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Senator K Moore
Chair
Corporate Services Scrutiny Panel
Morier House
St Helier

Dear Senator Moore

CORPORATE SERVICES SCRUTINY PANEL – APPOINTMENT OF JURATS

Thank you for your letter of 12 January 2022, which you have written as a result of the Corporate Scrutiny Services Panel's consideration of P116/2021 Draft Royal Court (Amendment No. 16) (Jersey) Law 202- (P.116).

The question that your letter addresses is important and is certainly one that has been considered from time to time by the Jurats as a group. It was, in part, as a result of those considerations that P.116 came into existence.

The office of Jurat is, of course, an ancient one and it has undergone a number of changes over its existence, for example when the Royal Court itself ceased to be a legislative body and became solely a Court of Law and subsequently Jurats ceased to be members of the States.

It used to be the case that Jurats were elected by the public at large. This resulted, as I understand it, in the politicisation of the office of Jurat. It is important that the Jurats, who amongst other things are the judges of fact in the Royal Court and provide the larger number of returning officers for elections to the States Assembly, maintain independence and are not in any way seen as politically influenced.

There is a query in the second paragraph of your letter as to the apparent imbalance in the Electoral College in favour of those who are either qualified lawyers or already Jurats.

The Electoral College does not ever contain all of the members of the legal profession who would in theory be entitled to participate and, whilst I have not counted recently, if I were guessing, I would suspect that a little more than 100 members are likely to attend.

There is, nonetheless, an imbalance in numbers between the members of the legal profession and members of the States Assembly who attend the election of a Jurat on any occasion.

Because of the functions of Jurats, two of which I have mentioned above, I can well understand how the system evolved to have Jurats elected by the States Assembly and the legal profession. The latter's contribution probably comes about as members of the legal profession, particularly those who attend Court, will have an insight into and understanding of the duties of Jurats and the qualities needed for an individual to be a Jurat of the Royal Court. It is essential in my view that those qualities are maintained and fostered within any system appointing Jurats. We have in the current Jurats and in their predecessors a tradition of public service by people of proven ability, intelligence, judgment, humanity and integrity.

It may be that the reason that a broader range of members of the public do not put themselves forward for election as Jurat is because to an extent it is not understood widely what Jurats do. Efforts have been made to address that.

The Panel may have noted that steps have been taken in recent times, in particular with media interviews of retiring Jurats, and advertisements for replacement Jurats, to begin to address that information gap.

A change in the terms and conditions of service of Jurats as set out in P.116 is another modest but important step in that direction by making it easier for people to serve as Jurats.

Changes to the Electoral College should however be approached with the utmost care and after full consultation. In the time available to me to respond I am able to offer only the most cursory view and a much more detailed consideration of these issues is important.

In the past, the Jurats were entirely male. That has changed in relatively recent times and the gender composition of the College of Jurats is now 50:50 and may indeed at the next election move to a majority of female Jurats. This equality is not only to be welcomed but is illustrative of the fact that the College of Jurats has changed with the times and is taking active steps to ensure that the office reflects the needs and expectations of our society.

You refer to exploring ways to keep in with the ideals of the community in the 21st Century and the overriding objective of the Criminal Procedure (Law) Law 2018, which was to ensure that cases of criminal proceedings are dealt with justly. I am not entirely sure as to what point that reference is addressed.

Certain trials take place before Jurats (as opposed to a Jury) and others can take place before Jurats if defendants make such a choice.

The role of the Jurats has been considered by the European Court of Human Rights and has been found to be human rights compliant. In *Snooks & Dowse v UK* (2002 JLR 475) A case in the European Court of Human Rights the Court held:

“The manner of the Jurats appointment and their terms of office were sufficient guarantees of independence and impartiality to satisfy Article 6(1) i.e. they were appointed by an Electoral College, in which advocates and solicitors predominated, they remained in office until retirement at the age of 72, and they could not be removed unless the Bailiff and at least seven other Jurats petition the Queen in Counsel this part of the application was manifestly ill founded and was therefore inadmissible”

I am not aware of any basis for suggesting that the Jurats do not deal with criminal proceedings in any manner other than justly.

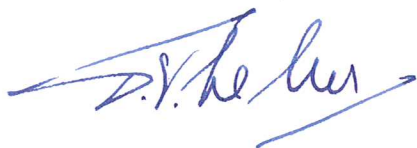
I hope the Panel will not mind that I have made these preliminary points but I thought that it was important to do so before expressing my views on the numbered paragraphs in the letter under reply. Turning now to those paragraphs, however, and using the same numbering I respond as follows:

1. There are a number of theoretical means by which the Electoral College could be changed to provide for more people voting within it. As I have mentioned, in years gone by, Jurats were voted on an Island wide basis and this was seen as politicising the office. In theory, restrictions could be placed upon the Electoral College to ensure a greater balance between members of the legal profession and the States Assembly. I cannot immediately see how a mechanism could be put into place to increase the breadth of membership of the Electoral College but of course that is a matter for further consideration.
2. As I have already mentioned, there has been a push in recent times to make the office of Jurat more visible to members of the public with a view firstly, that it is understood better and secondly, that suitably qualified members of the public might consider applying for that office. It may be possible to increase the public profile both of the office of Jurat, its importance in the island, and the electoral process for that office in a number of ways. You will be aware of the office of Jurat has an age range restriction but to alter that age range would have consequences and would require the most careful consideration.
3. It is difficult to address how the Royal Court (Jersey) Law 1948 might precisely be amended to "bring it in standing with modern thinking." I confess I do not know what that means if it is intended to mean anything other than the questions posed by the preceding two paragraphs. Accordingly it is difficult for me to offer any suggestions.

Whilst I do not feel able to address the questions exactly in the terms that they have been asked I hope the above has provided some assistance to the Panel. I would be very happy to meet with the Panel to discuss in more detail any concerns that the Panel may have identified or indeed any of the issues mentioned above.

I would hope, however, that the Panel's understandable enquiry will not give rise to a delay in the passage of P.116 before the Assembly. Should, after careful consideration, there seems to be any other reason to amend the process for the election and appointment and terms of office of Jurat then I would suggest that this be brought by a further separate amendment to the Law to enable the relatively modest but important changes encompassed in P.116 to proceed without delay.

Yours sincerely



Bailiff