STATES OF JERSEY

COMMITTEE OF INQUIRY: ACTIONS TAKEN BY THE R.N.L.I. AND THE JERSEY GOVERNMENT WHICH LED TO THE REMOVAL OF THE ALL WEATHER LIFEBOAT (P.36/2018) – AMENDMENT

Lodged au Greffe on 26th February 2018
by Senator S.C. Ferguson

STATES GREFFE

COMMITTEE OF INQUIRY: ACTIONS TAKEN BY THE R.N.L.I. AND THE JERSEY GOVERNMENT WHICH LED TO THE REMOVAL OF THE ALL WEATHER LIFEBOAT (P.36/2018) – AMENDMENT

PAGE 2, PARAGRAPH (a) –

After the words "taken by the R.N.L.I. and the Jersey Government" insert the words –

", the Ports of Jersey and the former R.N.L.I. Lifeboat Crew".

SENATOR S.C. FERGUSON

Note: After this amendment, the proposition would read as follows –

(a) to agree that a Committee of Inquiry should be established in accordance with Standing Order 146 to inquire into the circumstances leading to the formation of the J.L.A., in order to investigate the actions taken by the R.N.L.I. and the Jersey Government, the Ports of Jersey and the former R.N.L.I. Lifeboat Crew which led to the removal of the All Weather Lifeboat; and

(b) to request the Chief Minister to take the necessary steps to select a suitable Chairman and members to undertake the Inquiry and to bring forward to the States for approval the necessary proposition relating to their appointment and the approval of detailed terms of reference for the Inquiry.

REPORT

For the sake of clarity I am amending the proposition to ensure that its motives and intentions are fully transparent.

The following is an extract from a U.K. Human Rights document entitled "Independence and public inquiries – why you need it and how you can lose it". You will note that in the U.K., the Inquiries Act 2005 contains provisions intended to secure and display the suitability and impartiality of those charged with conducting a statutory inquiry.

In Jersey we still seem to have arrangements put together in Cyril Le Marquand House. This inquiry is designed to draw out the truth – nothing more, nothing less.

> *"There is a scene in "Yes Minister" in which the beleaguered Jim Hacker is contemplating a public inquiry into the latest failing of his department. He warily suggests to his Permanent Secretary, Sir Humphrey Appleby, that perhaps the judge chairing the inquiry could be leant on to come up with a favourable outcome. Sir Humphrey is outraged at this violation of the separation of powers. Surely the Minister wasn't serious? After all, wouldn't it be better to appoint a judge who didn't need to be leant on in the first place?*
>
> *Times have changed since the careers of Hacker and Sir Humphrey. The Inquiries Act 2005 contains provisions intended to secure and display the suitability and impartiality of those charged with conducting a statutory inquiry (see in particular s.8 and 9). When it comes to appointing a judge, the Act provides that the minister must consult with the Lord Chief Justice or another relevant senior member of the judiciary (s.10). Sir Humphrey would be disappointed.*
>
> *And yet the precious commodity of independence can still be lost or compromised in a number of ways in the course of a public inquiry. Jim reflected on the difficulties of a government department sponsoring an inquiry in which its own conduct was under scrutiny. While, as he says, this may be more of a question of perceived rather than actual bias, it can still be an uncomfortable arrangement. This is particularly so given the recent tendency to staff public inquiries with significant numbers of civil servants. In 2015 the Centre for Effective Dispute Resolution recommended that inquiries be established and administered by an independent inquiries office, both for reasons of independence and to ensure that there was an institutional memory of how best to undertake such endeavours. The recommendation was not adopted. It is, perhaps, worthy of reconsideration.*
>
> *Then there is the use by ministers of non-statutory inquiries or panels. Undoubtedly there's a role for such bodies when the full bells and whistles of a 2005 Act inquiry would prove unnecessary, counter-productive or unduly cumbersome. Yet there are also dangers. Ministers will appoint the panel according to their own criteria; Sir Humphrey would approve. The processes then adopted may be opaque and are unlikely to be as robust as those imposed by statute – cumbersome as they may be, they serve an important forensic purpose. The final product sits in an uneasy limbo somewhere between official and autonomous. Simply adding the word 'independent' to the title of the body or its report does not necessarily make it so.*

It must also be remembered that independence cuts both ways. It is not just being impartial and nonaligned so far as the government are concerned; the same must apply in respect of all participants and institutions involved. Sir Martin Moore-Bick resisted calls to appoint assessors to the Grenfell Tower inquiry who were drawn from the affected community, rightly emphasising that this would compromise the inquiry's impartiality. The same result would occur if victims and survivors were to take part in the process leading to the appointment of an inquiry chair. Further, independence can be threatened not only by ministerial interference, but also by backbench or Opposition politicians trespassing into the judicial sphere from the political one. The boundary line can be perilously difficult to discern.

This brings us back to the concerns that must accompany the judicial pride in the clamours for the use of independent judges in contentious inquiries. Independence is not always popular and is not always accepted. There is much less deference to judges than in the past, and a much greater willingness to subject them to ad hominem attacks. This rise of scepticism is, paradoxically, occurring at a time when there are greater and greater expectations of what inquiries can consider and what they can achieve. Terms of reference have become broader, taking judges beyond their traditional roles as finders of fact and asking them to make determinations on the culture and ethics of entire professions, or the efficacy of a method of policing over a 50 year period. It is questionable whether judges are well placed to be arbiters of a zeitgeist. The danger is that over-expectation or over-reach will lead to disappointment and worse. This in turn may bring judicial inquiries and even judicial independence into question, deservedly or otherwise.

To finish with an historic example, following the deaths of 13 civilians on Bloody Sunday the judge who had just been asked to chair the public inquiry into the events, Widgery LCJ, was invited to Downing Street for a discussion with the Prime Minister, Edward Heath. The Prime Minister there reminded the Lord Chief Justice that "we were in Northern Ireland fighting not only a military war but a propaganda war." In line with the best civil service traditions, this inappropriate and damaging intervention was carefully minuted and preserved. Hacker would have approved of the Prime Ministerial leaning, Sir Humphrey of the record-keeping."

From One Crown Office Row UK Human Rights Blog – Matthew Hill – 9/11/2017.

Financial and manpower implications

There are no additional financial or manpower implications for the States arising from the adoption of this amendment.