

**WRITTEN QUESTION TO THE MINISTER FOR HOME AFFAIRS
BY SENATOR B.E. SHENTON**

ANSWER TO BE TABLED ON TUESDAY 3rd JUNE 2008

Question

Can the Minister describe her political role, with particular regard to the relationship with the police, and the concept of political and public accountability?

Answer

In order to understand the complex nature of police accountability, it is necessary to map out the terrain and to highlight a number of themes.

From the outset it is essential to understand that “accountability” and “control” should not be confused.

Accountability: This involves having to account for what you do. Built into the legal, organisational and political frameworks are constraints on the exercise of police discretion and these provide forms of accountability at each level.

Control: This implies being directed and restricted in what you do. Control of the Police is both undesirable and inappropriate in a democratic society. Police powers which provide safety and security could if carried to excess begin to deny freedom. This is the paradox of police governance. Stark demonstrations of where the Police have been required to carry out the directions of the dominant political regime are provided by Nazi Germany and South Africa, and there are other examples from around the world. The delicate balance that must exist between our security and our freedom is the paradox of police governance.

Executive powers of direction and control over the Police would leave the Police not directly answerable to the community or the States, but to the government of the day. Former Police Commissioner Robert Mark warned that the danger of subversion of the operational independence and thus the impartiality of the Police is that the operational role of the Police could be dictated by one or other political faction or party.^[1]

Separation of powers: There is a need to balance the unwarranted exercise of police power with mechanisms to enable their effective operation. The separation of powers is the way that freedom and security are reconciled. The role of the Police is to provide safety and security but the price for this is some loss of freedom in terms of political direction. Clearly it is necessary for the Police to maintain degrees of independence from Government direction as there may be occasions when they are investigating Government members or departments.

The notion of the separation of powers and police operational independence has a long history and can only be understood in terms of the Police Force (Jersey) Law 1974, custom and practice and legal opinions of the Law Officers on issues such as the Chief Officer’s employment status. Together they provide the three main sources of checks and balances on police powers. The first is legal such as the Police Force (Jersey) Law 1974; Police Procedures and Criminal Evidence Law (PPCE) and the various codes under the Law. Secondly there are organisational constraints which are provided through Police discipline and force orders. Thirdly are political constraints which are provided by the Minister.

Legal accountability: In one sense the ‘police chief’ is a legal entity as well as a person. His primary responsibility is to the law. The Law Officers have opined that the Police Chief, and indeed all sworn police officers, are not “employees” but when sworn in assume a distinct legal status which holds them semi-detached from direct government control in operational matters. This is common practice in jurisdictions operating within the traditions of democracy all of which see a need to have measures in place which provide reassurance that the Police service (and other areas of criminal justice such as the prosecutions service and the courts) cannot be manipulated for political purposes. Laws are usually crafted which draw a distinction between accountability, which is seen as desirable, and control, which is not.

The nearest we have to a written philosophical framework in Jersey is paragraph 7.3.2 of the first Clothier report which stated:

“A society is entitled to tell its Chief Officers of Police what is required of them and to make sure they do it. It should abstain from telling Chief Officers how to do it because that is a matter for their professional expertise.”

It is probably right to say that subsequent Law Officers’ opinion may be read as taking a somewhat more robust view of operational independence than Clothier but nevertheless the principle is the same. If traditional freedoms are to be maintained a Police service needs to be politically accountable but free from day to day political control, particularly in matters of investigation and arrest. There also need to be safeguards against indirect influence such as the ability to interfere in human resource issues and decisions to demote or transfer officers.

So long as everyone has a broad understanding of the proper principles which underpin this thinking and the place of legitimate operational independence in a framework of good governance there will be few occasions when the detailed provisions of the law would need to be invoked. I will now touch briefly on this formal legal framework.

Formal legal accountability is set out in Article 9 of the Police Force (Jersey) Law 1974. Article 9(3) provides that the Police Chief is responsible to the Minister for the administration, discipline, training and organisation of the force (but curiously not its performance). Under the law the Minister has powers to suspend the Police Chief but he/she can only be removed from office by a meeting of the States as a whole (Article 9(2)).

In my view the exercise of such powers should be only in extremis and should have to be fully and objectively justified. Successive UK Home Secretaries have never accepted overall responsibility for and control of policing. They have been reluctant to constrain the operational independence of the Police. Rather there have been examples where the Home Secretary has reinforced that operational independence. For example, the UK Home Secretary gave Chief Constables permission to by-pass police authorities over the refusal of some Chief Constables to obey instructions from their local police authority not to purchase plastic bullets. Also in the UK, the Chief Constable can decline to give a report to his police authority if he thinks it will not be in the public’s interest to do so, or if he thinks such a report is not needed for the Police Authority’s exercise of its duties.

Here in Jersey everything should be done to avoid getting into a position where such draconian powers might be exercised. The bottom line, as a matter of law, is that if the Home Affairs Minister cannot resolve any differences then it requires a full meeting of the States to suspend or remove the Chief Officer.

Internal organisational responsibility: In addition to their primary responsibility under the Police Force (Jersey) Law 1974, the Police are answerable also to the internal disciplinary regulations of the force. The introduction of the States of Jersey Police Professional Standards Unit has further enhanced accountability in this area.

Political accountability: This is a form of ‘indirect accountability’ because of the distinct operational autonomy of the Police. What happens routinely is that the force drafts an annual business plan which seeks to align priorities with resources. This is presented to the Minister for agreement and thereafter constitutes a political mandate to act within the parameters of the plan. All plans need to be flexible to respond to operational priorities and political involvement is sustained by a programme of regular meetings with the Minister to seek agreement on issues which would benefit from a political view. The Police Chief also meets with the Chief Minister and provides a confidential briefing on matters affecting the security of the island. As well as the Education and Home Affairs Scrutiny Panel some States members take a close interest in policing issues and correspond directly with the Chief Officer as well as asking questions of the Minister in the States. This process enables the wider political community to influence police priorities and address constituents’ concerns.

Public accountability: The principle of public accountability as a further safeguard is important. It has been appropriate for the Police to seek public accountability through the following:

- 1) Regular meetings between the Police and key stakeholders to discuss matters of joint interest eg The Connétable of St. Helier and the executive of the Honorary Police Association.
- 2) Soundings of the non-political community are taken through a rolling programme of customer

questionnaires. Information from this source is used to fine-tune policy and determine priorities for the next year.

3) The media are an important source of public scrutiny and accountability.

There are additional external bodies providing further oversight of SOJP activities. Firstly, the islands' independent Police Complaints Authority exercises close oversight of professional standards issues and complaints against officers and reports annually to the States. Secondly, HM Inspectorate of Constabulary provides independent detailed advice to the Minister on how operational accountability is working in practice.

In accordance with particular operational requirements other agencies may be involved in providing oversight and ensuring appropriate accountability. For example, in the historic abuse inquiry the ACPO Homicide Working Group and the National Policing Improvement Agency have been overseeing the phase of the inquiry at Haut de la Garenne and have stated that they see the operation there as an example of best practice.

Financial accountability: The Chief Officer, Home Affairs, rather than the Police Chief, is the accounting officer legally responsible. He monitors significant areas of expenditure, carrying out early checks and regular review to ensure best value. Additional input on the financial aspects of the inquiry at Haut de la Garenne is being supplemented by the ACPO Homicide Working Group. They have said that the Senior Investigating Officer in the historic abuse inquiry should continue to consider the financial implications and would be failing in his duty if he did not do so.

Finally, I offer a few thoughts which have been fed into the new draft Police Law. It will set up a Police Authority to improve accountability of the Police. Much current good practice, the annual plan, the joint working protocols with the Honorary Police, and the ability of the Minister to call in an inspectorate to address any concerns will be formally incorporated in the law. It will also make clear that the Minister can call the force to account for performance. It will however include measures intended to protect day to day operational independence in matters of operational deployment. My belief is that the law would not pass the 'good governance' test if it were otherwise.

^[1] Mark, R., 'Police of the eighties', *Police Review*, 1980, pp.292-3