

OPUS 2

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Independent Jersey Care Inquiry

Day 3

July 29, 2014

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1 Tuesday, 29 July 2014

2 (10.30 am)

3 THE CHAIR: Good morning, Ms Jerram.

4 MS JERRAM: Good morning, Madam Chair, Members of the Panel.

5 Unless there are any matters of housekeeping to deal
6 with firstly, I propose calling the Inquiry's first
7 witness, the first witness being Dr Phillip Johnson, who
8 gives a broad outline view of constitutional matters in
9 Jersey to assist the Panel.

10 THE CHAIR: No, I don't understand there to be any
11 housekeeping matters, so we can proceed to call
12 Dr Johnson.

13 MS JERRAM: Thank you. Dr Johnson please.

14 DR PHILLIP JOHNSON (affirmed)

15 Questions from Counsel to the Inquiry

16 MS JERRAM: Dr Johnson, thank you. Please could you confirm
17 your full name and professional address please.

18 A. My full name is Phillip Michael Johnson. My
19 professional address, for the purposes of academia, is
20 University College Dublin, Belfield Dublin 6.

21 Q. Thank you. Could I ask to be called on screen document
22 {EE000035} which is the document, Dr Johnson, that you
23 have produced for the Inquiry. Could you confirm that
24 that's the statement you have produced dated
25 25 July 2014?

1 A. That's certainly the first page of it, yes.

2 Q. If we go please to page 20 in that document, is that
3 your signature that appears there with the date
4 25 July 2014?

5 A. That's my signature and that's the date, yes.

6 Q. Thank you. Are the contents of that statement true to
7 the best of your knowledge and belief?

8 A. They are.

9 Q. Thank you. If we could go back, please, to the first
10 page of the statement. Dealing with your professional
11 qualifications to begin with you say that you are
12 an Associate Professor of intellectual property law at
13 the University College Dublin and also a practising
14 barrister in England and Wales, called to the Bar in
15 1998.

16 In relation to your post at the Jersey
17 Institute of Law, just help us with this firstly: what
18 was your connection, if any, with Jersey before you came
19 to be appointed as Associate Professor?

20 A. None. I used to work for the Government Legal Service
21 between 2003 and 2007 in that role. There were
22 occasionally issues with Island authorities, so
23 occasionally I could speak to them in that capacity, but
24 that was all.

25 Q. And in relation to the post, how was it that you came to

1 be appointed Associate Professor?

2 A. It was advertised on a website for academic posts,
3 "jobs.ac.uk", and I applied.

4 Q. How much time do you actually spend in Jersey teaching
5 the course?

6 A. The first two years -- it might have been just the first
7 year -- I came on a Friday night and went home on
8 a Sunday twice a year, plus one day for revision, so it
9 would have been five or six days a year. It might be
10 a little less now.

11 Q. Now, in relation to your post at the Jersey
12 Institute of Law are you acquainted with any Officers of
13 the States of Jersey in your capacity as Associate
14 Professor?

15 A. I was appointed by Sir Philip Bailhache and he remains
16 the Chair of the governing body of the Institute, so
17 he's a Senator, so I suppose he's not an officer.
18 Although he's a Minister as well, so he is an officer.
19 And I co-teach the Adjunct -- each of the Jersey law
20 courses has a visiting professor who is meant to bring
21 the academic and the main bulk of teaching and they have
22 an Adjunct who is a local lawyer. For my course, until
23 this year it has been William Bailhache, who is
24 obviously the Deputy Bailiff, and he is actually going
25 to be replaced by Philip next year, when he becomes

1 Bailiff.

2 Q. In relation to the production of your statement have you
3 consulted either William or Philip Bailhache in relation
4 to its contents?

5 A. Not in relation to the statement, no.

6 Q. Could I just ask you please to look at page 21 of the
7 statement which is the appendix setting out the various
8 documents that you have consulted. We see there it is
9 split into a number of reports, firstly a legal opinion
10 from Rabinder Singh, the Carswell and Clothier Reports
11 and then two reports regarding proposed reforms in the
12 Channel Islands and on the Constitution, and thereafter
13 a number of clauses, which I think in the body of your
14 statement you have --

15 A. I have used the abbreviation, which is in brackets at
16 the end, to make it more readable.

17 Q. Yes, exactly, and then a number of cases at the bottom.

18 Are those the sources for the material contained
19 within the statement?

20 A. Largely, although on the next page there is I think
21 three what I have called texts.

22 Q. Yes, if we could turn over to page 22, thank you.

23 {EE000035/22}

24 A. I have called them textbooks. The Institute of Law
25 has -- there is very little written in most areas of

1 Jersey law. There are some things in trusts and so
2 forth, but generally there is very little written on
3 Jersey law and the Institute of Law when it started --
4 I think 2008/2009, I might be wrong about that -- wrote
5 textbooks, study guides, as they were. That is where
6 most of my original learning comes from. I have worked
7 out of those into the other sources. The one on the
8 Jersey Legal System and Constitutional Law, I have
9 edited the last -- I'm presently editing, it is the
10 third time I have edited, I think, and that's co-edited
11 with William Bailhache, who is the Adjunct, although
12 I do most of the work. I didn't write the original
13 draft though.

14 Q. Thank you. Please if we can come back to page 2 of your
15 statement {EE000035} . Dealing very briefly with the
16 background to the Jersey Constitution, you set out there
17 at paragraphs 5 and 6 the background and the fact that
18 the Channel Islands were originally part of the Duchy of
19 Normandy. I just wanted to ask you in relation to
20 paragraph 6, the final sentence:

21 "The Royal Court is not subject to the supervisory
22 jurisdiction of the High Court of England (but it is
23 subject to that of the Judicial Committee of the
24 Privy Council)."

25 Can you explain how that works in practice?

1 A. The highest Court of Appeal for the Channel Islands is
2 the Privy Council and so a decision of the Royal Court
3 can be appealed to the Court of Appeal for Jersey and
4 the second appeal can go to the Privy Council, which
5 is -- or the Privy Council or the Judicial Committee of
6 the Privy Council is made up of English judges, usually
7 judges in the UK Supreme Court, or formerly the Law
8 Lords in the House of Lords, and so they have and give
9 the highest authority in that capacity, but they are
10 sitting at the Judicial Committee of the Privy Council
11 and not as Supreme Court judges. That said, there is
12 a decision at the moment before the UK Supreme Court
13 relating to aspects of the jurisdiction of the
14 High Court over matters within the Islands, relating to
15 the Barclay Brothers in Sark, but generally the view is
16 that it is not subject to the High Court of England and
17 hasn't been, certainly in relation to private court
18 matters, since the 14th Century.

19 Q. Thank you. Then if we can move to paragraph 7 of your
20 statement, which is still on screen, in relation to the
21 States of Jersey you set out there:

22 "The Assembly of the States of Jersey is the
23 legislature for the Island." {EE000035/2}

24 And comprises both elected members and unelected
25 members. Just help us with the numbers. In terms of

1 Senators, Deputies and Connétables, what are the
2 respective numbers that sit?

3 A. The number of Senators used to be 12; it has come down
4 and now it is ten. Deputies there are 29 and
5 Connétables there are 12, one for each parish, so in
6 total 51 members.

7 Q. Thank you, and if you could just go over the page please
8 to the section on the Bailiff, you set out there the
9 Bailiff is the President of the Assembly of the States
10 of the Jersey and presides over the proceedings and it
11 is a role very similar to the Speaker in the House of
12 Commons.

13 Help us with this, in terms of the appointment of
14 the Bailiff is that an elected post, or how does the
15 appointment work?

16 A. The appointment is by the Crown. It is a very similar
17 appointment to the way that a judge is appointed in
18 England. They are appointed by a patent from
19 Her Majesty. Sorry, I should say a High Court judge,
20 a Circuit Court judge is not appointed in the same way,
21 in England. So they are appointed by Her Majesty on
22 advice and they are given a patent as their authority.

23 Q. And you set out in paragraph 10 that until the
24 commencement of the States of Jersey Law 2005 the
25 Bailiff had the casting vote and what was called the

1 power of dissent. {EE000035/3}

2 A. Yes.

3 Q. And what sort of circumstances was it appropriate for
4 the power of dissent to be exercised?

5 A. Well, the 1966 Jersey law said that it could be used
6 when a resolution was susceptible to implementation and
7 there were concerns about the States not being competent
8 to pass it. Quite what that means and when it was used
9 is not entirely clear. Some reading has said it hasn't
10 been used for a number of years. When it came to the
11 2005 law it said it hasn't been used for a number of
12 years, but I don't know how long that period is.
13 I certainly haven't researched the last time it was
14 used.

15 THE CHAIR: Dr Johnson, could I ask you to take it a little
16 more slowly, you appreciate that notes are being taken,
17 and could you speak up a little.

18 A. Sorry. I don't know the last time it was used, although
19 when it was abolished in 2005 it was said it hadn't been
20 used for a number of years, but as the Inquiry's period
21 goes back to 1955 I have no idea if during that period
22 it was used or not used.

23 MS JERRAM: Thank you. Now in relation to the office of the
24 Bailiff what is the duration, the period of tenure for
25 the Bailiff once appointed?

1 A. Once appointed it is until they would reach the
2 retirement age.

3 Q. Which is?

4 A. I think it is 70, but I'm not positive.

5 Q. Thank you.

6 You also deal here at paragraph 11 {EE000035/3} with
7 the Deputy Bailiff which is a statutory office and in
8 summary is it fair to say that the Deputy Bailiff can
9 carry out any function of the Bailiff on the instruction
10 of the Bailiff?

11 A. Yes, that's right.

12 Q. Yes, thank you.

13 Going over please in the statement to page 5
14 {EE000035/5} , paragraph 18, you deal there in a little
15 bit more detail with the Crown appointments of the
16 Bailiff and Deputy Bailiff. At paragraph 18 in the
17 middle you say that there are no formal qualifications
18 for a person to be appointed. Is it right though in
19 reality that this is always a legally qualified post,
20 that is to say that somebody comes up through the ranks
21 from Solicitor General to Attorney General, Deputy
22 Bailiff and Bailiff?

23 A. It is now. Historically the Bailiff is a very old
24 position and early Bailiffs were probably not legally
25 qualified. Certainly in modern times they are usually

1 a Jersey advocate who is then elevated to the Bench.

2 Q. You go on to say in the same paragraph that the Bailiff
3 is the civic head of the Island and is meant to
4 represent the views of the people of the Island. So it
5 is a representative post notwithstanding the fact that
6 it is not an elected post, is that right?

7 A. It is. I think it is representative in a ceremonial
8 fashion, in much the same way you might say the Crown is
9 representative of the United Kingdom. She -- it is --
10 it is to meet and greet and that sort of ceremonial role
11 I think rather than -- it is more involved than --
12 certainly in recent history it has been far more
13 involved than the Crown in that they are often the
14 channel of communication between the Islands and the UK
15 authorities in particular. That's less so now but it
16 was often that letters would go through the Jersey
17 authorities and then be channelled through the Bailiff,
18 which wouldn't of course happen with the Crown. But the
19 bits when it says "represent the views of the people of
20 the Island" is often more of a ceremonial rather than
21 other role.

22 Q. I see.

23 You go on to say that the two main facets of the
24 office are acting as President, Chief Justice of the
25 Royal Court and as President of the States, which you

1 have already discussed and you say the Bailiff spends
2 about two-thirds of his time on his judicial role and
3 one-third on his role in the States.

4 Can I ask you please to look at {EE000004} which is
5 the Carswell Report. My internal page number is
6 pages 77 to 79 which is appendix 3.

7 So this was the Carswell Report of 2010 and it had
8 as an appendix to it the Bailiff's duties and just
9 looking at the statistics there from 2006 to 2009, we
10 have got Royal Court sittings. Presumably those are
11 sittings carried out either by the Bailiff or by
12 somebody appointed by him?

13 A. It could be a Bailiff, it could be a Deputy Bailiff, it
14 could be a Commissioner, or it could be a Lieutenant
15 Bailiff in some limited circumstances. So that would be
16 the days the court is sitting not just the Bailiff
17 sitting. The one-third to two-thirds comes from
18 a statement -- I think it was by Philip Bailhache which
19 is reported in -- I think it's the Carswell -- I can't
20 remember the exact page, I think it's in here: he said
21 the division, he estimated, was two-thirds/one-third.
22 It is not done in the basis of statistics.

23 Q. We see there is a small amount of time spent on
24 licensing matters and warrants and then if we go over
25 the page, please, we see further down the page -- we

1 need not concern ourselves with the Licensing Assembly
2 and so on, but numbers of States meeting days, just to
3 give the Panel an idea as to how often the States is in
4 session, 38 days in 2006, 45 in 2007, 51 in 2008 and 60
5 in 2009.

6 As far as you are aware, is that a representative
7 number of sitting days per annum for the States?

8 A. It is, yes. It is usually around just over or just
9 under one day a week on average, although the sittings
10 tend to be in clumps, but yes, that's right.

11 Q. Yes. In your statement -- we don't need to get it up,
12 but it is paragraph 20 for the record {EE000035/6} --
13 you deal there with the issue of the multiple roles of
14 the Bailiff, raising issues regarding the separation of
15 powers. Could you just explain in broad terms what the
16 issue is in relation to that?

17 A. The separation of powers generally, or in Jersey
18 context?

19 Q. In relation to the Bailiff?

20 A. There is a view in constitutional theory that you should
21 have the Executive, the Judiciary and the Legislature as
22 separate entities, in other words it is not thought to
23 be -- if one adheres to a strict separation of powers it
24 is thought that the Judiciary should not be part of the
25 Legislature, they should also not be part of the

1 Executive and similarly the Executive should not be part
2 of the Legislature. So in many countries you have
3 a very strict separation of powers, the United States
4 being a classic example. In others you have a much less
5 strict -- the United Kingdom classically didn't have
6 a great separation of powers. The Executive obviously
7 does sit in Legislature and until recently the Lord
8 Chancellor sat as judge and Member of the Executive and
9 as part of the Legislature. So that's the basic issue.

10 In the Jersey context, the Bailiff is a judicial
11 officer and is also a Member of the States and so from
12 a separation of powers point of view it could be seen
13 that that might be problematic because they are in both
14 situations, but, as I think I say in my statement, this
15 is -- and this is something I think there is a counsel's
16 opinion on by Rabinder Singh -- something that is not
17 thought to be hard and fast, contrary to any human
18 rights norms at the moment.

19 The other thing is that in the 2005 States of Jersey
20 Law some of the powers of the Bailiff were reduced to
21 try and address a decision of the European Court of
22 Human Rights, the McGonnell case, and that's why the
23 power of dissent that you mentioned earlier was
24 abolished and the casting vote was abolished and so now
25 if there is a split, even vote in the States then it is

1 deemed to be in the negative rather than the Bailiff or
2 the presiding officer having a casting vote.

3 Q. In relation to that issue of separation of powers you
4 mention in your statement that both the Carswell and
5 Clothier Reports recommended that the Bailiff should
6 cease to act as President of the States, but that wasn't
7 implemented.

8 A. That's correct.

9 Q. And there was a vote as recently as 1 May 2014 as to
10 whether the Bailiff should effectively be stripped of
11 that role and you set out in your statement on -- partly
12 on advice from the Attorney General -- that vote was
13 defeated?

14 A. That's right. There was a proposition put to the States
15 for debate and in advance of that the Attorney General
16 gave written advice, which is available on the
17 States Assembly website. He said it wasn't incompatible
18 with Article 6 and one presumes that's largely derived
19 from Rabinder Singh's opinion and they voted to keep
20 it -- part of their concern was this idea of the Bailiff
21 being the civic representative, the sort of figurehead
22 position for the Island and that might not be
23 appropriate if he was just the judge. I think that was
24 a large amount of the concern.

25 Q. If we could move on to Senators and Deputies please,

1 back in E35, paragraph 13, page 4 {EE000035/4} . You
2 set out here that a Senator is an elected Member of the
3 States who is elected on an Island wide mandate whereas
4 a Deputy is elected by constituency which is usually
5 a parish and in St Helier, as I understand it, the
6 Parish is divided?

7 A. It is not just St Helier, but yes. The smaller parishes
8 you have one Deputy for a parish, the larger parishes
9 you have multiple deputies. There is 29 Deputies in
10 12 parishes, so that gives an idea of how they are
11 divided.

12 Q. And so the period of tenure which you set out is the
13 same for both. They both now have a four year period in
14 office?

15 A. That's right.

16 Q. And the elections take place at the same time?

17 A. That's right. That's again a relatively new innovation.
18 When Senators were first created they had a six year
19 term and Deputies had a shorter term than they have now.
20 Over time they have been brought together. The two
21 positions have become more and more similar save for the
22 constituency that elect them. But when the two
23 positions were created in the late 1940s, they had
24 different terms of office and different points of
25 election but now they don't.

1 Q. In terms of voting rights is there any distinction
2 between the two?

3 A. No. In terms of once they are elected, no.

4 Q. I see. Then you deal with the Connétables who were also
5 elected by their parish. And also elected for a four
6 year term and similarly have the right to hold any
7 office in the States or the Executive, so they could
8 also be a Minister, for example.

9 A. In theory, yes.

10 Q. You go on in paragraph 15 to discuss the referendum
11 which is due to be held on 15 October this year as to
12 whether Connétables should remain Members of the States?

13 A. That's right.

14 Q. Yes. If we could move on to Connétables more generally.
15 Given that Deputies are also elected on a parish-wide
16 mandate, what is the difference in practice politically
17 between a Connétable and a Deputy?

18 A. I think there is a misunderstanding there. Connétables
19 are elected one per parish and there are 12 parishes.
20 Some Deputies, because of the way the constituencies are
21 drawn up some Deputies have the same electorate as some
22 Constables. Most Deputies don't, most have a part of
23 a parish, and so the Constable for example of St Helier
24 will have a larger constituency than a Deputy in
25 St Helier. So there is a distinction there. It is

1 simply the way that the original constituencies for
2 Deputies were drawn, that they were drawn along parish
3 lines, which is why they are slightly uneven, rather
4 than the fact that they have the same electorate.

5 Q. I see, thank you.

6 The other part of their function is in relation to
7 the Honorary Police, dealing with Connétable, and you
8 set out in your statement that they were historically
9 responsible for maintaining law and order in the parish.

10 A. They are until Friday, yes.

11 Q. Until Friday. I want to come on to that in a moment, if
12 I may. Just before we do that, help me with this: from
13 your description it sounds like they have both
14 a political and executive function as far as the
15 policing is concerned. Are Connétables able to vote on
16 matters to do with the Honorary Police in the States --

17 A. Yes.

18 Q. -- when such matters arise?

19 A. Yes.

20 Q. Thank you.

21 Please could we call up on screen {EE000008} . This
22 is the Connétables (Miscellaneous Provisions) Jersey Law
23 2012, which I think is the law you were just referring
24 to.

25 A. Yes.

1 Q. If we could go over to page 3: {EE000008/3}

2 "A law to repeal the policing functions of the
3 Connétables, to empower a Procureur du Bien Public to
4 deputise for a Connétable in certain circumstances, to
5 remove certain other functions from the Connétables and
6 to make ancillary and consequential amendments."

7 Help us with the timing in relation to that. You
8 said things are going to change on Friday. What's the
9 process by which this has become law?

10 A. This is -- this is a normal law so it would have gone
11 through the States. It then would pass Royal Assent and
12 then be registered, but as with legislation in many
13 other countries the making of legislation is not
14 necessarily the point at which it comes into force. One
15 can have what is generally called commencement
16 legislation, the bringing into force of legislation, and
17 the Act which brought this into force which is made
18 under a later provision, this law brings it into force
19 on 1 August, which is Friday, so although it was made in
20 2012 it was brought into force on Friday.

21 The reason that often happens is that you need
22 things to be done before a law is brought into force.
23 It is often if you bring it into force on Royal Assent
24 it makes everything very awkward because they don't have
25 the timing right, which is why many jurisdictions do

1 this. And in fact there is two -- there is also another
2 law which makes further consequential amendments which
3 comes into force at the same point in addition to the
4 consequential amendments made by this and it is made
5 under this law, so again one would imagine the delay was
6 to make those other amendments to the general law to
7 ensure that the law worked properly and achieved its
8 objectives.

9 Q. Thank you. Now, in relation to the interpretation
10 section that we see there on the screen, the policing
11 function exercisable by the Connétables is set out as:

12 "(a) keeping the peace;

13 "(b) opposing and arresting wrongdoers and bringing
14 them to justice ..."

15 Then under (c), setting out the various powers that
16 the Connétables have or had until Friday, in exercising
17 those functions under (a) and (b), including:

18 " ... searching, examining or investigating, or
19 authorising a search, examination or investigation of,
20 property of any description or a person,

21 "(ii) charging a person with an offence,

22 "(iii) arresting a person,

23 "(iv) granting bail,

24 "(v) conducting a Parish Hall Inquiry ..."

25 And:

1 "Presenting a person charged with an offence before
2 a court ..."

3 Then just going over the page please {EE000008/4} ,
4 and:

5 " ... discharging functions incidental or ancillary
6 to any of the actions referred to in this paragraph."

7 Does that section effectively set out a summary of
8 the powers of the Connétables to date in the
9 Honorary Police?

10 A. That's certainly what was thought to be the powers,
11 which is why they have been set out, to abrogate them.
12 Some of those powers might be -- the way it worked is
13 the abrogation -- the customary law powers, some of
14 those powers may be statutory, some of them may be
15 customary, so they are not necessarily all customary law
16 powers that are listed there, there are some that are
17 reflected in the statute as well and there has been
18 consequential amendments to remove statutory references
19 to the Connétables in those instances.

20 Q. As far as you are aware in relation to all of those
21 powers we have just looked at under Article 1, are those
22 powers that have been exercisable by the Connétables
23 since 1945?

24 A. And long before. But they might have varied as
25 statutory enactments changed and customary law can

1 evolve and change, but those broad functions would have
2 been, yes.

3 Q. Looking on to Article 4, which is on the page on the
4 screen in front of you, the supervisory role of the
5 Connétables has been retained, hasn't it? So in
6 relation to -- under (a):

7 "The responsibility of the Connétables ... at
8 customary law or under any enactment to supervise the
9 Honorary Police of the parish ..."

10 And (b), the powers and duties associated with that
11 responsibility. So it is right to say, isn't it, that
12 with regards to that supervisory function that remains
13 the duty of the Connétables?

14 A. Yes, that's right, yes.

15 Q. Now, you mention in your statement the Chef de Police.
16 Can you explain what a Chef de Police is within the
17 Honorary Police system?

18 A. Originally most of the -- the day-to-day policing was
19 originally historically led by the Connétables. As time
20 went on less and less of the policing role was conducted
21 by the Constable for the parish and as time went on it
22 was delegated to the Chef De Police, who was
23 a Centenier. And so the management of the day-to-day
24 policing has, for a period, a significant period, been
25 conducted by the Chef de Police under the supervision of

1 the Connétables. So it is a power that the Connétables
2 had but didn't normally, or didn't often exercise, which
3 is one of the rationales I understand for removing the
4 powers is that the Connétables didn't usually have
5 day-to-day management of the Honorary Police, it was by
6 the Chef de Police. Although that will vary obviously
7 between Connétables and parishes, but usually that was
8 how it was conducted is my understanding.

9 Q. Thank you. I should just ask for the record, we have
10 been using the expression "connétable" and "constable"
11 interchangeably, do they mean the same thing?

12 A. "Constable" is the English, "connétable" is the French,
13 and as originally a French law system or a Normandy
14 customary law system, many of the terms stem from the
15 French language rather than the English language, but
16 they are interchangeable, depending on ...

17 Q. Just dealing further with the Chef de Police point,
18 please could we have on screen {EE000015} which is the
19 Honorary Police (Jersey) Regulations 2005. Going over
20 the page please to Article 1 which is actually on
21 page 5 -- sorry, is no it is not. We see there.

22 "'Chef de Police' means the Centenier of a parish
23 appointed by the [Constable] of that parish to be
24 Chef de Police for that parish."

25 So there are 12 of them presumably. And the Comité

1 means the Comité de Chefs de Police. That is a Comité,
2 is it, which comprises all 12 of the Chefs de Police?

3 A. Yes.

4 Q. If we can go on please to Article 3, we see there the
5 process by which a person may become a member of the
6 Honorary Police. It is an election by way of process,
7 isn't it?

8 A. Depending on the rank of the Honorary Police it is by
9 election, yes.

10 Q. Can you help us with what the processes are for the
11 different ranks?

12 A. The two most junior ranks are elected at parish
13 assemblies and Centeniers are elected more broadly.
14 They are elected in the parish but it is done as
15 a public election rather than just a Parish Hall
16 Assembly.

17 Q. And those elections are open to the general public in
18 the parish?

19 A. They are open to parishioners. So if you live in say
20 St Martin and they have an election for a constable's
21 officer, you can attend. The technical requirements for
22 being a Member of a Parish are very little. There are
23 people who are non-parish members, rate payers for
24 example, and certain statutory corporations can be
25 deemed to be Members of the Parish, but you as a Member

1 of a Parish -- broadly the one you live in -- can turn
2 up to a Parish Hall Assembly and vote for who is made
3 a constable's officer or Vingtenier or a Centenier.

4 Q. Are the parishioners put on notice of these elections?

5 A. They are notices of Parish Hall meetings and there are
6 statutory requirements as to how they are advertised.
7 Most Parish Hall law, although not all, is in the French
8 language and is quite old. Parish regulation is
9 something which hasn't been codified. There has been
10 suggestions of codification in the past, but they
11 haven't been adopted. In fact I think there was
12 a suggestion against it most recently and -- but they
13 are public elections on public notice.

14 How many people actually partake in a particular
15 election and how many people stand will vary. Often
16 they are uncontested.

17 Q. I see, thank you. Then please if we can go on to just
18 briefly look at Article 8. That's the Comité de
19 Chefs de Police which I have just referred to and the
20 purposes of that are set out at sub-section 2. In
21 general terms is the Comité there to promote consistency
22 across the different parishes?

23 A. Consistency and cooperation I think, yes.

24 Q. Just help us with that. In terms of the jurisdiction
25 for the Honorary Police, does this jurisdiction arise

1 from where the crime was alleged to have been committed?

2 Is that how it works on a parish-wide basis?

3 A. The jurisdiction relates to where you are appointed. So
4 if you are appointed for one parish, under customary law
5 you had powers in your parish wherever the offence was
6 committed and if you were chasing somebody you could go
7 outside your parish to chase them basically. As time
8 has gone on there are statutory broadenings of these so
9 that there is jurisdiction for example for Centeniers in
10 States Police stations because they charge there
11 et cetera. So it is actually not necessarily where the
12 offence is committed. That's a better way to put it.

13 If the offence has just been committed, then if you
14 are chasing them you retain it, but it is not
15 necessarily just where it has been committed. It is
16 where you have your badge, as it were.

17 Q. Thank you. I want to come back now please to
18 paragraph 17 on page 5 of the statement, dealing with
19 issues of political parties. You set out there that as
20 at the time that you drafted your statement there were
21 no formal political parties in the States of Jersey and
22 that has been the situation historically, hasn't it?

23 A. There have been attempts to form political parties in
24 the past and I believe people have been -- one or two
25 candidates have been elected as a member a party in the

1 past. My understanding is that isn't the case now,
2 nobody is party political. On the whole they haven't
3 been very successful.

4 Q. My understanding, and I'm afraid I don't have anything
5 documentary to put to you, is that a political party may
6 have formed and been given approval very recently. Is
7 that something that you are aware of?

8 A. I know nothing of that.

9 Q. No, okay. Just in terms of the practical effect
10 historically of the lack of political parties, you say
11 that in theory at least individuals were all elected
12 based on their own profile and merits, but in terms of
13 getting through legislation what has been the effect of
14 the absence of political parties?

15 A. Well, if one compares it to a very strong party
16 political system such as in the United Kingdom, there,
17 if you have Government -- and again the idea of
18 government legislation is something which in most
19 jurisdictions -- well, in parliamentary jurisdictions
20 generally is quite well understood, it is something the
21 government is trying to put forward, that idea doesn't
22 really apply in the current Jersey system, although
23 again there are changes in October this year, in that
24 legislation is put forward by a Minister and not
25 necessarily even other Ministers have to vote for that

1 legislation. In a party political system -- again in
2 the House of Commons being an example -- if the
3 Government have a Government bill and it is contentious
4 and they think the opposition are going to call for
5 a full vote, you can have whips and you can be told to
6 go and vote and there is often stories in the press you
7 can see about people being forced to vote. On occasion
8 there have been people -- in the old days people in the
9 House of Lords used to get taken on stretchers to vote
10 to make sure they got the numbers. That's sort of how
11 a party political system of whipping works. In Jersey
12 because there isn't the strong -- there is no party,
13 there is no discipline, there is no requirements to vote
14 a particular way, you vote on what you might call your
15 own conscience each time, that means that legislation
16 can't be pushed through as such, you have to have a much
17 broader consensus and you have to canvass votes. Both
18 those who are members of the Government and those who
19 are not might need to be canvassed to get the necessary
20 votes, although normally non-contentious legislation
21 doesn't have that many problems. If it becomes
22 contentious it can just not get past.

23 Q. Thank you for that. If we can move please on to the
24 next page of the statement and just dealing briefly with
25 the Lieutenant Governor and as you set out, he is the

1 personal representative of the Monarch and provides the
2 official channel of communication between Island
3 authorities and Her Majesty's Government of the
4 United Kingdom.

5 In relation to sitting in the States you say that
6 the Lieutenant Governor is a speaking but non-voting
7 Member of the States and by convention speaks only
8 twice. How often in practice in fact does the
9 Lieutenant Governor sit in the States?

10 A. I don't know the numbers.

11 Q. No, okay. Then at 23 {EE000035/7} over the page,
12 please, you set out that there was historically a power
13 of veto over resolutions, but that ceased in 2005.

14 A. That's right, yes.

15 Q. Yes. Let's move on please to the Attorney General and
16 this is dealt with in two parts of your statement, the
17 first part from paragraph 25 {EE000035/7} . The
18 Attorney General, as you set out there, is the law
19 officer of the Crown and the office is held during good
20 behaviour, so that's the equivalent of a High Court
21 judge in England and Wales?

22 A. Yes.

23 Q. Yes.

24 A. And the Bailiff in Jersey.

25 Q. Yes. Help us please with how the Attorney General is

1 appointed?

2 A. In recent years the appointment is advertised and people
3 apply and it is an open competition.

4 Q. Just to help us with that, please, if we could go back
5 to the Carswell Report, which is E4, thank you. If we
6 can go please to appendix 2 which in the external page
7 numbering is pages 72 do 73. I think it might be 74 to
8 75. {EE000004/74}

9 Just to help the Panel understand the functions of
10 the Attorney General, we see there dating from 2010 the
11 job description of the Attorney General and again at
12 paragraph 2:

13 "The post holder will hold office during good
14 behaviour until the age of 70."

15 Paragraph 3, the duties include acting as.

16 "... legal advisor to the Crown, the States
17 Assembly, Ministers, Scrutiny Panels and other public
18 bodies, and will be expected where reasonable to act to
19 assist individual States members in the exercise of
20 their public functions."

21 The other main role of the Attorney General is
22 under 5, isn't it, the responsibility for the
23 Prosecution Service in all courts?

24 Under 6, that sets out the Attorney General's role
25 as head of the Honorary Police and there are three

1 different sub-functions to that, aren't there? There is
2 firstly:

3 "Offering help and guidance to the Comité des
4 Connétables, the Comité des Chefs and the Honorary
5 Police Association in respect of Honorary Police
6 matters."

7 Could you just help us with what the Honorary Police
8 Association is?

9 A. I actually don't know very much about it, I have to say.
10 I just presume it is the association which Honorary
11 Police members join, but I don't know anything about
12 what it does beyond it exists.

13 Q. Then exercising various statutory functions, under the
14 second bullet point, and:

15 "Offering guidance to Centeniers as prosecutors."

16 That is a central part of the function of the
17 Attorney General, is it, on a day-to-day basis?

18 A. I don't -- I'm sure the advice is there, as it says, it
19 is one of the roles they do. How often a Centenier
20 seeks advice on an individual prosecution I wouldn't
21 know, but it is certainly a possibility for a Centenier
22 to ask the Attorney General for advice.

23 Q. Yes. Then just looking at the miscellaneous functions,
24 if we can just go over the page please {E000004/75}
25 there are a number of other matters which are not of

1 direct relevance to this Inquiry and then it is set out
2 there the principal accountabilities, which I need not
3 detain you with. But do you accept that's a fair
4 overview of the Office of the Attorney General?

5 A. Yes.

6 Q. Could you just help us please with matters that you set
7 out in paragraph 28 of your statement {EE000035/8} .
8 Dealing with the promotion through the ranks, if I can
9 put it that way, from Solicitor General to
10 Attorney General, and thereafter Deputy Bailiff to
11 Bailiff, you described earlier that the posts are now
12 advertised. Do you know when that process began of
13 advertising the posts?

14 A. I don't know. I know it used to be the case
15 historically that there was a sort of progression
16 between Solicitor General, Attorney General and then
17 Deputy Bailiff and then Bailiff. I don't know when they
18 were openly advertised for the first time, so I can't
19 tell you who was the first competitively advertised
20 position. I think the Solicitor General might have been
21 advertised well before the others as the entry but
22 I honestly don't know by what stage that began.

23 Q. In relation to that, help us if you can, in relation to
24 the time during which the posts have been advertised are
25 you aware of whether the traditional route, if you like,

1 has ever been altered such that a fresh candidate has
2 been appointed to any one of the four posts?

3 A. I don't know. As with all -- the nature of the posts is
4 such that one would imagine the person in the post
5 below, as it were, has the most expertise in the field
6 so -- and one would assume that they would have a head
7 start in any job application if they made it, but beyond
8 that I don't know.

9 Q. Can we please bring up on screen paragraph 56 of
10 Dr Johnson's statement in {EE000035/14} . Paragraph 56
11 there, I just want to ask you about the discretion as to
12 bringing criminal charges and you set out that the
13 Attorney should only bring a prosecution where on the
14 current evidence there is a realistic prospect of
15 conviction. Is it right to say that the Attorney has
16 absolute discretion in the exercise of that function?

17 A. Yes.

18 Q. Then going over the page, please, just to finish up that
19 point, you say that beyond the general principles you
20 can't provide further information as to how the decision
21 is taken in individual cases, but could I refer you
22 please to the Code for Decisions On Prosecution, which
23 is document EE37. {EE000037/1}

24 We will see when we get to the end of this document,
25 it is a document published in 2000 and as I understand

1 it is on the Law Officers' website.

2 A. That's right.

3 Q. As far as you are concerned is this a code which is
4 designed to be read by the Centeniers in their analysis
5 of whether to prosecute an individual, or bring
6 a charge?

7 A. Yes. It is obviously used by those in the Department
8 for later stages as well, but initially to help
9 Centeniers.

10 Q. This covers the position from 2000. Are you aware of
11 whether there was any previous guidelines?

12 A. I'm not.

13 Q. Let's look at this if we may. As far as the general
14 principles are concerned --

15 A. One thing I would say about previous guidelines is there
16 is a tendency in guidance in Jersey, as elsewhere, to
17 say "These replace earlier guidelines"; I'm not aware of
18 it saying anything like that in here, so that might
19 suggest they are not replacing anything, but I can't say
20 either way.

21 Q. "General principles", if we can look at first:

22 "Each case is unique and must be considered on its
23 own. There are, however, general principles which apply
24 in all cases." {EE000037/1}

25 And it sets out there:

1 "The duty of the Centenier is to make sure that the
2 right person is prosecuted for the right offence and
3 that all relevant facts are given to the Court."

4 If we could then go over the page to 2.3, this sets
5 out the requirement for fairness, independence and
6 objectivity on the part of the Centeniers and in
7 particular for their views not to be fettered by the
8 factors set out.

9 Then if we can move on to the Code tests, it is
10 effectively a two-stage process, isn't it?

11 A. It is, yes.

12 Q. Firstly one has the evidential test and then the public
13 interest test and it is right to say in broad terms that
14 if the case does not meet the evidential test there is
15 no consideration of the public interest test?

16 A. That's right. The first and primary concern is whether
17 or not there is enough evidence to warrant
18 a prosecution. If there is enough evidence to warrant
19 a prosecution the question then becomes, despite there
20 being that evidence, is there a public interest in
21 proceeding.

22 Q. Yes. Could we deal briefly with the evidential test,
23 4.2. It sets out here that this is an objective test
24 and:

25 "... means that the Magistrate, a jury or bench of

1 Jurats properly directed in accordance with the law is
2 more likely than not to convict the defendant of the
3 charge alleged." {EE000037/2}

4 So it is a sort of balance of probabilities, isn't
5 it, or more than 50 per cent chance?

6 A. I think, yes, this seems to be very closely mirrored on
7 what's called the Code of Crown Prosecutors, issued by
8 the Crown Prosecution Service in the UK and they simply
9 call it the 51 per cent test and I think that's a very
10 good summary of what this is meant to be. If there is
11 a 51 per cent chance of conviction then it has met the
12 evidential test.

13 Q. More generally as far as you are aware does this code
14 mirror the sort of codes in place in the UK as far as
15 prosecutions are concerned?

16 A. Well, the Code of Crown Prosecutors is something issued
17 by the CPS and is meant to be taken in account by all
18 Prosecutors in England and they too have a two-stage
19 test, an evidential test and a public interest test, and
20 many of the factors in this code are very similar to, or
21 just rewordings of things in that test -- I'm not saying
22 that they are mirrors of each other by any means but
23 they are very similar in the sorts of considerations and
24 the sort of approach that should be taken.

25 Q. Yes. Then just going over the page, please {EE000037/3}

1 . We have the two main factors, "Can the evidence be
2 used in court?" and "Is the evidence reliable?". The
3 first relates to legal rules, doesn't it, meaning that
4 some evidence might be regarded as inadmissible in
5 court?

6 A. Yes, classically Jersey has rules of evidence similar to
7 other jurisdictions and so some things can't be led at
8 trial. An extreme example would be if evidence was
9 obtained by torture that is not going to be something
10 that's going to be admissible in evidence, so if the
11 only evidence you have is somebody confessed to a crime
12 while being tortured then you couldn't prosecute because
13 the evidence wouldn't be admissible.

14 Q. And then in relation to reliability, one of the factors
15 is whether the confession is reliable as you have just
16 set out, but also more generally whether the evidence of
17 the complainant is reliable for any number of factors,
18 including the child's age and intelligence and so forth.

19 A. Yes.

20 Q. Coming then on to the public interest test which is over
21 the page, please, the famous statement of
22 Lord Shawcross:

23 "It has never been a rule in this country -- I hope
24 it never will be -- that suspected criminal offences
25 must automatically be the subject of prosecution."

1 {EE000037/4}

2 That picks up your point, doesn't it, that it is not
3 simply that the evidential test is met, it is a second
4 process of considering the public interest?

5 A. That's right.

6 Q. Now in 5.2, the second sentence:

7 "In cases of any seriousness a prosecution will
8 usually take place unless there are public interest
9 factors tending against prosecution which clearly
10 outweigh those tending in favour."

11 So is it fair to say in summary that this is
12 a balancing exercise of the various different factors?

13 A. Yes, it is.

14 Q. Yes. But what it does go on to say is that:

15 "Although there may be public interest factors
16 against prosecution in a particular case, often the
17 prosecution should go ahead and those factors should be
18 put to the court for consideration when sentence is
19 being passed."

20 Does that mean generally that there is a presumption
21 in favour of prosecution, or does it all depend on the
22 individual circumstances of the case?

23 A. I can't say more than it says there.

24 Q. Okay. Now just going over the page again please to 5.4
25 {EE000037/5} , common public interest factors in favour

1 of prosecution. Firstly the conviction is likely to
2 result in a significant sentence. Presumably this would
3 apply to serious offences?

4 A. Yes, although serious -- I think when you say "serious",
5 what the general public might think is serious is not
6 necessarily the same -- they have a higher threshold of
7 seriousness than would be the case here.

8 Q. I see. Then in relation to (d):

9 "The defendant was in a position of authority or
10 trust."

11 So that might apply to a carer or a teacher --

12 A. Quite.

13 Q. -- or a doctor?

14 A. Or an employee is another classic example. If you steal
15 from your employer it is much more serious, or perceived
16 to be much more serious than stealing from a member of
17 the public more generally.

18 Q. Then going over the page at (h):

19 "The victim of the offence was vulnerable, has been
20 put in considerable fear or suffered personal attack,
21 damage or disturbance."

22 So that might apply, might it not, to cases of
23 physical harm and assault, for example?

24 A. Yes. Although of course it doesn't actually have to
25 be -- it could be fear of physical harm, not actually

1 being in a position of physical harm, so threat of it as
2 well as simply --

3 Q. Yes. Then going over the page {EE000037/7} to common
4 factors against prosecution, including the likelihood of
5 the court imposing a very small or nominal penalty and
6 then over the page please {EE000037/8} , if we could
7 look at (d), the delay between the offence taking place
8 and the date of the trial, so that's a factor against
9 prosecution, as I understand it?

10 A. That's right.

11 Q. Unless:

12 "The offence is serious;

13 "The delay has been caused in part by the defendant;

14 "The offence has only recently come to light; or:

15 "The complexity of the offence has meant that there
16 has been a long investigation."

17 So is it right to say that those are
18 counterbalancing factors that have to be weighed against
19 delay?

20 A. Yes.

21 Q. Then finally (e):

22 "A prosecution is likely to have a very bad effect
23 on the victim's physical or mental health (always
24 bearing in mind the seriousness of the offence)."

25 So there is a discretion there, isn't there, to

1 consider the position of the victim --

2 A. Yes.

3 Q. -- in relation to this?

4 Finally if we could move on in the document please
5 to the internal page numbering 11, paragraph 8
6 {EE000037/11} . We see there in relation to the
7 guidance:

8 "Members of the public should be able to rely upon
9 decisions taken by the Centeniers. Normally, if
10 a Centenier tells a person that there will not be
11 a prosecution that is the end of the matter. However
12 the Attorney General is the ultimate authority ... and
13 has the power to overrule a Centenier's decision not to
14 prosecute."

15 As a matter of practicality, how would it occur that
16 the matter would come before the Attorney General in
17 circumstances where the Centenier had decided not to
18 prosecute?

19 A. Because of offences or allegations which are
20 investigated by the States Police, they have to refer
21 matters to the Centenier for a charge. So it might be
22 the States Police take a case to a Centenier who says
23 "I won't charge this", they then might refer to the
24 Attorney General. If both the States Police and
25 Centenier didn't think it was something that should be

1 pursued it might be another interested party refers it
2 or mentions it to the Attorney General, or of course it
3 could be the press or something like that.

4 Q. Conversely, at 8.2 the Attorney General retains
5 a discretion not to proceed with the prosecution, even
6 if the Centenier has decided to prosecute?

7 A. Yes, that's obviously a very common power in all sorts
8 of criminal systems that somewhere during the
9 prosecution it becomes apparent it is not a prosecution
10 worth proceeding with for any reason.

11 Q. Thank you. Can we move on now to consider the Executive
12 and in particular the Committee system and if you can
13 take down that document please and bring back
14 Dr Johnson's statement at paragraph 29, internal page
15 numbering 8. {EE000035/8}

16 Help us with this to begin with: you set out there
17 the move to ministerial government brought about by the
18 States of Jersey Law 2005, but in relation to the
19 various Executive Committees, how long had they been in
20 existence before the 2005 law came in?

21 A. I don't know exactly when they started, but they were
22 definitely in existence at the start of the relevant
23 period for this Inquiry.

24 Q. From 1945 onwards?

25 A. Yes.

1 Q. Thank you.

2 A. The number I don't know at any particular time because
3 they would have varied, but that was the form of
4 management at the time.

5 Q. You deal in paragraph 30 {EE000035/8} with the issue of
6 members of Committees often disagreeing over matters and
7 there being no mechanism for the President to compel
8 a person to attend a meeting or to vote in any
9 particular way. As far as you are aware how as a matter
10 of practice was that issue resolved?

11 A. I think before going at that it is important to
12 understand what collective responsibility is. If one
13 takes an example again in the UK Government, if you are
14 a member of the UK Government and you want to vote
15 against the Government you generally have to resign from
16 the Government and then vote, unless there is a free
17 vote given. There is no -- and there will be
18 from October, but up until October this year there is no
19 form of collective responsibility at all in Jersey, so
20 if you are a member of a Committee and a Committee on
21 a majority voted one way and the matter is then referred
22 to the States for any reason, you can vote against your
23 own Committee in the States and although this is only
24 based on what was said in the Clothier Report, it would
25 seem that that did happen.

1 So there is no idea of -- what's known in the UK
2 system as party discipline, as I said before, doesn't
3 exist, and similarly with Committees, Committees have to
4 try and resolve things as a Committee and if they don't
5 get on, or don't work together very well, it could lead
6 to lots of problems.

7 Q. Imagine that there was a collective view between two
8 different Committees, so one Committee had one idea,
9 a different Committee had a different idea; was there
10 any hierarchy of Committees in order to resolve any
11 dispute that the two Committees might have with each
12 other as to how to deal with the particular issue?

13 A. I think if there was a divergence like that -- often if
14 a Committee couldn't agree something, or there was
15 a problem within the Committee it would be referred to
16 the whole States. Committees were delegated from the
17 States so it was the States exercising the authority
18 usually and then delegating it to a Committee, so if the
19 Committee couldn't resolve it it could go back up to the
20 primary body of the States and if there was a divergence
21 between two Committees I presume that's what would
22 happen, although I have no instances of knowing either
23 way on that.

24 Q. The other issue you raise in relation to this at the end
25 of paragraph 30, just over the page, is that:

1 "It could also mean that policy issues could
2 ping-pong between Committees causing great delay."
3 {EE000035/9}

4 So bar the resolution of taking something back to
5 the States, there could be protracted negotiation, could
6 there, between different Committees on a particular
7 issue?

8 A. That again is quite common in most jurisdictions. Again
9 when I used to work for the UK Government it was quite
10 common that things that was primarily one area of policy
11 would have implications in other area of policy and you
12 would refer it to the other department for their
13 comments and views and then if there was a divergence it
14 would go back and forwards. Exactly the same thing
15 happened here with the Committee system. If your
16 Committee was responsible for one thing and another
17 Committee was responsible for something else they would
18 get views from the other Committee and then if there was
19 a divergence between the two policies the Committee
20 wanted, it would go back and forth.

21 I don't know about the resolution of this.
22 Obviously in the UK system it just gets pushed up to the
23 Ministerial level and eventually to Cabinet to resolve
24 if it becomes significant enough. Here it is much more
25 difficult to come to that position because there wasn't

1 a sort of ultimate authority.

2 THE CHAIR: Ms Jerram, would that be an appropriate moment
3 to take a break if you are moving to a different topic?

4 MS JERRAM: Yes, thank you.

5 THE CHAIR: We will sit again in ten minutes. So we will
6 take a break.

7 (11.30 am)

8 (A short break)

9 (11.45 am)

10 MS JERRAM: Dr Johnson, before we carry on could I just ask
11 you again if you would mind trying to speak as slowly as
12 you can and to keep your voice up, particularly at the
13 end of sentences.

14 A. Yes, I will try.

15 Q. Thank you very much.

16 Before we move on to ministerial government there
17 are just a few sweeping up points that I wanted to deal
18 with. If we can get please paragraph 32 of the
19 statement back on screen please. {EE000035/9}

20 Dealing here with the issue of disagreements between
21 Committees and the need for rapid decisions, you set out
22 there that:

23 " ... when a rapid decision was needed [in
24 Government], the decision was usually taken by a senior
25 civil servant with the involvement of one or two of the

1 members of the relevant Committee. Essentially
2 sidetracking the Committees altogether."

3 Are you aware of how often that actually occurred in
4 practice?

5 A. That is based on the evidence given to the
6 Clothier Report and as I say the statement is largely
7 something the Clothier Report says, I don't know how or
8 how often that actually happened. An example I do know
9 better than others is that Committees often didn't feel
10 able to speak and say that their view represented the
11 whole -- I have done some research on the position in
12 relation to Jersey and the joining of the European
13 Economic Community as it then was and then, which was
14 the 1970s, Committees were speaking to UK Government
15 authorities and they made it clear repeatedly that they
16 could not represent Jersey as what the Jersey view would
17 be. One assumes that that's similar on other matters.
18 The Committees didn't feel necessarily that they were
19 always able to speak authoritatively and to be
20 considered the ultimate decision makers, they were
21 always realising they were acting as a delegate. That
22 might be just unique to the European Economic Community
23 membership but it did seem that was the way they were
24 thinking.

25 Q. I want to come back now, if I may, just to a couple of

1 points about decisions to prosecute. Firstly this: when
2 a Centenier makes a decision to prosecute or not to
3 prosecute, apart from the case being referred up to the
4 Attorney General, has there existed at any time any
5 mechanism for the Centeniers' decisions to be reviewed
6 by anybody in order to assess the validity of those
7 decisions?

8 A. I don't know what you mean.

9 Q. So let's say in any given year the Centenier makes 365
10 decisions about whether to charge --

11 A. Do you mean were the decisions ever audited?

12 Q. Yes, exactly. Is there any sort of audit process that
13 goes on in relation to that?

14 A. I have no idea.

15 Q. Thank you. Could I ask in relation to the
16 Attorney General question please to bring back on screen
17 paragraph 57, which is internal page numbering 15.

18 {EE000035/15}

19 Just as a question of practical application you deal
20 there with the situation:

21 "Following a guilty plea, or a conviction, the
22 Attorney General (or his representative) will present
23 'conclusions' as to the appropriate sentence the court
24 should impose in a case of this sort ..."

25 In relation to that, as far as you are aware does

1 the Attorney General make submissions as to the
2 appropriate sentence or simply remind the court of the
3 appropriate sentencing guidelines?

4 A. I have never heard actual conclusions. My understanding
5 is they do go as far as making submissions but I can't
6 say that's the case.

7 Q. As far as you are aware are there -- there are
8 sentencing guidelines presumably in Jersey for a range
9 of different offences?

10 A. There aren't formal guidelines. There are -- there
11 is -- decisions are made by Jurats and the Jurats try to
12 be consistent, one would assume, and so if they
13 generally impose one sentence for one sort of conduct,
14 one assumes that they generally do that. But I don't
15 think there are written guidelines -- there may be that
16 I'm not aware of written guidelines -- as to sentencing.

17 Q. And on the issue of charging, is there any duty on the
18 Centenier to consult the Attorney General before
19 charging?

20 A. No. They can if they want to, but they don't have to.

21 Q. Can the Attorney General take external advice about the
22 merits of continuing with the prosecution or proceeding
23 with the prosecution?

24 A. The Attorney General can, as could any person take --
25 I mean within budgetary restraints and confidentiality

1 requirements and so forth, the Attorney General could
2 take external advice. Quite whom they would take it
3 from is a different matter because save issues of human
4 rights or international law, one would imagine that in
5 relation to Jersey criminal law the people who know most
6 are probably in the Attorney General's Department
7 themselves, so it is unlikely in most cases they would,
8 but one can imagine if there is a difficult human rights
9 point they might take external advice from an expert in
10 that field.

11 Q. Then coming back to ministerial government, this is from
12 paragraph 34 of your statement, page 9 {EE000035/9} .
13 Here you set out the consequences of the
14 Clothier Report, which was some but not all of those
15 recommendations were implemented, creating so-called
16 "ministerial government". Now, the Members of the Panel
17 have the Clothier Report but if you could summarise in
18 a sentence the basic recommendation behind the
19 Clothier Report?

20 A. To have more -- make it clearer who is responsible for
21 decisions and so to have a ministerial type system with
22 a Minister responsible, rather than a Committee
23 responsible with no clear individual to be held
24 accountable.

25 Q. Then from paragraph 35 onwards you deal with the

1 situation that has pertained since 2005 to date, so
2 that's the States Assembly voting on who should be
3 appointed Chief Minister and thereafter the
4 Chief Minister and other members of the States Assembly
5 can then nominate a member to be a Minister. Pausing
6 there, that could be a Senator or a Deputy?

7 A. Yes, or a constable.

8 Q. Or a constable. And then the States will then vote on
9 who is to be the Minister and the effect of that, as
10 I understand your statement, is that the Chief Minister
11 may well end up with Ministers with whom he does not
12 share the same ideology on some points?

13 A. They might, yes. As I say, they could easily dislike
14 each other personally.

15 Q. Now in paragraph 36, I just want you to help us please
16 with the process by which a Minister may remove
17 a particular Minister as of today, so you set out here
18 that -- paragraph 36, third sentence:

19 "The only way the Chief Minister can deal with this
20 [that's to say a Minister voting against the Government
21 view] is to propose to the States Assembly to remove
22 a particular Minister, but only the States are empowered
23 actually to remove that person from office ..."

24 {EE000035/10}

25 So it has to go to an election in the States in

1 order for the Minister to be removed?

2 A. It has to be a States vote for the Minister to be
3 removed, yes.

4 Q. Is that by simple majority?

5 A. It is a normal decision of the States, so yes.

6 Q. Yes, I see. As far as the Chief Minister is concerned,
7 again the Chief Minister is drawn from the ranks either
8 of a Senator or a Deputy?

9 A. That's right. Or in theory a constable as well.

10 Q. You go on in your statement to deal with the position
11 from May 2014 at paragraph 41 {EE000035/11} and you say
12 that:

13 "In May 2014, the States Assembly adopted the States
14 of Jersey Law 2005 ..."

15 A. Sorry, that should be "amended" rather than "adopted".
16 The States of Jersey Law 2005 was obviously adopted
17 in -- it was amended.

18 Q. Yes:

19 "The law has not yet been registered but has
20 received Royal Assent."

21 In terms of the timeframe for registering the law,
22 are you able to assist the Panel in relation to that?

23 A. If it has received Royal Assent it is normally
24 registered soon thereafter. It might have been
25 registered on Friday. It is normally registered on

1 Friday afternoons. I don't know if it was registered
2 last Friday, I haven't checked.

3 Q. Where is it registered?

4 A. At the Royal Court. For a law to -- the final stage of
5 a law coming into force in Jersey is the registration by
6 the Royal Court. There is an Act which -- the
7 commencement legislation, as it were, is presently, or
8 may even have been passed by the States in relation to
9 that law, so the amendment law is meant to be coming
10 into force in October and there is a -- the draft
11 commencement legislation is before the States at the
12 moment, or it might have even been passed by now,
13 I haven't checked today.

14 Q. Just help us, if you will, in outline what the new
15 regime will be as far as the Chief Minister and the
16 Ministers are concerned?

17 A. The main two differences are there is going to be
18 collective responsibility, in other words there is
19 a requirement for Ministers to follow the decision of
20 the Government and there is things about giving
21 directions to Ministers from the Council of Ministers
22 and so forth. But the other thing is it is the
23 Chief Minister is the person who fires a Minister. So
24 although the Chief Minister won't appoint Ministers, it
25 would still be the States Assembly, if the

1 Chief Minister doesn't like the Minister they can fire
2 them, which I suppose leads to a situation where if the
3 Chief Minister says "I want X and I won't have Y" and
4 the States decide to vote for Y, then Y can get fired
5 and it might just come to a situation where -- the worst
6 that happens is an impasse between the States and the
7 Chief Minister as to who they want and I suppose that
8 has to be resolved in the normal way, but it moves
9 towards -- much more closely towards what most people
10 understand to be a conventional, or at least the
11 traditional Westminster model of collective government,
12 although it is still not quite all the way.

13 Q. Was that one of the recommendations of the
14 Clothier Report, or has that evolved since that time?

15 A. The Clothier Report dealt with aspects of this. I don't
16 think this is purporting to implement Clothier. There
17 has been a lot of discussions about constitutional
18 arrangements in Jersey over the last five or so years.
19 There was a referendum last year about the constitution
20 of the States Assembly. There has been lots of reviews
21 and discussions of Jersey's Constitution more generally,
22 so it has been an ongoing process.

23 As this is the number 7 law, there is a number 8
24 already which is a relatively minor thing; one can see
25 there has been quite a lot of amendments in the nine

1 years since it has been passed.

2 Q. Let's move on to Scrutiny Panels. Is it right to say by
3 way of summary that the Scrutiny Panels exist to bring
4 the Government to account and to provide a system of
5 checks and balances, if you like?

6 A. Yes. Yes, sorry, that's their primary role. Although
7 they can investigate things unrelated to the Government
8 as well and make suggestions on other matters, but one
9 of their primary roles is to scrutinise the activities
10 of Ministers and policy areas.

11 Q. In our period under review, so 1945 to date, but
12 particular reference to 1945 to 2005, in the absence of
13 a body like the Scrutiny Panels how was the Government
14 brought to account?

15 A. Again the idea of a Government is an unusual concept
16 prior to 2005 because the Committee system that we have
17 mentioned had -- most members of the Assembly were
18 a member of -- in fact probably -- I would like to say
19 all, but I can't say at no stage as a member of the
20 Assembly not being a member of the Committee, but I
21 would I assume that they always were, would be a member
22 of one of the Committees. So you would always find
23 a States Assembly Member would be part of the Executive
24 in one narrow remit, which means it is very difficult to
25 say that there is a Government and a non-Government as

1 such, everybody was part of the Government in some way
2 or other. Often you find that people on average would
3 be a member of about three Committees, Clothier
4 suggested, so you would have three policy areas. Some
5 of those Committees would be very active, some would be
6 less so, and one assumes that you wouldn't be appointed
7 to three very active Committees, you would be appointed
8 to different things. So the idea of bringing to account
9 yourself is much more difficult.

10 What could happen is you could have Committees of
11 Inquiry that could be appointed in relation to
12 particular issues, or indeed the States could as a whole
13 create a Committee to look at something, or require the
14 Committee to look at something by a resolution. Often
15 that might be more theoretical than practical though.

16 Q. So in summary is it fair to say that with that Committee
17 of Inquiry system it would be more on an ad hoc basis --

18 A. Yes.

19 Q. -- than the permanent Scrutiny Panels that exist today?

20 A. That's right. Although there will of course be Standing
21 Committees dealing with particular policy areas. They
22 were also the Executive, so that's another issue.

23 Q. Yes. Could we call up on screen please EE28 {EE000028}
24 which are the Standing Orders of the States of Jersey.
25 That's the opening page. If we could go please to

1 Standing Order 135, which in the internal numbering is
2 page 75 and I think on your numbering it may be 66.
3 Could we go please to the previous page, thank you. If
4 we start at 132 there please. {EE000028/65}

5 We see there the terms of reference of a Scrutiny
6 Panel. There are -- before we go on to look at the
7 detail of that -- a number of different Scrutiny Panels,
8 aren't there --

9 A. Yes.

10 Q. -- dealing with a variety of different topics. Firstly:

11 "(a) to hold reviews into such issues and matters of
12 public importance as it, after consultation with the
13 chairmen's committee, may decide ..."

14 Under (b):

15 "(b) to consider the existing and proposed policy of
16 the Council of Ministers ..."

17 In relation to (c), the function in relation to
18 scrutinising draft laws and draft subordinate
19 enactments, is that one of the central features of the
20 Scrutiny Panel, to make suggested amendments to any
21 proposed law?

22 A. It is an important function. What would normally happen
23 is if you have a piece of legislation it will be shown
24 to members of the Scrutiny Panel and they would seek
25 advice on it. For example, the intellectual property

1 legislation that was passed went to the economic
2 affairs, I think it probably was, Scrutiny Panel and
3 they sought advice externally on things that might be
4 issues and they then investigated those within the
5 Panel.

6 Q. And how does the Scrutiny Panel tend to report? Do they
7 produce a written report?

8 A. Usually if there is a report it is probably something
9 which would be one of the documents that are attached to
10 a proposition if it is a law, so they would have
11 comments on it there, if they had comments. Often they
12 wouldn't have comments on a particular piece of
13 legislation because -- if it is not falling squarely
14 within one of the five Scrutiny Panels, or it is
15 something which doesn't necessarily need the scrutiny of
16 individuals above the States as a whole, it might not
17 get scrutiny, but if it goes there it will be a written
18 report, which is usually published along with the
19 propositions and amendment, and they might propose
20 amendments to it as well. It is not routine for them to
21 do it, is what I'm trying to suggest. Not every draft
22 law or every draft (inaudible) enactment will lead to
23 detailed reports and scrutiny.

24 Q. Just coming back to (a) and (b), the Scrutiny Panel
25 might, for example, be charged with looking at

1 a particular area, a particular policy area --

2 A. Yes, that's correct.

3 Q. -- for example and producing a report and advising the
4 States in that way?

5 A. They would decide what they want to report on and they
6 would advise and report on it. Although they can take
7 into account things put by others, it is for them to set
8 their own agenda.

9 Q. And if we could go to the previous page, please, and we
10 just deal there with the issue of the different Scrutiny
11 Panels under 131, so we have corporate services,
12 economic affairs, social affairs and environment, and in
13 terms of any matters relating to residential homes for
14 children and fostering care, am I right to assume that
15 the social affairs Scrutiny Panel would be the
16 appropriate panel?

17 A. Yes, I assume so.

18 THE CHAIR: Dr Johnson, could you just remember to keep your
19 voice up.

20 A. Yes, I assume so. Sorry.

21 MS JERRAM: Then sub-paragraph 2, the composition of the
22 panel is a chairman who is an elected member but not
23 a Minister or assistant Minister and then over the page
24 a number of members but not more than four. The
25 provision now under 3 is that:

1 "An elected member cannot be a member of more than
2 two Scrutiny Panels and can only be the chairman of
3 one."

4 A. Yes.

5 Q. Okay, thank you. In relation to any report or
6 recommendation made by a Scrutiny Panel, do those have
7 the status of advisory recommendations rather than
8 mandatory --

9 A. Yes.

10 Q. -- guidelines.

11 A. They are very similar to Select Committees in the House
12 of Commons or House of Lords, if that helps anybody.

13 Q. Thank you. That can be taken down. If we go back to
14 E35, Dr Johnson's statement, page 12 going on to
15 page 13, paragraph 48 {EE000035/13} . You are dealing
16 here with the structure of the judiciary and you deal
17 there with the Royal Court at paragraph 48, presided
18 over by the Bailiff who is the sole judge of law and
19 then may deputise to the Deputy Bailiff or the
20 Lieutenant Bailiff or any Commissioner. I don't think
21 we have defined Commissioner. Could you just help us
22 with what they are?

23 A. Under the Royal Court Act it is possible for a person to
24 be appointed as a Commissioner. They are essentially
25 a judge. They are normally appointed due to workload or

1 particular expertise. It might be that there are
2 certain areas of law where the Bailiff or Deputy Bailiff
3 feel it would be helpful to have someone more expert and
4 they will appoint them. They are either Jersey
5 advocates or senior members of the English Bar.
6 Occasionally they will be judges in England as well but
7 very rarely.

8 Q. As far as criminal matters are concerned, you set out
9 that the Royal Court can have three formations: the
10 Inferior Number, the Superior Number and the Assizes.
11 Just help the Panel with the various constitutions of
12 the Royal Court?

13 A. The Assizes is the judge with the jury of 12, the
14 Inferior Number is the routine sitting which is two
15 Jurats and the Bailiff, or another judge such as the
16 Deputy Bailiff or a Commissioner, and the Superior
17 Number is the Bailiff or another judge and any more
18 than -- I can't remember the exact number -- I just have
19 to double check that. Yes, it is five, so it is five or
20 more, so the Superior Number could be all 12 Jurats or
21 any more than five.

22 Q. As far as swearing in a jury when it sits as the
23 Assizes, given the reasonably small population of Jersey
24 and the need for 12 jurors are you aware if there are
25 difficulties in practice in finding juries and in

1 particular people who are not associated in any way with
2 any of the parties?

3 A. I'm sure in instances there have been problems, but I'm
4 not aware of any and it is not my area of speciality.

5 Q. Jurats you say are closest in parallel in the English
6 system to lay magistrates and they have to be between
7 the ages of 40 and 72 and lived on the Island for five
8 years preceding the appointment. Do they have to have
9 any legal qualification of any sort?

10 A. No, and it is probably unusual if they do.

11 Q. And they never sit alone, as I understand it, always
12 with the Bailiff or another judge?

13 A. Yes. The Lieutenant Bailiff is a Jurat, so the
14 Lieutenant Bailiff will sit and hear on certain
15 procedural uncontentious matters. So there will be
16 a situation where just Jurats sits because the
17 Lieutenant Bailiff is a Jurat who is not necessarily
18 legally qualified, but that is normally only for very
19 uncontentious matters or procedural matters.

20 Q. Then if we can look at paragraph 51 please:

21 "The Jurats, when sitting as a criminal court of
22 first instance, will usually sit as the Inferior Number
23 (that is two Jurats and the Bailiff)." {EE000035/13}

24 And they can try any offence. You go on to say that
25 the Inferior Number also determines sentences but can

1 only impose a sentence of up to four years. So if, for
2 example, the Inferior Number were deciding a serious
3 case, for example of rape, and the sentencing could
4 include a sentence of more than four years, would it
5 then be remitted up to the Superior Number for
6 sentencing?

7 A. Yes.

8 Q. Then going over the page in paragraph 52 {EE000035/14}
9 there you say that the Superior Number has unrestricted
10 sentencing powers.

11 A. Within the scope of the law, so for example they can't
12 impose the death penalty.

13 Q. Juries. Appropriate for an offence which is a serious
14 offence. Are there defined offences which must be tried
15 before the jury?

16 A. There are none which must be tried before the jury.
17 There are some which cannot be tried before a jury.
18 Customary law offences can always be tried before a jury
19 if both the prosecution -- well, if the defendant elects
20 it, or the prosecution ask for it. But there are what
21 are called "contraventions" that cannot be tried before
22 a jury unless they specifically say so in statute.
23 Contraventions are statutory offences rather than
24 customary law offences and unless they are said to be
25 a crime or a delict they will not be tried before

1 a jury.

2 Q. Just for clarity, what is a customary law offence?

3 A. Customary law is -- a customary law is a non-statutory
4 law, so it is law which has evolved out of custom. It
5 is the same as the common law in England, but that
6 doesn't necessarily help you unless you know what the
7 common law in England is. It is based on custom and
8 practice over the time, based originally on Norman
9 custom and various documents in Norman custom in the
10 11th and 12th Centuries.

11 Q. You mentioned in your statement the so-called Beast of
12 Jersey or Paisnel case being an extreme example and that
13 was a case where that was decided by the Inferior
14 Number, notwithstanding the nature of the allegations.

15 A. Yes, most people when they are tried on a serious
16 offence prefer to be in front of a jury. Sometimes,
17 however, and that was an example, they might feel that
18 they will get a better chance in front of Jurats because
19 of the nature of the offence and so in theory even the
20 most serious offence can be tried by Inferior Number.
21 In practice it would be unusual when you have an option
22 of a jury there.

23 Q. Can we move on then please to law making, which is
24 paragraph 58 over the page. {EE000035/15}

25 A. There seems to be quite a few typos in the statement and

1 weird words on the screen here.

2 THE CHAIR: Don't worry about that, that's the stenographer.

3 That's one of the reasons we have asked you to go
4 slightly slower and keep your voice up, but don't worry
5 about those, concentrate on the document, ie your
6 statement and any other documents that are pulled up.
7 Don't worry about the rolling transcript.

8 A. No, I don't mean that. I mean in my statement, there
9 seems to be things that don't reflect what I signed and
10 there seem to be words that have suddenly changed. So
11 "Privy Council" is in my copy of my statement but here
12 it doesn't say that.

13 I understand what it says, I'm just worried that the
14 formal record isn't actually -- it is full of typos.

15 MS JERRAM: Would it be appropriate to check that now or at
16 lunchtime? I think now.

17 THE CHAIR: Yes, I think now, now that Dr Johnson has raised
18 it. Let's go to source now and sort that.

19 A. If one goes back to the heading above 54 for example,
20 and if one looks at paragraph 59, you can see that's
21 not -- it should be "vy". It might just be the
22 character recognition software has gone wrong.

23 THE CHAIR: Dr Johnson, Ms Jerram, we will rise and leave
24 you to --

25 MS JERRAM: If we may have at least five minutes and perhaps

1 if we could let you know.

2 THE CHAIR: As long as you need. Dr Johnson is the only
3 witness today so better it is sorted at this juncture
4 and take as long as you need.

5 We will rise.

6 (12.14 pm)

7 (A short break)

8 (12.30 pm)

9 THE CHAIR: Yes, Ms Jerram.

10 MS JERRAM: Madam Chair, thank you very much for that time.

11 We have made some investigations in your absence. The
12 correct version of the statement has been obtained and
13 was uploaded onto the system, but we understand further
14 to an email from the solicitors to the Inquiry to those
15 providing the information technology on Friday,
16 somehow -- we don't understand yet quite how --
17 a technical glitch has resulted in some of the words
18 being corrupted on the page that you see in front of you
19 and we will take matters in hand over the luncheon
20 adjournment and probably overnight to try and understand
21 how that has happened, but with your leave, and with the
22 assistance of Dr Johnson, what I propose -- in order not
23 to delay matters -- is to continue with his evidence and
24 where necessary he can point out and amend any
25 typographical errors.

1 THE CHAIR: Indeed.

2 MS JERRAM: It does seem to be limited to a few
3 typographical errors rather than anything of substance,
4 but obviously we will be mindful of that and of course
5 we will ensure that in due course the correct version is
6 properly uploaded so that a proper version goes out,
7 both on the database and on the Inquiry website.

8 THE CHAIR: Well, first of all, Dr Johnson thank you for
9 highlighting it, it is obviously something that needs to
10 be sorted and will be, and also for the explanation,
11 Ms Jerram, so that's on record. As you say, the matter
12 will be addressed. So if you are ready to proceed?

13 MS JERRAM: Yes, thank you very much.

14 Can we move on to the part of your statement that
15 deals with law making. It is paragraph 58, page 15
16 {EE000035/15} , and you have set out here the process by
17 which laws are made in Jersey. Help us, will you, to
18 begin with in classifying and defining, if you will, the
19 four main areas of legislation.

20 A. Orders in Council and laws are what are generally called
21 primary legislation, in other words they are made under
22 inherent powers, Orders in Council being made by the
23 Privy Council and laws being made by the States. There
24 are various delegated powers. Regulations and orders
25 are the main two and there are also acts and rules,

1 court rules, for example. They are subordinate
2 legislation made under enabling powers in either Orders
3 in Council or laws.

4 Q. As far as laws are concerned, you set out at
5 paragraph 59 {EE000035/15} the process: first of all
6 there is a proposition and that's made to the States and
7 then there is a gap of at least six weeks before there
8 is a second reading on the debate.

9 A. That's right, unless there is a matter of urgency, yes,
10 that's right.

11 Q. And referring back to our earlier discussion about the
12 Scrutiny Panels, at what point, if at all, would they
13 become involved in this process in terms of any
14 amendments to the proposed law?

15 A. They could be involved about before it is put as
16 a proposition as a draft law possibly, or they might be
17 involved at later stages such as between the first
18 reading and the second reading. It varies. There is
19 not, as far as I'm aware, a formal stage at which it
20 goes to a Scrutiny Committee.

21 Q. And then if it passes the third reading it is submitted
22 to Her Majesty and counsel for Royal Assent?

23 A. That's right.

24 Q. Is that generally a relatively speedy process or can it
25 take some time?

1 A. It is an issue which has had some contention over recent
2 years. There is a report by a House of Commons
3 Committee in 2010 suggesting the mechanism for Royal
4 Assent be changed and since then it has speeded up. For
5 example, as you can see, I refer to the States of Jersey
6 amendment number 7 law which was adopted in May. It
7 received Royal Assent in early July, so it is relatively
8 straightforward, relatively quick. There were problems
9 in the past for taking many months to pass.

10 As it has to be a meeting of the Privy Council
11 though, the Privy Council doesn't meet -- the
12 Privy Council only meets I think it is once a month
13 during parliamentary sessions and so if you can be --
14 you normally get the next Privy Council now. It didn't
15 used to be the case.

16 Q. I see. Then in paragraph 60 you deal with regulations
17 and over the page please you say that:

18 " ... regulations are enacted in exactly the same
19 way as a law ..."

20 Going through first, second and third readings, and
21 you draw the distinction between this and the situation
22 in the UK where the regulations must be taken as they
23 are drafted.

24 A. Well, regulations in the UK are simply delegated
25 legislation which will be either voted on as an

1 affirmative resolution before both Houses, or just laid
2 before the House as a negative resolution, there is no
3 mechanism to amend them, save what's called
4 a super-affirmative procedure, which I will not go into
5 unless you want me to.

6 In Jersey regulations go through the same -- there
7 is a procedure to amend it. They are essentially like
8 laws save they do not have Royal Assent. The procedure
9 is virtually identical. The only difference is there is
10 an enabling power in the law enabling the use of the
11 regulation, so the regulation is only empowered to do
12 things which are permitted by the law under which it is
13 made, otherwise it would be ultra vires, but the
14 procedure is exactly the same.

15 Q. Thank you.

16 A. Orders in Jersey are closer to regulations in the UK,
17 although in the UK you have orders as well but they are
18 often just a matter of name.

19 Q. Yes, and you set out the position in relation to that at
20 paragraph 61 where you say that:

21 "Orders (or rules) are delegated legislation made
22 under a law ..." {EE000035/16}

23 And they are, as you say:

24 " ... very similar in all respects to statutory
25 instruments subject to the negative resolution procedure

1 before the UK Parliament."

2 So those, as I understand it, are published in the
3 wording agreed beforehand and there is no process of
4 re-drafting --

5 A. No -- yes, they are laid before the States and they
6 become law. The only situation is if a Member of the
7 States decides that they shouldn't be, they can call for
8 a vote and if it is voted against they cease to be law
9 but they are valid up to the point they are voted down.

10 Q. Then you have a section entitled "Copying of UK law" in
11 inverted commas and you deal with some UK Acts which are
12 extended to Jersey. I don't want to consider those, but
13 the question for the Panel is the influence, in any, of
14 UK legislation on legislation that's passed in Jersey.
15 Can you help us with that in very broad terms?

16 A. There is no obligation for the States or the Jersey
17 officials to copy or follow the UK. They can do it
18 their own way. So if there is copying it is as a matter
19 of convenience, or simply because they don't have the
20 necessary resources. So there will be areas where they
21 are influenced by UK statutes and areas in fact where
22 they are influenced by French statutes as well. Indeed
23 traditionally, before the Second World War, it was more
24 common for copying to come from the French Civil Code
25 probably than from UK statutes in relation to certain

1 aspects of law.

2 Criminal law has traditionally been quite heavily
3 influenced in Jersey by the UK law. There is a report
4 of the Royal Commission in 1847 which concluded that and
5 that tends to be the view, although there are, as with
6 many things, lots of false friends and differences. It
7 is not a matter where there are direct parallels, it is
8 really down to the draftsman and the official to the
9 extent they want to copy the UK Act and the meaning of
10 a word in a UK Act might be different in Jersey.

11 For example in planning, there is certain copying
12 over of planning laws and certain decisions of the
13 UK Court were thought to be totally irrelevant, not --
14 there is no suggestion they be binding on a Jersey
15 court, but they are thought to be irrelevant because of
16 the different social and economic situation in Jersey,
17 being a small island, than planning in the
18 United Kingdom.

19 So they can, but they don't have to. That's
20 probably the best way.

21 Q. Thank you. Could we please go over the page
22 {EE000035/17} and just returning shortly to the
23 Honorary Police and the parish, you set out there at
24 paragraph 65 the 12 parishes in Jersey and mention that
25 each parish is a "corporation sole". Just help us with

1 the meaning of that?

2 A. A corporation sole is a creature which means it has
3 perpetual succession, can hold properties, sue and be
4 sued.

5 Q. Then over the page {EE000035/18} , if we may, dealing
6 with a few subsidiary points about the Honorary Police.
7 Number 70 deals with the handling of complaints against
8 individuals within the Honorary Police and you say that
9 that's been formalised since 2000.

10 Could we call up on screen please {EE000022} and
11 this is the Police (Complaints and Discipline) (Jersey)
12 Law 1999 and if we could go please to Article 1,
13 "Interpretation". We see here that this is:

14 "A law to establish the Jersey Police Complaints
15 Authority, to make provision for the investigation of
16 complaints about and the procedures, rights and powers
17 relating to disciplinary charges against members of the
18 Force, Port Control Officers and members of the
19 Honorary Police, and for related purposes, sanctioned by
20 Order of Her Majesty in Council of 10th day of
21 February 1999."

22 So that is the overarching purpose of the law and
23 looking at the interpretation section we see that "the
24 Authority" means:

25 "... the Jersey Police Complaints Authority ..."

1 And then please if we could go to the next page
2 {EE000022/3} , looking down the list there we see
3 "the Force":

4 "... means the States of Jersey Police Force."

5 Then under Article 3 do we see here set out the
6 definition of "Complaint", namely:

7 "... any complaint about the conduct of a member of
8 the Force or Port Control Officer which is
9 submitted ..."

10 By various different potential people.

11 A. That's in relation to States of Jersey complaints.

12 There's a different definition in relation to the
13 Honorary Police, but it's the same, but it just refers
14 to the Honorary Police.

15 Q. Yes. Then in relation to this we see that there is
16 a duty to maintain evidence under Article 5, preserving
17 evidence in relation to the conduct complained of and
18 then at Article 6, this is the duty of the Chief Officer
19 in relation to a complaints register, is that in
20 relation to the States of Jersey Police or the
21 Honorary Police?

22 A. Part 2 deals with the States of Jersey Police and
23 I think part 3 deals with the Honorary Police. The
24 provisions are largely mirrored save it is the
25 Chief Officer in part 2 and the Connétables in part 3.

1 Q. I see. If we could move on to part 3 please, if we just
2 keep scrolling through the document, I believe it is
3 Article 17 we are looking for. Here we are, part 3:

4 "Complaints and other matters concerning members of
5 the Honorary Police." {EE000022/7}

6 And again the same definition of complaint, save
7 that it is in respect of conduct of a member of the
8 Honorary Police.

9 Then over the page again please {EE000022/8} , do we
10 see at 19 the mirror provision in respect of preserving
11 and obtaining evidence?

12 A. Yes.

13 Q. And in respect of Article 20 the duty to maintain
14 a complaints register?

15 A. Yes.

16 Q. And as far as the procedure is concerned, this is set
17 out in some detail in Article 21, but to the extent you
18 are able to help us with this, what is the process now
19 when a complaint is made?

20 A. If a complaint is made to the Connétable firstly it has
21 to be recorded, then the Attorney General is notified of
22 the complaint. If the Attorney General thinks it is
23 suitable for informal resolution, which is usually when
24 it doesn't warrant a disciplinary hearing or it isn't
25 a criminal offence, then the Connétable was told to

1 resolve it informally. If it is not so suitable then it
2 proceeds on to having a reference onwards to the full
3 disciplinary proceedings.

4 Q. And is that the decision for the Connétable to make in
5 each case?

6 A. The Connétable does it very much under the direction of
7 the Attorney General and the Attorney General can refer
8 it even if the Connétable doesn't. As you can see under
9 Article 22.

10 Q. So that provides for the Connétable referring the case
11 to the Attorney --

12 A. Once the complaint has been resolved, if he still
13 believes it should be continued then he could refer it
14 there. But he would also direct the Connétable to refer
15 it in appropriate circumstances in any event.

16 Q. In summary are there basically three sorts of outcomes
17 to these sorts of complaints, the first being an
18 informal outcome, the second being a disciplinary
19 hearing against the police officer and the third
20 potentially being criminal prosecution?

21 A. There is a fourth which is that the complaint is utterly
22 ill-founded and therefore it will be told just not to go
23 ahead, but yes.

24 Q. Thank you. Finally I just want to explore the crossover
25 between the States of Jersey Police and the

1 Honorary Police and you deal with this back in your
2 statement please, page 18, paragraph 72 {EE000035/18} .
3 You say there that the Honorary Police were in charge of
4 all policing on the Island until 1974. There was a paid
5 police force from 1951, but the Honorary Police were not
6 obliged to seek their assistance until 1974. So just
7 dealing with the various periods for our purposes, from
8 1945 to 1951 all policing matters were under the aegis
9 of the Honorary Police, is that right?

10 A. Yes.

11 Q. Then between 1951 and 1974 to the extent that you are
12 able to help us with this, are you aware of the degree
13 of cooperation between the Honorary Police and the
14 States of Jersey Police?

15 A. I have no practical knowledge. All I can say is that
16 the Honorary Police could seek assistance from the
17 States Police if they wanted to, but the responsibility
18 fell to the Honorary Police. How often they did that
19 and whether and in what circumstances, I don't know.

20 Q. Yes, okay. Then at paragraph 73 you go on to say that:

21 "Since 1974, day-to-day policing has been conducted
22 by the States Police. This is because since that time
23 the Honorary Police were obliged to request the
24 assistance of the States Police when any prescribed
25 offence was believed to have been committed ..."

1 {EE000035/18}

2 A. I probably should have the word "most" day-to-day
3 policing, because there were certain -- this only
4 relates to prescribed matters. The Honorary Police
5 would have day-to-day policing of unprescribed matters.

6 Q. Yes. That begs the question of what were prescribed
7 offences. If we could have on screen please {EE000025}
8 This is the Police Force (Prescribed Offences) (Jersey)
9 Order 1974 and do we see there at part I the common law
10 offences?

11 A. Yes, it might better be called customary law, but it
12 says common law, yes.

13 Q. At number 5 we see:

14 "Assaults of every description, except minor
15 assaults."

16 A. Yes.

17 Q. Then going over the page please {EE000025/2} , 25:

18 "Sexual offences of all kinds."

19 A. Yes.

20 Q. Then a number of statutory offences listed there at
21 part II.

22 So is it right to assume then from this that the
23 States of Jersey Police should be or should have been at
24 any time involved in any case dealing with assault or
25 sexual offences against children?

1 A. All but the most minor assaults, yes, so one could
2 imagine maybe a very minor incident with a parent, it
3 might be they weren't involved, but yes.

4 Q. Then we have already dealt with the Connétable
5 (Miscellaneous Provisions) (Jersey) Law 2012. Just one
6 last question in relation to that: in relation to the
7 functions of the Connétable which are being removed by
8 that law, who is to take over the functions, if anybody?

9 A. Nobody essentially. The policing functions -- the
10 Connétable as a member of the Honorary Police
11 conducted -- they had policing functions. The
12 Honorary Police retained the policing functions, the
13 Connétable is not a person who will exercise those
14 functions.

15 The supervisory role will remain, so essentially the
16 best way of looking at the Connétable is just stepping
17 out of the day-to-day policing side, although in
18 practice I think in most cases there hasn't been very
19 much involvement of the Connétable in day-to-day
20 policing in any event for some time.

21 Q. And the final matter I wish to explore with you is the
22 Parish Hall Enquiry which you set out back in your
23 statement please at paragraph 75 {EE000035/19} . So
24 that the Panel can gauge this, what sort of offences
25 generally would the Parish Hall Enquiry be used for?

1 A. In practice mainly motoring offences and minor public
2 order, but generally less serious offences. I can't
3 give an indication of the actual workload of the
4 Parish Hall, but it tends to be minor public order and
5 drunkenness and motoring is probably a guess at what the
6 bulk of their work would be.

7 Q. And as far as the use of the Parish Hall Inquiry is
8 concerned, is it effectively a matter of the Centenier
9 offering the potential to go down I think what you
10 described as the less formal route of the Parish Hall
11 Enquiry, rather than proceeding directly to court?

12 A. As I understand it, yes.

13 Q. And you deal with the Enquiry at paragraph 76 and in
14 relation to the range of sanctions that are open to the
15 Centenier, there are a number of sanctions, including
16 a written caution, no further action, a fine of up to
17 £100, placing a person on probation for three to six
18 months or a deferral of a decision, or otherwise that
19 they can be charged and told to attend court.

20 In relation to the sanctions that can be given, you
21 say that these are not criminal convictions. Help us
22 with this: in terms of, for example, making
23 a declaration on a job application, or a visa
24 application, or similar, would a Parish Hall sanction be
25 required to be disclosed?

1 A. As they are not criminal convictions my understanding is
2 they probably wouldn't. I cannot say categorically that
3 is the case. In fact as most of the things that are
4 dealt with there are motoring offences and the like it
5 is quite likely that as in other countries, you don't
6 necessarily have to disclose those on job applications.

7 If it was a more serious offence that been dealt
8 with in this way, I think in theory you don't, but
9 I can't say that categorically. I don't know the
10 legislation in question.

11 Q. And help us with this, if you can: are you aware of the
12 extent to which the fact of any sanction is shared with
13 the States of Jersey Police or otherwise with the other
14 parishes?

15 A. It is meant to be recorded and the present guidelines on
16 how to do it suggest that it is actually -- it is held
17 in a way which is accessible to others. The
18 Attorney General has given guidelines on the conduct of
19 Parish Hall Enquiries which suggests that that's what
20 happens, but in terms of how it worked historically
21 I don't know. I imagine it was much more informal.

22 Q. Those are all the questions I have for you, thank you,
23 Dr Johnson. Members of the Panel?

24 Questions from THE PANEL

25 THE CHAIR: Dr Johnson, can I just ask you something in

1 relation to sentencing. You were asked about sentencing
2 guidelines, is there any provision for the prosecution
3 to appeal a sentence?

4 A. The defence certainly can. I don't think the
5 prosecution -- I don't know actually I'm afraid.
6 Criminal prosecution, or criminal procedure isn't really
7 my strength on Jersey. I could find out.

8 THE CHAIR: Thank you. That would assist.

9 PROFESSOR CAMERON: Could I ask you in relation to what you
10 just described as the decisions at the Parish Hall, in
11 the event of the Centenier making a probation order, is
12 he required, or is she required to receive a report
13 prior to doing that, do you know?

14 A. I don't. In fact when it comes to the sanctions the
15 only thing I could find describing what the sanctions
16 were was the study guide, which was based on an article
17 published in the Jersey and Guernsey Law Review. I have
18 found matters -- legislation dealing with the fining of
19 offenders, but I haven't actually gone on and found all
20 the detailed legislation about this. I'm basing it on
21 what a textbook says, which doesn't necessarily help I'm
22 afraid.

23 PROFESSOR CAMERON: Staying with the role of the Centenier,
24 while a Centenier is elected is there training provided
25 for the Centenier and, if there is, is it mandatory that

1 they undertake it?

2 A. Generally a Centenier will have been an Honorary Police
3 Officer beforehand. It is very rare -- I don't know if
4 it has happened, I would assume it doesn't happen, but
5 it is certainly unusual that they haven't been a more
6 junior Honorary Police Officer before and so they
7 generally have some -- constable officers is the entry
8 level, generally it will be more senior officers that
9 will get things on the job. There are probably courses
10 they go on as well, but again I don't have details of
11 it.

12 PROFESSOR CAMERON: But there is no requirement for them to
13 undertake any training in terms particularly of the
14 prosecution role that they --

15 A. Again I don't know enough about the requirements as to
16 whether or not a Centenier -- what the training
17 requirements are for a Centenier. I more know the
18 formal stages, rather than the informal things that are
19 requested.

20 PROFESSOR CAMERON: Thank you. Final question: in terms of
21 the role of the Lieutenant Governor, I understand that
22 the Lieutenant Governor has a role in relation to the
23 Royal Prerogative. That's part of the appeals process,
24 is that correct?

25 A. In what aspect of the Royal Prerogative?

1 PROFESSOR CAMERON: Well, it has been suggested to us that
2 someone going to appeal to the Privy Council would need
3 to do that through the Royal Prerogative.

4 A. Yes, but I don't think necessarily that the
5 Lieutenant Governor would have anything other than a
6 ceremonial -- a sort of official role in that. I don't
7 think they would be a determinant of --

8 PROFESSOR CAMERON: Do you know who would actually be the
9 person who then would advise the Lieutenant Governor?

10 A. I would imagine it would be the Judicial Committee of
11 Privy Council would actually deal with it and it would
12 be a judicial role. Again I am not aware of the
13 practicalities of that appeal. It is likely to be done
14 from the Privy Council and the Lieutenant Governor is
15 a rubber stamp in most regards. I doubt he will
16 actually have any discretion as to what to do in modern
17 times.

18 PROFESSOR CAMERON: Okay, thank you. That was my last
19 question.

20 A. Again if you want me to find more details, I could do
21 that.

22 MS LESLIE: Just one question, Dr Johnson, arising from the
23 reference you made to the police complaints legislation.
24 One of the points that was highlighted was that if
25 an Honorary Constable were to be convicted of an offence

1 that would be cause for a referral to be made to the
2 Attorney General to be notified. Is there any mechanism
3 that you are aware of for notification or consideration
4 of previous offences when someone is actually standing
5 for the position of Honorary Constable?

6 A. There is now. Historically it was slightly more
7 uncertain and there was a report, which I have mentioned
8 in paragraph 70, the Honorary Police Election Procedures
9 Report, which was a States Inquiry, where there were
10 shown to be some failings in the system, in particular
11 there was a stage where you had to notify the
12 Attorney General of new candidates having criminal
13 convictions, but not candidates already standing and
14 prior to that there was no obligation to notify certain
15 types of things.

16 So prior to the more modern system there were some
17 clear holes which came out in that report. It is now
18 much more regulated in the last decade or so.

19 MS LESLIE: Thank you.

20 MS JERRAM: Madam Chair, unless there is anything else, that
21 concludes the evidence that has been scheduled for
22 today.

23 Just one point of housekeeping. Mr Le Sueur is due
24 to give evidence tomorrow, starting I assume at 10 or
25 10.30. This morning the Inquiry has been provided with

1 a number of documents which are to be appended to his
2 statement. That will take some time to be uploaded and
3 so forth. It is hoped that that can be done in time for
4 the hearings to proceed tomorrow morning, but you will
5 obviously be mindful of the fact that the interested
6 parties will need some time in relation to that and it
7 may be helpful, Madam Chair, for the Inquiry to contact
8 the interested parties this afternoon with an update in
9 relation to that.

10 THE CHAIR: I understand, Ms Jerram. So at the moment it is
11 proposed that we sit tomorrow morning, but if more time
12 is required then you will let us know and we can either
13 sit later tomorrow ...

14 MS JERRAM: Yes, I thought it would be helpful just to give
15 a warning at this stage, simply because of the late
16 receipt of the documentation and the process that needs
17 to be gone through to make sure that they are
18 distributed to the interested parties.

19 THE CHAIR: Yes, indeed. Well, that must happen, so if you
20 keep us advised for this afternoon, but at the moment if
21 I say we will sit again at 10.30 tomorrow morning,
22 unless there is reason to put that back. Obviously
23 everybody must have time.

24 Unless there is anything else?

25 MS JERRAM: No, thank you, Madam.

1 THE CHAIR: Thank you. Thank you, Dr Johnson.

2 (1.00 pm)

3 (The Inquiry adjourned until 10.30 am on Wednesday,

4 30 July 2014)

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