessed and at the earliest stage.

MR CRILL: Whilst there is a practical convenience, obviously, in having the police advisor under your roof, is there an operational risk that it drifts into the operational investigative side?

MR WARCUP: I think there is but not only here in Jersey. I think there is in any relationship

where you have a lawyer and a police officer investigator.

But I'm quite clear that there is a distinction that the Law Officers are not there to advise us in terms of what action or what powers that we should use. They can advise us in relation to what we can do, what is possible, what is feasible and whether it is appropriate and within the law. But I'm very clear to make the distinction and I do make that distinction with our officers, that it is: we lead on the investigation; we take advice from the lawyers. The lawyers do not lead on the investigation.

THE CHAIRMAN: Then can you assist me - I am afraid again of my ignorance - as to exactly where the Centeniers come into it?

MR WARCUP: The Centeniers, as well as their policing responsibilities, the interface that we have with them on a daily basis is with their charging responsibilities. So the Centenier is the responsible person for making a decision in relation to whether a person should be prosecuted or referred to the Parish Hall for inquiry.

And at the conclusion of a police investigation, the Centenier will be contacted; the Centenier will review the evidence. Sometimes if it's a complicated investigation, the Law Officers will have already advised in relation to that, so the Centenier will have access to the Law Officer's advice, details of the police investigation and the evidence which has emerged, and then the Centenier is the responsible person for making the charging decision.

THE CHAIRMAN: This is what a DPP [Director of Public Prosecutions] would do on the mainland?

MR WARCUP: It is what the representatives would do, yes.

THE CHAIRMAN: Yes. You have the director in charge of the particular file. But the file goes up from the police; the investigation is complete; there is a recommendation or submission. The Centenier then gets that and accepts it or refers it back or whatever, maybe takes further advice. But the Centenier has the ultimate say in what the prosecution should be. Is that correct?

MR WARCUP: That's right, sir, yes.

THE CHAIRMAN: For States Police and Honorary Police, both?

MR WARCUP: That's right, yes. In each case.

THE CHAIRMAN: I just want to be clear. Thank you.

MR STRANG: Subject to review by the Attorney General, though.

THE CHAIRMAN: Yes, subject to the Attorney General.

MR STRANG: Or direction?

MR CRILL: Can I just throw in the hypothetical one, where, for example, your recommendation is that there be, shall we say, an actual bodily harm charge, whereas the Centenier says, "A bit heavy; let's just go for a common assault"? How is that then resolved? Or that does not happen in practice because the ...

MR WARCUP: Oh, it does. I'm quite sure you can well imagine the case where that will happen and that forms part of a dialogue between -- if in the rare circumstances there is a disagreement in relation to the charging - more extreme may be the decision is not to charge as opposed to, to charge - then if we feel that it is appropriate that the person is charged and there is sufficient evidence, then we would advise the Centenier that -- we would refer the matter to the Attorney General. And the Attorney General then can independently -- but I believe - my understanding of the law is - it is only the Attorney General that could actually, shall we say, override the decision of the Centenier.

MR STRANG: Who could make that decision, yes.

MR WARCUP: In fact, the Law Officers, for example, in practice, sometimes when during the early stages of an investigation when there is insufficient to charge an individual, quite often the person will be released, a file of evidence will be prepared. That file of evidence will go to the Law Officers and it'll be the Law Officers who will carry out a review on behalf of the Attorney General as to whether there is sufficient evidence and they will go into detail.

THE CHAIRMAN: That is very helpful. Thank you.

Any further points, ladies?

MR CRILL: Can I just ask if there is any fundamental difference in the process of charging and prosecution other than the fact that you have got a Centenier interposed rather than ... than you have experienced in the UK?

MR WARCUP: Yes. There are many differences in relation to this.

MR CRILL: In relation to the function of the AG's role or the Crown Officer's role as prosecutor?

MR WARCUP: Specifically in relation to the AG's role, I would say not. In terms of what follows from the responsibility of the AG and the Law Officers is where we interface on a daily basis in relation to charging decisions, and there are obviously many differences in relation to that.

MR STRANG: But it works well, does it, generally? Are you happy with the way that the system works?

MR WARCUP: I think it depends how you define "well" in terms -- and I'm not trying to be ... But I think there are issues. I think there are many issues which do work well and work effectively, I think in relation to some of the aspects of the Parish Hall Inquiry system which is able to deal particularly with those people who have not been in trouble with the police before, not been brought to the attention of the criminal justice system. And it provides an opportunity to deal with things in a way which is very close to what might be described as a restorative justice type approach and can be very effective.

In terms of the normal cases, if you like, the cases that people perhaps see the police dealing with on a more frequent basis - the things that are in the paper: assaults and break-ins and things like that - I think that there are issues in relation to how we manage that. And it is obviously very difficult and demanding for the Centeniers in terms of time. We operate a 24-hour service. If somebody's in custody then quite often there's a need to secure that charging decision at the earliest opportunity to ensure that we don't keep people in custody longer than necessary.

It also requires, in terms of efficiency, instead of perhaps when you are presenting an investigation to a lawyer and the lawyer is able to look at some of the evidence -- and I relate that to the statutory charging procedure which is now available in the UK where there is a 24-hour advice and decision-making process by the Crown Prosecution Service. You present evidence to the lawyers and they will make a decision. Sometimes it can be very difficult for the Centeniers, particularly out of hours, to make some of those charging decisions. Many of them fulfil their responsibilities very effectively and very well but sometimes there is a requirement for us to produce quite significant amounts of evidence in order that they can make decisions.

That creates a delay in the process and that also creates difficulties in relation to the time that a person's in custody. And if I just use one example, some Centeniers may require a transcript of the interview which has taken place with the suspect. And if you imagine that the inquiries are all complete and the officers then have to sit down and do transcripts of interviews before presenting it to the Centenier just to get -- as opposed to just being able to say, "This person admitted the offence," they have to do -- I think it's clear the sort of delays that can be ...

THE CHAIRMAN: We are not tasked with the job of reviewing that or police procedures or the relationship between the forces.

MR WARCUP: Absolutely.

THE CHAIRMAN: But as background it has been helpful, certainly to me, can I say, to know exactly where it stands, so that if we were minded to make any changes we can see the implications. That is the important thing: to see what would be the effect and where it might cause other problems which we would have to take into account.

MR WARCUP: Yes.

MRS BACKHURST: Because I am not a lawyer, I will address my question, really, through Lord Carswell and then probably re-word it for me.

If there was a DPP, would the role of the AG, that role as a prosecutor would fall out, but he might have still other roles in which he might still wish to deal with the police? And therefore you would not only have to deal with the DPP but you would also still have to deal with the AG? Is that correct? Or am I ... I don't know.

THE CHAIRMAN: The Attorney General supervises the Director of Public Prosecutions both in England and Northern Ireland and I have seen it working. The Director of Public Prosecutions will normally make all the decisions but every now and again there are difficult cases which may require a policy judgment to be applied. It would be very common then, for the Director of Public Prosecutions to consult the Attorney General and for the matter to be discussed.

I have seen it working, I have seen from time to time the Attorney General paying a visit to deal with current matters to the DPP and they would go over a number of things or there would be a particularly difficult or sensitive or high-profile case and the DPP would get it all prepared with the policy factors, get the papers to the AG and then go and talk to him or her.

The AG is not divorced from it but is more at arm's length. I think that is the way of it. That would be the way you are accustomed to in the UK forces?

MR WARCUP: Yes. Yes, sir.

MR CRILL: That is effectively what happens here. You have your police advisor in the police HQ. That would then referred up to Director, Criminal ...

MR WARCUP: That's right.

MR CRILL: Then, ultimately you have got the AG on top at the moment.

MR WARCUP: That's right. As described previously.

MRS BACKHURST: But as you have said, the AG still gives you advice on other matters which are not to do with investigation or prosecuting but administrative matters and legal advice?

MR WARCUP: Yes. When I say the AG, if it isn't the AG in person it would be one of his staff would advise on broader operational and organisational matters that --

MRS BACKHURST: So that relationship would still have to continue in any case?

MR WARCUP: Yes. It is different inasmuch as the States of Jersey Police do not have independent legal advice, whereas forces in the UK have access to independent legal advice.

Normally the situation is that they would employ their own solicitors and those solicitors would directly advise the Chief Officer of Police on legal matters, not on prosecution matters but purely on legal matters.

THE CHAIRMAN: Matters which arise in investigations, like powers of entry under a particular statute, things like that?

MR WARCUP: Not particularly, no. That might be something where you might actually talk to the Law Officers in relation to the application or interpretation of powers, perhaps before making an application for a warrant or something.

The Chief Officer of Police is charged with certain responsibilities and legal responsibilities. And they may be responsibilities under the complaints law; it may be responsibilities under issues such as protecting children and other things whereby the chief officer is -- it's not quite a body corporate but it is an entity, if you like --

MR CRILL: So, things like data protection or employment of your --

MR WARCUP: Yes.

MR CRILL: -- civilian staff, that sort of thing, could come under -- any legal advice on that, you would go to the AG?

MR WARCUP: That's right. And in Jersey, as in the UK and in many other jurisdictions, the force itself is an entity in its own right. It is a legal entity in its own right.

MR CRILL: So it is like the trading committee in the States, from that point of view?

MR WARCUP: It is; so quite often will require separate and independent legal advice because it may well be that the legal advice relates to a matter which brings the States of Jersey Police, not into conflict but into a different area with another States department.

So, it could be over children's matters; it could be over issues around Family Court matters. A frequent example is applications before the courts in childcare proceedings for discovery of information and documents.

It would be quite normal -- in fact, it would be normally quite a significant piece of business for the Chief Officer of Police - his staff, in my case - to seek legal advice about what is right and appropriate for the purposes of disclosure in those proceedings.

MRS BACKHURST: So you would seek that from an independent firm of lawyers on the Island?

MR WARCUP: Yes. Usually a person is appointed to represent me in relation to that. So you could have somebody wishing to discover information in the course of proceedings, and the extent of that discovery - as is required for the purposes of fulfilling the court requirements - may be excessive. And so in order to represent our views at the court, then we would obtain independent legal advice and representation to deal with those matters.

THE CHAIRMAN: That is very helpful. Thank you.

We are very grateful to you, Mr Warcup. Thank you very much. Sorry you were delayed at the start.

MR WARCUP: Not at all, sir. No.

THE CHAIRMAN: But thank you for your assistance. We are listening to a lot of people. We have quite a long way to go yet, so we are a long way from conclusions. But when we have taken into account all the evidence we will consider our conclusions, set them out in a report and

send our recommendation to the States. That will be our function.

MR WARCUP: Thank you.

THE CHAIRMAN: Thank you for your assistance.

MR WARCUP: Thank you. And if I can be of any further assistance then please feel free and I'll do what I can to help the Panel. Thank you very much.

THE CHAIRMAN: Thank you very much.