

**WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY DEPUTY M.R. HIGGINS OF ST. HELIER
ANSWER TO BE TABLED ON TUESDAY 28TH JUNE 2016**

Question

Will H.M. Attorney General publish the source of his powers exclusively to conduct all criminal prosecutions in Jersey? Will he further identify the legislative provisions that cover his role in overseeing the charging decisions of Centeniers in Parish Hall Inquiries and in the Magistrate's Court and his power to discipline Centeniers for any infractions or failures in their duties with regard to their role in prosecutions?

Answer

The exclusive power of the Attorney General to bring criminal prosecutions is a customary law power confirmed subsequently by statute.

An Order of the Privy Council of 23 November 1749 declared that:

“the Procureur is the superior officer and the proper person to commence and carry on all criminal prosecutions...”

The 1847 Commissioners' report on Criminal Law confirmed this position. The then Bailiff of Jersey, Sir John de Veulle, stated :

“In all criminal cases, or such as partake with that character, without exception, the Attorney General is, ex officio, public and only prosecutor, by whom all proceedings against a party accused are instituted and conducted”.

The position was summarised thus in Charles Le Quesne's 1856 “A Constitutional History of Jersey”:

“He is, from his office, public prosecutor. No individual is allowed to prosecute for crime, except the Attorney-General, on behalf of the Crown. All reports of the police to the Royal Court are to be presented to him, and the accusations against prisoners, in consequence of those written reports, are brought forward by him ... He is the upholder of public order, and can prosecute for all crimes and misdemeanours.”

This was enshrined in statute by Article 6 of the “Loi (1864) Régulant la Procédure Criminelle” as follows:

“Les poursuites auront lieu au nom du Procureur-Général; mais l'Avocat-Général pourra conduire la cause et prendre la parole, soit en la présence soit en l'absence du Procureur-Général, selon qu'ils en conviendront”[Prosecutions shall be undertaken in the name of Her Majesty's Attorney General, but Her Majesty's Solicitor General may conduct the case and make speeches, either in the presence or in the absence of the Attorney General, as they may agree].

The Attorney General's customary supervisory role over the Honorary Police is also confirmed by statute. Article 4 (3) of the Honorary Police (Jersey) Law 1974 (the 1974 Law) provides that “...the Honorary Police shall be under the general supervision of the Attorney General” and Article 3(4) of the same Law provides that:

“Where a Centenier declines to charge any person, the Attorney General may give such directions to such persons as the Attorney General thinks appropriate.”

The 1974 Law confirms the power of Centeniers to charge, but “*without prejudice to the customary powers of the Attorney General in the prosecution of offences*”.

Any failures on the part of a Centenier in respect of his or her role as prosecutor will be considered and determined by the Attorney General pursuant to his customary and statutory powers referred to above, having regard to the relevant provisions of the disciplinary code contained in the Schedule to the Police (Honorary Police Complaints and Discipline Procedure (Jersey) Regulations 2000).