

STATES OF JERSEY



ELECTED SPEAKER OF THE STATES (P.160/2013): COMMENTS

**Presented to the States on 16th December 2013
by the Privileges and Procedures Committee**

STATES GREFFE

COMMENTS

PPC had originally intended to consider the recommendation of the Review of the Roles of the Crown Officers (the 'Carswell Review') that the Bailiff should cease to act as President of the States and that the States should elect their own President towards the end of its term of office. However, following the unexpected announcement by Sir Michael Birt that he would retire from office as Bailiff of Jersey in January 2015, PPC had commenced work on a proposition to enable the States to debate the recommendation. The Committee is accordingly in complete agreement with the Connétable of St. Helier that the States should have the opportunity to debate this significant recommendation now.

The Carswell Panel worked for a year to review in depth the position of the Bailiff and the other Crown Officers, and concluded that it was no longer appropriate for the Bailiff to remain as President of the States. It recommended that the States should, instead, elect a Speaker either from within their ranks or by electing someone who was not a member of the States. Although the report was published in December 2010 and subsequently discussed 'in Committee', this core recommendation was never actually debated by the States.

In light of the forthcoming retirement of the current Bailiff, there is clearly a need to appoint a new Bailiff to act as President of the Royal Court. PPC agrees with the Connétable of St. Helier that it is important to take a decision now on whether or not a new Bailiff would continue to preside in the States so that the new Bailiff is aware of the scope of the rôle that he or she is taking on before the appointment is finalised. PPC believes it would be inappropriate to make a change whilst the current Bailiff remains in office, and agrees that any changeover should take place to coincide with the retirement of Sir Michael.

The arguments for ceasing the dual role of the Bailiff were clearly set out in the report of the Carswell Panel, and a similar recommendation was made in the Clothier report which was published 10 years earlier. Both review bodies made their recommendations after extensive consideration, and the relevant extracts from both reports are included at Appendices 1 and 2.

PPC is conscious that some States members and members of the public are concerned about a change to the Bailiff's role because the Bailiff's role is broader than his presidency of the States and the Royal Court through his wider civic role. It may not be the case, as suggested by the Clothier and Carswell Panels, that this role could continue unchanged in the long term if the Bailiff was principally nothing more than President of the Royal Court. In practice it is likely that a new Bailiff's role would simply evolve naturally over time if he or she was no longer President of the States, and there is no need to have a sudden and total transformation of the role just because he or she would no longer preside over the States. Certain of the functions of the Bailiff, for example speaking at official functions for visiting Ambassadors, could be undertaken instead by the Chief Minister, and the new elected President of the States would also have some civic role to represent the States Assembly at events such as the annual Remembrance Sunday ceremony. There would be nothing to stop a new Bailiff being invited to undertake functions and attend events for charities and other bodies as happens at present, but this aspect of his or her role might gradually diminish over time. An elected Speaker would become the public 'face' of the States Assembly and could undertake public engagement work in schools or with community groups to raise awareness about the States Assembly. This is something that has become a

feature of the work of many elected Speakers around the world and which cannot, in practice, be done at present by the Bailiff in Jersey.

Jersey is increasingly taking steps to portray itself as a modern and well-regulated democratic jurisdiction that meets all necessary international standards. States members need to consider whether it is possible to continue indefinitely with a person who is also a judge presiding over the Assembly, in clear breach of the widely accepted principle of the separation of powers. In the Isle of Man there is both an elected President of Tynwald (who also presides over the Legislative Council) and an elected Speaker of the House of Keys, and this system works well in our sister Crown Dependency. The Carswell Panel recognised that it would be sensible to give discretion to the Assembly to elect either one of its own members or, as happens for example in Gibraltar, the Falkland Islands and some Caribbean jurisdictions, a person from outside the Assembly with appropriate experience.

Whether or not members support a change in the Bailiff's role, PPC agrees that this debate should take place as it would be inappropriate to appoint a new Bailiff without there being a debate on the Carswell recommendation. It would not be fair for a new Bailiff to be appointed without being aware of the view of States members on this issue, and it would not be right to have a debate after the appointment when a new Bailiff could consider that the role was not going to change. The retirement of the current Bailiff provides a window of opportunity to debate the Carswell recommendation once and for all, and that is the primary reason why PPC supports this proposition.

If the States supports the proposition of the Connétable of St. Helier, it will be necessary for the Committee to report back to the Assembly with detailed proposals on an elected Speaker, including the full financial implications. If an elected member were appointed as Speaker, as happens in most jurisdictions, there would be no increase in the number of States members and no increase in remuneration costs. If a person from outside were appointed, there may be a need to pay a small honorarium to that person, but PPC considers that this could be accommodated within the current States Assembly budget. The States Greffe would continue to provide support for an elected Speaker and, if some of the Bailiff's current roles changed, it is possible that there would be savings in the Bailiff's Chambers which could be redirected to meet any additional costs arising.

Relevant extract from ‘The Review of the Roles of the Crown Officers’
(‘the Carswell Review’) – R.143/2010

Chapter 5

The Role of the Bailiff

- 5.1 The role of the Bailiff of Jersey has become modified by convention and statute over many years as the public institutions of government developed. The first Bailiffs were entirely responsible for the civic affairs of the Island, and their modern successors are still in charge of many aspects of its public life, but within more defined limits. The several functions of the Bailiff have derived from his position as civic head, which is more than a matter of status but is a reflection of his dominant position in public affairs in Jersey over the centuries. We believe that understanding of this is important when considering his functions today.
- 5.2 The Bailiff and Deputy Bailiff can be considered together, for the function of the Deputy Bailiff is to deputise for the Bailiff and there are no independent duties attached to the post. The three major functions of the Bailiff are presiding in the Royal Court as chief judge, acting as President of the States and carrying out a variety of duties in his capacity as civic head of Jersey. Allied to this last function is his role as guardian of the constitution of Jersey. In our view these functions all stem from the Bailiff’s historic pre-eminent position as civic head of Jersey.

The Bailiff as Chief Judge

- 5.3 The major part of the Bailiff’s time is spent on his judicial duties. The former Bailiff Sir Philip Bailhache estimated that they took up roughly two thirds of his time, but thought that the time required for presiding in the States was increasing, which would affect that proportion. The Bailiff’s role in the Royal Court needs little elaboration. The Deputy Bailiff performs exactly the same function and has the same powers when sitting in the Royal Court, as do the Commissioners when they are deputising for the Bailiff. They each sit to try cases, both criminal and civil, along with the Jurats and, in criminal trials at an Assize, a jury. The Bailiff is also the president of the Court of Appeal, but in practice rarely sits with that court. Each judge will, depending on the cases he has tried, have to spend varying amounts of time, which may be considerable, out of court preparing for hearings and writing judgments. The Bailiff has also a range of administrative functions to perform in relation to the running of the Royal Court.
- 5.4 In Appendix 3 we have set out figures provided by the Bailiff of days spent by himself and others in the years 2006 to 2009 in the Royal Court and presiding in the States together with his other public activities. They have to be interpreted with caution, due to the distortion of the figures caused by the then Bailiff’s illness in 2008 and the hiatus between appointments in 2009. It appears, however, that the Bailiff would ordinarily sit in the Royal Court and the Licensing Assembly on between 70 and 100 days, typically about 80 to

85 days, while the Deputy Bailiff would sit on somewhere over 100 days. The Commissioners' total of sitting days varied in the relevant years between 150 and 200 days.

- 5.5 There was a clear view, unanimous or practically so, among respondents that the Bailiff should continue to act as chief judge in the Royal Court. We consider that this is unquestionably correct. The Bailiff is a highly trained and experienced lawyer, as is the Deputy Bailiff, and they are the persons best placed to carry out these judicial duties. We do not support the proposal made in 1990 by the Committee chaired by Sir Godfray Le Quesne that a permanent judge be appointed to carry out a substantial proportion of the Bailiff's judicial duties in place of the Deputy Bailiff.

Recommendation 1: The Bailiff and Deputy Bailiff should continue to carry out judicial work in the Royal Court.

The Bailiff as President of the States

- 5.6 The Bailiff has historically presided over sittings of the States ever since the legislature developed out of the Royal Court. His position as President of the States is now provided for by section 3(1) of the States of Jersey Law 2005. The figures set out in the table in Appendix 3 show the steady increase in the number of sitting days of the States in the past few years, a trend which shows no signs of diminishing. The number of days on which the Bailiff and Deputy Bailiff presided has also been on the increase, rising between 2006 and 2008 from 24 to over 36 days (the 2009 figure was distorted and so is not typical). The Bailiff has power under section 3(2) of the States of Jersey Law 2005 to delegate sitting to certain other persons. The Greffier of the States has regularly deputised for him and the Deputy Greffier has done so at times. On occasion in past years a senior member of the States has presided in this way.
- 5.7 The Bailiff's function as President of the States is to act as presiding officer or speaker. It is his duty to act impartially and in accordance with the provisions of the Standing Orders of the States. He chairs debates and question time, calls upon members to speak and rules on any points of order, in all of these functions following Standing Orders. Debates in the States are not time-limited, unless, exceptionally, a motion of closure is passed, and all members who indicate a wish to speak will be called upon. Outside the Chamber, the Bailiff has to consider draft propositions and draft questions, which he must admit unless they contravene Standing Orders. Members will commonly consult the Greffier about the content of a proposed question. The Greffier can generally answer their inquiries, but if he is in doubt about an issue he will consult the Bailiff and obtain his ruling. The Bailiff may on occasion discuss these matters with individual members of the States. If questions are not properly framed, the Greffier or the Bailiff will regularly suggest amendments to address the defect and allow the questions to proceed.
- 5.8 It was represented to us by a number of respondents that although the Bailiff must apply Standing Orders in all decisions which he makes and is bound to give all members an opportunity to speak when they express a wish to do so, he nevertheless exerts a degree of political influence by the manner in which he carries out his function. To some extent this may be dependent on the personality of the Bailiff and the style which he adopts when presiding or

when discussing matters with members of the States. It also is a matter of perception: if the Bailiff in fact exercises little or no influence on the decisions of the States, it may nevertheless appear to those outside the States that he has such influence, particularly on account of his standing as civic head. Members of the States may also suppose that the Bailiff has allowed political considerations to affect his application of Standing Orders, particularly when he has ruled against their submissions.

- 5.9 The reasons advanced by those supporting the proposition that the Bailiff should cease to be President of the States were as follows:
- 5.9.1 The three reasons set out in the Clothier Report, which we have set out in Chapter 4, paragraph 4.6 above.
 - 5.9.2 The current practice is inconsistent with modern ideas of democracy. It offends against the Latimer House principles (which we shall discuss below), although those supporting the status quo point to the exception relating to small jurisdictions with limited resources. It projects an inappropriate image of Jersey to the wider world.
 - 5.9.3 The practice is unique to Jersey and Guernsey, as in every other democratic jurisdiction there is a separation of the judiciary from the legislature (the multiple roles of the Lord Chancellor were formerly cited as an exception, but since the changes made in 2005 in England that no longer applies).
 - 5.9.4 Spending large amounts of time presiding in the States is a wasteful use of the time of a skilled lawyer with judicial ability and experience.
 - 5.9.5 Presiding does not need an officer at the Bailiff's level and other people could carry out the function adequately.
 - 5.9.6 If the States decided to limit debate, e.g. by fixing time limits for speeches, or to increase the power of the President to intervene in debates to rule members out of order or discipline them, the President could be brought into areas of greater political controversy.
 - 5.9.7 There is a risk of a successful challenge under Article 6 of the European Convention on Human Rights to decisions of the Bailiff or Deputy Bailiff when sitting in the Royal Court. It is not a satisfactory solution for them to recuse themselves from time to time.
- 5.10 The arguments against change may be summarised as follows:
- 5.10.1 It is part of the valued tradition and heritage of Jersey that the Bailiff should preside in the States.
 - 5.10.2 The reasons propounded in the Clothier Report have insufficient weight to outbalance this factor.
 - 5.10.3 The Bailiff has a unique standing, which gives him unequalled authority as a presiding officer in the States.

- 5.10.4 There is no evidence that Bailiffs have exercised or attempted to exercise any political influence.
- 5.10.5 The Bailiff has pre-eminently the legal skills required for interpretation and application of Standing Orders.
- 5.10.6 It is not practicable to have a member of the States as the regular President, because (i) this would disenfranchise his constituents, which is particularly important in the absence of political parties, (ii) the more able members would hope for appointment as Ministers and so would be unwilling to accept the post of President. It would be difficult to find an outside person who has the necessary time and qualities to act as President. It would be inappropriate for the Greffier to act as permanent President.
- 5.10.7 Removing the Bailiff from the States would detract from his standing and tend to undermine his position as civic head.
- 5.10.8 The risk of a successful challenge under Article 6 to his decisions in the Royal Court is low and is worth running. Most litigation does not involve statute law, the more so since much of Jersey law is customary law. The Bailiff and Deputy Bailiff are well able to decide if they need to recuse themselves.
- 5.11 We have considered all these arguments with great care and devoted much time and thought to the issue. We have reached the conclusion that the Bailiff should not continue to act as the President of the States. The reasons which have brought us to this conclusion are the following:
- 5.11.1 Clothier's first reason has some force, but the weight to be placed upon it is a matter on which opinions may vary. It in fact contains two grounds:
- 5.11.1.1 The first is that the Bailiff exercises political power or influence, and only elected politicians should do that. Those supporting the Bailiff's present role deny that he exercises any significant political power or influence, since he must operate within the Standing Orders of the States. As against that, a number of respondents have maintained that Bailiffs have in the past exercised something of a political role in the way they have carried out their presiding function and that they have been decidedly influential. There may be some force in this contention, and certainly there seems to be at least a perception in some quarters that it continues to be correct.
- 5.11.1.2 The second ground is that the speaker should be the servant of the legislature, which can remove him from office if the members see fit. It is standard in most jurisdictions for the speaker or presiding officer to be appointed by the legislature. In that position the speaker is commonly described as the servant of the legislature. What that appears to mean in reality is that the speaker

must act in accordance with the standing orders laid down by the legislature. The Bailiff accepts that he must do this and that it is open to the members to amend Standing Orders if they choose. His function is therefore in most respects very little different from that of a speaker appointed by the legislature. The exception is that the Bailiff cannot be removed by the States from the office of President, although it would appear to be possible for them to pass a vote of no confidence in him.

- 5.11.2 Clothier's third reason would contain more significance if challenges to the President's rulings could be readily or regularly brought. It was authoritatively decided, however, in the Royal Court by Mr. Commissioner Beloff in *Syvret v Bailhache* [1998] JLR 128 that rulings of the President of the States relate to the regulation of the internal proceedings of the States, a legislative privilege which is subject to the exclusive jurisdiction of the States and with which the courts cannot interfere. This principle is generally followed in other jurisdictions. The only ground on which a legal challenge could be made is one on which judicial review of the ruling would lie. That ground would have to be that it fell outside the legal powers of the President or, conceivably, that it was irrational, i.e. that no reasonable presiding officer could possibly have made it. Such challenges would be exceedingly rare, and we consider the significance of the reason to be slight.
- 5.11.3 Clothier's second reason, based on the separation of powers, is in our view of greater importance. As has been pointed out in the Clothier Report para 8.11 and in submissions to our Review, the pure doctrine of the separation of powers has not generally been adopted in the jurisdictions of the western world. What has been widely accepted is that sufficient separation should be in place to prevent any one of the three estates of the realm from exercising excessive power. The independence of the judiciary from the legislature and the government of the jurisdiction is a necessary guarantee of impartiality, in that it provides freedom from political pressure and judges' detachment from the political process removes a possible source of influence in their decisions. It is universally accepted that those exercising judicial functions should not have been concerned in making the laws which they have to apply and enforce. If a judge has been concerned in lawmaking, there is a risk, or a perceived risk, that his interpretation of statutes may be influenced by his understanding of the meaning of their provisions as they went through the legislature.
- 5.11.4 This approach is inherent in what are known as the Latimer House principles. These are a set of principles and guidelines for Commonwealth jurisdictions, adopted and agreed at a meeting of Commonwealth Heads of Government in Nigeria in 2003. They were based on a set of guidelines drawn up at a conference of Commonwealth parliamentarians and lawyers at Latimer House in 1998. It is abundantly clear from the content of the principles, and also from the benchmarks for democratic legislatures drawn up by the Commonwealth Parliamentary Association in 2006, that the framers

considered that members of the judiciary should not also be members of the legislature.

- 5.11.5 Several respondents have, however, drawn our attention to a qualifying provision in the 1998 guidelines:

“It is recognised that the special circumstances of small and/or under-resourced jurisdictions may require an adaptation of these Guidelines.”

No doubt there are jurisdictions which are so lacking in financial resources or in the availability of able and educated people that they could not readily comply with the Latimer House principles. We are, however, unaware of any other democratic jurisdiction outside the Channel Islands, no matter how small, in which a judge presides in the legislature. In any event, we are unable to suppose that modern Jersey falls into such a category. We do not think that the conditions for invoking the exception are fulfilled, or that it would be a proper reflection of Jersey’s international standing and image for it to seek to do so.

- 5.11.6 We should mention also the Bangalore Principles of Judicial Conduct 2002, which were adopted by a group of senior Commonwealth judges after wide consultation with common law and civil law judges, and approved in 2003 by the UN Commission on Human Rights. They require that a judge should uphold and exemplify judicial independence. They go on to state that a judge “shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.” We regard it as unlikely that membership of a legislative body would be regarded as an appropriate connection.
- 5.11.7 The present arrangement is unique to Jersey and Guernsey. People outside the Channel Islands, who are unfamiliar with the historical development of the Bailiwicks, regularly express their surprise about it. It fails to present to the wider world the image of a modern democratic state.
- 5.11.8 The Presidency of the States makes excessive demands on the time of the Bailiff and Deputy Bailiff, which would be better employed in the judicial work for which they are particularly fitted. The Bailiff would also be more available for the type of exacting case on which it is preferable that he should sit as the chief judge. The need for adjournments occasioned by his requirement to preside in the States would be reduced, as would the cost of using Commissioners to deputise for him in judicial work.
- 5.11.9 The Bailiff has to avoid being brought into political controversy. This has two practical consequences. First, if the States decided to limit debate in order to improve procedure, the Bailiff as President would necessarily be involved in the exercise of discretion in making

decisions, which are likely to be controversial. Secondly, he is not in a position to play an active role in determining the procedures and working of the States Assembly, which is commonly done by presiding officers of other legislatures. An elected President would be able to take a more proactive part in this.

- 5.11.10 At present, if the Bailiff in his judicial capacity makes any criticism of the executive, it may possibly be seen as political and inconsistent with his position as President of the States. If he ceased to be President, he would be able to make such criticisms as he thought justified without such a consequence.
- 5.11.11 If the States were to pass a vote of no confidence in the Bailiff as their President, he would feel impelled to resign his office. Although such an event may be unlikely, if it did occur Jersey would lose the services of a valued and experienced judge. Such a possibility would not arise if the Bailiff ceased to be President of the States.
- 5.11.12 We consider that a President elected by the States, from within or without the ranks of its members, would be able to run its proceedings satisfactorily, notwithstanding that he or she may not have the standing, authority and legal skills of the Bailiff. The Bailiff is undoubtedly preeminent in these respects. But it does not follow that he is the only person who could carry out the duties of President of the States or that it is necessary for the proper functioning of the Assembly that the Bailiff should occupy this position. The fact that the Greffier has presided from time to time with conspicuous ability goes to show that it can be done. In other deliberative bodies this is found to be possible, with the assistance of skilled and experienced advice which an official such as the Greffier can provide. Nor do we consider that legal skills and experience, though undoubtedly helpful, are an essential quality for a speaker to possess, if he can call upon advice from officials.
- 5.11.13 An elected President would be able to undertake public engagements and other duties appropriate to his office, which the Bailiff is not always in a position at present to carry out because of his increasing workload or which he currently fulfils by taking time away from his judicial duties.
- 5.11.14 A number of respondents expressed concern lest the Bailiff's position as civic head would be undermined if he were no longer to be President of the States. In our carefully considered opinion it should not be. The Bailiff has a long-standing position of pre-eminence in the affairs of Jersey, which does not stem from his function as President of the States: rather the contrary, his function as President of the States derived from his civic pre-eminence. In our view that pre-eminence can be maintained without having to maintain his Presidency. If he remains guardian of the constitution, as we consider he should, that will help to maintain his paramount historic position as Bailiff of the Bailiwick of Jersey.

The European Convention on Human Rights

- 5.12 Whilst we consider that these reasons are sufficient to bring us to our conclusion, there has been a good deal of discussion by respondents of another important issue. That is the possibility that decisions of the Bailiff (in which we include the Deputy Bailiff) might be held invalid as being in breach of Article 6(1) of the European Convention on Human Rights. Article 6(1) provides, so far as material:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal.”

- 5.13 The concept of a perceived risk is of importance in determining this issue. Even though a judge may not have been in fact influenced by any personal bias – commonly termed subjective bias – it may be perceived by reasonable people that he may have been influenced by extraneous factors. The test is that summarised by Lord Hope of Craighead in *Porter v Magill* [2001] 2 AC 357, 494, para 103:

“The question is whether the fair-minded and informed observer, having considered the facts, will conclude that there was a real possibility that the tribunal was biased.”

This is termed objective bias. The test in European human rights jurisprudence is phrased slightly differently, that the arrangements must provide sufficient guarantees “to exclude any legitimate doubt” as to the tribunal’s impartiality. It is now well established both in UK domestic law and in the jurisprudence of the European Court of Human Rights (‘ECtHR’) that objective bias will invalidate a judicial decision. The same will follow in the law of Jersey, as the Royal Court is bound by Article 3 of the Human Rights (Jersey) Law 2000 to take account of decisions of the ECtHR. We of course presume that the Bailiff will be free of subjective bias in reaching his decisions, but the issue on which we must focus is whether it might reasonably be thought that objective bias is established by reason of his membership and Presidency of the States. If that were so, it could be held that his decisions in some cases were in breach of Article 6 of the Convention.

- 5.14 We have given careful consideration to the decision of the ECtHR in *McGonnell v UK* (2000) 30 EHRR 289, together with the antecedent opinion of the European Commission of Human Rights, and to the decision in *Pabla Ky v Finland* (2006) 42 EHRR 688. We have also taken account of the decisions of the House of Lords in *Davidson v Scottish Ministers* [2004] UKHL 4, the Scottish Court of Session in *Starrs v Ruxton* 2000 JC 208 and the English Court of Appeal in *R (Barclay) v Lord Chancellor* [2009] 2 WLR 1205. We do not find it necessary to set out the contents of those decisions and their import, as they are fully dealt with in the opinion of counsel to which we refer below.
- 5.15 After considering these decisions, we felt that it was uncertain what decision might be reached if a challenge were brought in the ECtHR to a decision of the Bailiff on the ground that he had presided in the States. We therefore took the opinion of leading counsel in London, Mr. Rabinder Singh QC, who has

considerable experience of human rights law and its application in the ECtHR. We have placed the full text of the opinion on our website www.gov.je/crownofficersreview and it may be read there. Mr. Singh summarises his conclusions in the following terms (para 2 of his opinion):

- “(1) On the current state of the authorities, in principle there would be no breach of Article 6 of the European Convention on Human Rights if the status quo were to be maintained.
- (2) However, the international trend suggests that the law will change in due course. Within the next 10 years, my view is that the present arrangements will come to be regarded as incompatible with the concept of judicial independence as embodied in Article 6, in particular because the Bailiff and his deputy are both judges and presiding members of the legislature.”

5.16 In our view this conclusion provides an additional reason why the Bailiff should cease to be President of the States. If a challenge were brought now, though it is not altogether easy to forecast the decision with any certainty, it would not in counsel’s view be likely to succeed. The Bailiff is no doubt likely to adopt the practice of recusing himself from sitting in any case where he has presided in the States during the passage of any legislation whose interpretation or application is in issue. The difficulty in putting this practice into effect is that it is not always apparent at the outset of a hearing that a particular piece of legislation will become material in this way. Moreover, we do not think it desirable that a judge should have to concern himself on a regular basis with the question of recusing himself, as the commentary on the Bangalore Principles recognises. In a few years, perhaps very few, judicial opinion may well come down in favour of the view that a breach of Article 6 may be established in a variety of cases. We do not think that it would be good for Jersey’s international reputation if it had to make the change reluctantly after litigation which may be protracted and expensive and in which strident attacks could be made on Jersey’s institutions. If the States make a change now they can retain control of the process and reduce the risk of having reform imposed upon them. In our view it constitutes a further reason for proceeding to make a change now.

5.17 The suggestion was made to us that the Greffier should be the President, as he has acted very ably in that post from time to time. We do not consider that this is an appropriate solution. The Greffier has an important administrative function to perform, being in a position to give advice to the members in the process. He would be placed at times in a difficult position if he were also required to preside and make final rulings. The separation customary in legislative assemblies between the presiding officer and the clerk of the assembly is a correct division of functions, which should be preserved.

5.18 A compromise solution was proposed by some respondents, whereby the Bailiff should continue to be nominal President of the States, but should not sit in its day-to-day work, delegating to substitutes nominated by him (possibly with the agreement of the States) and presiding only on ceremonial occasions or in case of emergency. Such an expedient might help to negate the suggestion that the Bailiff was no longer civic head. We consider, however, that it would leave the substitute presiding officer in a somewhat invidious

position, liable to be displaced in unspecified circumstances and relegated on important occasions. The suggested solution remains in our view no more than an expedient, which would not only be difficult to operate and capable of being misunderstood, but would fail to tackle the issue properly.

- 5.19 We recognise that it may not be entirely straightforward to find a person willing and able to undertake the office of President of the States. We acknowledge the force of the arguments which we have set out above, that it could be difficult to obtain a suitable President from within the ranks of the members of the States, although it may still at times be possible. If a member were appointed, the States might consider whether an additional member should be elected or appointed in his place. It may be preferable to look outside, to find a person of sufficient standing who would be willing to undertake a part-time post of this nature. Notwithstanding the difficulties which there might be in recruiting such a person, which were emphasised by several respondents, we are nevertheless hopeful that with the strong tradition of public service in Jersey it would still be feasible. We therefore favour the election by the States of their President, either from within the membership of the States or outside it.

Cost Implications

- 5.20 We have endeavoured to establish the resource implications of removing the Bailiff from the Presidency of the States, but any estimate must necessarily be very tentative and approximate, depending on the way in which the office would be organised. The cost would involve the salary of a President (or an extra member of the States if one is elected on the appointment of a member as President), the possible cost of ancillary staff and separate office accommodation.
- 5.21 There would be a rental charge for office accommodation, the amount of which would depend on the amount of space assigned and its location. It is likely to be not less than £8,000 to £10,000 per annum. It appears probable that the States Greffe could provide administrative and secretarial support from within its current resources, but if extra assistance has to be provided there would be a further cost. If the President undertook some ceremonial or representative functions currently discharged by the Bailiff or which the Bailiff is unable at present to undertake, there would be some added cost, though some at least might be met by a budget transfer from the Bailiff's Chambers.
- 5.22 Against that can be set off the reduction in the need to engage Commissioners to sit in the Royal Court. It is estimated by the Bailiff's Chambers that the Bailiff and Deputy Bailiff could be freed for approximately 20 days per year by the appointment of a President of the States, so at the present figure of £785 per day the saving in fees would be of the order of £15,700. To that may be added travel and subsistence expenses if fewer Commissioners from England are required, which might be estimated very roughly at £5000 per annum.

5.23 The net cost would therefore depend on the pattern adopted. In very approximate terms, it would appear to be a minimum of £31,000 to £33,000, but these are bottom figures and it might be advisable to contemplate a somewhat higher amount.

Recommendation 2: The Bailiff should cease to act as President of the States and the States should elect their own President, either from within or from without the ranks of their members.

Relevant extract from the Report of the Review Panel on the Machinery of Government in Jersey ('Clothier Report')

- 8.12 The task of the judiciary is to apply the laws which will most commonly have been proposed by the executive and endorsed by the legislature. It is now recognised almost everywhere that this requires that the judiciary should form a separate estate which is truly independent. The complexity and scope of modern legislation and the extent of executive action to which they have given rise have made both the reality and perception of such independence even more imperative.
- 8.13 Neither the underlying principles nor the volume of evidence can in our opinion be ignored any longer. For these reasons, we **recommend** that the Bailiff should cease to act as the president of the States or to take any political part in the Island's government and that the States should elect their own Speaker. It follows that he should cease to be the principal link with the Home Office. He should be liberated to do what all Bailiffs of recent times have been especially qualified and trained to do, namely be the Island's Chief Justice. There was never a time when the volume, scope and complexity of litigation in the Royal Court of Jersey were more demanding than they are today.
- 8.14 It is the inevitable consequence of our recommendation that the Chief Minister, rather than the Bailiff, would henceforward be the direct link to the Home Office in London. This does not mean that the Home Office might not communicate directly with the Bailiff on any matter where it seemed appropriate to seek his advice.
- 8.15 We **recommend**, however, that the ancient office of Bailiff should continue to be accorded the respect in which the office has been held for so long. It would be appropriate for the Bailiff to swear in Ministers in his Court and present them with their seals of office. Just as in England the Lord Chancellor takes precedence over the Prime Minister, so should the office of Bailiff continue to be the highest in the Island on all occasions when the order of precedence is observed.