

THE ROLE OF ATTORNEY GENERAL AS TITULAR HEAD OF JERSEY'S HONORARY POLICE

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Jersey's system of honorary policing is unique. The status of the Attorney General as titular head of the Honorary Police is one of the functions which attracts little public attention. This article examines the origin and extent of the Attorney General's rights and duties in respect of the Honorary Police and considers whether the role should continue.

Introduction

1 The Attorney General is frequently referred to as the titular head of the Honorary Police. This is a convenient but loose description of the relationship that has developed over several centuries between Her Majesty's Attorney General and the Honorary Police in each of Jersey's 12 parishes. The expression is not to be found in customary law or in statute.

The system of policing in Jersey—a brief overview

2 It is beyond the scope of this article to describe in detail the history of the Honorary Police and the separate development of the States of Jersey Police. However, in order that a reader unfamiliar with the 13 police forces in Jersey can properly understand the Attorney General's role in connection with the Honorary Police, it is important to sketch briefly a history of policing in Jersey.

3 Jersey has a long history of honorary service, concentrated in the parish system. The administrative structure of 12 parishes was probably established in the 12th century, if not earlier.¹ Despite the small geographical area of the Island, Jersey developed a strong parish culture. The role of the parish as the primary unit of social organisation and governance of Jersey was and remains of importance. The 12 parishes have an internal structure designed to promote good

¹ See Le Patourel, *The Medieval Administration of the Channel Islands 1199-1399* (OUP 1937) at 99 *et seq.*; and *Parish of St Helier v Manning* 1982 JJ 183.

stewardship with the *Connétable*² at the head, and presiding over the Parish Assembly which consists of all the electors of the Parish. *Ex officio*, the *Connétables* are members of the Jersey legislature, *i.e.* the States Assembly.

4 Most positions in the administration of the parish (including all positions in the Honorary Police) are unpaid, and the office holders are elected by the Parish Assembly, with exception of the *Centenier* who, if the post is contested, is elected by the parish as a whole.³ One needs to be a parishioner to stand for election for the Honorary Police of a parish, although an officer can continue to serve if they leave the parish for another after election.

5 The existence of the parish as a separate entity independent of government is important to the understanding of the development of the Honorary Police.

6 The Honorary Police have existed since, at the very least, the 15th century.⁴ The authority of officers is derived from their taking an oath of office before the Royal Court, subsequent to their election by the parish. Subject to statutory intervention,⁵ the authority of an Honorary Police officer is restricted to their parish.

7 Although the *Connétable* was for many centuries the principal officer of the parish and head of the Honorary Police, *Connétables* were shorn of their policing functions in 2012.⁶ Nonetheless, they retained their customary law responsibility to supervise the Honorary Police of their parish,⁷ but this is a non-operational responsibility. Among other things they will agree the annual policing plan with the *Chef de Police* and select the *Chef de Police* from amongst the *Centeniers*.⁸ They also have a significant role in dealing with complaints made against a member of the Honorary Police in their parish.

² The term “*Connétable*” now prevails in statute over the term “Constable” although both have been used interchangeably over the years.

³ Public Elections (Jersey) Law 2002.

⁴ See Raynor and Miles “Evaluating the role of the Parish Hall Enquiry” (2004) 8 Jersey Law Review 17

⁵ Honorary Police (Jersey) Law 1974.

⁶ See art 2 of *Connétables (Miscellaneous Provisions) (Jersey) Law 2012*, which came into force on 1 August 2014.

⁷ See art 3 of *Connétables (Miscellaneous Provisions) (Jersey) Law 2012*.

⁸ The appointment of the *Chef de Police* is at the discretion of the *Connétable* – see *Constable of St Helier v Gray and Att. Gen.* 2004 JLR 360

8 It is the *Centeniers*, especially the chief *Centenier* (*Chef de Police*) of each parish who are principally responsible for the running of the policing in each parish. Even prior to the reforms of 2012, the *Centeniers* had been described in the 1996 Clothier Report⁹ as “the most important echelon in the Honorary Police since in practice they are the active heads of the Honorary Police of each Parish”.

9 One popular theory is that the term “*Centenier*” derives from their original responsibility for a hundred families or houses and, correspondingly, the *Vingtenier* was responsible for 20 houses or families. Another theory traces the “*Centenier*” to the early period of the French monarchy, under which there were *Centeniers* (and *Dizainiers*) who had the right of holding a court or public assembly, where justice was administered, and where matters which related to the district were discussed.¹⁰ At any rate by the 16th century it was clear, according to Philippe Le Geyt,¹¹ that the *Connétable* in each parish was—

“*secondé d’un Centenier qui fait le même serment . . . et les mêmes fonctions en l’absence du Connétable*”

[assisted by a *Centenier* who took the same oath . . . and carried out the same functions in the absence of the *Connétable*.]

The *Vingtenier* is subordinate to the *Centenier* and carries out police duties deputed to them.

10 The junior rank is the Constable’s officer. As the 1996 Clothier Report said “their quality and motivation lie at the foundations of the Honorary Police. The recruitment of the right people joining for the right reasons, is vital to the survival of the institution”.

11 Constable’s officers, like *Vingteniers*, will be given directions by the *Centenier* as to their duties.

12 By contrast, paid police have a relatively recent origin. In 1853 the first *Loi sur la Police Salariée* was enacted. Ten paid police officers appeared on the streets of St Helier. By 1939 there were 50 paid officers. Their operations were confined to St Helier, where much of the population lived. The States of Jersey Police came into existence in

⁹ *Report of the Independent Review Body on Police Services in Jersey* (States Greffe, 1996).

¹⁰ Guizot, *Essais sur l’Histoire de France*, at 256 (referred to by Jurat Charles Le Quesne, *A Constitutional History of Jersey*, (London, 1856), at 73).

¹¹ *Manuscrits sur la Constitution les Lois & les Usages de Jersey*, (Jersey, 1847) Tome IV, at 166.

1960,¹² but it was only on the implementation of the Police Force (Jersey) Law 1974 that the States of Jersey Police were empowered to operate across the Island without the consent of the parish *Connétables*. The States of Jersey Police and the Honorary Police have the same power to arrest but the power of charging (and certain other powers to which I will return) are reserved to *Centeniers*.

13 The hybrid model of policing in Jersey, and in particular the Parish Hall Enquiry has been described as being “very rare, possibly unique”.¹³ Since 1974 the power to investigate all serious offences has been reserved to the States of Jersey Police—if a prescribed offence has been committed, an Honorary Police officer is obliged to request the assistance of the States of Jersey Police.¹⁴

14 Today, although the Honorary Police receive training in relation to their powers and duties and, for example, often carry body-worn cameras, they generally carry out a different function from the States of Jersey Police. The Honorary Police remain a community based policing body, serving with the consent of their communities and principally concerned with the welfare of their parishioners—often dealing with matters which the States of Jersey Police have neither time nor resources to attend to.

The origin of the role of Attorney General as titular head of the Honorary Police

15 It is not possible to pinpoint from which date the Attorney General began to exercise his supervisory role over the Honorary Police. It may be that the supervisory role arose at the same time as the emergence of the Honorary Police. On being sworn to office, *Connétables* and *Centeniers* undertake to keep the Queen’s peace; “*vous ferez garder la paix de Sa Majesté*”.¹⁵ They are sworn in by the Royal Court and the Attorney General, as a Crown officer, has obligations, as a Royal prerogative power, to maintain the Queen’s peace. The Attorney General thus has authority over all criminal prosecutions in the Island and it is natural that the Attorney General should have a supervisory jurisdiction over the Honorary Police.

¹² See Police Force (Amendment) (Jersey) Law 1960.

¹³ Raynor and Miles *op. cit.* at para 3

¹⁴ See agreement between the Attorney General and the States of Jersey Police referred to later in this article.

¹⁵ Code of 1771.

16 Indeed the oath of the Office of Centeniers includes the words “*vous conformant en ceci aux instructions de Monsieur le Procureur Général de la Reine*”.¹⁶

17 There are various references in the *First Report of the Royal Commissioners appointed to inquire into the state of the Criminal Law in the Channel Islands*¹⁷ in which they mention the Attorney General’s powers in relation to the police (at that stage all the police were Honorary Police). The Report confirms¹⁸ that the police could be considered officers of the Royal Court and that a *Connétable* or Centenier would lay a report before the Court through the *Procureur General*¹⁹ (the Attorney General).

18 The Report states that after evidence had been taken from witnesses in a criminal case the *Procureur General*—

“directs his warrant to the constable of the parish in which the offence has been committed, directing him to summon a sufficient number of the officers of the Police of his parish to form an *enditement* . . . a jury of thirteen, made up entirely of the Police.”²⁰

19 After having been tried by this tribunal the defendant, if found to be “*plutot coupable qu’innocent*” [more guilty than innocent], is entitled to be tried by the “*grande enquête*”. Evidence to this effect was given by Advocate Robert Pipon Marett, later Attorney General and Bailiff. In his evidence, Advocate Francois Godfray said—

“the Attorney General, whenever he thinks proper, may call upon the Constable or Centenier, upon the Attorney General’s responsibility, to arrest a person and bring him before the Court.”²¹

He went on to say—

“There are many cases in which the Police refusing to act, or not thinking the person should be arrested, the Attorney General has told them to do so, and they have arrested him”.²²

¹⁶ Code of 1771.

¹⁷ (London, HMSO, 1847)

¹⁸ *Ibid.* at xxxii

¹⁹ *Ibid.* at xxxiii

²⁰ *Ibid.* at xxxiv

²¹ *Ibid.* at 126 - Q586

²² *Ibid.* at 126 -Q 589

20 It was only in the latter part of the 20th century that the relationship between the Attorney General and the Honorary Police came to be set out more formally in statute.

21 Article 3(4) of the Honorary Police (Jersey) Law 1974 (“the 1974 Law”)²³ provides that the Attorney General may give such directions as he thinks appropriate to a *Centenier* who declines to charge any person. This same law provides, at art 4(3), that “the Honorary Police shall be under the general supervision of the Attorney General.”

22 This is the clearest statutory recognition of the Attorney’s role as titular head. The reservation of powers to a *Centenier* under art 3(2) of the 1974 Law is expressly preserved by art 12 of the Criminal Procedure (Jersey) Law 2018 which otherwise provides that the “prosecution of criminal proceedings may only be conducted by or on behalf of the Attorney General.”

Principal aspects of the Attorney General’s role as titular head

23 There are three principal aspects of the Attorney General’s role:

- (a) giving directions and guidance to the Honorary Police;
- (b) involvement in disciplinary proceedings concerning Honorary Police Officers; and
- (c) supervision of *Centeniers* as prosecutors.

24 This third aspect may more properly be considered as a matter that flows from the Attorney’s role as Chief Prosecutor, but it is convenient to deal with it here as to do otherwise would give an incomplete picture of the Attorney General’s role in relation to the Honorary Police.

25 Each of these aspects of the role will be considered in turn before treating miscellaneous aspects of the Attorney General’s function in respect of the Honorary Police.

Giving directions and guidance

26 It has been recognised that it is important for there to be consistency of practice across the Island. This was noted by the Howard League for Penal Reform in 2008.²⁴

²³ This law was enacted as the “Police Force (Jersey) Law 1974” but its short title was changed when the States of Jersey Police Force Law 2012 was enacted.

²⁴ Howard League for Penal Reform, “A Review of the Jersey Youth Justice System”, at para 5.24.

27 It is essential for there to be reasonable uniformity in practice across the parishes. This has been achieved by way of directions given by the Attorney General and by way of guidance issued by the *Comité des Chefs de Police*.

28 The *Comité des Chefs de Police* was established by regulation 8 of the Honorary Police (Jersey) Regulations 2005 (“the 2005 Regulations”), which were made under art 4 of the 1974 Law. The role of the *Comité* is delineated by regulation 8(2) and, *inter alia*, requires the *Comité* to coordinate the provision of advice and guidance to members of the Honorary Police and to promote consistency in operational practice between the Honorary Police in each parish.

29 Although it does not appear that this power has ever been exercised, the Attorney General is entitled to “set aside any decision of the *Comité* at any time”.²⁵

30 The *Comité des Chefs de Police*, which meets every month, constitutes the day to day management body of the Honorary Police.

31 The Honorary Police Association was also established by the 2005 Regulations and is principally concerned with the welfare of Honorary Police officers. Its statutory objective is to “promote efficiency in the Honorary Police”. Regulation 4(6) provides that the “Attorney General may set aside any decision of the Association at any time.” There is no evidence of that power having been exercised.

32 Various advices and guidance to members have been issued by the *Comité des Chefs de Police* which are outside the scope of this article. The Attorney General will always consult with the *Comité des Chefs de Police* before issuing any guidance to the Honorary Police as a whole. Occasionally, the nature of the guidance is such that it is appropriate to consult with all *Centeniers*, and very occasionally more widely but the key stakeholders for the purpose of consultation prior to the Attorney General issuing any guidance affecting the Honorary Police is the *Comité des Chefs de Police*.

33 The directions and guidance issued by the Attorney General fall into three categories:

- (a) guidance applicable to all officers;
- (b) guidance to *Centeniers* only;
- (c) guidance/requirements which arise by virtue of the Attorney General concluding agreements or arrangements on behalf of the

²⁵ Regulation 8(7).

Honorary Police or with the Honorary Police sometimes pursuant to statute.

Guidance applicable to all officers

34 Examples are as follows:

- (a) *Conduct of all Honorary Police officers leading up and during elections for Senators, Deputies, Connétables and during referendums* (August 2016)
- (b) *Honorary Police—reports of Suspicious Activity* (March 2017)
This gives guidance to Honorary Police as to what they should do when receiving a disclosure of suspicious activity under the Proceeds of Crime (Jersey) Law 1999 or the Terrorism (Jersey) Law 2002.
- (c) *Directions given to the Honorary Police in relation to powers and duties outside their home Parish* (March 2017)
Explaining the circumstances in which Honorary Police can exercise police powers outside their parish under the 1974 Law as amended. These provisions will soon be re-enacted and expanded.
- (d) *Guidance in relation to election of non-British nationals to the Honorary Police* (May 2019)
- (e) *Guidance given to Honorary Police in relation to loss and reporting of loss of warrant cards* (November 2019)
- (f) *Guidance on conduct and other matters* (November 2019, replacing September 1997 guidance)
Dealing with alcohol, dress, training, parish vehicles and security of documents.²⁶

Guidance to Centeniers only

35 The following guidance has been issued to *Centeniers*, principally in respect of their actions in a prosecutorial capacity—whether making decisions to charge; carrying out Parish Hall enquiries or giving guidance as to how to exercise their discretion in particular circumstances:

- (a) *Code on the decision to prosecute* (March 2016)

²⁶ The original guidance from 1997 was designed to address various recommendations made by the 1996 Clothier review of policing in the Island.

The code on the decision to prosecute was first published by the Attorney General in 2000 and gave guidance to *Centeniers* on the application of the evidential test and the public interest test, both of which need to be satisfied prior to a decision to charge. The code was re-issued in an amended form in March 2016, the Attorney General having undertaken a review of codes issued in the intervening years by England and Wales, Scotland, Northern Ireland, the Republic of Ireland, Australian Territories, Canadian Provinces, New Zealand and other relevant jurisdictions. In fact the amendments to the original code were not substantial—they were limited to rewriting the sections relating to the relationship between the victim of the public interest (para 5.7 of the code); young offenders (para 5.8), introduction of the threshold test—charging in special circumstances where all evidence has yet to be gathered (para 6), accepting guilty pleas (para 8) and consent to prosecute (para 9).

- (b) *Supplementary guidance has been issued to the Code on the decision to prosecute* (April 2016)

The supplementary guidance relates to shoplifting, environmental protection (issued June 2018), and, most importantly, domestic abuse (issued in December 2016). The latter code is accompanied by an *aide-memoire* identifying common abuse scenarios and their equivalent offences under the Jersey law in order to assist *Centeniers* with charging decisions. The definition of “domestic abuse” in the guidance is a wide one and the guidance makes clear that if the evidential test is passed the public interest will be generally in favour of prosecution, even if the injury was minor or the parties reconciled. Disposal at the Parish Hall will rarely be appropriate.

- (c) *Directions given in relation to possession of personal amounts of certain controlled drugs* (June 2015)

These directions replaced previous guidance, issued in 1998, which referred to two drugs only (cannabis and amphetamine). The directions now cover 20 controlled drugs, including two class A drugs, and potentially (after consultation with the Law Officers’ Department) all class B and C drugs. The directions set out circumstances in which a caution could be administered in preference to a prosecution. Supplementary guidance was issued in January 2019 to the effect that in certain circumstances a second caution for possession of controlled drugs might be administered in preference to the offender being charged to court.

- (d) *Direction regarding prosecution of offenders under the age of 14 years* (September 2016)

This direction recites that the Parish Hall enquiry has been recognised, particularly in the case of children and young people, as an excellent way of diverting the great majority of children away from the Youth Justice System in a positive and constructive manner. In order to reinforce the diversionary principle it is directed that in relation to children aged 10 or 11 prosecution should occur only in the most exceptional of cases and with the consent of the Attorney General (such consent has not been given since the direction was first issued in November 2013). In the case of children aged 12 or 13, there is a presumption against prosecution, which should only take place with the consent of the Attorney General or of a Crown Advocate or a legal adviser from the Law Officers' Department. It is noteworthy that the letter dated November 2015 which accompanied the first set of guidelines provided that the principal objective of the criminal law in respect of children aged 10 and 11 (the age of criminal responsibility being 10 years) is to secure the attendance of the child at the Parish Hall for the purpose of the child being diverted from the Criminal Justice System, not to participate in it for the purpose of punishment. The letter also referred to the 2008 report of the Howard League (to which reference has already been made) in which the authors observed—

“In general terms we believe the PHE [Parish Hall Enquiry] is an excellent method of dealing with children and young people in trouble with the law, and clearly has the potential for diverting the great majority of children away from the Youth Justice System, in a positive and constructive manner.”

- (e) *Direction regarding vehicles offences involving mobile phones, contrary to Article 50 of the Road Traffic (Jersey) Law 1956 (April 2017)*

This direction arose out of a concern that too many offenders were being dealt with at Parish Hall. The direction set out circumstances in which it would no longer be appropriate for an offender to be dealt for this offence at Parish Hall, increased the fine for a first and second offence and provided that, even in the absence of features which would require the case to be charged to attend court, any offender appearing at the Parish Hall for a third offence within three years would need to be charged to court.

- (f) *Supplementary direction in respect of the conduct of Parish Hall enquiries in relation to allegations of sexual offences (February 2016)*

In one case there was a disagreement between the Honorary Police and the States of Jersey Police as to whether a matter should be charged to court or dealt with by way of a caution at the Parish Hall. This led to a direction being given to the effect that no allegation of a sexual offence when the evidential test is passed should be dealt with other than by way of prosecution, absent the consent of a Crown Advocate or legal adviser employed by the Law Officers' Department.

- (g) *Direction regarding the conduct of Parish Hall enquiries* (March 2019)

This direction replaced directions issued in 1997 and 2008.²⁷ It ensures that it is clear that a Parish Hall enquiry is essentially a prosecution process; that is not appropriate for a *Centenier* to conduct an enquiry into an alleged offence which they have investigated; that the enquiries are not held in public and that various attendees have various rights, *e.g.* to be accompanied by a lawyer, and, if aged under 18, to be accompanied by a parent or guardian with a probation officer invited to attend. The procedure to be carried out the Parish Hall enquiry is set out in detail, as is the effect of the attendee admitting the offence.

- (h) *Directions given in relation to television licensing and enforcement offences* (October 2019)
- (i) *Directions given in relation to the wearing of seatbelts in certain goods vehicles* (March 2019)

Guidance/requirements which arise by virtue of the Attorney General concluding agreements or arrangements on behalf of the Honorary Police or with the Honorary Police (sometimes pursuant to statute)

36 Pursuant to art 21 of the States of Jersey Police Force Law 2012²⁸ (“the 2012 Law”) the Chief Officer of the States of Jersey Police and the Attorney General (acting on behalf of the Honorary Police) are obliged to make an agreement for the exchange of information and for the States of Jersey Police to work in partnership with the Honorary Police. Prior to entering into the agreement the Attorney General must (and did) consult with *Comité de Connétables* and the *Comité des Chefs de Police*.

²⁷ The former being issued in order to address concerns expressed by the Clothier review of policing in the Island

²⁸ Article 21(2) of the 2012 Law

37 Accordingly, on 20 December 2018 the Attorney General entered into an agreement with the States of Jersey Police, having consulted with the *Comité de Connétables* and the *Comité des Chefs de Police*. The agreement deals with information and intelligence sharing between the parties and the areas of responsibility and accountability in operational policing matters. As to the latter, a schedule to the agreement lists the customary law and statutory offences where the Honorary Police must request the assistance of the States of Jersey Police. This list of “scheduled offences” replaces the “prescribed offences” under art 6 of the now repealed Police Force (Jersey) Law 1974,²⁹ which required the Honorary Police, on investigating any prescribed offence, to immediately request the assistance of the States of Jersey Police.

Discipline—proceedings concerning Honorary Police officers

38 Prior to the enactment of legislation, discipline of the Honorary Police was a matter for the Royal Court. The first statutory intervention on the issue was the Honorary Police (Jersey) Regulations 1977.³⁰ Those Regulations provided, in summary, for complaints to be investigated by the *Connétable* of the Parish in which the officer served. The *Connétable* was under a duty to inform the Attorney General of the complaint as soon as possible. The *Connétable* would report to the Attorney General. The honorary police officer could be suspended or required to resign by the Attorney General. An appeal lay to a panel of three Jurats.

39 The position was altered by the Police (Complaints and Discipline) (Jersey) Law 1999 which, read in conjunction with the Police (Honorary Police) Complaints and Discipline Procedure (Jersey) Regulations 2000, provides a comprehensive code in relation to the resolution of complaints made against the Honorary Police in their policing capacity. A flow chart of the steps to be taken on the receipt of a complaint against a member of the Honorary Police can be found at the end of this article.

40 The following supplementary points can be made. The member of the Honorary Police is entitled to not less than 21 days’ notice before a disciplinary hearing; they are entitled to written notice specifying the conduct which is alleged to constitute an offence against discipline and the paragraph of the Code in respect of which that offence is alleged to have been committed; they are entitled to representation at the hearing; and at the hearing the Attorney General shall review the facts and

²⁹ See footnote 24 above

³⁰ R&O 6480

decide whether or not the member is guilty of an offence against discipline on the balance of probabilities. The Attorney General has a range of sanctions available to him, including dismissal, but any sanctions imposed are subject to the right of appeal to three Jurats of the Royal Court.

41 In order to ensure that the member receives a fair hearing, the Attorney General's functions subsequent to the investigation carried out by the States of Jersey Police, namely to decide whether or not a disciplinary charge shall be preferred against the member under regulation 9 of the 2000 Regulation and the drafting and, if necessary, presentation of that charge are carried out by the Solicitor General or another advocate in the Law Officers' Department.

42 In the context of disciplinary proceedings it may be preferable for the Attorney General to refuse to accept a resignation and to proceed to a disciplinary hearing nonetheless in order to ensure that, if the evidence warrants it, there is a finding of misconduct against the member in question. Otherwise the member may, after resignation, be able to apply to re-join the Honorary Police either in the same parish or another parish without any record of misconduct being retained.

43 It is noteworthy that pursuant to regulation 5 of the 2005 Regulations, only the Attorney General is entitled to accept the resignation of an Honorary Police Officer. It is the practice of the Attorney General to consult with the *Connétable* and, if appropriate, the *Chef de Police* prior to accepting any resignation in order to enquire as to the residual strength of the Honorary Police in the parish in question and as to whether (in particular in the case of a *Centenier*) the member might be persuaded to change their mind and continue to serve their parish.

Supervision of *Centeniers* as prosecutors

43 *Victim's right to review a decision not to prosecute* (September 2019)

This published guidance was not directed to *Centeniers* but was a matter of which they were notified. The right to review scheme provides victims of crime (which is widely defined) a three-month period to request a review of a decision not to prosecute which includes, expressly, a decision to deal with a matter at a Parish Hall enquiry or a decision not to charge made by a *Centenier*. The Attorney General/reviewing lawyer will set aside the decision if they are satisfied that it is wrong (not merely if they might have come to a different decision on the facts). This is consistent with the test that the Attorney General adopted when considering complaints against *Centeniers* prior to the victim's right to review being published.

44 *Code of conduct for Centeniers acting in their prosecutorial capacity* (April 2018)

It was appreciated that whilst all Honorary Police officers were subject to the regulations made under the Police (Complaints and Discipline) (Jersey) Law 1999 in relation to their policing activities, that did not extend to the activities of a *Centenier* when acting as a prosecutor, whether making a charging decision, conducting a Parish Hall enquiry or appearing in court. Although those matters would be subject to the overall supervision of the Attorney General as chief prosecutor, no code of conduct had been issued in respect of *Centeniers* acting in their prosecutorial criminal capacity. That was remedied, after consultation with all *Centeniers*, in 2018 by the issue of a Code of Conduct including a disciplinary code and an investigative process for complaints made against *Centeniers* in exercising their prosecutorial powers; with a provision that such a complaint may require a disciplinary hearing before the Attorney General which may result in a range of sanctions from reprimand to dismissal.

45 The code may be underpinned by statute if a new Honorary Police Law, now drafted, is adopted by the States Assembly.

Miscellaneous obligations of the Attorney General in relation to the Honorary Police

46 Lawyers at the Law Officers' Department train *Centeniers* in respect of matters in the Code on the Decision to Prosecute; bail applications; prosecuting cases before the Magistrate's Court; submissions to make when the Magistrate is determining jurisdiction and other related matters.

47 The Attorney General gave evidence before the Social Affairs Scrutiny Panel in November 2006 in respect of a review of *Centeniers*. He said that one element of the titular headship was the Attorney General's moving of conclusions when Honorary Police officers come to be sworn in before the Royal Court, having been elected in their parishes. The Attorney General is entitled to say that the particular individual ought or ought not to be appointed. If a *Connétable* is approached by a parishioner who wishes to join the Honorary Police but discloses that he has criminal convictions then the *Connétable* will generally approach the Attorney General prior to the Officer standing for election in order to ascertain whether or not the Attorney General regards those convictions as being a bar to election. A conviction for a minor offence a long time ago would not be a bar. In practice the Attorney General approaches these matters cautiously and, in the case of doubt, may contact the States of Jersey Police in order to ascertain what their approach would be to the convictions or cautions disclosed if they were considering an application to join their ranks.

Consideration of the Attorney General's role as titular head

48 From time to time the role of Attorney General as titular head of the Honorary Police has come under the spotlight.

49 It has been clear to the author and previous Attornies General that the Honorary Police are proud of their association with the Attorney General as the senior law officer of the Crown and have no objection to his giving them directions and exercising the disciplinary powers provided by statute. But does the titular headship conflict with the Attorney General's other roles?

50 The Attorney General is an *ex officio* non-voting member of the States of Jersey. He may address the States whose members include the *Connétable*. But the Attorney General is a member of the States by virtue of his role as a Law Officer of the Crown and legal adviser to the Crown and to the Assembly. Accordingly he is not a member of the Assembly by virtue of his relationship with the Honorary Police. Accordingly, in substance there is no conflict.

What of the Attorney General's Role as Chief Prosecutor?

51 It is appropriate for a chief prosecutor to be head of a police force? Again in substance there is no difficulty as the Attorney General does not exercise day to day management control over the Honorary Police of each parish. That function is exercised by the *Chef de Police*.

52 The Attorney General's power to oversee charging decisions made by a *Centenier* is held by virtue of the Attorney being the Crown's Chief Prosecutor and not by virtue of the titular headship.

53 The Attorney General is well placed to give the *Centeniers* advice and training. Accordingly in practice the influence which the Attorney General exerts over the Honorary Police within the criminal justice system flows principally from his role as Chief Prosecutor rather than his titular headship.

54 Furthermore, the Attorney General is also a member of the Royal Court, not merely someone who has rights of audience.

55 Again, although the Attorney General is a member of the Royal Court, he does not perform a judicial function. The Attorney General acts as a litigant in criminal and civil cases and also as a guardian of the public interest ("*partie publique*"). When the Attorney General prosecutes defendants who have been charged by *Centeniers* or calls honorary police officers as witnesses, the Attorney General does not act in his capacity as head of the Honorary Police but as Chief Prosecutor.

56 The only theoretical risk of conflict arises out of the disciplinary function, as it could be said that there is a tension between the Attorney General's titular headship of a police force and as the prosecutor. This is resolved by the fact that all investigations are

carried out under the auspices of the Chief Officer of the States of Jersey Police under the supervision of an independent Crown Officer/other Advocate. Accordingly, independence in the process is safeguarded, and the Attorney General's role is limited in effect to determining the outcome of complaints and considering the appropriate sanction.

57 The titular headship connotes supervisory control and no more. The Parish Hall is important; the vast majority of offending in Jersey is dealt with in this way. In 2018, 4176 matters were disposed of at Parish Hall. By contrast, well under 1000 cases resulted in proceedings before the Magistrate's Court or the Royal Court. It is important that an up-to-date framework for the exercise of a *Centenier's* discretion is provided by a lawyer working at the heart of the criminal justice system. Sir Cecil Clothier (whose recommendations were otherwise in large part followed) suggested a Chief Officer of the Honorary Police should be appointed by the States and that such a person would probably, but not necessarily, be a *Chef de Police*. It is unlikely such a person could carry out satisfactorily the role that the Attorney General currently undertakes.

58 The question of the Attorney General's role was considered by Lord Carswell's *Review of the Roles of the Crown Officers* in 2010.³¹ Carswell's findings and conclusions in relation to the Attorney's role as titular of the Honorary Police are brief and are worth setting out in full.

“Head of the Honorary Police

Some respondents questioned the propriety of the Attorney General holding the position generally described as titular head of the Honorary Police. The appropriateness of this name has also been questioned, since the *Connétable* in each Parish has responsibility for the Honorary Police in his Parish. There is no antecedent French title from which it has been translated and one is reduced to using it in the absence of a better one: the important thing is to understand clearly what the position involves.

Operational matters concerning the work of the Honorary Police are generally the province of each Parish, with the unifying influence of the *Comité des Chefs de Police*. The Attorney General may overrule the decision of a *Centenier* in relation to charging a person suspected of having committed a criminal

³¹ <https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20Crown%20Offices%20Review%20Report%20101202%20WM.pdf>

offence, but this is part of his responsibility for prosecutions. He may give instructions to the Honorary Police in relation to policy matters, but the occasion for doing so appears to be infrequent. He has the right to decline to recommend confirmation by the Royal Court of the appointment of a person to the Honorary Police, effectively vetoing the appointment. The main function of the Attorney General in this sphere is that of responsibility for disciplinary matters. If a complaint is made to the Police Complaints Authority and they consider that a disciplinary offence may have been committed, they will pass on their conclusions to the Attorney General, who will then cause a disciplinary hearing to be held. If the tribunal finds that the officer has committed a disciplinary offence, the Attorney General has to determine what sanction is to be imposed.

Responsibility for disciplinary matters has to lie with some person or body. It could not be the province of a Police Authority, if one is constituted, as such bodies ordinarily deal with matters of policy and resources, not discipline, which is usually the responsibility of the chief officer of a police force. Although it may be unusual for a law officer, we do not think that there is any breach of principle in the Attorney General carrying out this function. We are aware that the Honorary Police themselves value the connection, but if it is proposed to make another person or body responsible for discipline this function could readily be transferred.

Recommendation 11: The Attorney General should continue to act as titular head of the Honorary Police until an appropriate substitute has been obtained.”

59 The following remarks, almost a decade later can be made. In fact the volume of guidance and directions given to the Honorary Police has increased in recent years, possibly as a consequence of additional complexity in Jersey criminal law and the greater consequent obligations on prosecutors. On analysis, the only part of the role of Attorney as titular head which is controversial is the responsibility for disciplinary matters. That is an issue upon which successive Attornies General have not had a strong view either way. Nonetheless it is essential that the other aspects of the Attorney General’s role as titular head continue in order to ensure that decisions made by *Centeniers* are made properly and with the appropriate guidance and training, and that all officers are aware of their legal responsibilities.

60 The Honorary Police would expect to be consulted if there were any alterations to current arrangements.

Robert MacRae QC was HM Attorney General for Jersey between 2015 and 2020. He took up office as Deputy Bailiff of Jersey in January 2020.

