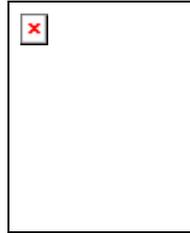


STATES OF JERSEY



POLICE COMPLAINTS AND DISCIPLINE: EXTENSION TO HONORARY OFFICERS CONDUCTING PARISH HALL ENQUIRIES (P.30/2009) – COMMENTS

**Presented to the States on 30th March 2009
by H.M. Attorney General**

STATES GREFFE

COMMENTS

1. As the Attorney General has responsibility for the prosecution service in Jersey, I am presenting these comments in relation to the Proposition (P.30/2009) of the Deputy of St. Martin seeking the States to agree that the Police (Complaints and Discipline) (Jersey) Law 1999 (the “1999 Law”) be amended so that the definition of “*complaints*” is extended to include complaints against honorary police officers conducting Parish Hall enquiries.

Summary

2. I do not think it is necessary or indeed appropriate to amend the 1999 Law, and I am sorry if the Deputy’s correspondence with me has led to any misunderstanding of my position. That position is that the Parish Hall enquiry is essentially a prosecution process and, to the extent that it is, it falls outside the scope of the 1999 Law. However, that is not to say that there will not be some occasions when there is conduct at a Parish Hall enquiry which merits being treated as a disciplinary issue rather than a prosecution issue. The essential difference is between misconduct, which is disciplinary, and incompetence which is a matter to be addressed by the Attorney General. The 1999 Law is structured as it is to give relevant authority to the Attorney General as titular head of the honorary police, and I suggest that the Attorney General should be left to decide on a case-by-case basis which are matters of competence and which are matters of conduct. If that is the conclusion, then no amendment of the 1999 Law is necessary.
3. If members’ view is that it is appropriate to introduce specific provisions in the 1999 Law, it would be essential that it be made clear that the Law was not intended to cover prosecution decisions.

Detail

4. It is perhaps right to start with Article 17 of the 1999 Law which is in these terms:

“Interpretation of Part 3.

In this Part, unless the context requires otherwise –

“complaint” means 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 –

- (a) *by a member of the public;*
- (b) *on behalf of, and with the written consent of, a member of the public; or*
- (c) *by a member of the Force, Port Control Officer or a member of the Honorary Police otherwise than in the course of his or her duty;*

“register” means, in relation to each Parish, the register maintained for it under Article 20 (1).” (emphasis added).

5. I do not think it is necessary to deal in detail with the factual circumstances surrounding the motorist to whom the proposer refers, but these facts can be made known to members at the time of the debate should they be relevant.
6. It is enough perhaps to say that the motorist was charged with contravention of Article 23(3) of the Police Force (Jersey) Law 1974, in that, not being a police officer, he had in his possession an article of police uniform, namely an official police sign. A detailed decision was given in the Magistrates’ Court acquitting the motorist of that charge.
7. Subsequently the motorist wrote to me to make a complaint about various actions of those involved in his prosecution – the States Police who called at his home at 8.20 a.m. on a Sunday morning to warn him to

- attend a Parish Hall enquiry on 20th February, the conduct of 2 Centeniers and also the conduct of the honorary police officer who had arrested him. He also had complaints to make about the court process.
8. As is set out in the report accompanying P.30/2009, investigations of the complaints made against the Vingtenier and the Police Constable were conducted, but I have not accepted that the complaint against the Centenier who carried out the Parish Hall enquiry was a complaint within the meaning of the 1999 Law.
 9. As I have previously advised the States, the Parish Hall enquiry is not a judicial process but a prosecution process. It is slightly unclear from the report accompanying P.30/2009 as to whether the proposer accepts this position, but in my view, the position is clear.
 10. In Attorney General v. Devonshire Hotel Limited 1987/88 JLR 577, the Royal Court had to decide whether the doctrine of *autrefois convict* and *autrefois acquit* operated to bar a prosecution where the respondent company was charged in what was then described as the Police Court, now the Magistrate's Court, with a breach of the Licensing (Jersey) Law 1974 in circumstances where, at the Parish Hall enquiry, the Centenier who conducted the enquiry decided for compassionate reasons to proceed by way of written caution, and where the then Attorney General had directed the prosecution take place, whereupon the Centenier charged the respondent company as instructed. The lower court rejected the defence of *autrefois convict* on the ground that no penalty had been imposed, but accepted that the Attorney General could not direct the Centenier to reverse his initial decision not to prosecute because, having informed the respondent that no proceedings would be brought against it, it would be contrary to the rules of natural justice to do so. The Attorney General appealed that decision of the lower court by way of case stated, and the question which had to be determined in the Royal Court was whether the Attorney General had the right and power to instruct a Centenier to prosecute in a case in which the Centenier had already decided not to prosecute.
 11. The Royal Court held that the doctrine of *autrefois acquit* or alternatively *autrefois convict* could not operate to bar the prosecution. In conducting an enquiry into the alleged offence "... *the Centenier was not performing a judicial function – Mr. Day conceded that Centeniers do not have judicial powers as normally understood – there were no "proceedings", there was no conviction and the Centenier was not a court of competent jurisdiction. Accordingly the defence of autrefois convict fails.*"
 12. All the reasoning of the Court which led to that conclusion was based on the premise that the Centenier's decision at a Parish Hall enquiry was a prosecution decision, shown indeed by the fact that the Attorney General has the power in law to overrule that decision.
 13. The Code of Directions for Centeniers on the Conduct of Parish Hall Enquiries which I issued on 23rd February, 2008, replacing the Guidance issued by my predecessor on 10th January 2000, restated the principle that the Parish Hall enquiry is a prosecution process because the report of the Panel chaired by Sir Cecil Clothier did not reflect the long-standing legal position confirmed by the Royal Court in Attorney General v. Devonshire Hotels Limited, and it was in my judgment important to set the record straight.
 14. I would respectfully suggest that there is little point in having a debate in the States about what the 1999 Law means or does not mean in this context. My own view is that the 1999 Law does not extend to complaints against Centeniers in relation to the exercise by them of a decision to prosecute or not to prosecute. That view is either right or wrong, and at some point may or may not be tested in a court of law. The issue for members now is whether, given that is the view which the Crown takes in relation to the 1999 Law, it is appropriate to amend the Law and provide expressly that a complaint about a prosecution decision at a Parish Hall enquiry should be treated as a "*complaint*" for the purposes of the 1999 Law.
 15. The 1999 Law provides a framework for dealing with complaints about the conduct of members of the honorary police. If one looks at the Police (Honorary Police Complaints and Discipline Procedure) (Jersey) Regulations 2000, it is clear that 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 Discipline Code which is a Schedule to the Regulations (see Regulation 2). Nothing in the Discipline Code deals with the making of prosecution decisions; in other words, the competence of the Centeniers. There are indeed requirements for honesty and integrity, fairness and impartiality, politeness and tolerance and matters of that nature; there is also a requirement that officers should be conscientious and diligent in the performance of their duties. The Discipline Code however, does not describe in any sense what the obligations are in relation to the taking of prosecution decisions, which is indeed why these are set out in the Code on the Decision to Prosecute which is published on the Law Officers' website.

16. The States Police Discipline Code is very similar to the Honorary Police Code. It is well known the States Police do not take prosecution decisions. Nor should they. The fact that the Honorary Police and States Police Discipline Codes are so similar also tends to suggest that the Discipline Code for Honorary Police is not aimed at prosecution decisions.
17. Furthermore, there is power under the Police Force (Jersey) Law 1974 at Article 3 for the Attorney General to give directions to a Centenier who has declined to charge a person. As is underlined in the Devonshire Hotel case to which I have made reference above, that authority given to the Attorney General is entirely lawful. It arises because the States recognised that the Attorney General is in charge of the prosecution service, and therefore should have the power to direct a Centenier to prosecute. Because the Attorney General also has the Crown's discretion to issue a *nolle prosequi*, it follows that the Attorney General can also direct a Centenier not to prosecute.
18. The Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949, provides at Article 5:

"Nothing in this Law shall derogate from the powers of the Attorney General to institute proceedings before the Royal Court in respect of any offence."
19. Once again, this provision is one where the States have recognised that the Attorney General has a discretion to prosecute, and it is a recognition which impliedly accepts the historical position that the Attorney General as a Crown appointment is in charge of the prosecution service.

The procedure under the 1999 Law for handling complaints

20. It is worth looking at the procedure for handling complaints about members of the honorary police. Upon a submission of a complaint to a Connétable, the complaint should be recorded in the register and the Attorney General notified that the complaint has been made. If the Attorney General is satisfied that a complaint may be dealt with informally, he should direct the Connétable to deal with it in that way. The Attorney General may not direct that a complaint be dealt with informally unless he is satisfied that the conduct complained of, even if proved, would not justify a criminal charge or a disciplinary hearing.
21. If the Attorney General is satisfied that a complaint may not be dealt with informally, he is to notify the Police Complaints Authority of the complaint and direct the Connétable to request the Chief Officer to appoint a member of the Force to carry out an investigation.
22. These provisions cannot easily be reconciled with what this Proposition seeks. It is clear that the Attorney General's powers to direct a Centenier either to prosecute or to cease a prosecution, or to start fresh proceedings of his own in the Royal Court, all remain. If the complaint about the Centenier is that he has not prosecuted a suspect when the complainant considers that the suspect should have been prosecuted, there seems little point in the Attorney General referring that matter to the Connétable to deal with it informally. One cannot expect the Connétable to take a charging decision. But if he or she did investigate the matter and then supported the Centenier, and the complainant is not satisfied, he can still ask the Attorney General to overrule the Centenier and to prefer a charge. The Connétable is in effect being asked to waste his time seeking informal resolution when he himself no longer takes prosecution decisions and when his views as to what should take place have no finality.
23. There would be no point in the Attorney General determining that the complaint should not be dealt with

informally and directing the Connétable to request a member of the States Police Force to carry out an investigation, because ultimately the decision which had to be reviewed was a prosecution decision, which would be for the Attorney General in any event.

24. Similar considerations apply if the complaint concerns a decision to prosecute. Once again, the Attorney General is in the position of directing the Centenier to cease the prosecution, if he thinks fit. There is no point in asking the Connétable to resolve the matter informally, because the Connétable does not have the power to direct that the prosecution should cease, and there is no point in the Attorney General directing the Connétable to appoint a member of the States of Jersey Police Force to carry out an investigation, because the upshot of the investigation would be a decision by the Attorney General as to whether the proceedings should continue.
25. For these reasons, I reached the view some years ago that the 1999 Law simply is not consistent with treating complaints about a prosecution decision as a “*complaint*” for the purposes of that Law. I have canvassed that view with the Chairman of the Police Complaints Authority, who shares it.
26. There may be some members who consider that prosecution decisions should not lie within the authority of the Attorney General. That is a completely different issue, and one which presumably will be canvassed in the proposed review of the rôles of the Attorney General. The point I seek to make in these comments is that for as long as the Attorney General does have the responsibility for taking prosecution decisions, the legislation that exists which enables a full oversight of those decisions is simply inconsistent with the disciplinary process which the 1999 Law envisages.
27. For these reasons, I invite members to share the view that this Proposition is inappropriate.

H.M. Attorney General