

STATES OF JERSEY



VOTE OF NO CONFIDENCE: THE BAILIFF OF JERSEY

**Lodged au Greffe on 25th June 2008
by Deputy S. Pitman of St. Helier**

STATES GREFFE

PROPOSITION

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

that they have no confidence in the Bailiff as President of the States, and to agree that Her Majesty be requested to dismiss him from office.

DEPUTY S. PITMAN OF ST. HELIER

REPORT

Preamble

It is surely the most important task of any individual elected to office to be prepared, no matter how difficult or controversial, to do what is in the best interests of the people. This then, I assure my fellow States Members, is why I now bring this proposition forward.

For far too long it has been portrayed by some that any challenge to the political status quo, whether that be within the anachronistic dual role(s) of the Bailiff or otherwise, is in some way a personal attack. Indeed, I feel it must be added that there have been some who have even warned me off about *any* challenge or criticism toward the Bailiff. To those I say without apology, there is not a single thing whether position, tradition, regulation or protocol that is sacrosanct if it may be proven to undermine the best interests of the people of Jersey. As the old saying goes, 'the people are all - those who would genuinely serve them are secondary and should rejoice in that'.

This proposition to call for a vote of no confidence in the Bailiff is grounded firmly in the incompatibility of recent actions and public statements set against the expected high standards of his role. Thus, for the specific reasons I outline below, I feel that such is the damage to public confidence in the Bailiff's judgement, that I feel his position is now untenable.

Key background

In laying out for the Assembly my underlying concerns in bringing this proposition, I am mindful that of the 3 specific incidents to which I will refer, one, though only recently coming to full light, has its roots at a time when the present Bailiff previously held the position of Attorney General. It might be seen as unusual to ask for consideration of such a circumstance to be accepted against an individual's ability/ suitability to continue in a different office, I fully accept.

However, it is the gross error of judgement demonstrated here and the nature of the Bailiff's defence upon this incident coming to light within the climate of community-wide shock and abhorrence arising from the current child-abuse investigations, that I think makes it relevant.

Bailiff's Statement to BBC on the Roger Holland affair (1992) – 17th April 2008 (APPENDIX 1)

I do not feel it is necessary to labour over repeating details now well-aided within the public arena, members of this Assembly will by now be painfully aware of them. Nevertheless, it is necessary to include basic details of this regrettable incident as this serves to put the first point underlying this 'no confidence' proposition into context.

The core fact marking this action on behalf of the man later to become our present Bailiff is essentially this: following on from what must be acknowledged to be a less than glowing example of the process ensuring only suitably safe and trustworthy individuals are accepted into the Honorary Police force – it came to the attention of the Bailiff (then Attorney General) in 1992 that Roger Holland, recently sworn in as a Constable's Officer, had a previous conviction for indecently assaulting a 14 year old girl (this child having the assessed mental age of just 10).

The Bailiff (as Attorney General) chose to do nothing about initiating the removal of this convicted paedophile from office. Shocking enough in itself, it is the Bailiff's subsequent justification, 16 years later, that I find as clear indication of his unsuitability to continue in the role of Bailiff. I quote from his statement –

'The facts confronting me were a man who had expressed a wish to give voluntary service to his parish; had been honest about his convictions...'

I put it to Members – this of a man who was a convicted paedophile...

And just as damning –

'I quite understand the reactions of the victim's father as reported on the BBC... but in context, on facts known as known at the time – 1992, when not as much was known about the long-term paedophile tendencies of those abusing children, and before the rash of child abuse investigations which took place in the UK in the 1990's – I hope the decision seems more understandable'.

The above judgements made by the Bailiff (in his then role as the Attorney General) clearly illustrate that by allowing Mr. Holland to become/continue as an honorary policeman, was a gross error of judgement and failure to the safety of the Jersey public, and in particular, young women and girls.

Since becoming Bailiff, in 1999 he published an article in the Jersey Law Review (**APPENDIX 2**) about his role as Bailiff –

'... in a real sense (the Bailiff) is also accountable to the people of Jersey...'

Furthermore, that the Bailiff should –

'...uphold and maintain the laws and usages and the privileges and freedoms of this Island and that you (the Bailiff) will vigorously oppose whomsoever may seek to destroy them'.

As can be seen, the (now) Bailiff did not adhere to his own principles of upholding the privileges and freedoms of the girl who was sexually assaulted by Mr. Holland, her family and the Jersey public. Further still, I am of the strong opinion that his decisions at the time have led to little public confidence in him as the President of the States of Jersey.

Whether this should be through simple insensitivity, incompetence or gross negligence I put it to the Assembly is, quite frankly, all but irrelevant. It is my contention that had revelation of the original gross error of judgement back in 1992 not damned him the Bailiff's truly unbelievable contention in April of this year that "not as much was known about the long-term paedophile tendencies of those abusing children" surely does so: I put it to the Assembly: this was 1992, not 1852, not even 1952 – just 16 years ago!

The Bailiff's Liberation Day Speech (APPENDIX 3)

Few of us within this Assembly will quickly forget the events surrounding Senator Syvret's 2007 Christmas address as Father of the House. The content of the Senator's speech is of no relevance to the context of this proposition. However, having ended the Senator's speech and condemned him for making his points at an inappropriate time, within a matter of just a few months we then see the Bailiff doing the same – utilising another long-established tradition – in this case the Liberation Day address.

If Senator Syvret was misguided in his use of the Christmas address in the Bailiff's judgement, what utter hypocrisy was this, what double standards and ill-judged foolishness.

I ask this Assembly to consider: was Liberation Day, a date so emotionally locked within the hearts of so many Islanders, brave men and women who suffered then and in many cases are still suffering more than 6 decades later, an event where a Crown appointed official of the highest tier of rank would be expected to show such insensitivity and colossal lack of judgement? I quote –

'All child abuse, wherever it happens, is scandalous, but it is the unjustified and remorseless denigration of Jersey and her people that is the real scandal'.

The Bailiff further spoke of there being as yet –

'No bodies, no evidence of any murder, and no evidence of cover-ups by government'.

In the most basic sense this may yet be true. Yet with almost daily discoveries of clear evidence, both physical finds and heartbreaking testaments from an ever-growing number of former residents that all within the walls of

Haut de la Garenne was clearly not as it should have been, but was in fact a place of torment for some of those in society who were most vulnerable – were these the words and actions of a man fit to preside as head of both the Island’s judiciary and legislature?

Were these the words to inspire confidence in a public reeling from the shock of what has recently come to light? Perhaps even more tellingly, to inspire reassurance and confidence in those who have been abused and suffered that they will eventually receive justice?

Further, to act in a manner seemingly demonstrating a belief that he is above and removed from the same standards he would impose upon others can do nothing other than transmit to the ordinary working people of Jersey a message of arrogance and double standards. It is not acceptable!

Bailiff’s disregard for the ‘apolitical’ mandate of his role: Keynote Address – Liechtenstein Dialogue (APPENDIX 4)

In highlighting this further example I am aware that there may well be some who will argue that the issue at hand is a subjective one, even that this is not of any real importance. To argue so, however, I believe is to completely overlook the fundamental democratic point at hand; just as importantly set within the context of this proposition this would ignore yet further evidence of an individual lacking the judgement and political sensitivity that is demanded of his appointed role.

– *“What is the Bailiff? He has **no political functions** or authority.”*

Words not written by a disgruntled politician or some independent review committee such as Clothier – but by the Bailiff himself within his keynote address at the Liechtenstein Dialogue on 6th October 2006. Yes... the Liechtenstein Dialogue... a high profile gathering focussed on the highly political issue of the future of international financial markets and taxation strategies.

The Bailiff’s role is an apolitical one and should at all times remain so. This was set out quite clearly when the role first came to be. As far as I am aware, and I make no claim to be a fully-fledged constitutional expert, nothing has come to pass over the following years that have seen this apolitical mandate be refined.

Yet here, once again, we see this Bailiff failing in his judgement, displaying disregard for protocols and constraints that he would, as President of the States Assembly, be quick to castigate were they made by others. International financial markets and the intricacies of taxation are beyond doubt ‘political’ – the mandate of the island’s Bailiff was clearly intended not.

If the Bailiff wishes to become a politician (once again) then let him put himself up for the democratic process of election and seek to become one. This apparent lack of judgement or disdain to adhere to the mandate of his appointed role can only further damage public confidence in the impartiality of his position.

Conclusion

I fully accept there will be some who will struggle to separate these criticisms between the actions they highlight and the individual himself. But separate them we must, for as I made quite clear within the preamble: this is not a personal attack.

This proposition is about the inappropriate statements, actions and behaviour of an individual, the Island’s serving Bailiff that have both brought his position into disrepute and significantly damaged the public’s confidence in its Government as a result. These are serious issues which I feel Members must take into consideration. To shy away from this would be to do the people of this Island a deep disservice.

I believe we have no choice but to pass a vote of no confidence in this Bailiff and petition Her Majesty the Queen to remove him from office.

Financial and manpower statement

There are no financial manpower implications other than that associated with the dismissal and then appointment of a new Bailiff.

Statement from the Bailiff to BBC – 17th April 2008

This issue has of course been the subject of investigation by a Committee of Enquiry established by the States, and the 2002 Report of that Committee is in the public domain for all to see.

I am afraid that it is easy to be wise after the event. My decision in 1992 not to refer the election of Roger Holland as a Constable's Officer back to the Royal Court was made in good faith on the basis of the facts known to me at that time. With hindsight it is certainly possible to say that a different decision ought to have been made, particularly given the harm done to the victims of some of his assaults. We owe it to those victims to make sure that the Island is alert to the problems which arose, and to ensure that they do not arise again.

The facts have been in the public arena since 2002.

Holland, aged 21, indecently assaulted a young girl then aged 14 but with a mental age of 10, by trying to put his hand up her sweater in his car in 1986. He was put on Probation for 12 months and received psychiatric help. The Court lifted the Probation Order after eight months because Holland had responded well to it.

In 1991 Holland applied to join the Honorary Police of St. Helier and declared that conviction to the parochial authorities. That application was not immediately taken forward, but in March 1992, the then Connétable indicated to him that, as a result of the conviction, he would not be accepted as a probationary officer.

In June 1992 the matter was reconsidered at a St. Helier Honorary Police Meeting. None of the officers present opposed Holland's election and the view was reached that, if he was prepared to face possible rejection by the Court, he should be allowed to stand.

On 7th July, 1992, Holland was elected unopposed as a Constable's Officer. The following day, the Parish Authorities wrote to me as Attorney General to give notice, in accordance with standing practice, that Holland should be sworn-in before the Royal Court on 10th July. I was not advised of Holland's previous conviction and at that time I was completely unaware of it.

Accordingly the Royal Court was not told of the existence of the conviction when the Oath of Office was administered to Holland on 10th July, 1992.

I became aware of the conviction on my return from the Royal Court when an anonymous letter arrived in the Law Officers' Department. The Parish Authorities were asked for their views and responded that the Parish did not oppose Holland's wish to join the Honorary Service.

It is unclear what jurisdiction in law the Royal Court could have exercised had these facts been brought to its attention the following week.

Whatever the position in law, the facts confronting me were a man who had expressed a wish to give voluntary service to his parish; had been honest with the Parish Authorities about his conviction; had received psychiatric advice at the time of the offence and had been accepted by the Court as deserving of early release from a Probation Order on account of good progress made; had not apparently re-offended in similar fashion in the six years since; was standing for honorary office with the support of the Parish Authorities, and who had taken his Oath of Office before the Royal Court. I had to balance all those factors, when considering whether there should be a public reference to the Court.

I have said it is easy to be wise after the event. I quite understand the reactions of the victim's father as reported by the BBC. With hindsight, of course, I would rather a different decision had been taken at the time. But, in context, on the facts as known at the time – 1992, when not as much was known about the long term paedophile tendencies of those abusing children, and before the rash of child abuse investigations which took place in the UK in the 1990's – I hope the decision seems more understandable.

I have served the Jersey public for over 33 years. During that period, I am sure that I have made mistakes. But I have always sought to behave with integrity, which I believe to be the case in this matter. I have no intention of resigning over this issue.

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**The Cry for Constitutional Reform- A Perspective from the Office of Bailiff
Philip Bailhache (extract)****The Bailiff's functions today**

In a sense this close relationship between the Crown and the States is best exemplified by the office of Bailiff. The Bailiff is appointed by the Queen and holds office during Her Majesty's Pleasure. He is also the President of the States and the Island's chief citizen, and is paid out of the public purse. He is of course accountable to the Crown, but **in a real sense is also accountable to the people of Jersey and their elected representatives.** No Bailiff could long continue if he did not enjoy the confidence of the States. His office bridges the divide between Her Majesty's Government in Whitehall and the Insular Government. He is a Crown Officer but he is also the guardian of the islanders' privileges and freedoms under the constitution. The oath administered to the Bailiff provides **"that you will uphold and maintain the laws and usages and the privileges and freedoms of this island and that you will vigorously oppose whomsoever may seek to destroy them."** In earlier times, when the functions of the Bailiff were performed in the Island by a Lieutenant-Bailiff, the Bailiff himself would from time to time appear before the Privy Council to present the island's case. None of this is inconsistent with the Bailiff's status as a Crown Officer. The Bailiff's function in this context is to protect against attack the Islanders' privileges and freedoms conferred by kings and queens down the centuries. It matters not from where the attack comes, even if from Her Majesty's ministers in England. In that event the Bailiff leads the States in resisting that attack.

BAILIFF'S SPEECH ON LIBERATION DAY 2008

I am sure that many of those who were here in May 1945 will remember the old saying that one of the first casualties of war is the truth. This year we have learnt that even in peacetime, once a media bandwagon starts rolling, it is difficult to distinguish what is true from what is fictitious. Liberation Day is as good a time as any to take stock and to shake ourselves free of the misinformation to which the child abuse inquiry has given rise. It is extraordinary how quickly it all happened. It all started with the discovery of a fragment of a child's skull and a sniffer dog who showed interest in six different sites. Within days newspapers and broadcasters had converted that information into stories of finding six or more bodies of children, and within two weeks those stories had crossed the world feeding a frenzy of righteous indignation and further wild speculation. A cover-up by government was suggested, and there was incredulity that local people had not noticed these sinister events. Unjustified smears about wholesale collaboration during the occupation led to suggestions that the Island was full of dark secrets and that ours was a community that cared nothing for vulnerable children.

Now we know that the fragment of skull is at least 60 years old and possibly very much older than that. There are as yet no bodies, no evidence of any murder, and no evidence of cover-ups by government. Hardly any of this has been beamed across the world. Yet many journalists continue to write about the Island's so called child abuse scandal. All child abuse, wherever it happens, is scandalous, but it is the unjustified and remorseless denigration of Jersey and her people that is the real scandal. The truth is that we do not yet know what happened at Haut de la Garenne or in other places. What we do know is that a rigorous investigation is taking place and, in due course, a balanced judgement will be possible. A brave writer in the Guardian earlier this week was the first journalist in a national newspaper, so far as I know, to confront this truth.

Confronting the past, which is one aspect of confronting the truth, is of course not always easy. After all, it took us some time to confront the uncomfortable truths about the occupation; to acknowledge publicly the elements of collaboration and profiteering that took place; and to remember the suffering of the slave workers and the hardships of the deportees. It also took time to acknowledge the heroism of those who rebelled against the occupiers in ways large and small, and the courage of those who sheltered escaped prisoners at great risk to themselves. It was easier to try to forget the painful memories of enemy occupation. But we have now confronted the gremlins, and this annual celebration of Liberation Day is a means of remembering the lessons of the past. Of course, it is also the opportunity for those who were in Jersey on 9th May 1945 to recall the jubilation and intoxicating excitement that people felt when the nightmare was over and freedom was restored. This celebration is also the chance for younger people to learn more about the occupation, and its significance in the story of our Island race, and to honour the perseverance and courage of their elders.

Confronting difficult situations is sometimes no easier than confronting the past. I was struck recently by a letter in the Jersey Evening Post from someone who was comparing her own experience in the Island with the appalling report of a man in the north of England who collapsed and was dying by the roadside, and who was ignored by numerous motorists including one who drove over the poor man's leg and broke it. Our letter writer had also come across an injured man sitting on the side of a country lane and had watched as a driver in front of her carefully negotiated his car around the man and drove off. She stopped and called an ambulance, but was lamenting that such callousness could happen in Jersey. Sadly, such stories are as old as the hills. If only one person drove around the injured man, we are in fact doing rather better than the men in the biblical story where both the priest and the Levite passed by the injured traveller on the other side of the road before the Good Samaritan came along. The letter writer set a fine example. Confronting the situation and showing personal responsibility for one's actions are qualities to which we can all aspire.

I do not believe that Jersey is an uncaring society. On the contrary, there is a strong political will to protect the poor and vulnerable in the community and to correct any mistakes of the past. Of course Jersey is not Utopia, and there are many problems to resolve. But equally we have much for which to be grateful.

Today our guest of honour is His Excellency Dr. Alberto Jardim, the President of Madeira and I extend a very warm welcome to him and to Mrs. Jardim. Our own Musical Original singers have just returned from Funchal where they were royally received. I am delighted to say that we have a group of young visiting musicians from

Madeira in Liberation Square today. I hope that the President's visit will lead to many more cultural exchanges of this kind between two Island communities which have more in common than one might think.

I also extend a warm welcome to Colonel Alexey Korkach, Air Attaché from the Russian embassy and to Señor Alveraz Gamido, First Secretary to the Spanish Embassy, who will both be at Westmount this afternoon but who are also in the Square for our celebration this morning. And finally may I thank all the senior citizens from the parishes who have made this annual pilgrimage to Liberation Square. Whether you were one of those in occupied Jersey or one of those evacuated to the UK, you collectively kept alive the flame of freedom and worked to create out of the ruins of 1945 the vibrant and successful community we now have. Thank you.

**KEYNOTE ADDRESS OF SIR PHILIP BAILHACHE, BAILIFF OF JERSEY, AT THE
LIECHTENSTEIN DIALOGUE ON THE FUTURE OF FINANCIAL MARKETS**

Vaduz, Friday 6th October 2006

It is a great privilege to have been asked to address this Dialogue on the future of financial markets. I am not sure why this privilege has fallen upon me and perhaps when I have explained the functions of the Bailiff of Jersey you may share that uncertainty. But I shall do my best nonetheless to justify my presence here and the generous hospitality shown to my colleague and me by the Liechtenstein government.

I should like to say just a few introductory words about the constitutional position of Jersey in order to set in context my remarks about the present and the future. Jersey is in constitutional terms a Crown dependency; it is not a colony nor is it an overseas territory of the United Kingdom. The relationship is with the Sovereign and dates back to 1066 when William, Duke of Normandy, invaded England and seized the English Crown. Jersey was then part of Normandy and our loyalty to the Duke became loyalty to the King of England. The loyal toast in Jersey remains a toast to La Reine, notre Duc, the Queen, our Duke. In 1204 King John of England lost continental Normandy to the French King and, in order to retain the loyalty of the strategically situated Channel Islands, conferred a number of liberties and privileges, including the privilege of self-government. Jersey's domestic autonomy dates from 1204.

This is not an address however on the constitutional position of Jersey and I will say no more about it, but I wanted to underline the long-standing autonomy of the Bailiwick, which is one of the critical framework conditions underpinning its position as a financial centre. Jersey enjoys, as an ancient constitutional privilege, the right to govern its internal affairs, including its fiscal affairs, while the United Kingdom is responsible for defence and external relations. Experience in the last eight years or so has taught us that it is sometimes necessary to defend our own international interests, and that we cannot reasonably or fairly expect the UK government to protect them on every occasion. We do not yet have the sovereign status of Liechtenstein or Andorra, but we nevertheless seek a much greater responsibility for our external relations. But that too is another story.

And what is the Bailiff? Jersey is a Bailiwick, and the Bailiff is the civic head of the Island. He is not the Head of State, but he is appointed by and holds office under the Queen. The Bailiff is the president of the Royal Court and Court of Appeal (the Chief Justice), the president of the States Assembly (the national assembly), and the guardian of the constitutional privileges of the Bailiwick. He has no political functions or authority.

What then are the fundamental framework conditions to justify long-term confidence in Jersey as a financial centre, and what are the challenges for us? The constitutional position is not, I think, material. Whether Jersey remains a Crown Dependency or claims at some future date sovereign status is not a relevant consideration. Any transition to sovereignty would be consensual and orderly. I take it as axiomatic that the political stability enjoyed for a very long time will continue. Our political institutions are democratic and mature and have shown a capacity to change and develop in a measured way. I take it as axiomatic that the government of Jersey will continue to maintain a fiscal framework that is attractive to investors, as it has done for more than 40 years.

I also mention for completeness the judicial independence that has existed for a long time. While Jersey's political autonomy is qualified, its judicial independence is complete. We have our own laws and judicial and legal system. I am often told that investors look for a mature judicial system in which they can have confidence. I naturally exclude your present speaker but the Court of Appeal also includes a number of very distinguished judges from the British Isles, and appeal lies from there to the Privy Council. The courts develop the law, in particular in relation to the administration of trusts, clarify the duties of trustees, and contribute to the certainty of investors that any disputes in relation to the administration of their assets will be fairly and speedily resolved. There is a professional system of law reports and the only law review, so far as I know, to be published in a small financial centre. The government has invested substantially in an online legal information system so that we have a website containing all the laws and regulations going back to 1771, all the judgments of the courts and other legal materials. Unusually, the revised laws of Jersey, that is an up-to-date statement of all statutory law, are

available online free of charge to the public. Investors throughout the world, and their advisers, can therefore easily consult the website for information as to the current laws and regulatory framework. It seems to me that all these framework conditions for investor confidence, political, legal and judicial stability, are self evident and no more need be said.

I should mention the relationship of Jersey with Europe, although this cannot easily be disentangled from the constitutional relationship with the UK. The theory is simple. Jersey is not inside the European Union, and does not form part of the European Communities. The relationship is governed by a short and rather imprecise protocol, Protocol 3, to the 1972 Treaty of Accession of the UK to the European Communities. In broad terms the Bailiwick is outside the EC but inside for trade in goods and agricultural products, and forms part of the Customs Union. Of the four freedoms, only freedom of movement of goods applies to the Bailiwick. The protocol also contains a non-discrimination provision, which obliges us to apply the same treatment to all natural and legal persons of the Community. While the theory is simple, the reality may be a little more complicated, particularly since the Single European Act and, to an extent, the Maastricht Treaty. Directives sometimes have several treaty bases, which make it difficult to ascertain whether they relate to the freedom of movement of goods or not. But usually these problems of interpretation can be resolved. Jersey has no direct relationship with the European Commission, although our officials frequently have contact with different DGs. I believe that the Commission has a good understanding of the nature of the financial services industry in the Bailiwick and of the regulatory structure which is in place. For our part we try, through various sources, to keep up-to-date with changes in the making.

The legal relationship with Europe does not of course exclude the possibility, as we learned in 1998 or thereabouts, of being affected by political developments. The Tax on Savings Directive is the obvious example, but the Code of Conduct on Business Taxation was a more serious challenge. The process whereby member states were led to believe that the Crown Dependencies would adopt the Code left much to be desired. The underlying rationale was also of doubtful conformity with international law. The premise of member states is that, although taxation is a legitimate instrument of national economic policy in order to promote competitiveness, certain tax measures are inherently harmful and must be eliminated. It is true that other factors were in due course instrumental in persuading the government of Jersey to change the basis of its framework for the taxation of companies, but pressure from the EU and the UK was not insignificant. I want to return to this theme in due course.

Small states that do not observe international norms in terms of the regulation of economic activity and the suppression of drug trafficking, money laundering and other serious economic crime (including tax evasion) must of course expect an adverse reaction from the community of civilised nations. There must be effective regulation. Jersey is not of course in that position. The Bailiwick's compliance with international standards has been endorsed by the FATF and IMF. To the extent that this is possible, the regime in Jersey is based upon principle rather than the dogmatic application of inflexible rules. The object is to apply a common-sense approach to international standards. Standards are rigorously enforced, but they are proportionately and sensibly applied when it is clear that there is no risk of abuse, and that the standard needs to be tailored to the circumstances of Jersey. I give as an example the small and highly visible charities sector, where heavy-handed regulation would be disproportionate to the risk of money laundering posed by local charities and in some cases destroy the dedicated voluntary work of those engaged in numerous good causes.

I do not in any sense argue for a selective or cavalier approach to international standards. On the contrary I fully endorse their application in every small financial centre based upon a robust evaluation process such as the IMF evaluation process based upon the FATF 40 + 9 recommendations, the Basel, IOSCO and IAIS Core Principles and the FATF evaluation methodology. I do think however that the process should involve an assessment of risk in the jurisdiction in question, so as to reach a judgment that is sensible. The brain surgeon does not use knitting needles and standard kitchen knives he uses instruments that are precisely matched to the operation being performed. There is otherwise a risk of clumsy over-regulation and, for small states, a disproportionate allocation of resources to problems that do not really exist. There is a standard below which all financial centres should not fall, but one should never lose sight of the purpose and object to which the regulation is addressed. That is "effective" regulation.

I will give one example from the experience of Jersey and some other small states for which the administration of

trusts forms an important part of their financial services business. The assessment of risk led to an appreciation that some small businesses handling significant sums of money and complex investments might not meet the expectations of government in terms of, for example, the suppression of money laundering. Trust administrators and company service providers are accordingly regulated to standards set by the Offshore Group of Banking Supervisors. In Jersey a number of unsatisfactory operators have been weeded out. There is, however, no internationally prescribed standard. Large jurisdictions such as the US and the UK, which also have significant trust business, do not assess the risk in the same way, and have no such controls. This seems to me to be a good example of the ways in which small states can play an active part in the debate on appropriate international standards.

If regulation is not to be a heavy hand, which discourages initiative and stifles competition, there must be a relationship between the regulator and those who are regulated. The controls on trust administrators and company service providers, which I have just described, were introduced with the broad support of the industry. All responsible businesses recognise the need to protect investors, (sometimes even from themselves), and to play their part in terms of international cooperation. What Jersey tries to do is to create a partnership between the regulator and those subject to regulation. It involves an approach which identifies risks that are specific to the jurisdiction, while at the same time allowing as much freedom to those who are in business as is consistent with the avoidance of that risk. If the regulator and the representative of lawyers, accountants, bankers and others are in accord, there is a strong probability that the government will react favourably to any legislative changes which are necessary to create the commercial opportunities. And this must be in the interests of investors. Innovation and fresh thinking, together with all those comfortable stabilities which investors need, are the ideal combination.

What then is the major challenge for a jurisdiction such as Jersey in maintaining the confidence of investors? The major challenge, in my view, is to defuse the antagonism towards small financial centres brought about by globalisation. One can understand that it is difficult in a world of freely flowing capital for a large economy to protect jobs, and to meet pension, health and welfare obligations. It is all too tempting for the elephant to stamp in frustration on the smaller and more agile animals on the jungle floor. Lip service is paid to tax competition, but the instincts of larger countries too often rebel against it. It is easier for large countries to attack the offshore centres than to face up to difficult choices and to explain them to their own citizens. It is easier to attach pejorative labels (e.g. tax havens, black holes of money laundering), to exaggerate and to foster myths than it is to face the reality of competition. This is of course unfair, but life is often unfair.

What can we do about it? The view taken in Jersey is that greater efforts must be made to dispel the myths. In fact, the standard of regulation in Jersey, and I use the term regulation to mean the supervision of licensed financial services providers but also the suppression of money laundering, terrorist financing and financial crime, is high, and in some respects higher than in some large countries. Large countries sometimes apply convenient double standards. Small states are occasionally driven to super-equivalence in order to persuade their critics that they indeed conform to international standards. Jersey and other responsible small states are cooperative and do respond positively to requests for assistance from those investigating serious crime. These are the messages which need to be hammered through to international organisations like the OECD and the EU and to the foreign departments of some larger countries. If one plays by the rules of the game one is entitled to expect equal treatment on the field of play.