

OFFICE OF FAIR TRADING: ESTABLISHMENT

**Lodged au Greffe on 11th June 2002
by Deputy A. Breckon of St. Saviour**



STATES OF JERSEY

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PROPOSITION

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

- (a) to agree, in principle, that upon the introduction of a ministerial system of government there should be established an Office of Fair Trading which shall be independent of the executive and under the supervision of a Board appointed by the States, comprising a Chairman and Vice-Chairman being members of the States who are not members of the executive, together with up to ten other persons, with the Office having responsibility for the matters set out in the report of Deputy Alan Breckon of St. Saviour dated 11th June 2002; and
- (b) to request the Policy and Resources Committee, in conjunction with the Industries and Privileges and Procedures Committees, and any other Committee concerned, to bring forward for approval detailed proposals on the establishment of the Office of Fair Trading.

DEPUTY A. BRECKON OF ST. SAVIOUR

- Notes:
- 1. The Finance and Economics Committee's comments are to follow.
 - 2. The Human Resources Committee's comments are to follow.

Report

The Policy and Resources Committee seems to have overlooked the fact that it is almost inconceivable in other jurisdictions for the cabinet of a Government (or Minister?) to have direct control and responsibility for certain functions which should more rightly be in the public domain. In some areas a degree of independence and distance from the power base is desirable with easy accessibility for the general public and also a considerable degree of transparency - this will not happen with Policy and Resources' proposals, as functions become "ring fenced" e.g. why not have "independent" production of statistics?

Rather than an individual States member with little or no resources detailing a comprehensive case or plan for the exact workings of an Office of Fair Trading, perhaps it would be more appropriate for the well resourced Policy and Resources Department to co-ordinate and make a case for why some of the suggestions set out below should not happen.

For guidance their Reports may begin, "I should not be part of a Jersey Office of Fair Trading because.....".

The Policy and Resources Committee is proposing that there should be ten departments of government in a ministerial system as detailed in Appendix 2 of P.70/2002 (Machinery of Government: proposed departmental structure and transitional arrangements).

At paragraph 1.12 (pages 38 and 39) of P.70/2002 it states -

"1.12.1 It is proposed that the following services should lie outside the structure of the ministerial departments -

- **States Greffe;**
- **Attorney General's Chambers;**
- **Official Analyst's Laboratory;**
- **Probation and After-Care Service;**
- **Judicial Greffe;**
- **Viscount's Department."**

With the exception of the States Greffe, the other "departments" are connected with access to services related to the justice system. However; I believe this leaves a rather large gap.

My proposition seeks to create a department (an Office of Fair Trading) with roles, responsibilities and functions, which is not under the direct control of the ministerial system but has links and access to it and the political systems via the role and functions, constitution of an Office of Fair Trading.

A comprehensive department is required to give people adequate access to a range of services and information, and explain to people their rights and responsibilities and helps to promote fair play, justice, and provide remedy for everyday problems, at a level generally below the legal process - I believe Jersey needs an OFFICE OF FAIR TRADING, which is linked to, but has independence of a central Government.

A JERSEY OFFICE OF FAIR TRADING would, I believe, develop and progress over a period of time for the unique situation that exists in the Island. While learning from the work, experience and achievements of others, offshore, in the United Kingdom, and in Europe and elsewhere, a proactive service to the community can be developed.

For example, Guernsey have a Trading Standards Department with a wider role and remit than Jersey's, and the Isle of Man have an Office of Fair Trading, again with more open public access and a very welcoming attitude. Jersey residents have, in the main, to rely on the heroic efforts of the Citizens' Advice Bureau.

Some would say this (intervention) is **not** the role of Government - others, including myself, would disagree.

Who should be considered to be there?

- Financial Service Commission;**
- Data Protection;**
- Independent Statistics Unit;**
- Trading Standards;**

**Jersey Advisory and Conciliation Service;
Jersey Competition Regulatory Authority;
Law Commission;
Criminal Injuries Compensation Scheme;
Environmental Health.**

There are many other existing roles and functions that would comfortably fit under the umbrella of an Office of Fair Trading, other possibilities to consider which could become part of an **effective** Office of Fair Trading are -

**Rent, Rates and Employment Tribunals;
Freedom of Information (and access to);
Human Rights information;
Racial Discrimination information;
Community Relations Trust;
Jersey Consumer Council;
Jersey Police Complaints Commission;
Health and Safety Inspectorate;
Review Boards.**

Possible conflicts of interest - The body of the Report attached to P.70 of 2002 contains a number of comments which are worth repeating and are also in need so some scrutiny at this early stage.

Page 9 of P.70/2002 -

“3.8 One of the Committee’s guiding principles has been the extent to which its proposals will maintain and enhance the current level of service to the public. Indeed, this could be said to be a guiding principle for all the machinery of government reforms. The introduction of an executive system of government, combined with a system of scrutiny, will result in a system that is more responsive, more decisive, and more effective in serving the public of Jersey.”

Also, at page 7 -

“3.2 It is self-evident that States departments should be ‘accountable’ to the public. Indeed, in recent years, there has been a tendency for this accountability to become more transparent through, for example, the widespread publication of annual business plans and performance indicators, and debate in the media.”

To me this is a very dubious statement about being accountable - before and after - disguised in a business plan or as a performance, indicator, with debate in media. The general public, or indeed most States Members, do not read business plans and monitor performance indicators.

4.2 (page 10) Chief Ministers Department

4.2.1

- **Law Commission** - Is this appropriate?
- **Jersey’s statistics (including responsibility for the Census)** - Is this appropriate?

4.3 (page 11) Economic Development

This title could be considered (by some) to be mainly promoting business interests. There appears to me to be some obvious conflicts of interest. (the bullet points on page 6) set out key principles to underpin the new system of government, one of which is **“an appropriate separation of regulatory and operational functions”**.

The content of the Report suggests bringing together roles of operation and regulation as set out in paragraph **4.3.1**.

Agriculture and Fisheries	Tourism
Harbours and Airport	Jersey Transport Authority
Telecoms	Postal
Employment Policy and legislation	

Some very real conflicts with the above

Jersey Harbour and Airport
(As separate entities)

- *- linked to Jersey Transport Authority*
- *- is this a conflict - what about travellers?*
- *- here we have the poacher and the gamekeeper*

4.5.3. Environment Department

As the Report suggests, there needs to be careful consideration to separate operational, promotion and regulatory functions.

4.6. Health and Social Services

At 4.6.2. the Report suggests some change for the Environmental Health Unit - this should, I believe, include a greater degree of independence.

4.7. Home Affairs

No mention is made of the Jersey Police Authority or Jersey Police Complaints Authority, which need to (and be seen to be), independent.

It is suggested in the Report that the Health and Safety at Work Inspectorate should be transferred here from Employment and Social Security - it would fit in an Office of Fair Trading and be independent for “**inspection purposes**”.

4.8. Housing

Again there could be some conflicts as the general public need a system which allows them to seek information and, when necessary, test and challenge the Law and Regulations that have been applied to them - quite properly, I believe, through an Office of Fair Trading - not the Department that handed it out.

4.9. Public Services

Again, distinction is required between operational, promotional and regulatory functions, and part of this may sit with an office of Fair Trading.

- **4.9.2.** As an aside, the Public Services Department no longer has responsibility for Car Parks - neither does anyone else?

4.10 Social Security

Again, conflicts are possible, moving “employment” to Economic Development causes a conflict between promotion and regulation (protection issues) - access to a tribunal must be separate under an Office of Fair Trading giving access to the Jersey Advisory and Conciliation Service.

Increasing benefits (and Housing) and providing a one-stop-shop should provide for an appeal system this would fit with an Office of Fair Trading.

Health and Safety does **not** fit readily into a Home Affairs Department and would fit with an Office of Fair Trading, as mentioned above.

General

The general public must feel that they have access to and are an integral part of the “**system**” and not apart from it.

This could be demonstrated if a more proactive stance was taken on matters such as -

Consumer Legislation - which is required in a number of areas;

- Unfair contract terms,
- Consumer credit,
- Misleading advertising,
- Sale of goods, and services,
- Distance selling, etc., etc.

The continuing absence of a meaningful Law and an appropriate selection of regulations to “**encourage**” fair trader(s) does Jersey consumers and traders a disservice and also does not create a very favourable impression to the outside world - less developed economies have greater consumer protection and rights.

The subject has been “**consulted to death**” - but not converted into positive action. Stronger measures are required for enforcement.

An Office of Fair Trading would provide a central and comprehensive point of contact and have benefits for people and Government.

Jersey Competition Regulatory Authority

The role and functions of a progressive JCRA fit more readily into an Office of Fair Trading than under direct minister/cabinet influence.

Positive promotion, progress and functions will come more readily as part of an Office of Fair Trading. This will be an important cog in the wheel.

Teeth

An Office of Fair Trading should be given powers to act against miscreants, as well as protecting consumers, explaining their rights, and ensuring that businesses compete and operate fairly.

Progress

For example, **STOP NOW** powers have recently been extended to the Office of Fair Trading in the United Kingdom and they can apply to a County Court for a “**STOP NOW**” order against a business allegedly harming the collective interests of consumers, e.g. dodgy plumbers, kitchen fitters, window or conservatory installers, such powers in Jersey, would provide much needed comfort for **many** aggrieved consumers and provide a powerful remedy for improving service and civility to the general public.

Ombudsman Service

In larger jurisdictions and ombudsman service can be specific for/to a trade or industry or an area of business. Recently in the United Kingdom there have been moves to amalgamate some of the ombudsman responsibilities in financial services and Jersey has been under some pressure (Edwards Report) to provide a Financial Service Ombudsman - if this is to progress any such service should, I believe, come under an Office of Fair Trading and be part of a wider service that gives a degree of access to Jersey consumers.

Manpower and funds

Most of the existing “parts” that would form an Office of Fair Trading are already resourced under Committee and/or Departmental functions and responsibilities, so it would **only** be a procedural and administrative matter and this should be referred to the Privileges and Procedures Committee along with any matters that may impinge on Standing Orders or the States of Jersey Law.

The funds with Committees or Departments should go with the functions that are transferred to an Office of Fair Trading. Further funds if required can be raised through charges on those who register with Financial Services Commission, whether as individuals or as companies.

Political Accountability and Constitution

A Board would be set up to oversee the role and function of an Office of Fair Trading.

The Chairman and Vice-Chairman shall be members of the States, elected by the States, from amongst their number, who shall **not** be members of the Council of Ministers.

Up to ten other members of the Jersey community would be nominated by the Chairman and Vice-President for approval by the States after appropriate advertising, publicity and a selection process.

This would include a period of public consultation - with nominations welcomed from all sections of the **Jersey** community drawing on the wealth of experience that exists.

The Office of Fair Trading Board would produce regular reports and information for the States, including an annual report.