

STATES OF JERSEY



POLICE COMPLAINTS AND DISCIPLINE: EXTENSION TO HONORARY OFFICERS CONDUCTING PARISH HALL ENQUIRIES

**Lodged au Greffe on 5th March 2009
by the Deputy of St. Martin**

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

- (a) to agree that the Police (Complaints and Discipline) (Jersey) Law 1999 should be amended so that the definition of ‘complaints’ is extended to include complaints against honorary police officers conducting Parish Hall Enquiries; and
- (b) to request the Minister for Home Affairs to bring forward for approval the necessary amendment to give effect to the decision.

DEPUTY OF ST. MARTIN

REPORT

In November 2007 a motorist was stopped by an Honorary Police Officer and warned to attend a Parish Hall Enquiry. At the Parish Hall Enquiry the motorist was advised to plead guilty and accept a Caution to an offence he strongly disputed. As a result of his decision and to shortcomings in criminal justice system, the motorist experienced months of anguish and inconvenience. He attended a further Parish Hall Enquiry, was unlawfully arrested and placed in a cell, made 7 court appearances and his family was disturbed at 8.15 a.m. on a Sunday morning when a States Police Officer who was the subject of a complaint against the motorist delivered a letter informing the motorist to attend another Parish Hall Enquiry a month later.

Following a trial the Court found the motorist not guilty and was awarded costs at the taxpayer's expense. The motorist was charged with an offence which carried a maximum fine of £20. The motorist contacted me requesting my assistance which I have given.

As was his right, the motorist understandably lodged complaints against the States and Honorary Police. The complaints were not lodged out of any sense of revenge but to ensure that the officers' actions were investigated and shortcomings in the criminal justice system were addressed.

Investigation of the complaints against the Vingtenier and Police Constable were conducted but the Attorney General refused to accept the complaint against the Centenier who carried out the Parish Hall Enquiry. The Attorney General rejected the complaint on the grounds that the Police (Complaints and Discipline) (Jersey) Law 1999 is concerned with disciplinary offences committed by honorary police officers, and is not concerned with the prosecution service.

On behalf of the motorist I wrote to Attorney General questioning his decision, however the Attorney General maintained his position and said he accepted the complaint against the Vingtenier because at the time the Vingtenier was acting as a police officer and not as part of the prosecution. He further stated that his decision was in line with the amendment to Article 21(5) approved by the States in 2007 (P.112/2007 adopted 23rd October 2007).

The Attorney General claimed that as a result of the amendment, if he did not think he would prefer any criminal charge or hold any disciplinary hearing in relation to the conduct of the Centenier in question as a prosecutor, the matter could consistently be the subject of informal resolution under Article 21. Informal resolution, however would require him to direct the Connétable to deal with the matter; and as it is a prosecution matter and not a disciplinary matter, he did not think it appropriate for the Connétable to do so. All this shows that the 1999 Law was intended to cover policing matters and not prosecution matters.

I believe the Attorney General's interpretation of 1999 Police Complaints Law is incorrect. The Parish Hall Enquiry is a key component of the Honorary Police system and its integrity should be open and above reproach. It is a finely balanced judicial/ prosecution/investigatory process which must be seen to be fair and Human Rights Compliant. Attendance at a Parish Hall Enquiry is not mandatory, although that fact is rarely made known to people warned to attend. It is also very important to note that Parish Hall Enquiries are not held in public. Sir Cecil Clothier described the Parish Hall Enquiry as "an ancient institution in Jersey, but it defies classification in a modern legal framework." I submit that the Attorney General's interpretation of the 1999 Police Complaints Law adds weight to Sir Cecil's opinion.

If the Attorney General's interpretation is to remain, it would remove the perceived right of aggrieved members of the public to have their complaints investigated and would bring the whole Parish Hall Enquiry System into disrepute. I also believe it would require an amendment to the 1999 Police Complaints Law to permit complaints to be made against officers engaged in Parish Hall Enquiries.

Following the adoption of the 1999 Police Complaints Law, on 10th January 2000 the Attorney General, is who Titular Head of the Honorary Police issued "Guidance Notes for Centeniers at Parish Hall Enquiries". On 23rd February 2008 the Attorney General issued a "Code of Directions for Centeniers on the Conduct of Parish Hall Enquiries". This replaced the 2000 edition.

In the replacement Code paragraph 3, it states that a Parish Hall Enquiry is essentially a prosecution process. The purpose of an Enquiry is for the Centenier to decide –

- 3.1. Whether there is sufficient evidence to justify a charge,
- 3.2. If so, whether the public interest requires a charge be laid,
- 3.3. If a charge is appropriate, whether the matter can be dealt with at the Enquiry after the charge is laid, using one of the applicable statutory provisions.

It should be noted that the sentence “**A Parish Hall Enquiry is essentially a prosecution process**” has been added to the 2000 edition. Nowhere in the Code is any reason given for the new sentence. Nor does it appear that any consideration has been given for any implications that would follow, particularly for the Honorary Police or for members of the public involved in Parish Hall Enquiries.

The decision implies that when Police Officers are engaged in Parish Hall Enquiries they are not within the ambit Discipline Code or the Complaints Law, are unaccountable, and as such the public has no right of complaint. The Attorney General informed me that if the motorist did not share his view, he was entitled to take steps to challenge it by applying for judicial review proceedings, subject to following the necessary procedures and obtaining leave. Understandably that course of action was totally unacceptable to the 68 year-old motorist.

In paragraph 7 the Code reminds Centeniers that the Parish Hall Enquiry is not an occasion for a Centenier to act as an investigator.

I submit that a Parish Hall Enquiry is very much an investigatory process: as mentioned above, a Centenier has to decide if the provisions of the 3 sub-paragraphs are satisfied. Therefore to enable Centeniers to reach that conclusion they must enquire into the merits of the case. Paragraph 7 also states “The Centenier, who shall have read the report of the incident before the Enquiry starts, shall consider such other material as she/he thinks fit including hearing from the attendee.”

The purpose for hearing the Attendee is part of the investigative process to determine whether there is sufficient evidence to justify a charge. Centeniers are the only police officers able to carry out that function, when doing so they do not cease being police officers. Therefore I believe they are within the ambit of the 1999 Police (Complaints and Discipline) (Jersey) Law.

On 22nd September 1998 the States approved the Draft Police (Complaints and Discipline) (Jersey) Law 199 (P.162/98). The purpose of the Law was to establish a Police Complaints Authority and the ability for people to make complaints against the States and Honorary Police.

Part 3 of the Law deals with Complaints and other matters concerning members of the Honorary Police. In Article 17, Interpretation of Part 3, a Complaint is defined “as any complaint about the conduct of a member of the Honorary Police which is submitted to the Connétable of the parish in which that member serves.”

It is apparent that a “Complaint” can be made about any activity undertaken by any Member of the Honorary Police. If the Law was intended to exclude Officers from the ambit of the Law when undertaking Parish Hall Enquiries it would have said so.

In Regulation 1(1) (**Interpretation**) of the Police (Honorary Police Complaints and Discipline Procedure) (Jersey) Regulations 2000, a “member of the Honorary Police” means a Centenier, Vingtenier or Constable’s Officer.

In Regulation 2 of the above named Regulations, reference is made to the Discipline Code and Offences against Discipline which states –

2 Discipline Code and offences against discipline

- (1) The Discipline Code in the Schedule to these Regulations shall have effect.
- (2) A member of the Honorary Police commits an offence against discipline if the member's conduct does not meet the standard set out in the Code.

The Discipline Code is listed in the Schedule to the Regulations, as stated in Regulation 2(1) (*see Appendix 1 to this Report*). In this Schedule "officers" means members of the Honorary Police.

The Schedule lists a number of matters which form the Discipline Code. Listed at number 7 is "**Lawful orders, directives, etc.**" which states –

"The Honorary Police is a disciplined body. Unless there is good and sufficient cause to do otherwise, officers must obey all lawful orders and directives and abide by the provisions of the Honorary Police (Jersey) Regulations 1977 and the Police (Honorary Police Complaints and Discipline Procedure) (Jersey) Regulations 2000. Officers should support their colleagues in the execution of their lawful duties, and oppose any improper behaviour, reporting it where appropriate."

Listed at number 13 is General Conduct, which states–

"Whether on or off duty, officers should not behave in a way which is likely to bring discredit upon the Honorary Police.

Notes:

- (a) The duties of those who hold the office of Centenier, Vingtenier or Constable's Officer include the protection of life and property, the preservation of the Queen's peace, and the prevention and detection of criminal offences. To fulfil these duties they are granted extraordinary powers; the public and the Honorary Police therefore have a right to expect the highest standards of conduct from them.
- (b) This Code sets out the principles which guide officers' conduct. It does not seek to restrict officers' discretion: rather it aims to define the parameters of conduct within which that discretion may be exercised. However, it is important to note that any breach of the principles in this Code may result in the preferment of disciplinary charges which, if proved, in a serious case, could involve dismissal.
- (c) This Code applies to the conduct of all officers whilst on duty, or whilst off duty if the conduct is serious enough to indicate that an officer is not fit to be such. It will be applied in a reasonable and objective manner. Due regard will be paid to the degree of negligence or deliberate fault and to the nature and circumstances of an officer's conduct. Where off-duty conduct is in question, this will be measured against the generally accepted standards of the day."

I submit that the above Code applies to all Honorary Officers irrespective of whatever function or duty they undertake. Nowhere in the 1999 Complaints Law or the 2000 Complaints Regulations does it state that the Code is not applicable to officers conducting Parish Hall Enquiries. In fact a Parish Hall Enquiry is not defined in either the Law or the Regulations.

Above, I stated that the words "a Parish Hall Enquiry is essentially a prosecution process" now appear in the 2008 Guidance Notes for Centeniers at Parish Hall Enquiries but were not in the original 2000 edition. Even if one supported the Attorney General's view, it matters not whether the Parish Hall Enquiry is essentially a prosecution process. This is because they can only be conducted by Centeniers who must be accompanied by another police officer. If Parish Hall Enquiries are outside ambit of the Police Complaints Law this creates a situation where officers are not accountable for their conduct. I submit that this situation was never envisaged when the Law was approved. There cannot be a situation where, dependent on the duties undertaken by police officers, they are able to opt in or out of the ambit of the Complaints Law or Regulations.

The Police (Complaints and Discipline) (Jersey) Law 1999 should safeguard the interests of the public who may be aggrieved over the conduct of Police Officers. It also safeguards the interests of all police officers by ensuring that any complaints registered against them are dealt with in a fair and Convention compliant manner.

I was a strong advocate in support of a Complaints and Discipline Law and for an independent Police Complaints Authority. I was present when P.162/1998 was debated and approved on 22nd September 1998. To the best of my knowledge I do not recall any discussion relating to officers engaged in Parish Hall Enquiries not being within the ambit of the Law. This is because Members were fully aware that “any Complaint” as defined in Article 17 of the law meant exactly that. Neither the President of the Defence Committee nor the Attorney General informed Members that Officers involved in Parish Hall Enquiries were outside the ambit of the Law. If that was intended then the Law would have been drafted accordingly.

I am of the view that Centeniers conducting Parish Hall Enquiries do come within the ambit of the Police (Complaints and Discipline) (Jersey) Law 1999. However, as the Attorney General does not accept that view I believe the Law should be amended to ensure that officers conducting Parish Hall Enquiries are within the Law’s ambit. I ask that Members support my proposition and charge the Minister for Home Affairs to bring forward the necessary amendment.

Financial and manpower implications

There is already a system in place to investigate complaints against police. Honorary Police Officers generally perform their duties to a high and commendable standard. Should any Officer transgress as a result of the amendment, I believe its impact on the existing system would be minimal.

**POLICE (HONORARY POLICE COMPLAINTS AND DISCIPLINE PROCEDURE) (JERSEY)
REGULATIONS 2000**

SCHEDULE

(Regulation 2(1))

DISCIPLINE CODE

1 Interpretation

In this Schedule “officers” means members of the Honorary Police.

2 Honesty and integrity

It is of paramount importance that the public has faith in the honesty and integrity of officers. Officers should, therefore, be open and truthful in their dealings; avoid being improperly beholden to any person or institution and discharge their duties with integrity.

3 Fairness and impartiality

Officers have a particular responsibility to act with fairness and impartiality in all their dealings with the public and their colleagues.

4 Politeness and tolerance

Officers should treat members of the public and colleagues with courtesy and respect, avoiding abusive or deriding attitudes or behaviour. In particular, officers must avoid: favouritism of an individual or group; all forms of harassment, victimization or unreasonable discrimination; and overbearing conduct to a colleague, particularly to one junior in rank or service.

5 Use of force and abuse of authority

Officers must not use more force than is reasonable, nor should they abuse their authority.

6 Performance of duties

Officers should be conscientious and diligent in the performance of their duties. If absent through sickness or injury, they should avoid activities likely to retard their return to duty.

7 Lawful orders, directives, etc.

The Honorary Police is a disciplined body. Unless there is good and sufficient cause to do otherwise, officers must obey all lawful orders and directives and abide by the provisions of the Honorary Police (Jersey) Regulations 1977 and the Police (Honorary Police Complaints and Discipline Procedure) (Jersey) Regulations 2000. Officers should support their colleagues in the execution of their lawful duties, and oppose any improper behaviour, reporting it where appropriate.

8 Confidentiality

Information which comes into the possession of the Honorary Police should be treated as confidential. It should not be used for personal benefit and nor should it be divulged to other parties except in the proper course of police duty. Similarly, officers should respect as confidential information about the policy and operations of the Honorary Police and the Force unless authorized to disclose it in the course of their duties.

9 Criminal offences

Officers must report to the Connétable of the parish in which they serve any proceedings for a criminal offence taken against them. Conviction of a criminal offence may of itself be an offence against discipline.

10 Property

Officers must exercise reasonable care to prevent loss or damage to property (excluding their own property but including police property).

11 Alcohol

- (1) Officers shall not consume any alcohol whilst on duty. An officer is on duty at all times during his or her duty rota except during such times as the officer has, with the prior agreement of, if he or she is a Vingtenier or Constable's officer, the duty Centenier or, if he or she is a Centenier, another Centenier of the parish, been relieved of duty.
- (2) Officers shall not be on duty having consumed alcohol before coming on duty to such an extent that their judgment or ability to perform their duties is likely to be adversely affected or is likely to bring the Honorary Police into disrepute.

12 Appearance

Unless on duties which dictate otherwise, officers should always be well turned out, clean and tidy whilst on duty.

13 General conduct

Whether on or off duty, officers should not behave in a way which is likely to bring discredit upon the Honorary Police.

Notes:

- (a) The duties of those who hold the office of Centenier, Vingtenier or Constable's Officer include the protection of life and property, the preservation of the Queen's peace, and the prevention and detection of criminal offences. To fulfil these duties they are granted extraordinary powers; the public and the Honorary Police therefore have a right to expect the highest standards of conduct from them.
- (b) This Code sets out the principles which guide officers' conduct. It does not seek to restrict officers' discretion: rather it aims to define the parameters of conduct within which that discretion may be exercised. However, it is important to note that any breach of the principles in this Code may result in the preferment of disciplinary charges which, if proved, in a serious case, could involve dismissal.
- (c) This Code applies to the conduct of all officers whilst on duty, or whilst off duty if the conduct is serious enough to indicate that an officer is not fit to be such. It will be applied in a reasonable and

objective manner. Due regard will be paid to the degree of negligence or deliberate fault and to the nature and circumstances of an officer's conduct. Where off-duty conduct is in question, this will be measured against the generally accepted standards of the day.