

3. Law Officers Bill 2014 – Second Reading adjourned

The Acting Attorney General to move:

That the Law Officers Bill 2014 be read a second time.

The President: The Law Officers Bill 2014. I call on the learned Acting Attorney General to move the Second Reading.

The Acting Attorney General: Madam President, at the First Reading I explained that this Bill gave effect to one of the recommendations contained in a Report of the working of the Attorney General's Chambers by Stephen Wooler CB, formerly Her Majesty's Chief Inspector of the Crown Prosecution Service. Members may recall that the executive summary of that Report was supplied to them in December 2012.

A follow-up visit to Chambers by Mr Wooler was then undertaken in April/May 2013 to enable him to report on the implementation of his recommendations, and the report of that 'stock take' report was circulated to Members in July 2013.

To assist Hon. Members since the First Reading of the Bill I arranged for copies of those documents to be again sent to Members of Council, and I hope that was of assistance to you.

At the First Reading of the Bill and since, a request was made by certain Members of Council for the full report of Mr Wooler to be made available. I advised Hon. Members at the First Reading that I would make enquiries as to whether this full Report could be made available, or whether it remained confidential. I can advise Members that, since the First Reading, I did make enquiries and I can confirm today that the full report is still not available. It was prepared by Mr Wooler on a confidential basis and must remain so.

I can advise Hon. Members that a copy was, however, made available to me at the time of my appointment as Acting Attorney General, with the agreement of Mr Wooler, as a management tool. I can inform Members, and I can give them my assurance, that the Report contains the recommendations upon which this Bill is based.

I am therefore familiar with the content of the Report and can confirm to Hon. Members that it was written on a confidential basis and also, as I have said, as a management tool.

I have also said I have seen the Report and it contains all the salient matters relevant to what is foremost. Among the recommendations made in the Report, namely the appointment by the Crown of a second law officer, bringing the Island into line with the position in England, Scotland and Northern Ireland, and the Channel Islands, each of which has two law officers.

It is only that singular recommendation in Mr Wooler's Report that is of relevance to this Bill, and the executive summary which has been provided to Hon. Members explains why this step is being required, or is being recommended to you.

The Bill achieves the necessary legislative changes to enable the Crown to appoint a second Crown Officer for the Island, principally by two amendments to existing legislation. One of these amendments, set out in clause 4, operates only in respect of the composition of the legislature, while the other in clause 3 provides that for other purposes reference to the Attorney General will in future include the Solicitor General, thereby permitting both to exercise the full range of the Attorney's functions.

Madam President, as you and Hon. Members of Council are aware, the progress of the Law Officers Bill 2014 has been delayed for reasons outwith my control. If the Second Reading and clauses are completed today I would be minded to seek a suspension of Standing Orders to enable the Third Reading to be taken today also.

Madam President, I beg to move that this Bill be now read a second time.

Mr Butt: I beg to second, Madam President, and reserve my remarks.

The President: The Hon. Member, Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

Madam President, I have *Hansard* of 11th March and my hon. colleague in Council, Mr Downie, even brought up that we had had the executive summary but we had not seen the full Report.

The Wooler Report was commissioned by the Chief Minister to look into the workings of the Attorney General's Chambers.

We have just seen the West Midlands Quality Review Service Report, the first report which, again, was commissioned by the Chief Minister to look in at Noble's – and he said it would be published, 'warts and all'.

The Acting Attorney General has said he has seen the Report, it is being used as a management tool – and I know that there was one other Member here who has also seen the Report. If there are names, those could be redacted, but I feel that it is essential if we are discussing legislation that we see the full facts and the full Wooler Report before us.

I am absolutely positive, Madam President, in another place they would be asking for the full Wooler Report before they discuss any of the legislation. Therefore under Standing Order 3.7 subsection (3) I would like to adjourn the Second Reading of this Bill until Members of the Legislative Council have seen the full Wooler Report. If there are names there, those could be redacted – but I think it is essential that we see the full Report.

Therefore, Madam President, I would like to move to adjourn the Second Reading of the Law Officers Bill:

'That this debate be adjourned until the full Wooler Report is available to Council Members'.

Mr Downie: Madam President, following on from my colleague, I know this is unusual but I do wish to support the adjournment. I think if it is not resolved here, I feel that the way this Bill is being progressed will cause embarrassment in the other place. The whole purpose of creating this new post is due to recommendations within the Wooler Report, a Report which... We have been fair and honest in this Chamber, we have asked for further information, nobody has even got back to me saying, 'We would be prepared to give you a confidential briefing of what is in the Report' – we have heard nothing, the communication really has been non-existent. And to say that we were circulated with a précis back in December 2012, well I do not think that is good enough.

I would urge Members of Council to support the adjournment because I think it is the right thing to do at the present time. I am quite prepared to put my time into having an update and to get a full understanding of some of the recommendations that Wooler has brought forward. But we are asked to vote on something here that we really do not have any knowledge of other than, 'It says in the Wooler Report that there needs to be another officer in the Attorney General's office'.

I would urge Members of Council to support that until we get some clarity.

The President: We now have a proposal for adjournment, Hon. Members, that has been proposed and seconded, so we are now into an adjournment debate.

The Hon. Member, Mr Turner.

Mr Turner: Yes, thank you, Madam President.

I was not sure at first whether to support the adjournment, but I think the Hon. Member who has moved the adjournment has made a very good case. We are often criticised for passing

legislation without knowing the full details, and I think it is important that... certainly the case made by the hon. mover, with his analogy with the health services review is a good one.

I think in this time of openness, warts and all, then we should have sight of the full Report, so at least it can have consideration.

I fully support the principles that in matters of national security and other such issues you would not circulate such documentation, but this is a report into a particular branch of the establishment and therefore I think it – other than maybe causing somebody some embarrassment – this is about the accountability, the procedures. I think it is important, and the points made by the Hon. Member, Mr Braidwood, are valid.

So I will be supporting the adjournment of this item.

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

I can appreciate Members' desires to be open and to have all the information they require to make a decision – I can understand that and I agree with that principle – *and* with the principle that maybe this would have problems going through the other Chamber in the future.

I have to say that I was privileged to be a member, the Vice-Chairman, of the Civil Service Commission last year, where I actually did see the main Report. I can confirm that this is a working document which was a critique and examination of the practices of the prosecution service of the Attorney General's Chambers. The Report was a wide ranging report which was not just about this appointment of this officer. It was about lots of the practices within the Department, within the Chambers.

I really do feel that... one of the recommendations is that this Bill should be progressed with a new appointment. It is just one of the many matters which were discussed in that document, which does name names, does name practices, is critical in some areas, and is really a working document for the Chambers to actually use to address the problems which they were facing at the time. Similar to the West Midlands Review: in that, no names are named and no people are criticised personally about their behaviours.

Mr Braidwood: Subjective though. Names can be redacted.

Mr Butt: But the Wooler Report, I feel, I agree with the Attorney, is a working document for that Department to address their issues and get on with matters.

One of the ways they need to do that is by progressing this Bill to appoint an officer. I understand the principle that Members are saying, that we should have information, but to my mind I am assured from my reading of it and from the Attorney's, that... not *all* we need to know, but we do need to know that this Bill is required because of that Report and I can confirm that it is.

I do not think we need to adjourn, Madam President, to see the Report itself. The excerpt we had shows the need for this Bill and no more than that. The other details which cover lots of areas other than this, are really of no concern of us as far as I am concerned, Madam President.

The President: The Lord Bishop.

The Lord Bishop: Madam President, coming from the outside to a situation like this needs you to wonder, 'Which way should I vote?' But if I could be helped by the hon. mover: is the reason why we have been excluded from the full Report simply because of names? Is it because there are practices there of which the Wooler Report is critical – and I would have thought that was a fairly good reason for seeing it? Or are there issues of principle that are missing from the executive summary?

In other words, what is it that the full Report would produce that would make it difficult for us to see it?

Thank you, Madam President.

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

Again, like the Lord Bishop says, we are on the horns of a dilemma here, and maybe the Acting Attorney General can clarify. But in his defence he did circulate – or the Crown Office, or the Chief Secretary's Office – did circulate the original review and the stock take. So we have had an opportunity to look at the broad principles, and unless there is something dramatic in the Report that we should be made aware of, that we are not being made aware of, then I think I would go along with Mr Butt on this occasion, but rely on the Acting Attorney General for some further clarity.

The President: The Hon. Member, Mr Coleman.

Mr Coleman: Thank you, Madam President.

I, too, am inclined to agree with Mr Crowe and Mr Butt on this particular issue. This Bill simply is bringing in an additional resource into the Attorney General's Chambers – it is doing nothing else other than that. The first recommendation in the executive summary is simply that a second officer needs to be appointed because there is a resource deficit in the Chambers. That is really all we are being asked to determine here.

If this Bill contained other issues, far more reaching than the fact that we might need a second resource to be able to try and implement legislation to make the other recommendations come into force, then I will not be voting for the amendment.

The President: The Hon. Member, Mr Corkish.

Mr Corkish: Thank you, Madam President.

Notwithstanding the remarks of my colleagues who have just spoken in support of Mr Butt and the mover, surely there is a principle to be upheld and acknowledged here, and it is the duty of Council to view such a report. If it is a case of names which should not be revealed, they could be (**A Member:** Redacted.) redacted, and I think we would be almost using a blind eye here and just almost nodding it through.

I think there is a principle to be acknowledged here and I would support my hon. friend, Mr Braidwood.

The President: Do you wish to speak to the adjournment?

The Acting Attorney General: If I may, Madam President.

If I could thank Hon. Members for their comments and their queries and, if I may, I will not deal with each one individually but go straight to the crux of the matter, which is simply the confidential nature of this Report and my understanding of the concerns which certain Members of Council have as to why matters could not simply be redacted for a report which would then enable you to see it all.

I think you have got to look at this in the context of what Chambers is: it is a very small organisation, and in round figures it does not reach 40 people. It is divided into four divisions which effectively will give *my* role a division, a civil division, the prosecutions division and then the legislative drafting team.

The Report and its remit was to examine the factors affecting the manner in which HM Attorney General's Chambers discharges its responsibilities, with particular reference to its structures, ethos and working practices, and to make recommendations for strengthening its cohesiveness and improving its performance. As I have advised Hon. Members it is essentially a management tool.

There is no way, in my view, that simply by crossing out or blanking out names, you could fail to identify those areas of Chambers which would be criticised in any shape or form in this Report – it is too small a place, so that will not work, with the greatest of respect to Hon. Members.

I could then suggest to you that I could say that the Report could be redacted in part, so take out for example all areas that dealt with prosecutions, because that is not necessarily a matter which needs to be considered in the context of the second Crown Officer. That is not going to give you much of a report to look at. Similarly for the civil division. That is why the executive summary was then prepared by Mr Wooler, really, to explain to the reader in an executive way – so not as a management tool – the basis upon which he made his many recommendations. As you have seen, Hon. Members, a stock take report was then circulated giving you an update as to where we were going, and where we had reached with reference to implementing his recommendations.

You will have noted, Hon. Members, that out of those recommendations there will be certain matters which have still got to come back to the Legislature, because legislative changes are going to be required to deal with recommendations with reference to the change of the Director of Prosecutions' role.

This is the start of the journey and, with the greatest respect, I do not actually see how I can go about creating a redacted form that is going to be in any way, first, legible and secondly, of any value to Hon. Members.

I have given Hon. Members my assurance that I have read it, it is personal by nature, it will take nobody a moment to identify who it might be critical of. That is why it is a confidential report, as a management tool, to enable me in my appointment to take what steps are necessary to address concerns which were identified. But if it is the view of this Council, I can take it back and redact it, and then, Madam President, Hon. Members can see what is left – but it is not going to be worth reading, I can assure Hon. Members of that.

You have the open executive summary which, as I have said with reference to this matter, clearly identifies his recommendation of a need for a second Crown Officer, identifies his recommendation, and it is upon that recommendation and the identification of that need that this Bill has been brought forward. That is all that I can say Madam President.

Thank you.

The President: Mover of the adjournment to reply.

Mr Braidwood: Thank you, Madam President.

The Acting Attorney General said this is the start of the journey and there will be more things brought back to us for legislation. Madam President, we have had other reports which have been critical of people and have been circulated under confidential cover.

To me it is a matter of principle: if we are looking at legislation we have to discuss all the full facts. I am sorry, this is not the way forward as far as I am concerned in Legislative Council to have an executive summary. As the Acting Attorney General said, there was follow-up report in April/May of 2013, which was his stock take report. I feel that if the Acting Attorney General says if all the names were redacted it would not be worth circulating, then the full Report in its whole entirety should be circulated under confidential cover so all Members can see the full Report.

We have had this before in other cases, we have had reports of other departments, when we have had scrutiny committees who have actually criticised people – it is under 'confidential'.

Madam President, I hope that Members will reconsider and vote for the adjournment until we see the full Report.

The President: The motion before Council, Hon. Members, is that the debate on the Second Reading of this Bill be adjourned until the full Wooler Report is available to Council Members. Those in favour, please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

FOR

Mr Braidwood
Mr Corkish
Mr Downie
Mr Turner

AGAINST

The Lord Bishop
Mr Butt
Mr Coleman
Mr Crowe

The President: We have 4 votes for, Hon. Members, and 4 votes against. (**A Member:** Mr Wild.)

It is most unusual for the presiding officer to have to cast a vote, but I shall have to do so Hon. Members, and I do it in favour of the adjournment in order that all Members can be satisfied that the justification for this new role is convincing.

In that case, Hon. Members, the deliberation of the Bill is adjourned.