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Education and Home Affairs Scrutiny Panel

The Rôle of the Centenier in the Magistrate's Court



Presented to the States on 28th September 2007

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1. TERMS OF REFERENCE

1. To assess the justification for why Recommendation 4 of the Review of Criminal Justice Policy (that “the rôle of the Centenier in the Magistrate's Court should cease”) was not pursued by the Department of Home Affairs.

2. To assess whether the rôle played by Centeniers in the Magistrate's Court meets the Court's (and consequently the public's) expectations and requirements.

3. To examine the system of training and assessment provided to Centeniers for their work in the Magistrate's Court

4. To assess the administrative support and advice given by the Parishes, States Police, Courts and Crown Officers to Centeniers for their work in the Magistrate's Court

2. PANEL MEMBERSHIP

2.1 Education and Home Affairs Scrutiny Panel

DEPUTY D W MEZBOURIAN, CHAIRMAN

DEPUTY J GALLICHAN, VICE-CHAIRMAN

DEPUTY S PITMAN

Officer Support during the review: Mr C A Ahier, Mr W J C Millow, Mr T A Oldham.

2.2 The Scrutiny Review of the Rôle of the Centenier in the Magistrate's Court was begun by the Social Affairs Scrutiny Panel in April 2006. At that time, the Panel was chaired by Deputy F J Hill BEM and comprised Deputies J A Martin (Vice-Chairman), D W Mezbourian, A E Pryke and S Pitman.

2.3 Following the States' agreement in November 2006 to establish a fifth Scrutiny Panel, the remit of the Social Affairs Scrutiny Panel changed and it was consequently renamed the Education and Home Affairs Scrutiny Panel. At this juncture, Deputy Martin resigned in order to join the new, fifth Panel. Deputy J Gallichan was appointed to the Education and Home Affairs Panel and Deputy Mezbourian became Vice-Chairman.

2.4 On 30th January 2007, Deputy Pryke resigned from the Panel to take up the position of Assistant Minister for Planning and Environment.

2.5 On 6th June 2007, Deputy Hill resigned as Chairman, an event that precipitated the election of a new Chairman and the appointment of new Members. Deputy Mezbourian was elected Chairman on 19th June 2007, on which day Deputies Gallichan and Pitman were appointed to the Panel.

3. EXECUTIVE SUMMARY

3.1 Executive Summary

- 3.1.1 Our review began as an examination of why the former Home Affairs Committee did not follow Recommendation 4 of the Rutherford report (that Centeniers should cease to present cases in the Magistrate's Court).
- 3.1.2 The decision to reject Recommendation 4 was made on the grounds of cost and tradition. Whilst we cannot indicate the financial cost of following the recommendation, we recognise that it could be significant. Similarly, we acknowledge that if Centeniers were removed from Court there would be a significant impact upon them; however no consensus was received on the nature of that impact.
- 3.1.3 We found that insufficient consideration was given to Human Rights implications when the decision was made to reject Recommendation 4; a Human Rights audit of legislation relating to the Magistrate's Court was not carried out.
- 3.1.4 Regardless of Human Rights issues, the current legislation is seen to be defective although a review is being undertaken, led by the Attorney General. We recommend that consideration be given to whether the system meets Human Rights requirements. The Panel itself cannot make any conclusions on this point, however, as that is a matter for the courts.
- 3.1.5 An examination of the support provided to Centeniers showed that they receive effective administrative and legal support and, furthermore, have benefited from training in recent years. In this matter, we support moves already taken to learn from the training methods used elsewhere and recommend that training could benefit from the involvement of professionally-trained trainers. We believe all Centeniers should receive training for their work in the Magistrate's Court and should also be subject to appraisal.
- 3.1.6 Our findings suggest that further consideration should be given to the use in Court of a specialist group of 'presenting Centeniers'. Our review also highlighted potential confusion regarding the organisation of the Court list and we recommend that clarification is required. However, our review suggested that there is sufficient separation in Jersey between the processes of investigation and prosecution.
- 3.1.7 We also identified a potential for confusion over responsibility for Jersey's criminal justice system and therefore recommend that the situation be clarified. Confusion may also arise from the fact that the rôle of HM Attorney General incorporates three capacities: we recommend that the Attorney General's position as 'titular head' of the Honorary Police be

reviewed.

3.2 Recommendations

Please note: Each recommendation (and key finding) is accompanied by a reference to that part of the report where further explanation and justification may be found.

- 3.2.1 Detailed consideration should be given by the Attorney General and the Minister for Home Affairs to whether the current system, whereby Centeniers present cases in the Magistrate's Court, meets the requirements of the European Convention on Human Rights. (9.7)
- 3.2.2 The Magistrate, in consultation with the Attorney General, the Comité des Chefs de Police and the Bâtonnier should ensure that all relevant parties clearly understand who is responsible for the organisation of the Court listing. (9.8)
- 3.2.3 Further consideration should be given by the Attorney General (in consultation with the Comité des Chefs de Police) to establishing a specialist group of Centeniers to undertake work in the Magistrate's Court. (10.1)
- 3.2.4 The Comité des Chefs de Police, together with the Legal Advisers, should continue to consider adopting appropriate elements of the methods used in England to train Designated Case Workers. (10.2)
- 3.2.5 Consideration should be given by the Comité des Chefs de Police and the Legal Advisers to involving professionally-trained trainers in the development and delivery of training to Centeniers. (10.2)
- 3.2.6 Any Centenier undertaking duties in the Magistrate's Court should be expected to receive appropriate training before doing so. (10.3)
- 3.2.7 The Attorney General should act upon his suggestion and consult with the Comité des Chefs de Police about setting up a more formal appraisal scheme for the work undertaken by Centeniers in the Magistrate's Court. (10.4)
- 3.2.8 When considering whether the current system meets the requirements of the European Convention on Human Rights, particular attention should be paid by the Court Service and the Attorney General to the 'dual rôle' sometimes played by the Magistrate. (11.1)
- 3.2.9 The proposed informal forum to be established as part of the Criminal Justice Policy should ensure that the lines of authority and responsibility for Jersey's criminal justice system are clearly set out. (11.2)
- 3.2.10 HM Attorney General's rôle as 'titular head' of the Honorary Police should be included in the

proposed review of Law Officer functions as detailed in Section 6.2.8 of the Strategic Plan, and for which the Chief Minister's Department has responsibility. (11.3)

3.3 Key Findings

- 3.3.1 On the understanding that it will promote a synergy between the executive, the judiciary and the prosecution on criminal justice matters, the Panel welcomes the establishment of an informal forum on criminal justice policy. (8)
- 3.3.2 During the initial consideration of whether to progress Rutherford Recommendation 4, there was inadequate examination of Human Rights implications. (8)
- 3.3.3 The Panel welcomes the work being undertaken by the Attorney General's 1864 Group on legislation relating to criminal procedure. It is unacceptable that the existing statutory base for the Magistrate's Court has been described as "wholly defective". (9.1)
- 3.3.4 A detailed Human Rights audit of the legislation relating to the Magistrate's Court did not occur prior to the implementation of *Human Rights (Jersey) Law 2000*. Previous examinations of the operation of the Magistrate's Court had highlighted concerns that might have been expected to prompt such an audit. (9.2)
- 3.3.5 From the evidence received, it is not feasible to determine precisely the cost implications of Centeniers ceasing to present cases in the Magistrate's Court. However, it is a reasonable argument that there might be significant cost implications given that Centeniers essentially provide services on an honorary basis. (9.5)
- 3.3.6 If Centeniers were to lose their rôle in the Magistrate's Court, it does not necessarily follow that they would be held in any less respect than they are now or that it would be more difficult to find Parishioners willing to stand for election. (9.6)
- 3.3.7 It is not for the Panel to reach a conclusion as to whether or not Centeniers presenting cases in the Magistrate's Court is Human Rights compliant; this may only be conclusively decided within a court of law. (9.7)
- 3.3.8 The evidence received suggests that there is the potential for confusion regarding who has responsibility for organising the list of cases in the Magistrate's Court. (9.8)
- 3.3.9 The issue regarding the separation of investigation and prosecution may not be significant in Jersey provided that care is taken to ensure that a Centenier involved in the investigation of a case does not subsequently take part in any charge and prosecution that might arise from the investigation. (9.9)

- 3.3.10 Due to the potential benefits, the introduction of a specialist group of presenting Centeniers is worthy of further consideration, especially given that a change to legislation might not be required. (10.1)
- 3.3.11 The Panel welcomes the efforts being made by the Legal Advisers and Comité des Chefs de Police to develop and refine the training currently provided to Centeniers. (10.2)
- 3.3.12 Centeniers themselves value the opportunity to attend training. So long as this culture of professionalism remains, the Panel does not see any need for a rule or law making training explicitly compulsory. (10.3)
- 3.3.13 Whilst it is now common for people undertaking various functions to be subject to periodic appraisal of their professional competence, Centeniers are not subjected to a similar process. (10.4)
- 3.3.14 Effective support is provided to Centeniers by the Legal Advisers, Criminal Justice Unit and the St Helier Charges Office and Administration Unit. Whilst St Helier Centeniers primarily benefit there is co-operation and mutual support between St Helier and the rural Parishes. (10.5)
- 3.3.15 It is not for the Panel to reach a conclusion as to whether or not the 'dual rôle' sometimes played by the Magistrate is Human Rights compliant; this may only be conclusively decided within a court of law. (11.1)
- 3.3.16 There is a risk of confusion regarding the lines of authority and responsibility for Jersey's criminal justice system. (11.2)
- 3.3.17 Confusion may potentially be caused in situations where HM Attorney General may be required, or seen, to act in more than one of his capacities. (11.3)

4. CHAIRMAN'S INTRODUCTION

- 4.1 The Honorary Police service is a distinctive and much-valued feature of Jersey's criminal justice system. There are currently 56 Centeniers, men and women from all walks of life, who find time to carry out policing duties for the benefit of their Parishes. The Centenier's rôle can be onerous and the pressures of modern life have sometimes made it difficult for Connétables to find people to offer themselves for election. Nonetheless the Honorary Police is in good health and there is every reason to suppose that it will continue to serve the Island for generations to come. Indeed, the Panel whole-heartedly supports the Honorary Police and wishes to see it with a secure future as part of Island life in the 21st century. Views have been expressed that by examining matters relating to the work undertaken by Centeniers, we may undermine the whole Honorary Police system. We believe this is emphatically not the case.
- 4.2 Our review is of just one aspect of the work of Centeniers: the way in which they present cases to the Magistrate's Court. The review did not develop in the manner we envisaged when work began in April 2006. Initially, we focused on the operation of the current system, considering whether any refinements or improvements might be required. The evidence was in many respects encouraging.
- 4.3 We prepared a draft report based upon the work we had undertaken and circulated it for comment to the relevant parties. It subsequently became apparent, however, that there were other questions that needed addressing; a second phase of the review therefore began in which the Panel looked at Human Rights issues. Additions and amendments to the report we had initially prepared were subsequently required.
- 4.4 It is unfortunate that this second phase of our work (and in particular the production of this report) led to events and discussions of a political nature that we did not invite nor wish to happen. This report will not address those political issues. It would not be appropriate to do so in a Scrutiny Report that, as with all such Reports, is designed to provide an objective analysis of the evidence received in relation to the topic at hand.
- 4.5 In presenting this report, the Panel would like to thank all those who contributed to the review and, as Chairman, my thanks go to Deputy Gallichan, Deputy Pitman and the Scrutiny Officers.



Deputy Deidre Mezbourian,

Chairman, Education and Home Affairs Scrutiny Panel

5. BACKGROUND

5.1 Overarching Principles

- 5.1.1 In evaluating current practices and policy options, the Panel has attached importance to three overarching factors:
- 5.1.2 First is the need to maintain public confidence in the rôle of the Honorary Police, both from the perspective of the general public and as a form of service to the community.
- 5.1.3 A second factor is the constitutional principle of the independence and impartiality of courts and the criminal justice system, especially now that *Human Rights (Jersey) Law 2000* is in force.
- 5.1.4 The third factor is the need for efficiency and effectiveness in the use of public resources (which in this context means the way in which the Magistrate's Court operates). It must be recalled that one of the virtues of the Honorary Police system is that the voluntary service of its members saves the Island's tax-payers significant sums of money each year.

5.2 Report Structure

- 5.2.1 When the Panel began its review in April 2006, it did not foresee where its examination of the rôle played by Centeniers in the Magistrate's Court would lead. Lines of enquiry emerged that had not been evident at the review's beginning. In order to do sufficient justice to the evidence we have considered, and the lines of enquiry we have followed, we will structure our report in the following way.
- 5.2.2 Whilst perhaps narrower in focus, our review was not the first examination of the issues at hand. In section 6, therefore, we provide a brief synopsis of the reviews that have previously been undertaken.
- 5.2.3 In section 7, we provide background information relating to the key players in Jersey's criminal justice system and to Human Rights legislation in order that subsequent sections of the report may be understood in context.
- 5.2.4 In section 8, we will undertake a general examination of how the Home Affairs Committee decided not to proceed with a recommendation to remove Centeniers from the Magistrate's Court, a decision that provided the spur for our review and first Term of Reference.
- 5.2.5 Section 9 will address our second Term of Reference and therefore provide an assessment of the work undertaken by Centeniers in the Magistrate's Court. This section will include a more detailed consideration of the reasons given by the Home Affairs Committee for not

pursuing Rutherford Recommendation 4. It will also give consideration to Human Rights issues.

- 5.2.6 Our third and fourth Terms of Reference will be addressed in section 10. In this section, we will therefore look at questions regarding the training, assessment and administrative support supplied to Centeniers for their work in the Magistrate's Court.
- 5.2.7 Finally, in section 11, we shall explore issues that have arisen during the review which, whilst relevant and significant, did not relate directly to the matters that we initially set out to examine.

6. PREVIOUS AND CURRENT REVIEWS

The operation of the Magistrate's Court and the rôle of Centeniers has been the subject of several previous enquiries. These form the background to the Panel's own review and we therefore begin by taking stock of what has been said before. Our review could be seen as a continuation of work previously undertaken by others and, as such, we will consider in our report many of the issues that arose during those previous examinations: the effectiveness of a traditional 'informal' system; the potential need for legally qualified prosecutors; the benefits of training; the 'dual rôle' of the Magistrate; the rôle of HM Attorney General as 'titular head' of the Honorary Police; and the potential need for legislative reform.

6.1 The 1990 Le Quesne Review

6.1.1 In the late 1980s and early 1990s, a committee under the chairmanship of Sir Godfray Le Quesne QC carried out a review of "*the supply of judicial and legal services in Jersey*".¹ On 23rd October 1990, the committee's second interim report was presented to the States. One of the most important recommendations made by the committee related to the 'dual rôle' of the Magistrate. The committee stated:

"the absence of any public prosecutor in the Police Court to conduct the case against the defendant means that the Magistrate has to undertake some tasks which do not normally fall upon a Judge who is trying a criminal case. He has to examine the witnesses for the prosecution ... in order to draw out the relevant facts, and if the defendant elects to give evidence or calls witnesses, he has to question the defendant and the witnesses and, in effect, to cross-examine them in order to test their evidence and form an opinion as to its reliability. Another consequence of the absence of a prosecutor is that there is nobody to make submissions to the Magistrate on behalf of the public on the issues of law and fact that arise".²

6.1.2 The Le Quesne committee recommended that "*the dual rôle of the Magistrate should be abandoned and he should not be required to adopt the inquisitorial rôle of examination and cross-examination*".³ The Committee called for Centeniers to become prosecutors in all cases (rather than merely presenters), though it was envisaged that many cases would be handled by legally-qualified prosecutors. The Le Quesne committee also recommended that Centeniers be supported in their rôle in the Magistrate's Court by training.

1 *Jersey Judicial and Legal Services Review Committee: Second Interim Report* (R.C.24/1990), Appendix 1 Members of the committee, in addition to Sir Godfray, were: Mr John Averty; Jurat Peter Blampied; Sir Cecil Clothier QC, Sir Thomas Hetherington (a former Director of Public Prosecutions in England and Wales); and Advocate P de C Mourant

2 *Ibid*, paragraph 7.9

3 *Ibid*, paragraph 9.19

6.2 Comments from the Royal Court in 1994 and 1996

6.2.1 The potential problems resulting from the system of Centeniers presenting cases were highlighted by two appeals from the Magistrate's Court to the Royal Court in 1994 and 1996. The 1994 case concerned a conviction and sentence for using a motor vehicle without third party insurance. The defendant said that she had not been driving the car but the Magistrate held that "*there is no doubt in my mind at all that on that occasion you were driving*". On appeal to the Royal Court, the Deputy Bailiff stated:

"Now, it appears that the Court must accept that factual basis upon which the [defendant] was convicted and sentenced. The Court has some unease about accepting that factual basis because it is quite clear from the transcript that the case was one in which the process of justice would have been greatly enhanced had there been prosecuting counsel to present the case on behalf of the prosecution. As it was there was no prosecuting counsel, and nor in fact was there counsel appearing for [the defendant], and we have some sympathy with the learned Magistrate in the exceedingly difficult task with which he had to deal with unravelling the confusing state of affairs which was laid before him in Court".⁴

6.2.2 The 1996 case was an appeal brought by the Attorney General against the refusal of the Relief Magistrate to adjourn a prosecution because prosecution witnesses had not been warned to attend the trial. The Relief Magistrate had dismissed the case following representations by counsel for the defendant. The Royal Court said:

"We wish first of all to repeat that which this Court has said on more than one occasion about the difficult, if not impossible, position in which the Magistrate is often placed when considering applications of the kind made in the context of the case under appeal. [The Relief Magistrate] was faced with an application persuasively made by experienced counsel for [the defendant]. Who was there to put the other side of the argument and to place the relevant law before him? The answer is no-one. The reason of course is that the Magistrate in Jersey is a juge d'instruction. He is not a juge d'instruction in the sense that the term is understood in France. But equally he is not a Magistrate as that term is understood in England. He has a hybrid function⁵ which, although no doubt apt for the nineteenth century, has become for several reasons quite inappropriate for the process of criminal justice which has developed in recent years. The deficiencies were laid bare by the report of the Judicial and Legal Services Review Committee under the Chairmanship of Sir

4 *Reid v HM Attorney General*, 21st March 1994 (Deputy Bailiff sitting with Jurats Blampied and Orchard)

5 We refer to this as the "dual rôle" in this report

Godfray Le Quesne QC as long ago as 1990. The system cries out for legislative reform."⁶

6.3 The 1996 Independent Review Body on Policing Services in Jersey

6.3.1 In 1995 the Defence Committee commissioned a full and thorough review of the policing system in Jersey. The committee, chaired by Sir Cecil Clothier, reported in July 1996. The recommendations put forward by the committee were wide-ranging. One theme was the need for systematic training for members of the Honorary Police. The committee recommended that Connétables should cease to be the head of the Honorary Police in their Parish, that rôle being taken by a Chef de Police. The committee also recommended that the Attorney General should no longer be the titular head of the Honorary Police.⁷

6.4 The 1998 Nicholls Working Party Report

6.4.1 In 1997 the Legislation Committee established a working party to consider the recommendations of the Le Quesne review. The report of the working party, chaired by former Deputy Imogen Nicholls,⁸ was presented to the States on 17th March 1998. The report accepted that the dual rôle of the Magistrate "*gives rise to many concerns, both from the point of view of the prosecution (representing the public in general and the victim) and the defence*".⁹ The working party considered the Le Quesne committee's recommendation that Centeniers should be prosecutors in all cases but concluded that this was impractical.¹⁰ The working party accepted submissions made by the Centeniers Association that "*it would be unfair and unreasonable to expect Centeniers to undertake this rôle*".¹¹

6.4.2 The working party considered three options: (a) a legally-qualified prosecutor would present every case (whether guilty or not guilty); (b) a prosecutor would present all not guilty pleas; (c) a prosecutor would present selected cases. Two members of the Working Party favoured (a); six members, the majority, preferred (c).

6.4.3 It followed that "*in cases where a prosecutor is required, a legally qualified prosecutor will be necessary*".¹² The working party recommended that Legal Advisers, who would not need

6 *HM Attorney General v Tracey*, 19th December 1996 (Bailiff sitting with Jurats Blampied and Vibert)

7 *Report of the Independent Review Body on Police Services in Jersey* (1996). The other members were Bernard Binnington, Sally Le Brocq (now Jurat Le Brocq), Ronald Mitchell and Jurat Michael Rumfitt

8 Other members were: Mr M Birt QC (the Attorney General), Mr T Sowden QC (the Magistrate), Superintendent S Le Breton, Dr D King (Chief Probation Officer), Advocate S Pearmain (representing the Jersey Bar), Mr I Christmas (Legal Adviser to the Police), and Centenier E Gallichan (representing the Centeniers Association)

9 *Magistrate's Court – Practice and Procedures Working Party Report* (R.C.7/1998), paragraph 5.2

10 *Ibid*, paragraph 6.1

11 *Ibid*, paragraph 6.2

12 *Ibid*, paragraph 6.3

to be Jersey-qualified Advocates, be appointed and that decisions as to which cases they would present should be taken under the authority of the Attorney General. The working party therefore recommended that *“the dual rôle of the Magistrate should continue as at present in those cases presented by a Centenier”*.¹³

6.5 The 2002 Rutherford Review

6.5.1 The formation of the Home Affairs Committee in December 1999 prompted a wish to have a comprehensive criminal justice policy for the Island for the first time. As part of that process, the Committee commissioned a review by Professor Andrew Rutherford of the University of Southampton. *Review of Criminal Justice Policy in Jersey* (hereafter referred to as the ‘Rutherford report’) was published in October 2002. In relation to the matters that fall within the scope of the Panel’s review, the Rutherford report stated:

*“With the increasing sophistication of prosecution in all areas, trained prosecutors are becoming increasingly necessary. If Centeniers are to continue prosecuting, consideration needs to be given to creating a branch of the honorary police service that specialises in prosecuting and that receives specific training in that regard. Such an arrangement would ensure better co-ordination of the honorary service and greater efficiency in respect of time. Alternatively, legally qualified prosecutors should present all cases in the Magistrate’s Court.”*¹⁴

6.5.2 Two specific recommendations in this area were made:

“the rôle of the Centenier in the Magistrate’s Court should cease. This Review agrees with the conclusion reached by a minority of members of the [Nicholls] Working Party on Practices and Procedures in the Magistrate’s Court (1998) that the rôle of the Centenier in the Magistrate’s Court should cease. Instead, the task of presenting cases should be done on behalf of the Attorney General by a legal adviser, to be known as a public prosecutor.”

“the decision as to whether or not to charge an individual with an offence should reside with the public prosecutor and not with the Centenier. It is not proposed by the Review that this duty be discharged by the States of Jersey Police and thereby match the rather unusual position that came to be in England and Wales under the Prosecution of Offences Act 1985.⁶⁸ Instead it is accepted by the Review that the appropriate locus for these powers is with the office of the public prosecutor, independent of the police, as is the position in other European

13 Ibid, paragraph 11.1(ii)

14 *Review of Criminal Justice Policy in Jersey* (2002), p. 41

jurisdictions. Legislation to this effect will also serve as an appropriate balance to the powers and responsibilities bestowed on the police under the Police Procedures and Criminal Evidence (Jersey) Law soon to be debated by the States."

6.5.3 The Rutherford report "*acknowledged that the establishment of a Directorate of Public Prosecutions carries quite substantial resource implications. It is anticipated that Centeniers will be replaced with public prosecutors in the two lower courts [i.e. the Magistrate's Court and the Youth Court] when new resources become available. The resource implications of placing the discretion to charge with the Public Prosecutor will need to be estimated in the course of drafting the law for the creation of a public prosecution service.*"¹⁵

6.6 Miles and Raynor Study of Parish Hall Enquiries 2005

6.6.1 In September 2005, a report by Mrs Helen Miles and Professor Peter Raynor, *The Conduct and Effectiveness of Parish Hall Enquiries*, was presented to the Jersey Probation and After Care Service. The purpose of the report was not to make recommendations about policy, but to present "*a picture of the operation, achievements and problems of the Parish Hall Enquiry system.*" The authors concluded that:

*"It is important that attempts to modernise and formalise the system do not undermine the traditional arrangements which are already more effective and efficient than some formal criminal justice processes. Our research on the effectiveness of the Parish Hall Enquiry and the honorary system suggests that it could be more realistic to expand their rôle. Jersey has a low cost system into which more could be diverted. For example, it is possible that raising the threshold of speeding offences which can be dealt with by Centeniers could reduce costly court time. Given the success of the Victim Offender Mediation initiative, there is also potential to consider how Enquiries might usefully deal with more serious offences, particularly those involving public order."*¹⁶

6.7 HM Attorney General's '1864 Group'

6.7.1 During its review, the Panel learnt that a working party under the chairmanship of HM Attorney General, Mr William Bailhache QC, has been working for several years on a comprehensive review of criminal procedure law. The Attorney General explained to us:

"The main Criminal Procedure Law is the Loi (1864) sur la Procedure Criminelle. It is in French, and therefore not easily accessible to most members of the public. It is a very old piece of legislation, which no longer reflects the practicalities of criminal

15 Ibid, p.99

16 *The Conduct and Effectiveness of Parish Hall Enquiries* (2005), p.156

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trials in 2007. Although it is a big task, I resolved some three or four years ago that an effort should be made to bring about its reform and replacement with a modern up-to-date Criminal Procedure Law. With that in mind, I raised the matter before the previous Legislation Committee. It was agreed that a Working Party would be set up, chaired by me, and comprising the Magistrate and two members of the Jersey Bar [...].

*The remit of the Working Party is to prepare a law drafting brief, which has now been done, and to liaise with the Law Draftsman with a view to presenting a draft piece of legislation to the Home Affairs Minister for her consideration. I am hopeful that this might be achieved by mid-summer [2007] ...”*¹⁷

6.7.2 The current Magistrate, Mr Ian Le Marquand, told us that the working party's remit is “to redesign the criminal procedures for all the courts”. He explained:

*“It is set out on a basis of what we would like to do if we had a blank piece of paper and were starting from scratch. It has come up with proposals which are now at the stage of drafting instructions. This is a very, very lengthy process. We have had many meetings over quite a number of years ... It will come up with far-reaching proposals for review of the whole of criminal procedure”.*¹⁸

6.7.3 The Panel was informed that the working party was not proposing any change to the rôle Centeniers played in presenting cases in the Magistrate's Court.¹⁹

6.8 Centenier L’Amy’s Report in 2006 on a Visit to the Nottingham Police and Crown Prosecution Service

6.8.1 The Panel also received a detailed report prepared by Centenier Malcolm L’Amy (Chef de Police for St Peter), which was endorsed by the Comité des Chefs de Police.²⁰ The report gave an account of a visit undertaken by Centenier L’Amy to the Nottingham Police and Crown Prosecution Service (CPS) in May 2006 in order to gain an understanding of the English procedures for charge, bail and prosecution. The report contained a valuable description of the rôle of Centeniers in the Magistrate's Court as well as several recommendations for the future.

17 Written Submission from HM Attorney General, 11th April 2007

18 Transcript of Public Hearing with Mr I Le Marquand, Magistrate, 19th September 2006

19 Ibid

20 *Visit to Nottingham Police and Crown Prosecution Service, 16th – 19th May 2006, Centenier M P L’Amy*

7. OUTLINE OF THE CRIMINAL JUSTICE SYSTEM IN JERSEY

7.1 The Magistrate's Court

- 7.1.1 Until April 1997, the Court was known as the 'Police Court'. Today, the Magistrate's Court is served by the Magistrate, Mr Le Marquand, and an Assistant Magistrate, Mr Ian Christmas. From time to time members of the Jersey Bar are called upon to serve as Relief Magistrates. Since February 2006, the Court has been accommodated in modern, purpose-built premises.
- 7.1.2 The jurisdiction of the Magistrate's Court was increased in October 2000; it is now able to impose terms of imprisonment of up to 12 months and fines of up to £5,000.²¹ There is an increasing use of Probationary and Community Service Orders as an alternative to prison.
- 7.1.3 Until very recently, there had been a notable reduction in the number of cases coming before the Magistrate's Court: "*The reality is that, over the 11-year period from 1993-2004 there was a 15% drop in recorded crime and a 33% drop in Magistrate's Court appearances*".²² Over the past 4 years the Magistrate's Court has dealt with approximately 3,000 cases a year which involved approximately 7,000 appearances before the Magistrate. Of these cases, considerable proportions were for parking and motoring infringements. In 2006 there were 2,000 non-parking cases of which 218 were committed to the Royal Court. In addition there were 1,033 cases that were solely connected with parking infractions. A total of 1,712 Arrest Orders were issued in 2006, of which 1,360 were for parking infractions.²³
- 7.1.4 All cases are presented, including those where the accused has failed to appear and their arrest was ordered, by a Centenier in the first instance and only passed onto a Legal Adviser when necessary. A vast majority of cases were processed by the Court without difficulty. However, some 2,529 cases were dealt with following the issue of arrest warrants which greatly increased the work load of both Centeniers and Officers of the Viscount's Department.
- 7.1.5 A Court Listing Officer oversees the business of the Court in order that a balanced workload may be established. Once the Court is in session Centeniers play a part in ensuring that the order of business runs smoothly. On three mornings a week (Mondays, Tuesdays and Thursdays) the Court's work is dedicated to cases from St Helier.

21 *Magistrate's Court (Miscellaneous Provisions)(Jersey) Law 1949*, Article 3

22 More detailed statistics can be found in *Criminal Justice Policy Consultation Document* (July 2006), chapter 5

23 *Jersey Court Service Annual Report 2006*, p.13

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7.1.6 Several official groups meet from time-to-time to discuss the various functions and running of the Magistrate's Court. They include: the Magistrate's Court Focus Group; the Police Liaison Group; the Magistrate's Court Users Group; the Prosecutors Group; the Honorary Police Training Group; and the Jersey Child Protection Committee.

7.1.7 The statutory basis for the Court's work and operation is provided by a number of laws, including:

1. *Loi (1853) établissant la cour pour la répression des moindres délits*
2. *Loi (1864) réglant la procédure criminelle*
3. *Magistrate's Court (Miscellaneous Provisions)(Jersey) Law 1949*
4. *Criminal Procedure (Connétable and Centeniers) (Jersey) Law 1996*

7.2 Centeniers

7.2.1 There are currently 56 Centeniers, each elected by their Parish for a term of three years. Over the last few years there has been an increase in the overall number of Centeniers, partly to share the heavy workload among more officers. Centeniers are normally on duty for a week at a time, usually every 3 or 4 weeks depending upon the roster within the Parish, and are on call 24 hours a day during that period. Several Parishes have experienced difficulties in attracting people to offer themselves forward to become Centeniers. In February 2005, the Parish of St John was fined £5,000 for failing to elect a Centenier whilst the Parish of St Lawrence has in recent years twice been warned by the Royal Court that it would face a fine if a vacancy was not filled.

7.2.2 There are significant differences in the workload of Centeniers from different Parishes. In his written evidence to the Panel, Mr Le Marquand said "*if we leave out parking and speeding offences, then St Helier deals with about 80 per cent of other cases. The quality of the St Helier Centeniers is, therefore, crucial to the system. After St Helier, St Saviour, St Peter (because of the airport), St Brelade and St Clement follow in that order of activity. The other seven Parishes have much less activity with St Mary, Trinity, St John and St Martin having the least.*"²⁴

7.2.3 Centeniers carry out many general policing duties but three are central to Jersey's criminal justice system. First, Centeniers preside at Parish Hall Enquiries. Secondly, only Centeniers may charge and bail offenders before a case goes to the Magistrate's Court. Thirdly, Centeniers present cases to the Magistrate's Court. This report focuses on the last

24 Written Submission from Mr I Le Marquand, Magistrate, 19th September 2006, paragraph 3C

of these duties, which is described in more detail in paragraph 9.3.1.

7.2.4 Centeniers generally carry out their functions in relation to alleged offences committed in the Parish they were elected to serve; but the Connétable of another Parish may authorise a Centenier to exercise powers in that other Parish. In particular, "*in any case before the Magistrate's Court, the Connétable or a Centenier of one Parish may present the accused before the Court on behalf of the Connétable of another Parish if the Connétable has been authorized to act by and on behalf of the Connétable of the Parish in which the offence was committed.*"²⁵

7.2.5 One Centenier in each Parish is appointed by the Connétable to be Chef de Police with day-to-day responsibilities for the organisation of the Honorary Police in that Parish.

7.3 Comité des Chefs de Police

7.3.1 Under the terms of *Honorary Police (Jersey) Regulations 2005*, the 12 Chefs de Police form the Comité des Chefs de Police, which has a number of legal duties: to seek to strengthen and uphold the Honorary Police by fostering and maintaining the unity of its members; to oversee the management of resources made available to the Honorary Police; to coordinate the provision of advice and guidance to members of the Honorary Police; to promote consistency in operational practice between the Honorary Police of each Parish; and to foster continued cooperation with the States of Jersey Police Force and other agencies. Under the 2005 Regulations, the Attorney General may set aside any decision of the Comité.²⁶

7.4 Honorary Police Association

7.4.1 *Honorary Police (Jersey) Regulations 2005* also established the Honorary Police Association, the legal duty of which is to "*promote efficiency in the Honorary Police*". All members of the Honorary Police are members of the Association. Under the 2005 Regulations, the Attorney General may set aside any decision of the Association.

7.5 Connétables and the Comité des Connétables

7.5.1 As noted above, each Connétable appoints a Chef de Police for their Parish. Connétables are also responsible for matters relating to complaints about members of the Honorary Police in their respective Parishes. In law, Connétables – like Centeniers – have the right to charge, grant bail and present cases to the Magistrate's Court, though these powers are no longer in practice exercised.

²⁵ *Criminal Procedure (Connétables and Centeniers) (Jersey) Law 1996*, Article 3

²⁶ *Honorary Police (Jersey) Regulations 2005*, Article 8

7.5.2 The Comité des Connétables is the collective body of the 12 Connétables. The Chairman of the Comité may be asked questions in the States Assembly relating to a function or official responsibility which each Connétable has in their Parish.

7.6 Parish Hall Enquiries

7.6.1 Parish Hall Enquiries (PHEs) are an important part of the criminal justice process in Jersey; we understand that they are a highly regarded form of diversionary justice, particularly for young people. As we have noted, they have recently been the subject of a study commissioned by the Jersey Probation and After Care Service in which the following description was provided:

“Parish Hall Enquiry refers to the process of preliminary investigation conducted by a Centenier to ascertain whether there is sufficient evidence to suggest that an offence has been committed and whether or not it is in the public interest to prosecute the alleged offender for that offence. In all but the most serious offences, offenders will be invited to attend at a Parish Hall Enquiry to have the circumstances of the offences reviewed by the Centenier. The Parish Hall Enquiry has no legal definition and it is not a Court. Enquiries are usually held in the evening, attendance is voluntary and the attendee can at any time request that the case be heard before the Magistrate. If a person warned to attend at Parish Hall Enquiry does not attend, the Centenier may choose to issue a summons to appear before the Magistrate.”²⁷

7.7 HM Attorney General and the Law Officers' Department

7.7.1 HM Attorney General and (under his superintendence) the Law Officers' Department carry out several distinct rôles in relation to the criminal justice system in the Island.

7.7.2 The Law Officers' Department provides a public prosecution service for the Island.²⁸ The Attorney General and his officers advise and direct States and Honorary Police in criminal prosecutions. The Legal Advisers who present cases to the Magistrate's Court are employees of the Department. The Attorney General has issued a number of written guidelines in relation to the work of the Magistrate's Court, such as *Disclosure Guidelines to Prosecutors*. The Law Officers' Department also has responsibility for instituting proceedings, where appropriate, against States and Honorary Police following investigation of complaints.

7.7.3 The Attorney General is the legal adviser to the States of Jersey. He and his officers also

²⁷ *The Conduct and Effectiveness of Parish Hall Enquiries*, p. 8

²⁸ For further information, see <http://www.gov.je/LawOfficers/>

provide advice to Ministers in relation to the compliance of proposed legislation with *Human Rights (Jersey) Law 2000*.

7.7.4 Finally, the Attorney General also has a (non-statutory) rôle as 'titular head' of the Honorary Police. The Attorney General deals with the Honorary Police in various ways (in addition to those associated with his duties as the Island's prosecuting authority). Under *Honorary Police (Jersey) Regulations 2005*, the Attorney General has the power to set aside any decisions of the Comité des Chefs de Police and the Honorary Police Association. The Attorney General is also involved in the swearing in of members of the Honorary Police in the Royal Court; he explained to the Panel that in theory he could refuse to "move conclusions". In effect he could advise the Court on his judgement as to the suitability of a candidate; ultimately the Court itself would then make a decision as to suitability.²⁹ The Attorney General has also issued directives to the Honorary Police on matters such as dress and alcohol (in addition to guidance on the prosecution process).

7.8 Legal Advisers

7.8.1 In 1999, Legal Advisers were first appointed to share the task of presenting cases to the Magistrate's Court (as recommended by the Le Quesne and Nicholls reviews). Legal Advisers are either Jersey Advocates or English Barristers or English Solicitors employed by the Law Officers' Department.³⁰ There are currently two full-time and two part-time Legal Advisers; the team is led by Mr Laurence O'Donnell.

7.8.2 There is a good working relationship between the Legal Advisers and the Centeniers. Centeniers sometimes request that a case is taken by a Legal Adviser.³¹ The Legal Advisers, in their own time, have been involved in providing Court training to Centeniers.

7.8.3 The Attorney General has issued a 'guidance note' which sets out the criteria for deciding whether a case should be handled by a Centenier or Legal Adviser.³² On occasion, the Magistrate may direct that a case be presented by a Legal Adviser. Decisions about the allocation of cases between Legal Advisers and Centeniers are generally taken by the Legal Advisers; they are the Attorney General's representatives in Court.³³

7.9 Minister for Home Affairs and the Department of Home Affairs

7.9.1 The Minister for Home Affairs, through the Department of Home Affairs, has political

29 Ibid

30 *Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949*, Article 14

31 Transcript of Public Hearing with Mr L O'Donnell and Advocate R Morris, 1st November 2006

32 *Magistrate's Court Guidance Note: Procedure for the Progression of Cases Presented by Centeniers and Legal Advisers* (17th January 2000)

33 Transcript of Public Hearing with Mr L O'Donnell and Advocate R Morris, 1st November 2006

responsibility in relation to part of the criminal justice system, including the States of Jersey Police Service, Customs and Immigration and La Moye Prison. The Department does not fund the Honorary Police nor is it responsible for the courts.

7.9.2 The current Minister, Senator Wendy Kinnard, told the Panel *“there is value I think in keeping some separation of powers between policing powers in terms of what we do in terms of catching criminals and what the system does in terms of the running and smooth operation of the courts. I think that is a separate matter that ought not to be under a Home Affairs remit”*.³⁴

7.10 Human Rights

7.10.1 *Human Rights (Jersey) Law 2000* is still relatively new to the Island. It was adopted by the States in February 2000 and came into force on 10th December 2006. Closely modelled on the United Kingdom's *Human Rights Act 1998*, the Law brought into Jersey law most of the rights set out in the European Convention on Human Rights. The Convention is an international treaty ratified (in other words, formally accepted) by the United Kingdom in 1951, since which time it has also applied to Jersey. The Convention rights are wide ranging: they include a prohibition on torture (Article 2); the right to personal liberty and security (Article 5); a right to a fair trial (Article 6); a right to respect for private and family life (Article 8); rights in relation to freedom of thought, conscience and religion (Article 9); freedom of expression (Article 10); and freedom of assembly and association (Article 11). All public authorities (including Ministers, the States of Jersey Police, Connétables, and the Courts themselves) are obliged to act in conformity with Convention rights or risk legal challenge. In making decisions and developing policy, public authorities must now take account of the case law on the Convention rights set down by the European Court of Human Rights in Strasbourg.

7.10.2 In the context of our review, Article 6, which guarantees the right to a fair trial, was the most pertinent article:

“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 within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly by the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in

34 Transcript of Public Hearing with Senator W Kinnard, Minister for Home Affairs, 11th October 2006

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special circumstances where publicity would prejudice the interests of justice."³⁵

7.10.3 With reference to this Article, in April 2007 the Panel sought legal advice in the matter of the dual function of the Magistrate in Jersey from Mr J Cooper of Doughty Street Chambers, London.³⁶

7.10.4 Since the 1960s, individual 'victims' of breaches of Convention rights have had the right to take their cases to the European Court of Human Rights in Strasbourg. This is still the case in Jersey following implementation of *Human Rights (Jersey) Law 2000*, but now these fundamental rights and freedoms can be enforced in legal proceedings in the Island's courts. However, it has always been the rule that domestic remedies must be exhausted before a case will be accepted by the Court in Strasbourg.

7.10.5 The impact of the 2000 Law is made clear in a publication prepared for staff working in the public sector:

*"The Law will have a significant impact on your work. It affects almost everyone working in the public sector - those who are involved in developing legislation, making any decisions that affect the public or carrying out existing policy, those concerned with prosecutions or law enforcement, involved in the administration of a contract or working in personnel, those involved in teaching, or providing social services and medical or nursing care."*³⁷

7.10.6 Several aspects of the Island's criminal justice system were modified to bring them into line with Human Rights requirements during the period of almost six years between States approval of *Human Rights (Jersey) Law 2000* and the Law's implementation. When the appointed day act was considered by the States on 22nd November 2006, the Chief Minister, Senator Frank Walker, explained that the delay had been due to "*a multiplicity of legislation needs, including amendments to the Mental Health Law, the Regulation and Investigatory Powers Law, Police Procedures and Criminal Evidence Law and also some review and changes to the Prison Rules*". The Chief Minister added that work remained to be done in this regard but that enough measures had already been taken for the appointed day act to be considered and approved.³⁸

35 *Convention for the Protection of Human Rights and Fundamental Freedoms*, Article 6

36 Available on the Scrutiny website: <http://www.scrutiny.gov.je>

37 Available on the Chief Minister's website:

<http://www.gov.je/ChiefMinister/International+Relations/International+Agreements/Human+Rights/>

38 Official Record of the States Assembly, 22nd November 2006

8. HOW THE RUTHERFORD RECOMMENDATIONS WERE CONSIDERED

8.1 Following the publication of the Rutherford report in 2002, the Home Affairs Committee proceeded to draft a Criminal Justice Policy for Jersey that was lodged on 20th September 2005 for debate by the States Assembly. The starting point for the Panel's review was a wish to examine why one of Professor Rutherford's recommendations was not pursued in the draft Policy. That was Recommendation 4, which was "*that a public prosecution service be created under a Director responsible to the Attorney General; that the rôle of the Centenier in the Magistrate's Court should cease; and that the decision as to whether or not to charge an individual with an offence should reside with the public prosecutor and not with the Centenier*".³⁹

8.2 In February 2006, *Criminal Justice Policy* (P.201/2005) was withdrawn. In July 2006, the Department of Home Affairs published the draft Policy as a consultation paper. In relation to our review, the consultation paper did not differ extensively from P.201/2005 and the executive summary stated:

*"The resultant 'Rutherford Report' made 10 recommendations, nine of which have been taken forward ..."*⁴¹

8.3 It became apparent during our review that the executive summary was in fact an oversimplification of the position, as the Minister conceded to the Panel in correspondence dated 26th September 2006.⁴² For instance, Rutherford recommendation 5 on Parish Hall Enquiries was also not taken forward in the manner Professor Rutherford had envisaged.

8.4 The main decisions as to which of the Rutherford recommendations to pursue were taken by the Committee in March 2003 (prior to the introduction of Ministerial Government). The President of the Committee at that time was Senator Wendy Kinnard, the current Minister for Home Affairs. P.201/2005 indicated that:

"Having consulted the Attorney General at an early stage in the policy-setting process, the Home Affairs Department will not pursue the Rutherford recommendations that a public prosecution service be created. This could not be justified on cost grounds and would result in the Centeniers losing their traditional

39 *Review of Criminal Justice Policy in Jersey*, p.91

41 *Criminal Justice Policy Consultation Document* (July 2006), paragraph 1.2

42 Written Submission from the Minister for Home Affairs, 26th September 2006

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*rôle of presenting cases in the Magistrates Court.*⁴³

- 8.5 In Public Hearings with the Minister and the Attorney General, we explored how it was decided which recommendations would be implemented. It appeared that the Attorney General had a decisive influence on the thinking of the Home Affairs Committee when it considered whether to pursue the Rutherford recommendations.
- 8.6 The Minister told us that *“we had to make a decision quite early on about which of those recommendations we were going to spend time and effort on and which of those we felt really were not going to fit our purposes”*. The Committee *“had various focus groups dealing with the Criminal Justice Policy and we had a focus group on prosecution and dealing with offenders”*. The Committee had also *“consulted with the Bailiff in 2002 and he was very much of the view that he was totally opposed to the removal of the Centeniers from the court process. We consulted with the Attorney General in November 2003”* and *“my Chief Officer consulted at various times with the Centeniers Association and various Centeniers”*. The Minister told the Panel that the Committee did not at that time ascertain what the costs would be to establish a public prosecution service.⁴⁴
- 8.7 The Minister said that the Attorney General was consulted *“as the titular head obviously of the honorary service and also as the Attorney General”*. The Attorney General had attended on the Committee *“on 27th March 2003 where he made his points verbally and strongly”*. The Minister reported that the Attorney General had *“also said that those recommendations were not supported - and that includes obviously the one we are talking about - by the Bailiff, the Deputy Bailiff, the Magistrate or the Jurats. So he obviously had worked closely with them to be able to express that view when he came to the Committee on 27th March 2003”*.⁴⁵
- 8.8 The senior figures in Jersey's judiciary were therefore consulted in relation to the Rutherford recommendations. However, the Panel has noted that the Criminal Justice Policy consultation paper, released in July 2006 by the Department of Home Affairs, stated:

“The Rutherford Report recommended the establishment of a body with oversight responsibility for criminal justice policy. To be called the Criminal Justice Policy Oversight Council, its task would be to keep under review and co-ordinate all legislative and other initiatives relevant to criminal justice in order to encourage a joined-up approach that fully respects the independence appropriate to the essential separation of powers.

43 *Criminal Justice Policy* (P.201/2005), paragraph 1.25

44 Transcript of Public Hearing with the Minister for Home Affairs, 11th October 2006

45 Ibid

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Whilst it is clear that effective joint working has become commonplace at officer level, both in the conduct of operations and the development of strategy, the same cannot be said for liaison between the executive and the judiciary at the highest level. Meetings do take place, but they tend to be ad hoc in nature to discuss specific issues. Clearly, as the Rutherford Report suggests, there are clear boundaries of responsibility which must be preserved. Sentencing policy is the preserve of the Court, whilst legislation, resourcing and the direction of operational departments belong to the executive. However, the criminal justice process implies a synergy between the executive and the judiciary which would benefit from a policy and planning forum. Rather than establish a formal body with oversight responsibility, there is a willingness amongst both parties to interact on a more regular and informal basis.”⁴⁶

The Department of Home Affairs has therefore itself concluded that there has been insufficient liaison in the past between the executive and the judiciary.

- 8.9 The intention to interact more regularly, albeit informally, was reflected in objective 3.3.7 of *States Strategic Plan 2006 – 2011*. Lead responsibility for reaching this objective was assigned to the Minister for Home Affairs:

“[To] Establish an informal forum for the criminal justice policy and planning involving the Minister / Assistant Minister for Home Affairs, the judiciary and the prosecution by 2008.”⁴⁷

- 8.10 In the December 2006 update on progress on the Strategic Plan objectives, it was noted that the forum would be found in the draft Criminal Justice Policy and that it already had the Bailiff's agreement.⁴⁸

KEY FINDING:

- 8.11 On the understanding that it will promote a synergy between the executive, the judiciary and the prosecution on criminal justice matters, the Panel welcomes the establishment of an informal forum on criminal justice policy.**

- 8.12 Notwithstanding other work or consultation that may have been undertaken by the Home Affairs Committee when considering Rutherford Recommendation 4, the Panel came to examine what specific consideration had been given to Human Rights implications. The decisions regarding the Rutherford recommendations were made before *Human Rights*

46 *Criminal Justice Policy Consultation Document*, paragraphs 7.8 and 7.9

47 *States Strategic Plan 2006 – 2011*, p. 23

48 *Strategic Plan Initiatives – Progress Report as at 31st December 2006* (R.C.4/2007)

(Jersey) Law 2000 came into force. Despite this fact, however, the Home Affairs Committee should have taken Convention rights into account when developing the draft Policy: the 2000 Law had been on the 'statute book' for three years and the delay in its implementation was to ensure that so far as possible Jersey law, policy and practices were compliant with Convention right requirements.

- 8.13 We sought clarification from the Minister on what consideration had been given, either by the Home Affairs Committee in 2003 or later by the Minister individually, to the Human Rights implications of rejecting Rutherford Recommendation 4. In reply, the Minister advised:

*"Dealing with the Committee's decision in March 2003 first, it will be apparent from inspection of the Committee's Act B3 of the 27th March 2003 that possible Human Rights Law implications were covered during the course of the meeting at which the Attorney General was present. There is specific reference to this under Recommendation 6. It would be reasonable to assume, therefore, that had there been reservations about Human Rights Law compliance with regard to Recommendation 4, or indeed 5, that these would have been raised at the time."*⁴⁹

- 8.14 In relation to later (re)consideration as Minister, she added:

*"Had I not been the President of the former Home Affairs Committee, I can see that it might have been considered necessary to re-visit the issues. But that is just the point. I do not see that becoming Minister, as opposed to Committee President, should have acted as a trigger for a review of decisions that had been taken in the recent past following consultation with the appropriate source of advice in such matters. Furthermore, I am not aware that there have been any challenges to date over the rôle of the Centenier either before or after the bringing into force of the Human Rights (Jersey) Law, 2000."*⁵⁰

- 8.15 It would appear therefore that whilst the matter of Human Rights was raised during initial consideration of the Rutherford recommendations, more detailed consideration could have been given to the specific Human Rights implications of rejecting Recommendation 4. Given the nature of the issues that had been raised in previous examinations of the workings of the Magistrate's Court, such detailed consideration might have been expected.

49 Written Submission from the Minister for Home Affairs, 26th April 2007

50 Ibid

KEY FINDING:

8.16 During the initial consideration of whether to progress Rutherford Recommendation 4, there was inadequate examination of Human Rights implications.

9. THE CURRENT RÔLE OF THE CENTENIER IN THE MAGISTRATE'S COURT

9.1 The Statutory Foundations for the Magistrate's Court

9.1.1 The current legislative framework governing the operation of the Magistrate's Court (and in which Centeniers therefore operate) dates back to laws of 1853 and 1864 (see paragraph 7.1.7). As we noted in paragraph 6.7.1, the 1864 Group, chaired by the Attorney General, has been working for several years on a review of criminal justice procedure. At a Public Hearing, the Attorney General told us the working party had been established some three or four years previously to review *Loi (1864) sur la Procedure Criminelle* and replace it with more modern legislation. The Panel was advised that the 1864 Group's work was likely to lead to the preparation of draft legislation by mid-summer 2007.⁵¹

9.1.2 In his evidence to us, Mr Le Marquand, the Magistrate, was highly critical of the current state of legislation:

*"Now in reality and the fact of the situation is that the existing statutory base for the Magistrate's Court is wholly defective. It is wholly defective. Magistrates have had to operate for many years despite the legislation which is wholly defective. It just does not hold together properly; the bits do not relate to each other properly...If you had the Attorney General in front of you he would say exactly the same thing."*⁵²

9.1.3 Mr Le Marquand stated that the Court could not have operated properly if it operated in accordance with the existing statutes. He explained that Magistrates have had to adjust the system from time to time to make it workable albeit without doing any violence to the actual text of the statute. He also advised the Panel that an examination of the statutes and relevant documents might allow a theoretical view as to who was doing what and how it was operating; however, the Panel was told that the way it operates in practice is completely different to that within the statute. As an example of an adjustment to working procedures, Mr Le Marquand cited that Centeniers would need to adapt when it became necessary for the system to be Human Rights compliant in terms of bail applications.⁵³

51 Written Submission from HM Attorney General, 11th April 2007.

52 Transcript of Public Hearing with the Magistrate, 19th September 2006

53 Ibid

KEY FINDING:

9.1.4 The Panel welcomes the work being undertaken by the Attorney General's 1864 Group on legislation relating to criminal procedure. It is unacceptable that the existing statutory base for the Magistrate's Court has been described as "wholly defective".

9.2 Human Rights Audit of Legislation

9.2.1 Mr Le Marquand was not asked to give his assessment in the context of Human Rights. Prior to implementation of *Human Rights (Jersey) Law 2000*, however, a review of Jersey's legislation was due to take place in order to ensure its compliance with the Law. During the States sitting of 19th June 2007, however, it became apparent that this review of legislation had not included the laws governing the functioning of the Magistrate's Court: *Loi (1864) réglant la procédure criminelle; Criminal Procedures (Connétables and Centeniers) (Jersey) Law 1996*; and *Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949*. In reply to a question from the Deputy of St Martin, the Chief Minister stated that "*the laws to which the Deputy has referred were not the subject of an audit before the Human Rights Law came in.*"⁵⁴ This fact was confirmed and clarified on 3rd July 2007 by the Attorney General when responding to another oral question from the same Deputy:

*"Following the passage of the Human Rights Law in 2000 the Policy and Resources Committee of the day set up a Human Rights Working Group which looked at the different laws, policies and administration across the States. The decision taken in that group was that each Department would be responsible for reviewing its own legislation and its own administration to ensure that there was a Human Rights compliant process. That decision, as far as I am aware, although my department was represented on the working group I was not on it myself, was taken on the grounds mostly of cost but also, linked to cost, the time that would be taken to review the entirety of the statute book. That, I understand, are the reasons for the decision that was taken at that time."*⁵⁵

9.2.2 The Attorney General suggested that it was not entirely his Department's responsibility for implementing an audit of legislation relating to the Magistrate's Court:

"The administering responsibility for the Courts would be the Court Service. But, having said that, I fully accept that the prosecution should have spotted any major errors if there were any major errors and, of course to that extent, if there are any I

54 Official Record of the States Assembly, 19th June 2007

55 Official Record of the States Assembly, 3rd July 2007

would take responsibility for that.”⁵⁶

KEY FINDING:

9.2.3 A detailed Human Rights audit of the legislation relating to the Magistrate's Court did not occur prior to the implementation of *Human Rights (Jersey) Law 2000*. Previous examinations of the operation of the Magistrate's Court had highlighted concerns that might have been expected to prompt such an audit.

9.3 The Centeniers' Rôle in the Magistrate's Court

9.3.1 Notwithstanding the legislative situation, the actual rôle played by Centeniers in the Magistrate's Court was outlined by Centenier L'Amy in his report:

“The Centenier sits in the front of the new Magistrate's Court to present cases. The Centenier arranges the running order of cases. The presenting Centenier will read the charges to the Court. If a guilty plea is given then the Centenier will read the facts. The Centenier will also present persons who have breached probation orders, and will call Viscount Arrest orders.

A Centenier can ask for certain bail conditions to be set for a person to be remanded in custody. Centeniers can oppose bail and ask the Magistrate to decline jurisdiction in serious cases on first presentation [resulting in the case being sent to the Royal Court]. The Centenier cannot cross-examine defendants in Court.

The Legal Adviser sits behind the Centenier. [...] While Legal Advisers can present cases and make objections to bail, they cannot read the charge sheet.”⁵⁷

9.3.2 Centenier L'Amy explained that:

“When cases are remanded for either 14 or 28 days, again the Centenier will have prepared the date to which the accused will be remanded. The Centenier, if a “not guilty” plea is expected, will have pre-arranged the date for a Pre-Trial Review or a trial date, prior to the Court sitting....

Centeniers, having on occasions spoken with the Legal Adviser, conduct opposition to bail, not only at first appearance but also on subsequent appearances. The Centenier will also have chased for further information from witnesses, or for other evidence to be made available”.⁵⁸

56 Ibid

57 *Visit to the Nottingham Police and Crown Prosecution Service, 16th – 19th May 2006, p. 15*

58 Ibid, p.21

9.3.3 When an accused person is committed for trial to the Royal Court in relation to a serious offence, the Centenier will prepare a report, to be signed by the Connétable, detailing the facts of the case and this is signed by the Magistrate on the indictment.⁵⁹

9.4 Should Centeniers be removed from the Magistrate's Court?

9.4.1 The principal arguments for and against the rôle of Centeniers in the Magistrate's Court can be briefly stated.

9.4.2 Those defending the current system point to two different factors. First, it is said that to remove this rôle from Centeniers would undermine the Honorary Police system. It is said in particular that removing Centeniers from the Magistrate's Court would devalue the rôle of the Parish Hall Enquiry as well as diminishing public perception of the importance of the office of Centenier. Secondly it is said that the Centeniers, who give their time to the community voluntarily, provide a prosecution service that is remarkably good value. These two arguments were accepted by the Nicholls working party in 1998⁶⁰ and also, in 2003, by the Home Affairs Committee in its decision not to pursue Rutherford Recommendation 4.

9.4.3 Those who wish to see change point to two factors. First, it is said that some Centeniers lack the aptitude and skill to carry out their rôles in the court effectively. Secondly, it is said that to have non-legally qualified officers (Centeniers) presenting cases puts the Magistrate in the difficult position of having to adopt a 'dual rôle' and that this risks creating an impression that the court process is not sufficiently independent and impartial. If that were so, such a situation would have potential Human Rights implications.

9.4.4 The Panel will explore the issue of the Magistrate's 'dual rôle' in section 11 of the report. At this juncture, we shall examine in more detail the other arguments relating to cost, tradition and the aptitude of Centeniers.

9.5 The Issue of Cost

9.5.1 The Home Affairs Committee gave cost as one of the reasons for rejecting Rutherford Recommendation 4. We were told by the Minister for Home Affairs that if Centeniers ceased to present cases to the Magistrate's Court and a Directorate of Public Prosecutions were established, at least two extra Legal Advisers would be needed, along with administrative and secretarial support and appropriate office accommodation.⁶¹ The Attorney General told us that it would require "*somewhere between two and three full-time equivalent legal staff and that salaries for the legal and support staff would be about*

59 Ibid, p.16

60 *Magistrate's Court Practices and Procedures* (R.C.7/1998), paragraph 7.3

61 Transcript of Public Hearing with the Minister for Home Affairs, 11th October 2006

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£300,000 a year in total.”⁶² Centenier L’Amy put the costs even higher, suggesting that if Jersey adopted a UK-style Crown Prosecution Service between £5 million and £7 million a year would be needed for “a further twenty Legal Advisers to get through 3,100 cases on an annual basis”.⁶³

9.5.2 The Minister told the Panel that, when considering the Rutherford recommendations in 2003, the former Home Affairs Committee did not establish what the costs would be to establish a public prosecution service because “we felt we did not need to because for the simple reason that [...] we knew that we were coming into a time of very severe budgetary restraint within the States and also we were very concerned about this issue about how that would impact upon the other rôle of the honorary system”.⁶⁴

9.5.3 The Panel received evidence from the Chairman of the Comité des Connétables, Connétable Ken Vibert, regarding the cost to each Parish of running the Honorary Police. For 2006 the specified costs of providing administrative support totalled approximately £160,000 (spread across all the Parishes).⁶⁵ It was not possible to identify the separate annual budget for training of Centeniers to do Court work, as this was included in the annual training budget that ranged from £1,000 to £4,560. It can be seen therefore that there is a minimal cost of Centeniers undertaking their work in the Magistrate’s Court.

9.5.4 It is worth noting that cost issues cannot be used as justification for non-compliance with the European Convention on Human Rights. If the system of Centeniers presenting cases in the Magistrate’s Court were found to be in contravention of the Convention, it would not be possible to refrain from amending the system on the grounds of cost: it would be necessary to change the system, regardless of cost.

9.5.5 The Attorney General indicated that he agreed with this view when answering questions in the States Assembly on 3rd July 2007:

*“I quite agree [...] that cost is no answer to making sure that your administrative and legal systems are Human Rights compliant.”*⁶⁶

62 Transcript of Public Hearing with Mr W J Bailhache QC, HM Attorney General, 6th November 2006

63 Transcript of Public Hearing with Centeniers M L’Amy and G Cornwall, 21st September 2006

64 Transcript of Public Hearing the Minister for Home Affairs, 11th October 2006

65 Written Submission from the Comité des Connétables, 20th November 2006

66 Official Record of the States Assembly, 3rd July 2007

KEY FINDING:

9.5.6 From the evidence received, it is not feasible to determine precisely the cost implications of Centeniers ceasing to present cases in the Magistrate's Court. However, it is a reasonable argument that there might be significant cost implications given that Centeniers essentially provide services on an honorary basis.

9.6 The Traditional Rôle

9.6.1 The other reason given for the rejection of Rutherford Recommendation 4 was the adverse affect it would have on the office of Centenier. Centenier Tania Reed of St Lawrence, shared this concern and summed up the matter graphically:

"I think there are going to be a lot of Centeniers who would maybe then start just feeling like car-park attendants or sort of general dogsbodies rather than playing an important rôle. I think it might take a bit of respect away from the Centeniers' rôle, if that was taken away".⁶⁷

9.6.2 Centenier Geoff Cornwall of St Brelade was equally forthright. He told us:

"It would be a nail in the coffin of the whole system. The whole Honorary Police system relies on the fact that the Centenier is able to see matters through from start to finish. The Parish Hall Enquiry depends on the fact that one of the things the Centenier can do at the outcome is to bring a charge. ... I think if you take the Centenier out of the Court system it immediately devalues the Parish Hall system and the Parish Hall system I think is absolutely vital".⁶⁸

9.6.3 This view was echoed by Centenier L'Amy:

"The respect that we have from youngsters I think is extremely high, because they know that we have the power [to charge them] ... If we took away the power of the Centenier of being in Court, being involved in the criminal justice system in the way that we are at the moment, we would lose all that respect. We would be glorified car park attendants. Would there be any necessity to hold public elections for Centeniers? I think the whole system would crumble".⁶⁹

9.6.4 We acknowledge the sincerity of these concerns. However, if the view was reached that current arrangements were not compatible with Convention rights, the system would have to change. The right to minimum standards of fair trial – both for defendants and indirectly

67 Transcript of Public Hearing with Centenier T Reed, 21st September 2006

68 Transcript of Public Hearing with Centeniers M L'Amy and G Cornwall, 21st September 2006

69 Ibid

for victims of crime – has to take precedence over the personal views of the Honorary Police. That is the consequence of the decision by the States of Jersey to adopt *Human Rights (Jersey) Law 2000*. We believe that members of the Honorary Police service understand this well, noting that in an interview given to the *Jersey Evening Post* on 28th April 2007, Centenier Geoff Cornwall stated that the Honorary Police are now, quite rightly, increasingly aware of Human Rights issues.⁷⁰ This awareness was also apparent in correspondence we received from the Comité des Chefs de Police in which the Comité set out some long-term aims:

“as Human Rights legislation impacts upon the traditional rôle of the Magistrate and Centenier, to investigate how the Centenier’s rôle needs to change in order that the whole process may remain Human Rights compliant.”⁷¹

9.6.5 As it is, removing Centeniers from the Magistrate's Court might in fact make the position more attractive to prospective candidates. Evidence we received suggested that presenting cases may not be a universally popular aspect of a Centenier's duties: not everyone feels comfortable with that aspect of the position.⁷² This fact may take on more significance when recalling (as indicated in paragraph 7.2.1) that some Parishes find recruitment difficult. Indeed, we were advised that fewer people would stand if they had a full understanding of the position's responsibilities.⁷³

KEY FINDING:

9.6.6 If Centeniers were to lose their rôle in the Magistrate's Court, it does not necessarily follow that they would be held in any less respect than they are now or that it would be more difficult to find Parishioners willing to stand for election.

9.7 A Professional Prosecution Service?

9.7.1 The Panel received a variety of views on the effectiveness of Centeniers when undertaking their duties in the Magistrate's Court. Advocate Timothy Hanson told us that he felt Centeniers lacked training and sufficient legal knowledge:

“Centeniers have numerous powers and responsibilities including the granting or opposing of bail, the formal charging of a person with an offence, the presentation of a case to the Magistrate, the decision not to pursue a charge (for instance to accept a lesser charge) etc. However, in an age where professionally trained persons are

70 *Honorary Dedication*, Jersey Evening Post, 28th April 2007

71 Written Submission from the Comité des Chefs de Police, 24th October 2006

72 Transcript of Public Hearing with Centenier J Rigby, 30th October 2006

73 Record of Meeting with Mr I Jayes, 10th July 2006

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*expected to conduct proceedings in a Court, it is an anachronism that Centeniers, who will have little in the way of formal training, are permitted to conduct such an important rôle. While they may have a basic knowledge as to why bail might be refused or granted, I doubt that they would be able to assist the Court on more difficult issues that might arise during a particular case”.*⁷⁴

9.7.2 Other evidence pointed to the fact that the cases in which Centeniers appear are in practice confined to minor offences; Legal Advisers act in more serious cases, especially those in which the defendant pleads not guilty. The Attorney General told us:

*“The Centeniers do not deal with not guilty pleas, as I understand it, in all the more serious offences which occur in the Magistrate’s Court. They do deal with not guilty pleas for the very much less serious offences, urinating in a public place or minor breach of the peace and that sort of thing. Here there really is a balance to be struck because if we were to take those cases away from the Centeniers, quite apart from the impact on charging...there are quite a lot of those cases and it would require a resource in terms of lawyers in, presumably, my department to add to Mr O’Donnell [Legal Adviser (Police HQ)] and his team in presenting those cases”.*⁷⁵

9.7.3 The Attorney General told the Panel that the relationship between Centeniers and Legal Advisers required some “*give and take*”. Mr Laurence O’Donnell said that the Centeniers seemed very comfortable about asking the Legal Advisers, on occasion, if they would deal with matters. We were told that the Magistrate might also ask that a Centenier pass the matter over to a Legal Adviser.⁷⁶

9.7.4 The Attorney General’s assessment was that he “*cannot see that there is anything much wrong, in practice, with the way things are going at the moment.*” He added:

*“How do you make sure that you, first of all, support the Honorary Police; that you maintain the integrity of their process as a whole? The right way of doing that, at the moment, is that as there is no obvious problem I think the best thing is to leave well alone and we can tackle it if we need to”.*⁷⁷

9.7.5 A contrary view to that expressed by the Attorney General (that invokes Human Rights consideration) is that the current system violates the right to a fair trial, guaranteed under Article 6 of the Convention. It might be said that the ‘dual rôle’ played by the Magistrate could give the impression that the system was not impartial or independent. More arguably,

74 Written Submission from Advocate T Hanson, 24th June 2006

75 Transcript of Public Hearing with HM Attorney General, 6th November 2006

76 Transcript of Public Hearing with Mr L O’Donnell and Advocate R Morris, 1st November 2006

77 Transcript of Public Hearing with HM Attorney General, 6th November 2006

it might be contended that the system fails to meet the apparent requirement under Article 6 for a professional prosecution service, if indeed that is a requirement.

9.7.6 We do not in any way question the personal integrity of Centeniers. However, we do note that Centeniers are elected and it could be said that it is not sufficient for there merely to be the option of prosecution by a legally-qualified person (given that any case could theoretically be handed to a Legal Adviser). It might be argued that a prosecutor for the purpose of the right to a fair trial, regardless of the nature of the offence, must:

- dedicate him/herself to the achievement of justice and pursue that aim impartially;
- s/he must conduct the case against the accused with due regard to the traditional precepts of candour and absolute fairness;
- since s/he represents the State, the community at large and the interests of justice in general the task of the prosecutor is more comprehensive and demanding than that of the defending practitioner;
- s/he has a special duty to see that the truth emerges in court;
- s/he must produce all relevant evidence to the court and ensure the veracity of such evidence;
- s/he must state the facts dispassionately;
- if s/he knows of a point in favour of the accused, that must be brought out;
- if the accused is unrepresented and the prosecutor knows of a credible witness which goes to show the innocence of the accused, then the prosecutor must call that witness themselves;
- if the defence is represented, then that witness must be tendered to the defence;
- finally, if the prosecutor's own witness substantially departs from his/her written evidence the prosecutor should draw the attention of the court to this discrepancy or reveal the seriously contradictory passages to the defence.⁷⁸

We think that it will be necessary for arguments such as these to be considered in the review we suggest should be conducted (see paragraph 9.7.10).

⁷⁸ *In the Matter of the Dual Function of the Magistrate in Jersey* (May 2007), Mr. J. Cooper, Paragraph 72

- 9.7.7 There may also be other issues involved in the apparent requirement for a professional prosecution service: equality of arms; freedom from discrimination; and positive obligation to protect victims of crime.
- 9.7.8 Equality of arms effectively means that, in court, both the prosecution and defence occupy a level-playing field.

KEY FINDING:

- 9.7.9 It is not for the Panel to reach a conclusion as to whether or not Centeniers presenting cases in the Magistrate's Court is Human Rights compliant; this may only be conclusively decided within a court of law.**

RECOMMENDATION:

- 9.7.10 Detailed consideration should be given by the Attorney General and the Minister for Home Affairs to whether the current system, whereby Centeniers present cases in the Magistrate's Court, meets the requirements of the European Convention on Human Rights.**

9.8 Organising the Running Order of Cases

- 9.8.1 During our review, questions arose concerning one specific area in relation to the Centeniers' work in the Magistrate's court: the organisation of the running order of cases. There did appear to us to be a lack of clarity regarding this matter.
- 9.8.2 The understanding we gleaned during our review was that the Magistrate's Court has a Listing Officer whose rôle is to prepare the daily list of cases to be heard. The list is constructed in a preferred order of presentation: bail applications; custodial remands; represented cases; cases requiring interpreters; all other cases. A 'mini list' operates within each of these categories. It is possible for cases to appear before the Court without delay on a 'walk in' basis but only in the following instances: where the defendant has medical, mental or social problems, or is about to leave the Island.⁷⁹
- 9.8.3 The list is therefore prepared in advance, albeit with in-built redundancy to allow for the appearance of any 'walk in' cases. Centeniers assist in the organisation of matters, particularly once the Court is in session. For instance, the Magistrate's Court Greffier liaises with the St Helier Charges Office (which provides administrative support to the

79 Written Submission from Mr D Le Heuzé, Magistrate's Court Greffier, 20th October 2006

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Parish's Centeniers) before it is decided to 'close' the list. Once the Court is in session, pressure may come to bear on the prepared list for various reasons: the prison van may be delayed, for example, or Advocates may be receiving instruction from their clients. Centeniers "*will [therefore] call cases with due regard to the list but also with regard to the smooth presentation of cases to ensure that the Magistrate[s] do not have to continually retire after a few cases are presented.*" However, the Magistrate (or Magistrate's Court Greffier) will ensure that the Centeniers are aware if particular cases require priority attention. The upshot of this system appears to be that "*whilst [...] when the Court is in session the Centeniers will run the order of presentation of cases within the Court, it is within the boundaries laid down by the Court.*"⁸⁰

9.8.4 The Panel received a variety of views on the effectiveness of the system. Mr Le Marquand told us: "*There is a batting order ... but we never follow that batting order*" and "*We simply cannot run with a fixed batting order. ... If you have got eight or ten Centeniers there and nobody is taking charge in terms of who is the lead Centenier, who is running the running order, it can be very bitty and people don't know what is happening*". Mr Le Marquand also pointed to the fact that some Centeniers are better at this rôle than others. He told us that the Magistrate was in no position, sitting on the bench and dealing with the cases, to know whether an advocate had finished seeing his client in the cells and was ready.⁸¹

9.8.5 Centenier L'Amy told us that that he regarded the rôle of running the list as "*an onerous responsibility*". He explained that:

*"There might be three or four Centeniers on a Court sitting and they will have already spoken with the defence advocate and Legal Adviser if the case is of a complicated nature so that the Court will run as smoothly as possible and that there will be very few adjournments. Sometimes that does not happen because the advocates for the defence are not ready and we have to have perhaps 2 or 3 adjournments on a morning sitting".*⁸²

9.8.6 The running order does not always go smoothly and as a result cases have to be adjourned, causing delay and wasted expenditure. It should also be noted that where cases involve the provision of Legal Aid, Advocates are often providing their time and service free of charge or at greatly reduced rates. The Panel heard conflicting evidence on the causes of the problems. Centenier Rigby of St Saviour laid the blame squarely on the advocates. He told us: "*I think one of the biggest hold-ups is the advocates themselves by not being*

80 Ibid

81 Transcript of Public Hearing with the Magistrate, 19th September 2006

82 Transcript of Public Hearing with Centeniers M L'Amy and G Cornwall, 21st September 2006

themselves prepared to come into Court at that particular time".⁸³ Advocate Timothy Hanson took a different view:

"I have found myself sometimes most frustrated at the manner in which some Centeniers have chosen the cases that they have wished to call on, without any appreciation that there were far shorter cases that could have been dealt with and the legal representatives then freed up to deal with other matters. On one occasion despite being duty advocate and having a client in custody I and my client (who was eventually granted bail) were kept waiting five hours in part whilst the Centeniers on duty that day chose a myriad of less serious cases to deal with first, including parking infractions. Cases were then chosen that involved a great deal of argument and delayed all other matters whilst they were adjudicated on. Certainly in my experience in England of prosecuting and defending criminal cases both in the Magistrates' Court and Crown Courts one would report to the usher whether or not one's case was ready and give a time estimate so that the cases in the list could be dealt with as expeditiously as possible".⁸⁴

9.8.7 Whilst we were therefore advised that the Court oversees the Court List, it would appear that Centeniers have a part to play in its implementation. This situation may leave room for confusion regarding who is ultimately responsible for the Court List; this is potentially a significant matter as the organisation of the list raises issues beyond efficiency. Ms Tracy Easton, District Crown Prosecutor, Hampshire and Isle of Wight Crown Prosecution Service, raised a point about compliance with Convention rights. She told us: *"In England listing is not controlled by any of the parties, so it is impartial, if you like, in that it is controlled entirely by the Courts. It is felt to be a judicial function. Because of equality of arms under the European Convention, what it is believed is that neither the prosecution nor the defence should have undue influence over the way a court is listed"*.⁸⁵

9.8.8 Any confusion that may be caused about who 'controls' the list may merely be a question of terminology arising perhaps from the interchangeable use of terms such as 'court list' and 'running order'. Furthermore, the fact that Centeniers assist in determining the running order once the Court is in session may give the impression that they 'control' the list. However, it should be clear to all involved in cases in the Magistrate's Court who is responsible for the court listing.

83 Transcript of Public Hearing with Centenier J Rigby, 30th October 2006

84 Written Submission from Advocate T Hanson, 24th June 2006

85 Transcript of Public Hearing with Ms T Easton, 5th October 2006

KEY FINDING:

9.8.9 The evidence received suggests that there is the potential for confusion regarding who has responsibility for organising the list of cases in the Magistrate's Court.

RECOMMENDATION:

9.8.10 The Magistrate, in consultation with the Attorney General, the Comité des Chefs de Police and the Bâtonnier should ensure that all relevant parties clearly understand who is responsible for the organisation of the Court listing.

9.9 The Separation of Investigation and Prosecution

9.9.1 Prior to 1980, the Police in England and Wales were responsible for the charging and prosecution of offenders. In 1980, a review of criminal procedure took place under the chairmanship of Sir Cyril Philips and the resultant report was presented to Parliament in January 1981. When the Phillips report was published in 1981, one of the findings contained within was:

*"We recommend that the point of charge or issue of the prosecutor should mark the division of responsibilities between the police and prosecutor. It was the view of the Review Body that the pre-trial process has two distinct but inter-dependent phases; the police should have primarily responsibility in the investigative phase and the Crown prosecutor in the prosecutorial phase."*⁸⁶

9.9.2 The issue of separating the investigatory and prosecutory processes arose during our review and was a matter covered when, in order to further our understanding of Jersey's Magistrate's Court system, we enquired as to how the equivalent systems worked in Guernsey and the Isle of Man. To this end, we made written requests to HM Attorney General in the Isle of Man and visited the Magistrate's Court in Guernsey.

9.9.3 Despite its proximity to Jersey, Guernsey has not retained an honorary system. The Guernsey system therefore utilises a separate police unit within the police force to determine whether or not to proceed with a case and charge an individual (although advice is available from the Law Officers of the Crown). Under Guernsey's current system, the Island's Police force, albeit through different units, both investigates and makes a decision to charge. This is somewhat in contrast to the Jersey and UK systems.

86 *The Royal Commission on Criminal Procedure – Report (1981)*

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9.9.4 In relation to the Isle of Man, the Attorney General, Mr. W. H. J. Corlett QC, told us that:

*"It has been the policy of the Isle of Man Government for several years that the prosecution of all criminal offences should be carried out by the Attorney General. It is considered that it is wrong in principle that the police should be both investigators and prosecutors in a given case. At present, the police do still prosecute summary offences (those less serious offences which are dealt with in the Summary Courts and attract a sentence of no more than 6 months imprisonment). This policy was brought forward into legislation by schedule 8 of our Criminal Justice Act 2001 which provides that it shall be the duty of the Attorney General, inter alia, to take over the conduct of all criminal proceedings, other than certain specified proceedings, instituted on behalf of the police force."*⁸⁷

9.9.5 The reason this matter was seen to be a potential issue in Jersey is that Centeniers, whilst retaining responsibilities for charging and presenting cases in the Magistrate's Court, also retain powers to arrest and investigate. An argument could therefore be made that the separation of investigative and prosecutory processes does not exist in Jersey. If this were accepted, it would follow that Centeniers should no longer present cases as they would be insufficiently distinct from the investigation process. However, a contrary argument might be put that there is indeed a separation, given that a clear distinction could be drawn between the Honorary Police of each Parish and the States of Jersey Police: generally speaking, it would be the States Police that undertakes an investigation before a case may be 'handed over' to a Centenier for the process of prosecution.

9.9.6 In the States Assembly on 19th June 2007, the Attorney General was asked whether he agreed with the principle outlined by his counterpart in the Isle of Man that the prosecution and investigative processes should be separate. In reply to the question, he stated:

*"[...] on this particular occasion I will [...] say that it is very unusual that those responsible for the investigation of the offence should be responsible for the prosecution of it. There have been directions given by me to Centeniers that where they are personally engaged in the investigation of an offence they should not take the decision as to whether there should be a prosecution. That is not to say it never happens. There may be exceptional circumstances when it does happen but it is very, very rare indeed."*⁸⁸

9.9.7 In one sense, if it transpired that Centeniers lost their rôle in the Magistrate's Court, the Honorary Police in Jersey would be no different from their professional counterparts in

87 Written Submission from HM Attorney General of the Isle of Man, 9th August 2006

88 Official Record of the States Assembly, 19th June 2007

England, Wales and the Isle of Man. There, policing and advocacy are now regarded as separate functions that need to be carried out by different people.

KEY FINDING:

9.9.8 The issue regarding the separation of investigation and prosecution may not be significant in Jersey provided that care is taken to ensure that a Centenier involved in the investigation of a case does not subsequently take part in any charge and prosecution that might arise from the investigation.

10. TRAINING AND SUPPORT FOR CENTENIERS

The Home Affairs Committee (in a decision subsequently 'confirmed' by the Minister) agreed to maintain the rôle of Centeniers in the Magistrate's Court on the bases of cost and tradition. However, such justifications would not be sufficient to maintain the rôle were the system to be found in contravention of Human Rights. Regardless of any overarching Human Rights issues, however, we sought evidence during our review relating to the effectiveness of the system. When considering whether amendments might be made to Jersey's system, it must be remembered that systems elsewhere have also undergone development. For instance, in the last two decades, Designated Case Workers (DCWs) have been introduced in England and Wales to undertake duties that in Jersey would be performed by Centeniers.

10.1 A Group of Centeniers

10.1.1 Professor Rutherford suggested that if (contrary to his primary recommendation) Centeniers were to retain their rôle in presenting cases to the Magistrate's Court, consideration should be given to "*creating a branch of the Honorary Police Service that specialises in prosecuting*".⁸⁹ During our review, the terms "pool", "group" and "cadre" were also used to refer to such a body of specially skilled and trained Centeniers. In one sense, this could be seen as a mid-way point between the current arrangements and the fully-professional prosecution service to which we referred earlier. In an informal and ad hoc way, this was already happening to some extent, we were told.⁹⁰

10.1.2 Witnesses who favoured the development of a specialist group of Centeniers did so for a number of reasons. Some saw relieving some Centeniers from Court work as a way of making standing for election a more attractive proposition; it is not a universally popular aspect of a Centenier's duties as not everyone feels comfortable with public speaking.⁹¹ Another reason given was that such a development would increase the efficiency and effectiveness of the justice process, as it would enable those Centeniers with the best aptitude for the task to concentrate on Court work.⁹²

10.1.3 Mr Le Marquand told us that he favours an increased use of "*presenting Centeniers*"⁹³ and in his written evidence to the Panel said that "*the law already allows for this*".⁹⁴ Mr

89 *Review of Criminal Justice Policy in Jersey*, p. 41

90 Transcript of Public Hearing with the Magistrate, 19th September 2006

91 Transcript of Public Hearing with Centenier J Rigby, 30th October 2006

92 Transcript of Public Hearing with Centeniers M L'Amy and G Cornwall, 21st September 2006

93 Transcript of Public Hearing with the Magistrate, 19th September 2006

94 Written Submission from the Magistrate, paragraph H

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Christmas supported these views.⁹⁵ Mr Le Marquand envisaged that “*routine cases would continue to be dealt with by other Centeniers but the more difficult cases would be dealt with by a specialist*”. He added that most of the St Helier Centeniers would need to be specialists.⁹⁶ He foresaw some challenges in implementing such a scheme, including the need to train replacement Centeniers ahead of time to ensure continuity upon retirement of one of the group.⁹⁷

10.1.4 Views about setting up a specialist group of Centeniers are mixed within the ranks of Centeniers themselves; there is no consensus. Although some members of the Honorary Police support the idea, others have concerns. Some regard appearing in the Magistrate's Court as an essential part of a Centenier's duty and not an optional one. Concerns were also expressed that the proposal would involve a pool of specialist Centeniers *across several Parishes* as it was regarded as important that Centeniers look after their own Parishioners.⁹⁸

10.1.5 The Comité des Chefs de Police, in consultation with the Comité des Connétables and the Centeniers' Coordinating Group, has identified as a longer-term project the need “*to consider, with the Law Officers' Department, the Magistrate and the Police Legal Advisers whether there should be established a team of Centeniers who specialised in Court work, having regard to the long-term effect of this upon the rôle of the Centenier were this to be implemented and to investigate how such a team might be identified, trained and maintained*”.⁹⁹

10.1.6 The Attorney General told us that he was “*slightly against*” the development of a specialist body of Centeniers with responsibilities for Court work. He believed that introducing a specialist body of Centeniers responsible for Court work “*starts to achieve a disconnection between the person who charges and the person who presents*”.¹⁰⁰ Other evidence we received, however, painted a rather different picture: it is no longer certain that one Centenier will follow a case through from charging to presenting a case in Court.¹⁰¹ The Attorney General also told us that he believed the decision whether or not to introduce a system of specialist presenting Centeniers ultimately lay with him: “*what we are talking about here is the presentation of prosecutions in Court. I think that does fall within the*

95 Transcript of Public Hearing with Mr I Christmas, Assistant Magistrate, 5th October 2006

96 Written Submission from the Magistrate, paragraph H

97 Transcript of Public Hearing with the Magistrate, 19th September 2006

98 Transcript of Public Hearing with Centenier J Rigby, 30th October 2006

99 Written Submission from the Comité des Chefs de Police, 24th October 2006

100 Transcript of Public Hearing with HM Attorney General, 6th November 2006

101 Transcript of Public Hearing with Centenier D Scaife, 21st September 2006

Attorney General's remit, and that is why I think it is ultimately for the Attorney General to give a direction".¹⁰²

10.1.7 It appears to us that several benefits could flow from the introduction of such a group. First, it would enable those Centeniers with Court-room abilities to concentrate on that task and so would improve the efficiency and effectiveness of prosecutions. Secondly, it would permit advanced training to be provided to those Centeniers; in our opinion, this would be more effective at enhancing standards than having to train all 56 Centeniers. Thirdly, removing the likelihood of appearing in the Magistrate's Court would possibly make standing for election more attractive and would thus assist in recruitment and retention.

KEY FINDING:

10.1.8 Due to the potential benefits, the introduction of a specialist group of presenting Centeniers is worthy of further consideration, especially given that a change to legislation might not be required.

RECOMMENDATION:

10.1.9 Further consideration should be given by the Attorney General (in consultation with the Comité des Chefs de Police) to establishing a specialist group of Centeniers to undertake work in the Magistrate's Court.

10.2 The Significance of Training

10.2.1 The question of training for Centeniers has been a persistent concern for some years and was raised in some of the previous studies described in section 5. There are two main questions relating to this matter. First, should training in Court duties be made available? Secondly, should training be compulsory? If a specialist group of Centeniers were established to present most cases, it is in relation to that group that training would be concentrated. If all Centeniers continued to carry out presentation work, then whatever training is provided would need to be available to all Centeniers.

10.2.2 In the past, the Panel was told, Centeniers had on occasion been elected, sworn in, and then expected to present cases in Court within a few days of their election.¹⁰³ The Attorney General responded that, *"if it has happened, I think that is a bad thing. I think Centeniers should not be elected on a Wednesday and sworn in on a Friday, and present somebody*

102 Transcript of Public Hearing with HM Attorney General, 6th November 2006

103 Record of Meeting with Mr G Morris, 24th July 2006

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*the following Monday. I do not think that is right at all.*¹⁰⁴ The Attorney General highlighted the relatively recent instances in the Parish of St. Lawrence where all the Centeniers were newly elected, without previous experience of the Honorary system; he commented that very early training had been put in place to alleviate any difficulties.¹⁰⁵

10.2.3 Before 2002, training for Centeniers was “*a hotchpotch and piecemeal thing*”.¹⁰⁶ A system of training has been in place since the summer of 2002.¹⁰⁷ There have been over 22 training sessions over the last three years.¹⁰⁸ Training is made available to all Centeniers on a voluntary basis and the Panel was told that no Centenier had refused to attend.¹⁰⁹ Centeniers L’Amy and Scaife organise the training.¹¹⁰ Training to date has focused on bail applications, advocacy skills, guilty pleas, and how to deal with jurisdiction (i.e. whether a case should go up to the Royal Court or whether it should stay in the Magistrate’s Court).¹¹¹ Training is delivered by the Legal Advisers, who do so in their own time, with no budget¹¹² and who are not themselves professionally-trained trainers.¹¹³ The Assistant Magistrate has also been involved in training.¹¹⁴ Mr Le Marquand expressed the opinion that “*experience of training judges has shown that this is best organised by judges and I suspect that the best training will be organised by Centeniers for Centeniers*”.¹¹⁵

10.2.4 The Attorney General pointed out the range of people with an interest in the development and delivery of training for Centeniers:

“Ultimately, who are the people who might be concerned with it? The Attorney General is concerned with it because the training goes to the way in which the prosecution process works, so the Attorney General is concerned with that. The Honorary Police Association is almost certainly concerned with it because the Association has, I am sure within its remit, something about standards as well as looking after Honorary officers. The Comité des Chefs, I am sure, equally, has a part to play in that because they are concerned with the standards and the uniformity of standards across the Parishes and in their presentations to the Court. The Comité

104 Transcript of Public Hearing with HM Attorney General, 6th November 2006

105 Ibid

106 Transcript of Public Hearing with Centeniers M L’Amy and G Cornwall, 21st September 2006

107 Transcript of Public Hearing with Mr L O’Donnell and Advocate R Morris, 1st November 2006

108 Transcript of Public Hearing with Centenier D Scaife, 21st September 2006

109 Transcript of Public Hearing with Centeniers M L’Amy and G Cornwall, 21st September 2006

110 Ibid

111 Transcript of Public Hearing with Mr L O’Donnell and Advocate R Morris, 1st November 2006

112 Ibid

113 Record of Meeting with Mr J de la Haye, 24th July 2006

114 Written Submission from the Magistrate, paragraph 4A

115 Ibid, paragraph 4C

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des Connétables, presumably, are also engaged with it because the Connétables are responsible for the Honorary Police in each Parish. The Home Affairs Minister, undoubtedly, has an interest in it, in the sense that as a matter of the Criminal Justice Policy in the round, that is within her remit. I am sure the Treasury Minister is going to have an interest in it if it means paying for it. It is a very Jersey solution, is it not, where responsibilities and interests are pretty diffuse across the system, but on the whole, it does seem to work".¹¹⁶

10.2.5 In 2005 the Comité des Chefs de Police was given responsibility for the day-to-day running of the Honorary Police.¹¹⁷ They set up three sub-committees dealing with various aspects of the Centeniers' rôle. The Centeniers' Coordinating Group was one of these, with responsibilities for dealing with Centeniers' training for their rôle in the Court system, charging, reviewing evidence and Parish Hall Enquiries. A separate Training Group dealt with police matters and Island-wide training.

10.2.6 One difficulty in providing training for new Centeniers has been that different Parishes elect their Centeniers at different times. The Panel were told that training sessions had been provided when there was a new 'influx' of Centeniers to train.¹¹⁸ Another challenge is the differences in work loads of Centeniers from different Parishes.¹¹⁹ Mr Le Marquand told the Panel that the St Helier Centeniers "*get the most experience and the most practice. There has been a problem with the rapid turnover of Centeniers in some of the seven quieter Parishes ... those of the four very quiet Parishes suffer from a lack of opportunity to present non-routine cases*".¹²⁰ The issues arising from the random election times of Centeniers were addressed in *Centeniers (Terms of Office)(Jersey) Law 200-*. This legislation, adopted by the States on 28th March 2007, established a system whereby elections are held on a number of 'appointed days', at nine-monthly intervals, on which a certain proportion of Centeniers are elected.

10.2.7 In addition to training, Advocate Morris produced a handbook in 2004 entitled *Criminal Procedure in the Jersey Magistrates Court* for the benefit of Centeniers. This resource is available on the Centeniers' website to which Centeniers have private access. Advocate Morris told us that the handbook would be updated by May 2007.¹²¹

116 Transcript of Public Hearing with HM Attorney General, 6th November 2006

117 *Honorary Police (Jersey) Regulations 2005*, Article 8

118 Transcript of Public Hearing with Mr L O'Donnell and Advocate R Morris, 1st November 2006

119 Written Submission from the Magistrate, paragraph 4A

120 *Ibid*, paragraph 5A

121 Transcript of Public Hearing with Mr L O'Donnell and Advocate R Morris, 1st November 2006

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10.2.8 There also exists a practice that newly elected Centeniers 'shadow' more experienced Centeniers through Court proceedings and at Parish Hall Enquiries.¹²²

10.2.9 The Panel were told that the Comité des Chefs de Police, in consultation with the Comité des Connétables and the Centeniers' Coordinating Group, has plans in place to develop training:

"In the short term: to secure funding for Centeniers training; to enhance the existing Centeniers' Court Training process; to establish a process to ensure that all new Centeniers will be adequately trained before presenting any case in Court; and to formalise, wherever possible within the home Parish, a mentoring structure for new Centeniers.

In the medium term (within 12 months): to form a working group to research and develop a more formalised and structured training plan for all new Centeniers to encompass their wider rôle in conducting Parish Hall Enquiries, the decision to prosecute and court work; to create a new Training Manual for Centeniers and to establish a process whereby it will be regularly maintained and updated; not only to maintain and improve links with the Court Users' Group but to ensure that Centeniers meet regularly with the Magistrate; to continue to strengthen links with the Attorney General's Office with a particular view to strengthening the Parish Hall Enquiry system to enable a larger portfolio of minor offences to be taken out of the Court system for first offenders, and to press for increased jurisdiction in fining levels.

*In the longer term (requiring consultation before implementation): to investigate the possibility of training some Centeniers to be able to undertake simple not guilty cases where the Centenier would cross examine witnesses and the accused; as Human Rights legislation impacts upon the traditional rôle of the Magistrate and Centenier, to investigate how the Centenier's rôle needs to change in order that the whole process may remain Human Rights compliant. With this in view to consider, with the Law Officers' Department, the Magistrate and the Police Legal Advisers whether there should be established a team of Centeniers who specialised in Court work, having regard to the long-term effect of this upon the rôle of the Centenier were this to be implemented and to investigate how such a team might be identified, trained and maintained."*¹²³

122 Record of Meeting with Deputy C H Egré, 26th June 2006

123 Written Submission from the Comité des Chefs de Police, 24th October 2006

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10.2.10 In his report on a visit to Nottingham Police and Crown Prosecution Service, Centenier L'Amy suggested that it might be possible to adapt the week-long training courses designed for Designated Case Workers in the English Crown Prosecution Service for Centeniers, and that a professional trainer from the UK could be brought over to the Island.¹²⁴ Centenier L'Amy added that training might be funded by the prosecution seeking costs against the defendant in some cases.¹²⁵

10.2.11 During its visit to the Crown Prosecution Service in Hampshire in August 2006, the Panel noted the training that Trainers undergo to deliver training in the UK system. The Panel also noted the contrast between both the training and the resulting qualifications of those who train under the UK system and those who train Centeniers in Jersey. The Panel further noted the contrast in the training given to DCWs and Centeniers, the subsequent assessment and the intensive bail course attended by DCWs.

10.2.12 However, ours was not the only visit to the Crown Prosecution Service. The Panel was advised that the Legal Advisers themselves attended a five-day training event in England, run by the Crown Prosecution Service, in order to learn whether refinements could be made to the system of training provided in Jersey.

KEY FINDING:

10.2.13 The Panel welcomes the efforts being made by the Legal Advisers and Comité des Chefs de Police to develop and refine the training currently provided to Centeniers.

RECOMMENDATION:

10.2.14 The Comité des Chefs de Police, together with the Legal Advisers, should continue to consider adopting appropriate elements of the methods used in England to train Designated Case Workers.

10.2.15 The Panel noted the Magistrate's suggestion that Centeniers themselves would be best suited to organising the training. This appears to be a reasonable suggestion, based on the idea that experienced individuals are well-placed to pass on that experience to others. However, Centenier L'Amy's suggestion that a professional trainer be used would also appear to be reasonable: the art of training constitutes a particular skill in which the Legal Advisers (who currently deliver the training) are not professionally trained.

¹²⁴ *Visit to Nottingham Police and Crown Prosecution Service*, p.11

¹²⁵ *Ibid*, p.14

RECOMMENDATION

10.2.16 Consideration should be given by the Comité des Chefs de Police and the Legal Advisers to involving professionally-trained trainers in the development and delivery of training to Centeniers.

10.3 Should Training be Compulsory?

10.3.1 The Le Quesne review in 1990 recommended that Centeniers be trained:

*“It should be obligatory for a newly elected Centenier, before he presents any cases in Court, to receive some training in the presentation and prosecution of cases. The same obligation should attach to an existing Centenier on re-election”.*¹²⁶

10.3.2 The Rutherford review also recommended that, if Centeniers were to continue to present cases in the Magistrate's Court, they should receive appropriate training:

*“Problems still arise where unqualified, inexperienced Centeniers present the facts for guilty pleas. There can be a situation where the only lawyer present in the court is the magistrate. With the increasing sophistication of prosecution in all areas, trained prosecutors are becoming increasingly necessary”.*¹²⁷

10.3.3 No formal training was in place at the time Professor Rutherford carried out his review, although the Attorney General had already started addressing the question of training with Centeniers.¹²⁸ As described above, there is now in place a system for training and proposals to develop more formalised and comprehensive provision.

10.3.4 Training is now an accepted part of working life for most people, and a pre-requisite for involvement in many voluntary community activities in the Island. Service in the Honorary Police should be no exception. The Panel welcomes these developments in provision of training for Centeniers in recent years and commends those involved in its delivery. We believe that Centeniers welcome the provision of training and, indeed, knowing that there is adequate training may be an important factor in encouraging people to offer service to the Honorary Police. It is important that training be as effective as possible.

10.3.5 We received a range of different views on whether training should be mandatory. Centenier Scaife of St Helier told us that his personal view was that training should be compulsory

¹²⁶ Jersey Judicial and Legal Services Review Committee: Second Interim Report (R.C.24/1990), paragraph 7.44

¹²⁷ Review of the Criminal Justice System in Jersey, p.41

¹²⁸ Transcript of Public Hearing with HM Attorney General, 6th November 2006

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and it should be accompanied by an aptitude test at the end of it.¹²⁹ Similarly, Mr Le Marquand told us that he thought there ought to be compulsory training and some sort of basic competency test.¹³⁰ Advocate Timothy Hanson suggested that Centeniers should be required to sit and pass a written exam (involving basic aspects of criminal procedure and perhaps ethical dilemmas) and also to have passed a practical course involving presenting cases in Court. He told us that training in ethics – which barristers and solicitors undergo – is important because Centeniers need to demonstrate that they appreciate that their overriding duty is to the Court and the administration of justice and not to the police.¹³¹

10.3.6 Ms T Easton, then a District Crown Prosecutor in Hampshire and the Isle of Wight, made the point that Justices of the Peace in England, who are also effectively lay people giving their time voluntarily, are required to undergo intensive training before beginning to sit on the bench and at regular intervals thereafter.¹³²

10.3.7 In his evidence to us, the Attorney General pointed to two factors that, in his view, would make it difficult to make training compulsory:

*“One of them is the reason Professor Rutherford identified: they are giving their time for nothing. The other reason is that, rightly or wrongly, Centeniers are elected and once they are elected, they are elected. It is difficult to see how you can enforce Centeniers to take up training. I think, in practice, the Centeniers who have been elected have all taken up the training. ... They are given the opportunity of taking up the training and it works”.*¹³³

10.3.8 There is a clear public interest in ensuring that cases are presented with efficiency and propriety. The Panel notes that in many contexts, assessment is an important aspect of training activities and can envisage that this has a rôle to play in the training of Centeniers. The detailed arrangements for training fall outside the scope of this review although recent legislation for the synchronisation of Centeniers' elections across the Island should help facilitate a more structured approach to the training of newly elected Centeniers.

KEY FINDING:

10.3.9 Centeniers themselves value the opportunity to attend training. So long as this culture of professionalism remains, the Panel does not see any need for a rule or law

129 Transcript of Public Hearing with Centenier D Scaife, 21st September 2006

130 Transcript of Public Hearing with the Magistrate, 19th September 2006

131 Written Submission from Advocate T Hanson, 24th June 2006

132 Transcript of Public Hearing with Ms T Easton, 5th October 2006

133 Transcript of Public Hearing with HM Attorney General, 6th November 2006

making training explicitly compulsory.

RECOMMENDATION:

10.3.10 Any Centenier undertaking duties in the Magistrate's Court should be expected to receive appropriate training before doing so.

10.4 Appraisal of Centeniers' Court Work

10.4.1 Periodic appraisal of professional competence is strongly linked to the issue of training. In relation to Centeniers' duties in the Magistrate's Court, we were told that currently the only feedback Centeniers receive is essentially through the attitude of the Magistrate in Court.¹³⁴ The Attorney General told us:

"If a Centenier goes to Court and makes a complete nonsense of the presentation, I would expect the Magistrate to be pretty grumpy with that Centenier. Maybe our Magistrates are too polite, but I would still expect them to be pretty grumpy, and in that way the Centenier will get something of a hard time and will not behave in that way again. I would expect my Legal Advisers, if they were in Court, to say to the Centenier afterwards: 'Well, that did not go terribly well, did it? Now how can we try and make sure things do not go as badly next time around?' I would expect the Centenier, himself or herself, to say: 'Gosh, that was a pretty uncomfortable experience. I do not want to be there again. How can I make things better?' So I think, from my part, that is the sort of practical way of dealing with appraisals and assessments. I do not think I am in favour of a Hugh Johnson Book of Wine appraisal where you get, say, 8 out of 10 for each presentation. I do not think that would work".¹³⁵

10.4.2 The Attorney General was generally positive about appraisal schemes, regarding them as a "way of dealing with problems in a non-confrontational and helpful way". He told the Panel: *"It may be that I ought to have further discussions with the Honorary Police Association, or with the Comité des Chefs probably, about an appraisal process and the criteria that they ought to look to. It is probable that it could be a self-regulating appraisal done by the Legal Advisers down there who see them in action, and done by other Centeniers who might be in Court at the same time".¹³⁶*

10.4.3 Appraisal schemes should not be overly bureaucratic or daunting but a supportive resource

134 Transcript of Public Hearing with Centenier J Rigby, 30th October 2006

135 Transcript of Public Hearing with HM Attorney General, 6th November 2006

136 Ibid

for Centeniers to use in the continuing development of their skills in Court. A simple requirement, for example, might be that every Centenier is observed by another experienced Centenier or Legal Adviser each year, and receives confidential feedback on their performance.

KEY FINDING:

10.4.4 Whilst it is now common for people undertaking various functions to be subject to periodic appraisal of their professional competence, Centeniers are not subjected to a similar process.

RECOMMENDATION:

10.4.5 The Attorney General should act upon his suggestion and consult with the Comité des Chefs de Police about setting up a more formal appraisal scheme for the work undertaken by Centeniers in the Magistrate's Court.

10.5 Administrative Support

10.5.1 Behind the 'front line' of Centeniers in the Magistrate's Court, there exists a system whereby Centeniers are provided with administrative support and advice to assist their work. The Panel investigated the adequacy of the support and advice available to Centeniers. People who give voluntary service to the Island through the Honorary Police service clearly deserve the best possible back-up for their rôles.

10.5.2 For legal matters, Centeniers have access to the Legal Advisers (two full-time and two part-time) who are based at Police Headquarters. They are available twenty-four hours a day, seven days a week, to provide advice to Centeniers; the States of Jersey Police; Customs and Immigration; and other States Departments that might need emergency advice.

10.5.3 The Panel learned that most of the background papers necessary for cases to be presented in the Magistrate's Court are produced by the Criminal Justice Unit (CJU) working with the Custody Unit at States of Jersey Police Headquarters. The Panel undertook a visit to both Units to learn more of the process and assistance given to the Centeniers.

10.5.4 Once a person is arrested, the arresting officer prepares an offence report to present to the Custody Sergeant, who is independent of the investigation. The Custody Sergeant has the following options:

- To recommend that the individual be charged (in which case a Centenier would be called to Police Headquarters)
- To decide to release the individual

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- To administer a Notice of Impending Prosecution (NIP).

- 10.5.5 A Centenier who decides to follow a recommendation to charge leaves Police Headquarters with a copy of the paperwork collated by the Custody Unit. The original file is sent to the CJU, which subsequently takes responsibility for ensuring that any necessary paperwork (e.g. regarding forensic evidence) reaches the Centenier in time for the Centenier to prepare for presenting the case in Court. Each NIP file is examined by a police sergeant before it is sent to the appropriate Centenier with a recommendation of the course of action for the Centenier to consider at the subsequent Parish Hall Enquiry. Legal advice may be sought from the Legal Advisers prior to sending such a file.
- 10.5.6 Following the Parish Hall Enquiry, the case file is returned by the Parish to the CJU with a record of the Centenier's decided course of action. The CJU then reviews the decision and, if there is a query regarding that decision, the CJU contacts the Connétable or Chef de Police of the Parish in question. As a last recourse, the CJU may approach the Attorney General with any query regarding a Centenier's decision.
- 10.5.7 During 2005, there were 3,446 NIP files and 1,873 crime files. The CJU is in regular correspondence with Centeniers and there are quarterly meetings.
- 10.5.8 In addition to the Criminal Justice Unit, St Helier's Centeniers receive support from the Town Hall, which they regard as excellent.¹³⁷ The Parish of St Helier employs Mr Michel Le Troquer in the rôle of Honorary Police Administrator (a post similar to that of Parish Secretary). He has responsibility for the Charges Office and Administration Unit where the Court case load for St Helier Centeniers is processed. Mr Le Troquer was formerly a States of Jersey Police Officer and has experience of working in the CJU.
- 10.5.9 Every day the Administration Unit receives from the CJU sealed packages of information relating to each case. The Administration Unit then prepares them for the Centeniers. One Centenier deals with the whole case load received on each day. Very often, most cases are dealt with at Town Hall level.
- 10.5.10 Forms are filled out detailing the decisions made at a Parish Hall Enquiry which is subsequently sent to the CJU. Information relating to each case is then shredded in order to maintain confidentiality. If a case is referred to the Royal Court, the Administration Unit compiles a report on the case. After a Parish Hall Enquiry the Centenier might request that a Legal Adviser take on the case.

137 Transcript of Public Hearing with Centenier D Scaife, 21st September 2006

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10.5.11 Administrative support is often provided by St Helier to other Parishes. St Helier Centeniers, generally the most experienced, often give oral advice to fellow Centeniers in other Parishes, on matters such as charges and prosecution procedures. Mr Le Troquer told the Panel: *"The smaller Parishes do not have the experience or staff so they call in to request the odd 'charge sheet' be prepared on their behalf. It is very ad-hoc and not daily. Furthermore it's those same Parishes that have very little work compared to St Helier so it would not be wise to have trained staff for that purpose. Some Parishes do not require assistance... We may go weeks without a request for a charge sheet and then see a couple of Centeniers in a week"*.¹³⁸ St Helier levies fees for assistance provided to other Parishes: £12.50 per charge sheet and £25.00 per Centenier's Report (for cases going to the Royal Court). Only two reports for other Parishes were prepared in 2006 in comparison to approximately 100 prepared for St Helier.

10.5.12 Some other Parishes employ part time staff to deal specifically with Honorary Police administrative work in their Parish. In other Parishes this work is dealt with by a member of the Parish administrative staff as part of general duties.

10.5.13 One St Helier Centenier told the Panel: *"some of the Parishes do not have the expertise that St Helier has or St Brelade has. They would invariably sometimes come to us and we do not mind. Because we have such a good database and we know how to work the charges, they will come to us. I personally think there should be an Island wide charges office. I think that would be a better thing really and they could come to this one office and have charges done that way. I think it would be a lot better because some Parishes just do not get the experience. You get a drugs raid in a rural Parish and there are all sorts of complicated drugs charges or conspiracy charges, they are not going to have that kind of expertise, whereas the urban Parishes do"*.¹³⁹

10.5.14 The Panel received written evidence from the Chairman of the Comité des Connétables, Connétable Ken Vibert, in respect of the administrative support provided and of the cost to each Parish of running the Honorary Police. For 2006 the specified hours of administrative support ranged from 5 to 17.5 hours per week and the specified costs of such administrative support ranged from c£2,500 to c£15,155 per annum at an approximate total combined cost of £160,000.¹⁴⁰ Connétable Vibert was not able to identify separately the annual budget for training of Centeniers in Court work, as it was included in the annual training budget, which ranged from £1,000 to £4,560. However it was noted that at least one of those budgets included an element of training for roads inspectors. No Parish had a

138 Written Submission from Mr M Le Troquer, 31st January 2007

139 Transcript of Public Hearing with Centenier D Scaife, 21st September 2006

140 Written Submission from Comité des Connétables, 20th November 2006

dedicated Honorary Police training officer but rather one Honorary Police officer per Parish was nominated to serve on the training sub-committee established by the Comité des Chefs de Police.¹⁴¹

KEY FINDING:

10.5.15 Effective support is provided to Centeniers by the Legal Advisers, Criminal Justice Unit and the St Helier Charges Office and Administration Unit. Whilst St Helier Centeniers primarily benefit there is co-operation and mutual support between St Helier and the rural Parishes.

141 Ibid

11 WIDER ISSUES CONSIDERED

11.1 The 'Dual Rôle' of the Magistrate

11.1.1 As we have explained above, we have reached the conclusion that when the decision was made in 2003 to reject Rutherford Recommendation 4, inadequate attention was paid to the requirements of *Human Rights (Jersey) Law 2000*.

11.1.2 If further attention were to have been given, it is possible that such attention would have focussed on the so-called 'dual rôle' of the Magistrate, a matter that had previously been the subject of comment in enquiries such as the Le Quesne review in 1990, the Nicholls Working Party in 1998, and the Rutherford review in 2002. The rôle of the Magistrate was not a line of enquiry that the Panel itself initially followed. However, due to its relevance to the rôle of the Centenier, it became apparent that it was a matter that merited attention and subsequently formed the basis of our decision to seek external advice.

11.1.3 It is easiest to understand the nature of the 'dual rôle' problem by first outlining the kind of case in which it does not arise. These are cases where a defendant is represented by an Advocate and the prosecution case is presented by a Legal Adviser. There is 'equality of arms' between the defence and the prosecution as both sides are represented by lawyers. The Magistrate does not need to question the defendant or witnesses directly. Examination and cross-examination of witnesses is carried out by each side's legal representatives. In this scenario, under *Magistrate's Court (Miscellaneous Provisions)(Jersey) Law 1949*, the Magistrate acts as a 'pure judge'. He is able to sit back and weigh up the competing evidence and submissions from each side before reaching his verdict.¹⁴²

11.1.4 The 'dual rôle' of the Magistrate does arise where the accused has entered a not guilty plea and the case is presented by a Centenier. In order to get to the truth of the matter in an effective way, the Magistrate needs to play a more prominent rôle in the procedure than in the first scenario. He must adopt an inquisitorial approach, questioning witnesses and the defendant before he has sufficient evidence to be able to reach a verdict. In these situations the Magistrate has a dual rôle – part inquisitor, part judge.

11.1.5 Mr Le Marquand explained the situation thus:

"The Magistrate still retains the Juge d'Instruction aspects of his rôle. Juge d'Instruction is a French word in fact encapsulated in our law, but in Jersey it is a quite different concept of an examining Magistrate to that elsewhere. But the Magistrate is far more proactive in the sense that, firstly, if he thinks the charges are

¹⁴² *Magistrate's Court (Miscellaneous Provisions)(Jersey) Law 1949*, Article 15

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wrongly framed he may well suggest amendments need to take place. In modern times of course, he is more likely to suggest that the Centenier go and seek advice with a Legal Adviser in order to frame those charges. Similarly, of course, when you come to a trial situation, the rôle of the Centenier is not that of a prosecutor in the conventional sense because there is no prosecutor in the conventional sense. The Magistrate will cross examine; the prosecution will question the prosecution witnesses and the defence witnesses. But I think the confusion lies in relation to trials where his rôle is not that which you would expect entirely of a prosecutor, it is more that of a presenter, but trials are a vast minority of cases".¹⁴³

11.1.6 The Attorney General explained that the Centeniers and the Legal Advisers have different rôles:

*"...where Centeniers are doing the presentation, and it is not a Legal Adviser doing the presentation, the Magistrate, as a lawyer, is in charge. Therefore, the Centenier has a slightly different rôle from the Legal Adviser. It is not the Magistrate then sitting back and hearing the competing arguments on either side. The Magistrate is directing the investigation, as it were, in Court himself. For all the criticism you can make of that theoretically, which was what we touched on earlier, at the level at which he is doing it, for these relatively minor cases of urinating in a public place, that sort of thing, it is quite a convenient way of administering what used to be called *bonne et brève justice*; good, straightforward and quick justice. That is not to say that accused people, if they are charged with urinating in a public place, are entitled to a lower standard of justice than somebody who is charged with murder. But it is just a practical recognition of the fact that society needs to get through a system; you have to have a system that works for the more common offences. I think, therefore, you look at what Centeniers' requirements are and what you expect a Centenier to achieve in Court against the background that he is not presenting a case as a lawyer would present a case, because his function is not the same".¹⁴⁴*

11.1.7 Concerns regarding the 'dual rôle' were raised during the Le Quesne review in 1990 and by the Royal Court in 1996. In 1998, the Nicholls working party recommended what in effect was a compromise. In his evidence to the Panel, Mr Le Marquand explained that this was broadly how the Magistrate's Court operated today. He said: "*The view of the current Magistrates I think is that we believe that other than the most minor matters they should be dealt with by a Legal Adviser and in those cases we are simply a judge, but in cases where*

143 Transcript of Public Hearing with the Magistrate, 19th September 2006

144 Transcript of Public Hearing with HM Attorney General, 6th November 2006

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*the Centenier is involved and not the Legal Adviser then we still play the dual rôle".*¹⁴⁵

11.1.8 As the Magistrate indicated in his evidence to us, it would appear that the number of cases in which this situation actually arises may be quite small.

11.1.9 The Panel noted the criticisms made of the 'dual rôle' over a number of years. We also noted that since the Le Quesne, Nicholls and Rutherford reviews, *Human Rights (Jersey) Law 2000* has come into force. That legislation brings into Jersey law the various rights contained in the European Convention on Human Rights.

11.1.10 On 19th June 2007, when answering questions in the States Assembly, the Attorney General indicated that, in reality, the system did not generally lead to injustices:

*"I would like to say that I have no significant concerns about the overall fairness of the system and the justice generally delivered in that Court."*¹⁴⁶

11.1.11 The issue could therefore be seen as theoretical and one of perception (especially as no ruling has been made in a court of law on the Human Rights compatibility of the Magistrate's Court). By having a system whereby the Magistrate occupies a 'dual rôle', can it be thought that the right to a fair trial before an independent tribunal has been violated?

11.1.12 To answer that question, one consideration could be whether the public is reasonably entitled to entertain doubts as to the independence or impartiality of the tribunal or, put another way, whether a fair-minded lay observer might have reasonably apprehended that the judge did not bring an impartial and unprejudiced mind to the resolution of the question he was required to decide.

11.1.13 As we have previously indicated, it is not for a Scrutiny Panel, none of the members of which are lawyers, to reach conclusions on whether the system is Human Rights compliant. The Panel is faced with a situation where 'in practice' (i.e. in the judgements made) the entirety of the system in the Magistrate's Court appears to be fair, but 'in theory' (dependent upon the test that is used) an argument might be run that part of that process might not be seen to be impartial; but even on that point there are, no doubt, arguments that might be run both ways.

KEY FINDING:

11.1.14 It is not for the Panel to reach a conclusion as to whether or not the 'dual rôle' sometimes played by the Magistrate is Human Rights compliant; this may only be conclusively decided within a court of law.

145 Transcript of Public Hearing with the Magistrate, 19th September 2006

146 Official Record of the States Assembly, 3rd July 2007

RECOMMENDATION:

11.1.15 When considering whether the current system meets the requirements of the European Convention on Human Rights, particular attention should be paid by the Court Service and the Attorney General to the 'dual rôle' sometimes played by the Magistrate.

11.2 Lines of Responsibility for Jersey's Criminal Justice System

11.2.1 During the Panel's review, the question emerged of who has responsibility for the Island's criminal justice system and, accordingly, who is answerable for shortcomings when they arise. Just taking as an example the matters into which this review enquired, there are clearly several office-holders and bodies who have responsibilities within the system. These include: the Minister for Home Affairs; the Attorney General – as the Island's prosecuting authority, the States' Legal Adviser and as titular head of the Honorary Police; the Comité des Connétables; the Comité des Chefs de Police (under the *Honorary Police (Jersey) Regulations 2005*); and the Honorary Police Association (under the *Honorary Police (Jersey) Regulations 2005*). In addition, as we noted above, there are several groups which meet to discuss the operation of the Magistrate's Court.

11.2.2 We explored the issues of 'lines of authority' at a Public Hearing with the Minister and were told that she was not responsible for the Courts. She stated:

*"At the end of the day I am very clear that the Honorary Police are answerable to their Constable and to the titular head. They are not answerable to me. So basically at the end of the day it is a matter of discussion and agreement about how to take things forward. But we also within the Criminal Justice Policy have said that one of the actions that will happen under that is a forum for discussing Criminal Justice Policy which would involve the executive, the judiciary and the prosecution. [...] But I have to be very careful about where my powers end because this is very sensitive. You know, when you are dealing with issues about the judicial process it is very important that politicians do not seek to overstep into those areas where it is not appropriate for political influence to be."*¹⁴⁷

11.2.3 The Minister added other jurisdictions often have a Ministry for Justice but that this did not exist in Jersey and that she was not therefore the 'Minister for Justice'. She added:

"As I say, there is value I think in keeping some separation of powers between

147 Transcript of Public Hearing with the Minister for Home Affairs, 11th October 2006

policing powers in terms of what we do in terms of catching criminals and what the system does in terms of the running and smooth operation of the courts. I think that is a separate matter that ought not to be under a Home Affairs remit.¹⁴⁸

11.2.4 It has already been seen, in paragraph 9.2.2, that there may have been some confusion regarding the responsibility for implementing the Human Rights audit of legislation relating to the Magistrate's Court. This could be seen as an example of the potential for confusion in the current system.

11.2.5 The Panel recognises the potential for confusion and believes it would be beneficial for the lines of authority and responsibility to be clearly set out in order to avoid confusion. As indicated in paragraph 8.9, an informal forum involving the executive, judiciary and prosecution is to be set up as part of criminal justice policy. Responsibility for clarifying any confusion that may exist would appear to fall within the remit of that informal forum.

KEY FINDING:

11.2.6 There is a risk of confusion regarding the lines of authority and responsibility for Jersey's criminal justice system.

RECOMMENDATION:

11.2.7 The proposed informal forum to be established as part of the Criminal Justice Policy should ensure that the lines of authority and responsibility for Jersey's criminal justice system are clearly set out.

11.3 The Attorney General as 'Titular Head' of the Honorary Police

11.3.1 Connected to the general issue of authority and responsibility is the particular matter of the Attorney General. In this matter, the Panel is most certainly not considering the personal integrity of the current Attorney General but rather the office of Attorney General and the responsibilities it comprises.

11.3.2 The Attorney General in essence currently fills three rôles: he is head of the Island's prosecuting authority; he is the States' legal adviser; and he is the 'titular head' of the Honorary Police. Complications are likely to arise when an authority wears more than one 'hat'. From our review's perspective, complications could have arisen from the fact that it focussed not only on a facet of the Honorary Police, of which the Attorney General is 'titular head', but also on the prosecution service, of which the Attorney General is also head.

148 Ibid

Furthermore, our review required us to consider legal matters, leading to the possibility of consultation with the Attorney General in his capacity as legal adviser to the States. In essence, we could therefore have dealt with the Attorney General in all his capacities. The potential difficulties arising from such a situation were clear to at least one member of the public who expressed concerns that the Attorney General would be conflicted in the context of our review.

11.3.3 Potential difficulties may also have arisen when the Home Affairs Committee considered *Review of Criminal Justice Policy in Jersey*. As previously noted, the Committee consulted the Attorney General “as the titular head obviously of the honorary service and also as the Attorney General”.¹⁴⁹ It might be said that in situation such as this, there is a risk that confusion will arise as to the capacity in which the Attorney General is offering advice.

11.3.4 The Attorney General said that the Rutherford review:

*“reported to the Home Affairs Committee, and, as somebody interested in the prosecution process, then to the extent that he made comments about what he thought ought to happen in the prosecution process, I think I was entitled to express the views which I did express. That really is where I came from and that is why I am prepared to express publicly my views to you today because it is not a question of legal advice. We had this discussion, if you remember, and it is not a question of legal advice being given to the Home Affairs Committee; it is the position that I am setting out as the person, the Attorney General ultimately in charge of the prosecution process, what I think of the proposals.”*¹⁵⁰

11.3.5 Mr Le Marquand told the Panel:

“The Attorney General has oversight of the Honorary Police. However, he also has oversight of just about everything in terms of prosecution and legal advice to the States. It is virtually impossible for the Attorney General to effectively fulfil this rôle. As a result there is a partial power vacuum. I have been a very pro-active Magistrate and at time have had to step into the vacuum in order to point Centeniers in the right direction. The Court often comments on the over usage of cautions at Parish Hall Enquiries but these are really matters for guidelines from the Attorney General. If the Attorney General delegated matters down within his Department then to whom would he delegate this? In the past there have been proposals for a Director of Public Prosecutions (separate from the Attorney General) or an Honorary Police supreme (under the Attorney General) but nothing has come to fruition. Will my

149 Ibid

150 Ibid

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*successors be as pro-active as I have been?*¹⁵¹

11.3.6 In considering this matter the Panel is mindful that the issue appears to be most pertinent to the Attorney General's capacity as 'titular head' of the Honorary Police. When the Attorney General appeared before the Panel he said that his rôle as titular head of the Honorary Police:

"has troubled me from time to time I must admit. The Connétable is, of course, the head of the Honorary Police in his Parish and he remains so at the moment. The creation of the Chef de Police also is relevant for the responsibilities of the Honorary Police in the Parish and, of course, that leaves over the question of what the rôle of the Attorney General is, because he is described as titular head of the Honorary Police and has been for quite a long time. I think it really derives from the Attorney General's responsibility for the prosecution process. There are a number of signals to it. One of the signals is in the Police Force Law where a States' police officer can refer a decision by the Centenier not to charge on to the Attorney General in order that it can be reviewed, and the Police Force Law makes provision for the Attorney General to give such directions to the Centenier as he thinks fit. Part of it is much more historic. Article 5, I think it is, of the Magistrate's Court Law in 1949 expressly reserves the position of the Attorney General to institute proceedings outside the scope of the Magistrate's Court Law and bring proceedings directly in the Royal Court if he chooses to do so. So that is, if you like, an illustration of the Attorney General's responsibility for the prosecution process and it is particularly relevant because, unlike in England where a private citizen can launch a prosecution, here in Jersey a private citizen cannot launch a prosecution; it is the Attorney General who brings prosecutions in the Royal Court and the provisions for bringing them in the Magistrate's Court started with the 1864 law on criminal procedure and then the statutory provisions continued with the 1949 Magistrate's Court Law. I suppose the other element of the titular head of the Honorary Police is that the Attorney General moves conclusions when Honorary Police officers come to be sworn in on a Friday morning in the Royal Court. Theoretically the Attorney General might decide not to move conclusions or, at any rate, might say to the Court: "I do not think this particular man or woman ought to be appointed as potentially a Constable's Officer" as the case might be and then give his reasons as to why that should be so. The Court is then seized of the matter and can decide whether or not that particular person ought to be sworn in. It is really putting those 2 discretions together that, I think, led to the delivery over a period of time of different sets of directives from the

151 Written Submission from the Magistrate, paragraphs 5A-5B

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Attorney General to the Honorary Police. I think copies of most of these have been given to your Panel already: the code on the decision to prosecute, the code on how to conduct Parish Hall Enquiries. There have been codes on dress and on alcohol and various other things of that nature that go to the conduct of the Honorary Police. I suppose in terms of conduct, I should not have overlooked the last statutory function of the AG (Attorney General) in relation to the Honorary Police which is contained in the police disciplinary provisions under the 1999 law".¹⁵²

11.3.7 In a written answer to a question tabled by Deputy Le Hérissier on 21st November 2006, the Attorney General sought to explain further the scope of his rôle as 'titular head'. He advised that the expression 'titular head' was not to be found in customary law and statute. However, his "supervisory control" of the Honorary Police was set out in various contexts: the oath taken by Connétables and Centeniers; Articles 3 and 4 of *Police Force (Jersey) Law 1974*; *Honorary Police (Jersey) Regulations 2005*; and *Police (Complaints and Discipline)(Jersey) Law 1999*.¹⁵³

11.3.8 The Attorney General's position as 'titular head' of the Honorary Police has been considered in other enquiries. In 1996, *Report of the Independent Body on Police Services in Jersey* stated the following:

"The involvement of the Attorney General in actual policing is very slight. He seems to us to be the titular head of the Honorary Police, not because that is a position which ordinarily falls to a government's principal adviser, but because there is no coherent structure for the 12 separate parish police forces and therefore no one else to assume the responsibility. If and when the law establishing a Police Complaints Authority comes into force, the Attorney General will presumably no longer need to deal with complaints from the public, except at the ultimate level of legal proceedings. And as for discipline, the co-ordinated structure which we envisage below would relieve him of that responsibility also. We therefore recommend that the Attorney General should cease to be the titular Head of the Honorary Police."

11.3.9 Notwithstanding that matters such as the Police Complaints Authority have been addressed since 1996, we asked the Attorney General about this recommendation. In reply, he stated:

"I think the Attorney General of the day said that if it was not wanted that he should remain as Titular Head of the Honorary Police that was fine by him, he would do whatever the political will was and I feel exactly the same. I will continue to perform these functions if people want me to but if it is suggested that somebody else should

152 Transcript of Public Hearing with HM Attorney General, 6th November 2006

153 Official Record of the States Assembly, 21st November 2006

do it, that is fine."¹⁵⁴

KEY FINDING:

11.3.10 Confusion may potentially be caused in situations where HM Attorney General may be required, or seen, to act in more than one of his capacities.

RECOMMENDATION:

11.3.11 HM Attorney General's rôle as 'titular head' of the Honorary Police should be included in the proposed review of Law Officer functions as detailed in Section 6.2.8 of the Strategic Plan, and for which the Chief Minister's Department has responsibility.

154 Transcript of Public Hearing with HM Attorney General, 6th November 2006

12. CONCLUSION

- 12.1 From the outset, the Panel was aware that it had chosen a sensitive topic to review. Indeed, concerns were expressed about our intention. Our intention, however, was merely to examine the rôle of the Centenier in the Magistrate's Court. In doing so, we focussed on the system. In no way do we question the integrity and dedication of the individuals involved.
- 12.2 We recognise the concerns regarding the potential damage to tradition and increase in cost were Centeniers to be removed from the Court. In terms of tradition, an examination of the previous reviews to which we have referred will show that the system survived them and, indeed, was enhanced by them. Answers to the question of cost depend on the precise changes to be made.
- 12.3 Our first guiding principle was the need to maintain public confidence in the Honorary Police. Our report shows there is reason for confidence for the future: training has been developed; a review of relevant legislation has begun; and an effective support structure has been made available to Centeniers. We welcome such measures and believe our recommendations, for instance relating to training and assessment, will assist the process of refining the system.
- 12.4 In some matters, we have found a need for greater clarity. For example, we conclude there is potential for confusion regarding responsibility for the Court list. Furthermore, we have recommended that clarification is required in relation to responsibility for Jersey's criminal justice system and to the Attorney General's rôle as 'titular head' of the Honorary Police. We believe it is important for the system to be understandable, not only for all those involved, but also for the observer (i.e. the wider public).
- 12.5 The criticisms we would possibly receive in reviewing this topic were evident to us but did not justify ignoring the issue. However, we did not know where the review would lead us; Human Rights issues were not identified as a distinct line of enquiry until late in the review. Our report shows that they did require consideration and that, indeed, the questions raised need further examination. If we have doubts regarding the consideration that may have been given in the past to these issues, we hope that the situation shall be rectified in the future. Human Rights legislation is relatively new to the Island and we believe our recommendations will help towards a situation whereby the legislation's implications may be more easily understood.
- 12.6 Our findings and recommendations are directed towards various parties, a reflection of a system in which a number of parties have a stake. We trust that they shall all give our

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findings and recommendations proper consideration and will report back to us in due course with their responses.

13. METHODOLOGY AND EVIDENCE CONSIDERED

13.1 Methodology

13.1.1 The Panel used the following methods to gather evidence during our review.

- Research of written sources including relevant legislation, former Committee Acts and departmental papers and policies
- Requesting advice and information from the Attorney General and Department of Home Affairs
- Call for Evidence from the Public (placed in the *JEP*)
- Written requests for information from stakeholders
- Meetings with interested parties
- Public Hearings
- Site visits

13.1.2 It became apparent in March 2007 that the Panel would benefit from expert advice. To that end, we appointed Professor Andrew Le Sueur. Professor Le Sueur is Professor of Public Law at Queen Mary, University of London, editor of the journal *Public Law* and legal adviser to the House of Lords Constitution Committee.

13.2 Evidence Considered

13.2.1 Those documents listed below, to the extent that they are relevant to the Terms of Reference, that were not received on a confidential basis are available to read at www.scrutiny.gov.ie. Those unable to access the Internet are requested to contact the Scrutiny Office (telephone: 441080) about accessing hard copies of documents.

13.2.2 Legislation:

Loi (1840) augmentant les pouvoirs des officiers de police honorifique

Loi (1853) établissant la cour pour la répression des moindres délits

Loi (1853) au sujet des centeniers et officiers de police

Loi (1864) réglant la procédure criminelle

Loi (1871) sur le mode d'élection des vingteniers

Loi (1908) au sujet des témoins et informateurs

Magistrate's Court (Miscellaneous Provisions)(Jersey) Law 1949

Costs in Criminal Cases (Jersey) Law 1961

Police Force (Jersey) Law 1974

Criminal Justice (Young Offenders)(Jersey) Law 1995

Criminal Procedure (Connétables and Centeniers) (Jersey) Law 1996

Criminal Justice (Evidence and Procedure)(Jersey) Law 1998

Human Rights (Jersey) Law 2000

Criminal Justice (Evidence of Children)(Jersey) Law 2002

Police Procedures and Criminal Evidence (Jersey) Law 2003

Police Procedures and Criminal Evidence (Codes of Practice)(Jersey) Order 2004

Honorary Police (Jersey) Regulations 2005

Centeniers (Terms of Office)(Jersey) Law 2007

13.2.3 **Official Record of the States Assembly:**

Statement by the Minister for Home Affairs, 14th February 2006

Written Question from Deputy R G Le Hérisier to HM Attorney General, 21st November 2006

Extract from debate on *Draft Human Rights (Jersey) Law 2000 (Appointed Day) Act 200-* (P.140/2006), 22nd November 2006

Oral Question from Deputy of St Martin to the Chief Minister, 19th June 2007

Oral Question from Deputy of St Martin to HM Attorney General, 19th June 2007

Oral Question from Deputy of St Martin to HM Attorney General, 3rd July 2007

13.2.4 **Committee Acts:**

Acts of the former Home Affairs Committee:

Act B3 – 27th March 2003

Act B9 – 22nd May 2003

13.2.5 **Other Written Material:**

States Strategic Plan 2006 – 2011

Criminal Justice Policy (P.201/2005)

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Jersey Judicial and Legal Services Review Committee: Second Interim Report (R.C.24/1990)

Magistrate's Court Practices and Procedures: Working Party Report (R.C.7/1998)

Strategic Plan Initiatives – Progress Report as at 31st December 2006 (R.C.4/2007)

Report of the Independent Review Body on Police Services in Jersey (1996)

Review of Criminal Justice Policy in Jersey (2002), Professor A Rutherford

The Conduct and Effectiveness of Parish Hall Enquiries (September 2005), H Miles & P Raynor

Criminal Justice Policy Consultation Document (July 2006)

Jersey Court Service Annual Report 2006, Judicial Greffe and Viscount's Department

Visit to Nottingham Police and Crown Prosecution Service, 16th – 19th May 2006, Centenier M P L'Amy, Chef de Police of St Peter

Reid v HM Attorney General, 21st March 1994

HM Attorney General v Tracey, 19th December 1996

HM Attorney General v Campbell, 1st April 2004

Magistrate's Court Guidance Note: Procedure for the Progression of Cases Presented by Centeniers and Legal Advisers (17th January 2000).

St Helier Honorary Police Report 2005

Code on the Decision to Prosecute (10th January 2000), HM Attorney General, Mr M St J Birt

Guidance Notes for Centeniers at Parish Hall Enquiries (10th January 2000), HM Attorney General, Mr M St J Birt

Guidance Notes to Individuals Representing Themselves

Overall Performance Assessments of Crown Prosecution Service Areas – Ratings and Analysis of Performance for 2004 – 05 (March 2006)

Overall Performance Assessments (CPS Hampshire & the Isle of Wight, CPS Dorset and CPS Warwickshire)

The Royal Commission on Criminal Procedure – Report (January 1981), Chairman: Sir Cyril Phillips

Statistics submitted by the Criminal Justice Unit

The various roles and duties carried out by Centeniers when presenting cases in the Magistrate's Court, Centenier D Scaife

Committee of Inquiry into Honorary Police Election Procedures: Report (3rd December 2002), Chairman: Sir C Clothier

Convention for the Protection of Human Rights and Fundamental Freedoms

13.2.6 **Written Submissions:**

Constable's Officer R T Stent	24th May 2006
Mr G Morris	27th May 2006
Advocate T Hanson	24th June 2006
	27th July 2006
HM Attorney General of the Isle of Man	9th August 2006
	15th August 2006
Mr I Le Marquand, Magistrate	19th September 2006
Centenier D Scaife	21st September 2006
Senator W Kinnard, Minister for Home Affairs	26th September 2006
	26th April 2007
Centenier C Foley, Chef de Police of St Saviour	28th September 2006
Jurat P G Blampied	13th October 2006
Mr W J Bailhache QC, HM Attorney General	16th October 2006
	11th April 2007
Honorary Police of St Martin	18th October 2006
Mr D Le Heuzé, Magistrate's Court Greffier	20th October 2006
Comité des Chefs de Police	24th October 2006
Mr M Taylor, Acting Bâtonnier	27th October 2006
Comité des Connétables	20th November 2006
Mr P Larbalestier	1st December 2006
	3rd December 2006
Mr M Le Troquer	31st January 2007

13.2.7 **Meetings with Interested Parties:**

The Panel met a number of individuals at its regular Panel Meetings. Transcripts of these meetings were not made as they were not audio recorded. However, they were formally minuted and the records may be found at www.scrutiny.gov.je.

Deputy C H Egré	26th June 2006
HM Attorney General, Mr W Bailhache QC, (accompanied by Mr L O'Donnell)	10th July 2006 [private meeting]
(accompanied by Mr R Whitehead)	14th June 2007 [private meeting]
	29th August 2007

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	[private meeting]
Former Centenier who wished to remain anonymous	10th July 2006 [private meeting]
Constable's Officer R T Stent	10th July 2006
Mr I Jayes	10th July 2006
Comité des Chefs de Police	17th July 2006
Mr G Morris	24th July 2006
Advocate M Renouf	24th July 2006
Mr A Hamilton	24th July 2006
Mr J de la Haye	24th July 2006

13.2.8 **Public Hearings:**

Mr I Le Marquand, Magistrate	19th September 2006
Centenier T Reed of St Lawrence	21st September 2006
Centenier D Scaife of St Helier	21st September 2006
Centenier M L'Amy, Chef de Police of St Peter, and Centenier G Cornwall, Chef de Police of St Brelade and Chairman of the Comité des Chefs de Police	21st September 2006
Mr I Christmas, Assistant Magistrate	5th October 2006
Ms T Easton, District Crown Prosecutor, Hampshire and Isle of Wight Crown Prosecution Service	5th October 2006
Senator W Kinnard, Minister for Home Affairs, accompanied by Mr S Austin-Vautier, Chief Executive – Home Affairs	11th October 2006
Centenier J Rigby of St Saviour	30th October 2006
Mr L O'Donnell, Legal Adviser, and Advocate R Morris, Legal Adviser	1st November 2006
HM Attorney General, Mr W J Bailhache QC	6th November 2006

13.2.9 **Site Visits:**

Guernsey Magistrate's Court	19th June 2006
Magistrate's Court, St Helier	23rd June 2006
Youth Court and Town Hall, St Helier	11th July 2006
Criminal Justice Unit and Custody Unit	21st July 2006
Crown Prosecution Service of Hampshire and the Isle of Wight	31st August to 1st September 2006

13.2.10 **Legal Advice:**

Mr J Cooper, Doughty Street Chambers, London

8th May 2007

13.2.11 **Media Articles:**

Jersey Evening Post

Honorary Dedication (an interview with Centenier G Cornwall) 28th April 2007

13.2.12 **Websites:**

www.gov.je/LawOfficers

<http://www.gov.je/ChiefMinister/International+Relations/International+Agreements/Human+Rights/>

14. TIMELINE

22nd February 1951	UK Government ratifies the European Convention on Human Rights
30th October 1951	States confirm that the Convention should be extended to Jersey
23rd November 1990	<i>Jersey Judicial and Legal Services Review Committee: Second Interim Report (R.C.24/1990)</i> presented to the States
1992	A proposal is made for the States to adopt Human Rights legislation (according to P.189/1998)
July 1996	Publication of Report on the Policing of the Island, produced by a Review Body chaired by Sir C. Clothier
1998	The UK Parliament adopts the Human Rights Act
17th March 1998	<i>Magistrate's Court – Practice and Procedures: Working Party Report (R.C.7/1998)</i> is presented to the States
22nd September 1998	The States adopt <i>Human Rights Legislation (P.189/1998)</i> that asks for a Human Rights Law to be drafted
July 1999	<i>Draft Human Rights (Jersey) Law</i> put out for consultation
8th February 2000	The States adopt <i>Draft Human Rights (Jersey) Law 200-</i> (P.197/1999)

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October 2000	The UK Human Rights Act comes into force
15th October 2002	Publication of <i>Review of Criminal Justice Policy in Jersey</i> , undertaken by Professor A. Rutherford, in which it is recommended that a public prosecution service be created.
27th March 2003	Home Affairs Committee considers the Rutherford recommendations with H.M. Attorney General.
22nd May 2003	Home Affairs Committee agrees that it will not pursue the recommendation regarding the creation of a public prosecution service.
20th September 2005	<i>Criminal Justice Policy</i> (P.201/2005) lodged <i>au Greffe</i> for debate. It indicates that the Rutherford recommendation regarding a public prosecution service will not be pursued.
25th October 2005	States defer consideration of <i>Criminal Justice Policy</i> (P.201/2005).
14th February 2006	<i>Criminal Justice Policy</i> (P.201/2005) withdrawn.
3rd August 2006	Consultation begins on Criminal Justice Policy.
22nd November 2006	States adopt <i>Draft Human Rights (Jersey) Law 2000 (Appointed Day) Act</i>
10th December 2006	<i>Human Rights (Jersey) Law 2000</i> comes into force