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## Jersey General Election 2022

### Comments by Sir Mark Boleat

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#### Introduction

The Jersey Electoral Authority (JEA) is responsible for the conduct of elections in Jersey. The JEA formally came into existence only early in 2022, in effect after the election campaign had started. The authority is required (under para 13(B)(1)(a) of the Elections (Jersey) Law 2002) to report, within six months of the date of the election, to the Privileges and Procedures Committee of the States Assembly on the conduct of the election, including any recommendations for changes to the law. In turn that report has to be presented to the States Assembly. This note is an input to the JEA for its review.

I was a candidate in the election, for deputy in the parish of St Clement, and also was the Leader of the Jersey Alliance Party which fielded 15 candidates. I also have had experience of elections in the UK having served for 17 years as a member of the Court of Common Council of the City of London Corporation including five years (2012-17) as its political leader and having stood in three local elections (in Westminster and Lewisham) as a “paper candidate”, that is a candidate nominated by a party so that there is a name of the ballot paper with no intention of winning the seat or even campaigning.

The comments in this note are personal comments and do not necessarily reflect the views of the Jersey Alliance Party. The paper is not regarded as confidential and may be used by the JEA as it wishes. It will be available on my website <https://boleat.com>.

#### Summary

- In difficult circumstances the election went smoothly with any problems being addressed when they were identified.
- The number and location of polling stations was unsatisfactory.
- The nomination form was far too long and should be greatly simplified.
- The JEA did a number of things including virtual hustings and campaigning and other advice to potential candidates which it was not well qualified to do and which should be discontinued
- The JEA was very slow to publish the full results of the election. This should have been done within two days of the election.
- The JEA website, like those of the Government and the States Assembly, is dire. It is still in pre-election mode and is formatted such that some data is hidden.
- The eligibility to vote requirement seems to have the objective of discouraging people from registering to vote and should be greatly simplified, down to being ordinarily resident on a particular day.
- There should be a closing date for being on the electoral register that is well before the election starts so candidates have certainty as to who is in the electorate and therefore their expenditure limits. The supplementary register is unnecessary if the residence requirements are retained.
- The concept of a regulated period beginning before the date on which nominations are formally announced serves no good purpose should be abolished.

- Expenditure limits should be simplified to cover only promotional activity during the election period.
- The election period – from nominations closing to election day – at 40 days is far too long.
- The “none of the above” concept is flawed, the procedure by which it was adopted was unacceptable and it should be abolished. The reasons for uncontested constable elections should be tackled at source.
- Voter turnout was unacceptably low and efforts to increase it failed.
- In the short-term voter turnout can best be increased by making postal voting easy, in particular by including this as an option in the electoral registration forms.
- Longer term, low voter turnout is a symptom of low trust in government and the States Assembly which in turn partly reflects appalling communication by both parts of the political machinery. Radical improvements in communication and public engagement in the political process are needed.

### The conduct of the election

Bearing in mind that the JEA had been established only early in 2022, that there was a new constitution of the States Assembly with more deputies and no senators and that there had been significant changes in the boundaries of the constituencies such that a majority of electors were voting in a different constituency from that which they were used to, the election went smoothly with no significant issues. The following good points in particular should be noted –

- Bearing in mind the circumstances the JEA staff were very helpful when issues were raised with them, responding promptly and efficiently.
- The process for checking nomination papers was well documented and worked well ensuring that potential candidates would not be prevented from standing because of a minor error on their part.
- The document distributed to electors was compiled and distributed efficiently.

There were of course some minor administrative issues which need to be recognised, including incorrectly giving one candidate a party affiliation which he did not have, incorrect information on officers of parties being circulated to the parishes and at times the risk of the impression being given that JEA was able to determine things that were not within its remit and that its guidance effectively had the force of law. However such issues were quickly addressed.

There were a number of issues where, on reflection, performance could have been better and which need to be borne in mind for the future. Not all of these issues are the responsibility of the JEA and this section avoids as far as possible matters which are legal requirements.

The number and location of **polling stations**, which is a matter for the parishes, is wholly unacceptable. For example, there was just one polling station in St Clement which was ideally placed for people with cars and who lived on the South Coast and could not be worse placed for those living in social housing (to be fair the Constable did arrange transport from Le Squez to the polling station). Some electors were required to vote some way from their home when other polling stations were much closer and it is understood that in St Saviour a number of electors were told to go to the wrong polling station and in some cases had to visit all three before they were able to vote or in some cases not able to vote.

The **nomination form was absurdly long** most of which had nothing to do with the nomination but had all sorts of legal provisions that could have been provided in another way. It also seemed unnecessary for nominators to state the time at which they signed the nomination form. This was an added bit of bureaucracy. I designed a simple form which met the legal requirements to be told initially

that this was not acceptable and even when it was confirmed that it would be legally compliant it was clearly not thought desirable. In the future there should be a much simpler form with all the necessary other information being given separately.

The **virtual hustings were a failure**, being boring for the participants let alone for anyone listening. A number were hijacked by activists who seemed to participate in a number of the hustings and the format was wrong with the same order of speaking, the only rotation being the person who spoke first. This disadvantaged some candidates and advantaged others. In my own case for example it meant I always spoke immediately after Sir Philip Bailhache so I could respond to what he said but he could not respond to what I said. It is no part of a regulator to organise such events but if they do then it needs to be much snappier and with candidates being selected to speak on a random basis not in alphabetical order.

The JEA took it upon itself to give **advice to people considering standing** for example in respect of handling social media. The videos it produced were amateur in design, not helpful and completely missed the main reasons why people are deterred from standing for election, that is an unfavourable risk/reward ratio and the certainty of being subject to considerable abuse. Such communications are best done by people with no official position, for example former candidates. The JEA should confine itself to managing the election not giving advice to potential candidates.

**The JEA was very slow to publish the full results of the election**, indeed not doing so until 2 August, some six weeks after the Election Day, which meant that those seeking to analyse the results or to know the results in detail had to fall back on the *Jersey Evening Post* the day after the election, which itself had one significant error. The JEA press release stated: "The election data could not be published in full until the results of that recount [in St Saviour] were known". This is disingenuous. The recount in St Saviour was not ordered until more than two weeks after the election by which time the results should have been published in full. And even after the recount was ordered there is no reason why all the other results could not have been published. It is understood that the fact that counting was done in constituencies contributed to the delay as inconsistencies had to be reconciled. Some transparency on the reasons for the delay is necessary. Generally, the cause of democracy is not helped when full election results are not promptly published.

The **JEA website is dire**, but to be fair this is exactly in line with the websites of the States Assembly and the Jersey government. The appearance is awful and the website is hopelessly out of date. At the time of writing (13 September) most of the website is still in pre-election mode with advice to candidates on standing and to voters on how they can vote. There is no "results" page. Some results are on the "news" page but have been formatted in a way such that the results for some constituencies have been excluded.

Action was taken, not by the JEA, to **remove a number of posters** which were deemed to be not complying with the appropriate regulations. However, there were numerous other posters that did not comply that were left untouched. For example, in St Clement a majority of the posters of two of the candidates were lower than the stipulated height. A more systematic approach is needed to ensure in compliance with the regulations.

There were new arrangements for **voting by post**, but these were not promoted nearly vigorously enough such that postal voting still very low, 9% of as against 20% in typical UK elections and 70% at the Guernsey general election. This point is covered more separately in the section on voter turnout.

Some necessary **guidance was issued very late** in the day. The Highway Election Advertising Guidelines were issued in May 2022.

## **The electoral law**

The electoral law, the Elections (Jersey) Law 2002, the current version of which came into operation on 20 January 2022, has serious deficiencies. The fact that the law came into operation just one month before the beginning of the newly instituted “regulated period” was itself unsatisfactory.

### **Eligibility to vote**

Paragraph 5 sets out requirements for entitlement to vote -

(1) A person is entitled on a particular day to have his or her name included on the electoral register for an electoral district if on that day –

(a) the person is at least 16 years old;

(b) the person is ordinarily resident in that district; and

(c) the person has been –

(i) ordinarily resident in Jersey for a period of at least 2 years up to and including that day, or

(ii) ordinarily resident in Jersey for a period of at least 6 months up to and including that day, as well as having been ordinarily resident in Jersey at any time for an additional period of, or for additional periods that total, at least 5 years.

Jersey has a serious problem with lack of voter engagement with a turn out that is among the lowest in the world and also a fairly poor level of voter registration. It would therefore seem sensible to have simple and inclusive rules governing who is entitled to vote. Instead Jersey does the opposite with its residence requirements. These are in contrast for example to the position in the UK where all that is needed is to be ordinarily resident on a particular day. It would seem sensible to remove the whole of 5(1)(c).

### **Closing date for registration and the supplementary register.**

Most electoral systems closed the register well before the election date so that candidates know exactly who is entitled to vote and also given that expenditure limits depend on the number of voters the limits are known well before the election date. Jersey allows people to register to vote very close to the day of the election. As a consequence candidates did not know the size of their electorate and therefore expenditure limits until they were formally notified the day before the election, although most candidates had gone to some lengths to estimate the number of voters and plan accordingly. If the period of residence requirements are maintained in the law, then there seems no justification at all for having the supplementary register. And even if the residence requirements are removed it would still be sensible to have a deadline for registration well before the election begins so candidates have certainty and the election authorities can get on with the task of organising the election without having the distraction of the supplementary register. For UK general elections the deadline for registration to vote is 12 working days before the election; in Jersey it is 5 working days.

### **Regulated period**

The Public Elections (Expenditure and Donations) (Jersey) Law 2014, like the Elections (Jersey) Law, 2002 came into operation on 20 January 2022. This introduced the concept of a four-month regulated period before the date of the general election. Expenditure on goods or services used to support a candidate or to prejudice the prospects of another candidate during this period counts as election expenses. This is a bizarre provision because there are no candidates until nominations have formally

been closed some six weeks before the election. Furthermore “election expenses” are defined as expenses incurred at any time before the poll for that election –

(i) to promote or procure the candidate’s election, or

(ii) to prejudice the electoral prospects of another candidate at the same election.

While the provisions are identically worded in respect of individual candidates and political parties the effect is wholly different between the two groups. It can legitimately be argued, and indeed this was the interpretation, that the sole purpose of a political party is to get candidates elected and therefore all expenditure by a party at any time counts as election expenses. By contrast, sitting members who stand as independents, who actually spend much of their time doing things and spending money designed to secure their election, are not caught in any way by such a provision.

The purpose of having a regulated period that is different from the formal campaign period is not at all clear. It serves no useful purpose and should be abolished. And the provisions in relation to expenses need to be simplified such as to cover only expenditure used during the campaign period on promotional material. This would allow parties and indeed individual candidates to be much better prepared for an election. For example, the interpretation of the legislation meant that the Jersey Alliance was prevented from doing polling as this would be deemed to be counted as campaign expenses.

### **Election period**

The period between the closing date for nominations and the election – 40 days – was far too long. There is no exact comparison with the UK general election as nominations are published on the day nominations close, but the period between that day and election day is just 28 days.

### **None of the above**

Voters, and particularly Jersey voters, do not like change and had to face significant change in the 2022 election. Some of this was necessary, in particular progress toward equalising the deputies/population ratios. When this was combined with the removal of senators and much bigger electoral districts many people did not understand the voting system. The decision was then taken to add a further complication, that is the ability to vote for “none of the above” in the event of an uncontested election. This major constitutional change was proposed in an amendment on 12 November 2020 and after a quick discussion in the Assembly and a vote of 25 for and 23 against became law three weeks later on 2 December

It is understood that the concept was introduced because uncontested elections were thought to be undemocratic. This is simply not the case. In all democracies many elections are not contested in practice. Where there are political parties then it is their normal custom to try to secure “paper candidates” in constituencies where they know they cannot win so as to give the impression of contesting the election. The paper candidates do no campaigning and on the odd occasions when by accident they win they are appalled.

Where there are no parties then uncontested elections are most likely to occur either when the incumbents are standing again and considered to have done a good job, or where there is no incumbent one candidate is seen to be so well favoured to win the election that those seeking election choose not to stand or when the role is unattractive. “Paper candidates” do not work in this environment. My personal experience supports this. I first stood in a by-election in the City of London in 2002 and faced opposition from one other candidate who thought, like me, that he had a good chance of winning. After I won the election I and my fellow two sitting members were not contested

for several more elections because those seeking election realised that we were doing a very good job in our constituency and could not be defeated. People seeking election therefore sought constituencies where either the incumbents were not thought to be performing well or where some of the incumbents had decided not to stand. When I stood down as a councillor the seat was again contested.

In the Jersey context where constables are considered to have done a good job they are often not contested and in previous elections where all the sitting deputies stood again and were considered to have done well, they were often not contested. By contrast senatorial elections were always contested.

None of the above” introduced an element of farce into the elections with indeed a strong campaign in two constituencies for none of the above. The concept allowed people to mount a campaign for “none of the above” which is practice was simply attacking people who had put their names forward – official encouragement to negative campaigning. This makes a mockery of democracy. As the Privileges and Procedures Committee rightly pointed out –

The notion that uncontested Connétables should also be on a ballot paper, of 1 name, and that that will somehow redress this particular anomaly is an absurd exercise in window dressing likely to fool or satisfy no one. It could also be counter-productive putting off contenders from standing; after all, to lose out to another candidate is unfortunate, however, losing out to nobody at all is a complete humiliation.

The advice to anyone facing an uncontested election in future is to arrange for a paper candidate to stand against them, that is somebody wholly unsuitable for office who would do no campaigning. And the message to those who do not like uncontested elections is to stand for election.

It is not known why people voted for “none of the above” but if the parliament is seeking to make a mockery of the political process it is not surprising if the public join in.

And from a constitutional point of view it is thoroughly bad practice for a major change in the constitution to be introduced with no consultation, no proper analysis and to become law within five weeks of being proposed.

“None of the above” should be removed from the electoral law. It may be argued that “None of the above” was popular with the electorate – and indeed secured 43% of the vote in St Saviour and 27% in St Brelade. But the position of constable is an important one and elections to the position should not degenerate into some form of entertainment.

It is significant that all the deputy seats were contested unlike in previous elections. This probably partly reflects that there were no single seats with a full slate of incumbent members – the circumstances that are most likely to lead to an uncontested election.

There is a history of uncontested constable elections – even where there is no incumbent. There were eight uncontested constable elections in 2022, 11 in 2014 and 2018 and nine in 2011. This perhaps suggests that there is a more fundamental issue with the position of constable. This issue is outside the scope of this paper but not irrelevant to it. Accordingly the appendix briefly discusses the issue.

### **Voter turnout**

Low voter turnout should be a subject of major concern in Jersey and given that the target for increasing turnout was not only missed but turnout fell the issue merits detailed consideration.

On voter turnout Jersey sits at the bottom of the league table. The Jersey Better Life Index 2021 commented -

Voter turnout in Jersey (43.4% in the May 2018 States Assembly elections) was lower than in all OECD member and partner countries. Across the OECD the latest average voter turnout rate is 69%.

Disaggregating the countries into regions, Jersey was placed 395 out of 405 regions.

Guernsey comes near the top of the league table with a turnout of 79.7% in its 2020 election. And less it be thought that this is because there was a single island-wide election, under the previous constituency-based system the turnout was 71.9% in 2016 and 71.0% in 2012.

Recognising that the position was not acceptable, the States Assembly implemented a digital and public engagement strategy. The first target was to increase voter turnout to 50% in the 2022 elections. A detailed set of tactics was listed to achieve this result.

Turnout was 41.6%, not only nowhere near 50% but two percentage points lower than in the 2018 election. Only in one election since 2005, that in 2014, has turnout been lower. The number of people who voted was a little over 25,000, fewer than in 2008 notwithstanding an increase in the population of 8,000 since then.

More people voted in the 2020 Guernsey election than in the 2022 Jersey election even though Jersey's population is 60% higher. In the UK General Election in December 2019 the turnout was 67.3% and in the Isle of Man 2021 election it was 50.7%.

Not only is turnout low but so is voter registration. Only 75% of people eligible to vote registered to do so, so only 31% of those eligible to vote actually voted. There were significant variations between the parishes, with much better figures in the country parishes. In St Mary 96% of those entitled to vote registered and the turnout was 52% so half of those entitled to vote did so. In St Helier Central only 57% of those entitled to vote registered, there was a 29% turnout so only 17% of those entitled to vote did so. (Note: these are figures from the JEA but it is not clear how it has been possible to calculate eligible voters given the residence requirements. It is possible that the number of those entitled to vote is overstated in St Helier which is likely to have a higher proportion of residents disqualified from voting because of the residence requirements.)

The low level of registration is not an issue confined to Jersey. Jersey actually scored better than Guernsey in this respect – an estimated 75% against 63%, although lower than the UK figure which is over 80%.

So what is the real problem? Evidence helps. The 2018 JOLS asked those who did not vote why they did not. 49% said that they deliberately decided not to vote, 25% said it was because they did not understand the Jersey political system, and 17% said it was they could not get to the polling station. Of those who said that they deliberately decided not to vote 39% said "My vote won't change things in Jersey", the same percentage said "Don't trust the Jersey political system" and 33% said "Not interested in the election". When asked what would make them more likely to vote 55% said being able to vote online.

The tactics detailed in the digital and public engagement strategy were at best vague and at worst irrelevant, such as "constantly reiterate the opportunities to influence change", "consolidate all our

online content, making information more accessible” and “developing informative and engaging content to reach new audiences “.

To the extent that tactics meant anything they clearly did not address the reasons people give for not voting so it is hardly surprising that they were not successful.

Increasing voter turnout is possible, but a very different approach is needed. The “quick win” is to increase the number of people who vote by post. On this issue, learning from Guernsey would be a good start. 67% of Guernsey voters voted by post, no doubt contributing to the high turnout figure. Guernsey achieved a tenfold increase in the number of postal votes between elections. Perhaps ask them how they did it?

In the 2018 survey when asked what would make them more likely to vote 55% said being able to vote online. This is a tempting thought – but it was not going to happen and may well not happen for the next election. The security issues are difficult to overcome and the cost of building the necessary systems and database could well be excessive. Online participation works well where there are many regular activities rather than one every four years.

The emphasis over the next four years should be increasing voter registration and registration for postal voting, for example sending every elector a form pre-filled with all the necessary information that simply requires a signature. But this will all be pointless unless the issue of trust is tackled.

It is noted that the 2022 JOLS asked a number of questions relevant to voter turnout. The results, which are expected to be published in December, will be very helpful in understanding the nature of the problem and how it can be addressed.

### **Trust in government**

The reasons that people gave in the JOLS for not voting relate to the low level of trust in Jersey’s political system. It is useful here to quote the words of the outgoing Governor, Sir Stephen Dalton, in his valedictory address to the States Assembly –

People who send you here to represent them, to make those big decisions for them, do need to understand the reasons why you have made those decisions. Even when they do not necessarily always agree with them. As leaders of the community, you need to explain your decisions and to take the people with you otherwise they feel disconnected and disrespected. Communications of any form should never be an afterthought. It should be considered in parallel with any change of policy or new legislation.

This is diplomatically stated. It could be better summarised as –

You have been hopeless in communicating your decisions.

Sir Stephen also made some wise comments on the apparent pre-occupation with using social media soundbites to communicate –

During the many Emergencies Council meetings on COVID I remember being told that the messaging going out was being effective because there had been 1,376 hits on the relevant Twitter or should that be tweet? I put it to you that how many hits there are on Facebook or Twitter is not particularly useful in measuring the effectiveness of your communications. Why do I raise that issue here? Because, as I said a few minutes ago, many people have asked me, as I have gone around the community: “How do the States make that or this decision?” A



functioning democracy relies on the people, the voters understanding why their representatives have made this law or that policy so that they can understand the rationale and not be left wondering why.

The problem of poor government communication in Jersey seems built into “the way we do things”. The Government and the Assembly have over many years been slow and poor in communicating. Just a few examples –

- As already noted, the Jersey Electoral Authority took over six weeks to publish the full results of the election, including turnout figures, on its website and it did so in such a way that some of the data is not accessible. And its website still has advice for those seeking to stand as candidates.
- The most recent minutes on the States Assembly website are for 10 February.
- Population policy is of great interest to the people of Jersey. A “Common Population Policy” was adopted by the Assembly in February. It cannot be found on the Government website, nor can the new Government’s proposed mini-budget.

Returning to the point made by Sir Stephen Dalton, the Government website is appalling, particularly in respect of policy issues. I have attempted to understand who and why took the decision on what should be included in the new hospital and why it should all be on one site. It may be that wading through numerous papers would give the answer but that should not be necessary. The fact is that the important Government policy documents are not on the Government website but rather are on the States Assembly website, carefully concealed by being referred to by numbers rather than names.

Related to this point, propositions are put to the States Assembly with little or no analysis of the impact on those affected – something that is standard practice in most jurisdictions. This leads to poor quality policy making and makes it difficult to explain the policy, so in the words of Sir Stephen people “feel disconnected and disrespected”.

Four immediate measures to increase trust in government are –

- The Jersey political system to be better explained in schools and to newcomers to the Island. The absence of brief factual literature makes this difficult. To address this issue I have written a guide to the political system, which is on the Jersey Studies section of my website <https://boleat.com>.
- All propositions to be accompanied by supporting evidence so as ensure a more informed debate.
- All policy papers to have a meaningful summary.
- The existing websites should be properly managed rather than the present practice of replying to criticisms by saying “we have plans for a new website”.

## Appendix – the role of Constables

The constables play a vital role in Jersey as do the parishes that they represent. The constables have been ex officio members of the States Assembly for many centuries and indeed they are the last survivors of the original three “States of Jersey”, that is the rector, the jurats and the constables.

However, there is clearly a problem when many elections for constable, even when there is no incumbent, are uncontested, and it seems that in some parishes it has been difficult to get candidates of sufficient quality to stand. Significantly, eight of the constable elections were uncontested in 2022 and all but one were uncontested in both 2014 and 2018. The introduction of “none of the above” is not the answer; it is a poor attempt to treat the symptoms of the problem.

Most constables probably regard their role in the Assembly as being secondary to their role as head of the parish. The Clothier Report on the machinery of government, commented on this -

We were impressed by the evidence of many of the Connétables to the effect that they placed their work in the Parishes at the head of their priorities and we were left with the impression that some of them felt somewhat uncomfortable with their position in the States. Indeed, an analysis showed that in general the Connétables asked fewer questions, introduced fewer propositions and spoke on fewer occasions than the Deputies for their respective Parishes.

In the new States Assembly the 12 constables play a small role. Although one holds the important position as Chair of the Privileges and Procedures Committee, none is a member of the Council of Ministers, just two are assistant ministers, and only one serves on a scrutiny committee.

The fact that constables continue to sit in the Assembly leads to over-representation of the country parishes exemplified in particular by the parish of St Mary which with a population of just 1,800 has its own representation in the Assembly.

There are several different approaches to this issue.

The first, and default position, is to do nothing and to hope that the situation rectifies itself.

At the other extreme, constables could lose their seats in the Assembly. The Clothier Report favoured this option, suggesting it could enhance the role of constables -

Many witnesses told us how busy the Connétables are in their Parishes and how excellent and useful was their work there. We believe that this role could be developed and its dignity enhanced. If it were, and if the position no longer carried with it the requirement to be part of the States Assembly, we believe that more candidates for the post of Connétable could well come forward.

There are options that lie between these two extremes. For example, constables could remain ex officio members of the States Assembly but without the right to vote but with a right to speak and also to hold office as minister, assistant minister and chair or member of a panel with the same rights as other members. A natural consequence of this arrangement is that constables, unlike other members of the Assembly, would not be expected to attend meetings of the Assembly unless they wished to speak or unless the assembly was discussing a matter with which they were connected as a minister, assistant minister or member of a committee. With this option those constables that wished to concentrate on their parish work could do so while those who wished to play a fuller part in the Assembly or Government could also do so.

It would also be appropriate to give a higher profile to the Comité des Connétables which brings together the constables of the 12 parishes. This meets regularly to discuss matters that affect all parishes such as rates, policing and refuse collection. But it could also play a wider role akin in some respects, functionally if not constitutionally, as an “upper house” able to review and comment on key issues

Providing for people to vote for “none of the above” was not the appropriate way to address the real issues around the role of constables and uncontested elections. The issue merits proper analysis and consultation, a prerequisite for securing a more satisfactory position.