

**Address to States Assembly
Tuesday 8th October 2019**

1. Communications from the Presiding Officer under Part A of Standing Orders often seem to me a bit like the notices which the Dean might give in a Sunday service – the Bishop is doing confirmations on a particular day, or there is a special service at 4 o'clock in the afternoon or something like that. But the purpose of the Standing Order is to enable the Presiding Officer to share information with members and while on this my last occasion in the States Assembly, I would really have preferred to avoid controversy, the timing of the publication of the last report of the Independent Care Inquiry is such that I have to do so today if I am to defend the office of Bailiff which I hold. I think it is my duty to defend it from unfair criticism, and I am doing so now in this place as a courtesy to members.

2. With a focus solely on the role of the Bailiff, I want to comment on the recent report the Inquiry has published. The Report in 2017 included a recommendation that consideration should be given to removing the Bailiff's dual role. This was a surprising recommendation because it was outside the Terms of Reference of the Inquiry, which the Panel itself recognised. However the criticism of the Panel for that recommendation is more substantial than simply a technical one that it was outside their Terms of

Reference. The Inquiry took not a scrap of evidence from any of the local witnesses who might be thought to know something about the Island's constitution and the way in which the dual role was managed. Instead, it merely arrived in the Island with what looks very much like preconceived notions and prejudices as to what a proper constitution should look like. It accepted unquestioningly the complaints of the present system, often expressed by those who had no real knowledge of how it worked.

3. Members may understand perhaps therefore why I take the view that, bad as the Inquiry's recommendation Number 7 was in July 2017, the most recent Report presented only two weeks or so ago is even worse. I do not think the following summary of what the Panel set out in paragraphs 69 to 74 of its report is unfair, although it is of course my summary. It is said that there is a strongly perceived "*Jersey Way*" in the Island. The Inquiry describes at paragraph 69 how the expression was most commonly used "as a shorthand to describe a lack of transparency and fairness in decision making, a reluctance to challenge the status quo and an absence of redress for those who suffered what were considered to be injustices". At paragraph 71, there is a further statement that there is still a strongly perceived *Jersey Way* in the island. At paragraph 72, the Panel describes how decision making processes should be clear consistent and demonstrably impartial. By implication, currently they are not. At paragraph 73, the Panel

moves seamlessly on to say the role of the Bailiff needs attention because retaining the current arrangements is a further indication of a failure to recognise the importance of these systems having evident impartiality and transparency at their heart. And at paragraph 74, the Panel then returns to the need to avoid a further perception of there being a Jersey Way.

4. There is an assumption by the Panel that the perceived lack of separation between the judicial and legislative or executive powers – in other words, the office of the Bailiff – is part of this alleged culture of cover up, unfair decision taking and decision making in secret. The juxtaposition of these paragraphs bears no other reasonable interpretation. I cannot accept that a lawyer of the Chairman's experience would inadvertently have drafted such an unfortunate juxtaposition of words. I am sure that the way in which Jersey receives her Panel's report matters greatly to her. Her linkage of the allegations of lack of fairness and transparency in decision taking by the Bailiff to historic child abuse was a grave error.
5. I reject that linkage and the assumptions underlying it absolutely. The Inquiry had no basis for saying it and it is not true. There are respectable arguments that can be advanced for changing the present role of the Bailiff, not that I agree with them, but this one is not. The Inquiry has spoken publically and I have not done so to date but before I leave office I think I owe a duty both to members

and to the public to say what I think of this last report. It is a particularly egregious recommendation for me personally because on the one hand the Inquiry absolves the Law Officers' Department generally and me in particular of any cover up or impropriety in relation to the child abuse investigations and prosecutions between 2008 and 2010, and on the other asserts that there is a perception of impropriety in the office which I now hold. Can I just focus members' attention on paragraph 71 of the recent Report. The Inquiry say:-

“We do not consider that this [the Jersey Way] is by any manner a simple issue to deal with since much is based on perception rather than tangible evidence.”

6. Let me put that another way. The Inquiry was saying that it had no tangible evidence of a Jersey Way which represented decision taking behind closed doors, a lack of transparency or a lack of fairness in decision making. At least insofar as concerns the Bailiff, it was right in that respect. It had no evidence to justify those conclusions as to a Jersey way of doing things but unfortunately the lack of evidence clearly did not act as a constraint. Instead, the Inquiry makes the comments and recommendations it does based on the perceptions and assertions from a few former politicians and a disaffected senior police officer, which undoubtedly affected those who suffered abuse.

7. The Inquiry had every opportunity to test its views – and indeed the evidence of the abused victims and others which it did hear - by asking questions of other politicians including the Chief Minister and his predecessors or other leading politicians of the time, or of the Bailiff or the Deputy Bailiff, or the Law Officers or the former Bailiffs. It did not do so. Regrettably that suggests that the Inquiry was not interested in receiving answers which might contradict the assumptions which it brought with it in this connection.
8. That was true in 2017 and it remains true of the last visit. Of course I could have addressed the matter with the Inquiry myself, although I rather assumed that the Inquiry would have been aware of my letter to the former Chief Minister in the summer of 2017 immediately after the publication of the July Report to defend my office against recommendation 7 in that Report. Equally, however, the Inquiry could have asked questions on this occasion. It is not obvious that it did so, and it certainly did not do so of me.
9. In being critical of the Inquiry, I want to make one thing absolutely clear. There is a world of difference between criticising the Inquiry and its Report and criticising those who suffered abuse. The abuse which many victims spoke of to the Inquiry was real and appalling. I condemn it and every right thinking person condemns it. The failures in the administration at the time, whether at Civil Service or political level were failures from which the Island needs to learn. There is no doubt about that. However, as I said the focus

of my words today is solely on my office, it is important that none of us merely adopt the entirety of what is in some ways a flawed report simply because the substance of the abuse which was put to the Panel, and on which they did have evidence was as bad as it was.

10. I have no more to say under Part A. Parts B and C are as on the Order Paper....