

STATES OF JERSEY



ELECTORAL COMMISSION: ESTABLISHMENT

Lodged au Greffe on 31st January 2011
by the Deputy of St. Mary

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

- (a) to agree that an independent Electoral Commission should be established in Jersey to investigate and report on all aspects of the composition of the elected membership of the States Assembly and the election and voting processes for such members, with the guiding principles of the Commission's investigation to be –
 - (i) the need to secure the greatest possible acceptance by the public of any new arrangements proposed, and
 - (ii) the need to ensure that the views of the electorate are reflected as effectively and as fairly as possible in the make-up of the States;
- (b) to approve the terms of reference of the Electoral Commission as set out in Appendix 1;
- (c) to agree that the Electoral Commission should be comprised of a Chairman and 2 other members from outside the Island and of 3 Jersey residents, all with relevant skills and experience;
- (d) to request the Privileges and Procedures Committee to take the necessary steps to identify, through a process overseen by the Appointments Commission, the proposed membership of the Commission for subsequent approval by the Assembly on a proposition lodged by the Privileges and Procedures Committee;
- (e) to agree that on receiving the recommendations of the Electoral Commission, if the Commission has recommended one or at the most, 2, complete packages of election reform (excluding such matters as could be classed as administrative improvements, for example matters pertaining to voter registration), the States shall put the option or options to the electorate in a referendum and, in the case of 2 options being put to a referendum, there shall also be put a third option which would be “neither option is acceptable to me” and to further agree that no option shall be pursued further by the States unless it is supported by at least 60% of those voting in the referendum;
- (f) to agree that the Electoral Commission shall be appointed no later than 30th September 2011 and that it shall be requested to endeavour to complete its work no later than 31st December 2012.

DEPUTY OF ST. MARY

REPORT

Introduction

The purpose of elections is to arrive at a representative Assembly which accurately and fairly reflects the wishes of the people, so far as this is possible. Anything less than this is a deep failure. It leads to a split between governed and States and it shows lack of respect for our people.

In the recent debates on reform of the composition of the States, speaker after speaker, from all shades of opinion in the Assembly, called for an electoral commission as the way forward. Most of us, I believe, are agreed that we cannot reform ourselves in a comprehensive and resolute way.

The process of the first Sitting of the year was tellingly described by one member as “piecemeal – a complete mess”. It does not enhance the reputation of the States. I should add that in my view, this is not an occasion for breast-beating. It is just a fact that this particular issue is not amenable to being settled by ourselves.

There are some debates where the States seems to genuinely try to come up with the best answer. But on the issue of reform the States gives the appearance of various factions all acting in their own self-interest.

The political correspondent of our esteemed local newspaper wrote this in his “A Week in Politics” column (JEP 18th January 2011, page 14):

“Senator (Sarah Ferguson) proposing to retain four Senators’ seats. A St. Brelade Deputy (Angela Jeune) proposing to retain a St. Brelade Deputy’s seat. A Deputy from the right (Eddie Noel) proposing to cut seats usually held by left-leaning Deputies from town. A left-leaning Deputy from town (Trevor Pitman) proposing to cut a seat usually held by a right-leaning Deputy from the country. A left-leaning Deputy from the country (Montfort Tadier) proposing to cut seats usually held by right-leaning Deputies from the country. Another Senator (Freddie Cohen) proposing to put off cuts to Senatorial seats with a referendum. A left-leaning Senator (Alan Breckon) proposing to add a question on the right-leaning Constables to the referendum.”

There is really nothing to add, is there? Opinions may be divided on whether or not it is true, but the point is that it looks as if it is true. And this is inevitable, given the topic. And yet reform is essential, so we have to find a way forward to address the issue.

The present electoral system

The present electoral system is manifestly unfair. The mandates of the Deputies differ hugely, the mandates of the Constables even more so. Furthermore, these variations in mandate ensure that country-dwellers are systematically over-represented, while those who live in the bigger and more populated parishes are under-represented. Just how unfair the present system is can be seen from the charts in Appendix 2.

And if you compare, as people do, the number of voters who vote for Senators with the number who vote for Deputies in the smaller parishes, then you can see another

unfairness built into the system. I am not saying that different routes into the States are necessarily wrong, I am just pointing out the problems which we are failing to address.

PPC were thus quite right when they wrote in their report accompanying P.72/2009 that: “PPC believes that the above imbalance in membership is unsustainable and must be addressed.” (P.72/2009, paragraph 2.13)

Comprehensive versus piecemeal

The reform debates of the last year or so have been rightly criticised from within and without the States Chamber.

The piecemeal approach has led to hours and hours of debate and more heat than light. The linkages and unintended consequences of different pieces of reform can only be addressed with difficulty, if at all within the confines of a States debate.

A case in point is the recent decision to reduce the number of Senators from 12 to 8. We have chosen to reduce the only class of member which is truly proportional, the class for which the greatest number of people vote, and the class of member which we know to be the most popular with the public.

This has raised serious questions of whether that decision was properly reached, the piecemeal nature of the process and the relationship between the States and the people. The backlash we are now witnessing was entirely predictable and focuses on all these points.

The Commission has to have a comprehensive scope. There is simply no point in looking at this aspect or that aspect of our electoral system. To attempt to do so reignites all the old accusations about vested interests which we are trying to leave behind. The Terms of Reference list all the aspects which should be considered by the commission.

The need for the Commission

The call for a Commission is quite understandable in that: (a) what we have is demonstrably unfair; and (b) the States cannot do major reform of its own composition. I can think of 2 main objections to the setting-up of a Commission along the lines of this proposition.

The first possible objection is: “but haven’t we had Clothier already?” Three observations. Firstly, Clothier was 11 years ago. It is likely that public opinion has shifted since then. Secondly, the election process was not the major focus of Clothier. He reviewed the entire machinery of government – electoral reform was just a part of the project. I attach at Appendix 3 the terms of reference of Clothier, to emphasize the huge scope of that review.

And thirdly, the MORI poll of 2006 showed clearly that Clothier’s solution of Deputies elected on a parish-based system was not a greatly favoured option amongst voters. You can argue that that opinion may have changed, or is liable to change as part of a wider debate about reform, but the fact remains that that is the latest data which we have. The relevant chart, as reproduced by PPC in the report accompanying P.72/2009 is reproduced at Appendix 4. (P.72/2009, paragraph 3.3.3)

The second possible objection can be phrased, indeed has been phrased, as: “we do not want someone from the UK telling us what to do”. However, it is clear to me that the review has to be independent and seen to be independent. That has to mean inviting those with demonstrably no axes to grind or prejudices, and with demonstrable authority and expertise to come and help us find the right way forward.

Selection of Commission

The process of selection and approval outlined in this proposition is designed to achieve this independence, and also the acceptance of the public and of States members. The 3/3 split between local and non-local commissioners is designed to ensure creative tension, in that a majority of one will not normally be sufficient to decide points, and also ensures that the group is not too large. It is designed also to provide equality of weight between locals and non-locals as the task is carried out.

The process of the review and the referendum

The idea of a review is that it listens, sifts, does the background reading, gathers and appraises evidence, and recommends. In this case there are 2 safeguards. One is that the Panel has membership from the Island. The second is that any proposal emerging from the review has to be approved by a referendum.

More than that, the bar for the referendum has been set deliberately high, at 60%. Thus the Panel will have to ensure that its work takes into account the “need to secure the greatest possible acceptance by the public of any new arrangements proposed”, as stated in the preamble to the proposition.

What we surely want to see is a process of debate and discussion which itself will lead to a clearer understanding of the issues, a clear consensus on the way forward and consent of those who still do not agree, that at least the process of arriving at the new way forward has been robust, transparent and fair.

This is a far cry from the present process of reform which has been very divisive and is regarded by those inside and outside the Chamber as unsatisfactory, due to the piecemeal nature of each debate and due to the vested interests which are involved or seen to be involved.

The option in the proposition for the Commission to recommend 2 packages allows for the possibility that they genuinely find that they cannot in theory or acceptability put a cigarette paper between the 2 options, and so they have the option of taking the exceptional step of putting forward 2 packages.

Conclusion in a nutshell

The present electoral system is manifestly unfair. The States cannot tackle the major reform required themselves. There is a need for an independent review of Jersey’s electoral system as a whole. A referendum is necessary to endorse or reject, as the case may be, any proposal resulting from the review, and the existence of such a referendum is itself the guarantor of a robust and fair process. In the end it is the public who will decide how they elect their representatives.

Financial and manpower implications

The cost of the Carswell Review was £158,000, the budget was £200,000. The major items were the fee of Lord Carswell and the cost of seconding an officer from the Greffe for the year of the review. I would suggest that the scope of this review is comparable. The only difference is that this proposition asks for 3 independent people from the UK to be commissioners.

An indicative cost, based on the Carswell Review and the need to add fees for 2 additional persons is £260,000. If the Assembly sees the need for this step, and if it turns out that there are no under-spends to use as a funding source, then members might like to consider the words used in the report of P.46/2009 which set up the Carswell Review: "For 2009 the monies can be found within existing resources". In other words, if this is seen as necessary, then the will is there, and the money can be found.

I take the view that restoring confidence in the fairness of our voting system is a task of fundamental importance, and we have to do what it takes. It is as important, in a different way, as hospital beds. We are talking about the renewal of the composition of the Island's representative assembly, the renewal of the contract between the people and their government.

A note about the timing and lodging of this proposition

As I remember, the Minister for Treasury and Resources said in the Assembly on Wednesday 19th January that he would lodge a proposition for an Electoral Commission if no-one else did ('within 2 months' was the phrase I think he used).

On the morning of Thursday 20th January this had moved on to a full exposition of what his proposal would be. It would focus only on the Deputies. And it would be lodged very soon, if not immediately.

It is clearly in the best interests of the Island that the search for the best electoral system for the Island is not arbitrarily limited in this way. I have therefore lodged this proposition more speedily than I would have liked. I have run it past some backbenchers who have a track record of interest in reform, and it has gone to all members of PPC who have been invited to comment as individuals.

However, most unfortunately, PPC have not discussed this proposition as a Committee. If PPC's discussions lead to suggestions for major change or raise issues which cannot be handled via amendments, then I will consider these when that time comes.

ELECTORAL COMMISSION TERMS OF REFERENCE

1. The Electoral Commission shall consider all the following areas –

- Classes of States member
- Constituencies and mandates
- Number of States members
- Terms of office
- The election process
- Voting systems
- Voter registration

and all other issues arising in the course of the work of the Commission which are relevant to the needs stated above.

2. The views of the public in Jersey should be sought and all such views taken into consideration.

Formal meetings and hearings of the Commission should be held publicly in Jersey unless the Panel believes that there are reasonable grounds for holding a meeting or hearing *in camera*.

The content of all written submissions to the Commission will be made available to the public, unless the Commission believes that there are reasonable grounds for non-disclosure of a submission or part of a submission, and should be attributed unless the submitter explicitly requests that a submission shall be non-attributed and the Commission accepts the reasons for such a request.

3. The Electoral Commission shall review existing studies and research and conduct further research as it sees fit.

4. At the conclusion of its investigation, the Electoral Commission shall put forward one complete package, or at most 2 complete packages, of how the elections to the States should operate in Jersey, with this package or packages being capable of commanding the support of the public, and only to desist from this duty if in all conscience it finds itself unable to do so.

APPENDIX 2

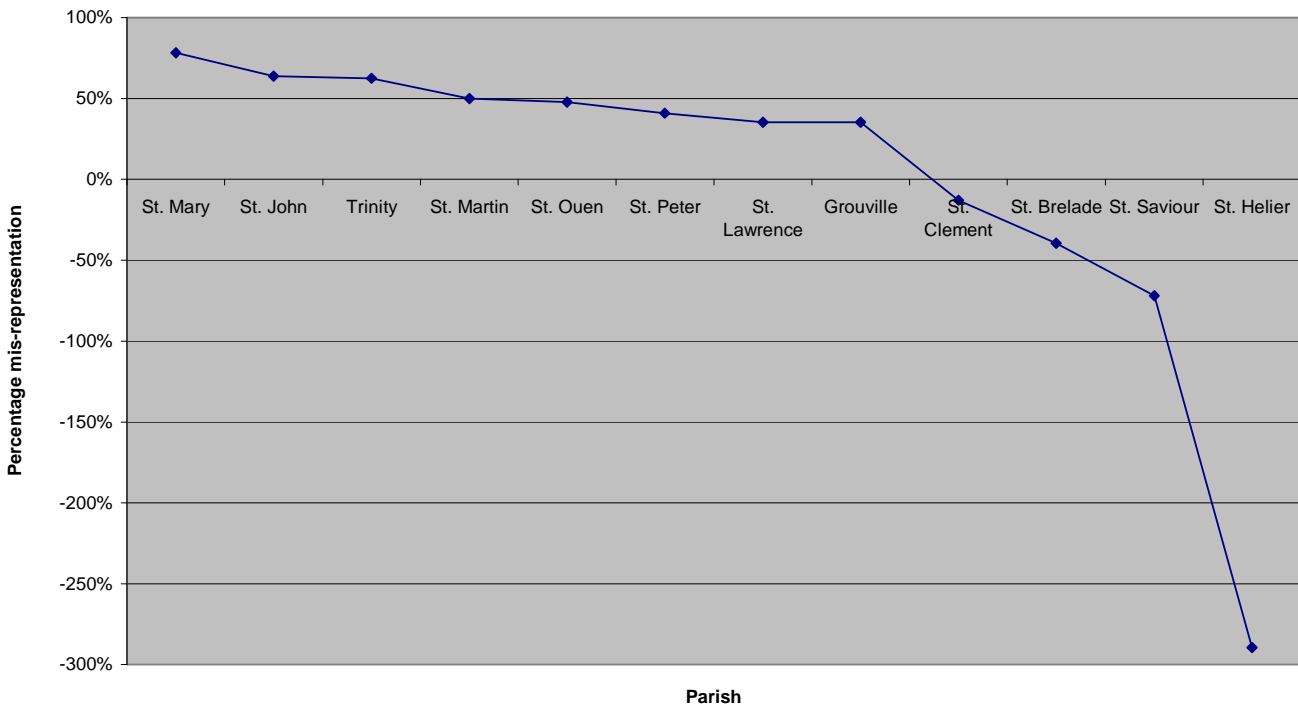
The first chart shows the degree to which the representation offered by the Constables is proportionate. Of course it is not proportionate: the residents of St. Helier are vastly under-represented, as are those of St. Brelade and St. Saviour.

The second chart shows the unfairness of the present electoral arrangements even when the Deputies are added in.

Comparison of over/under-representation

Chart 1 CONSTABLES ONLY – AS NOW

Under / Over-representation compared to perfect proportionality (constables only)



Note: the scale of this chart is larger to accommodate the huge range in representation.

Chart 2 CONSTABLES AND DEPUTIES – AS NOW

Under / Over-representation compared to perfect proportionality (constables + deputies as now)

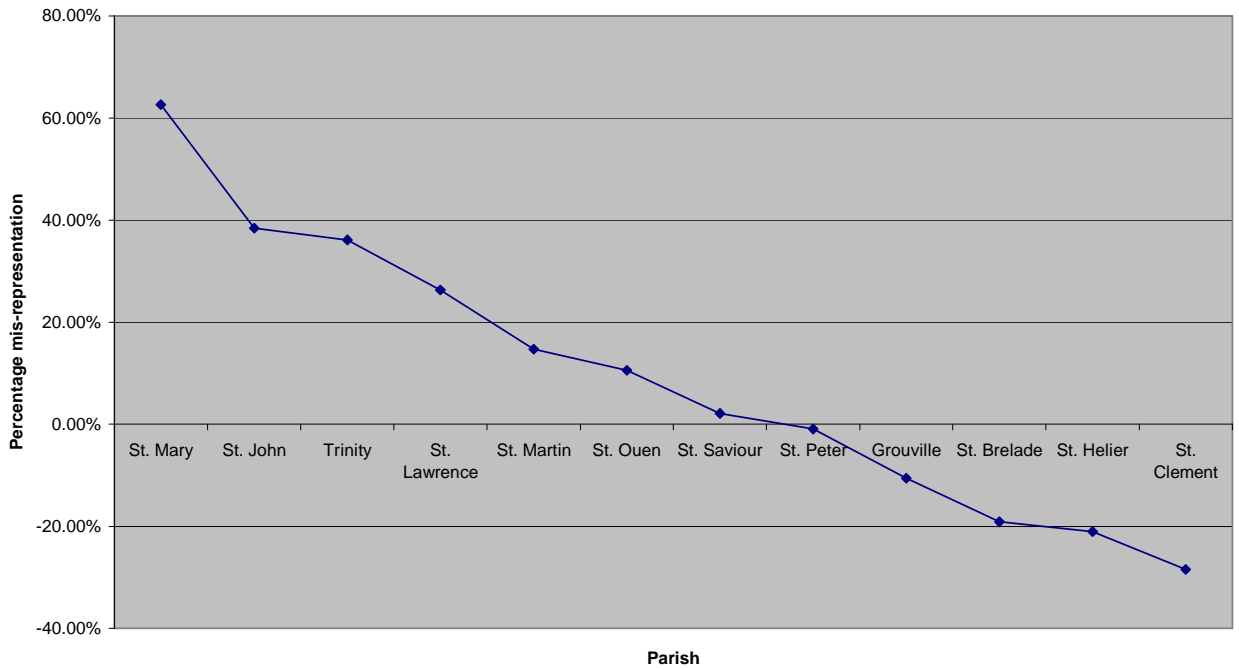


Chart 3 CONSTABLES ONLY – AS NOW – ELECTORATE PER CONSTABLE

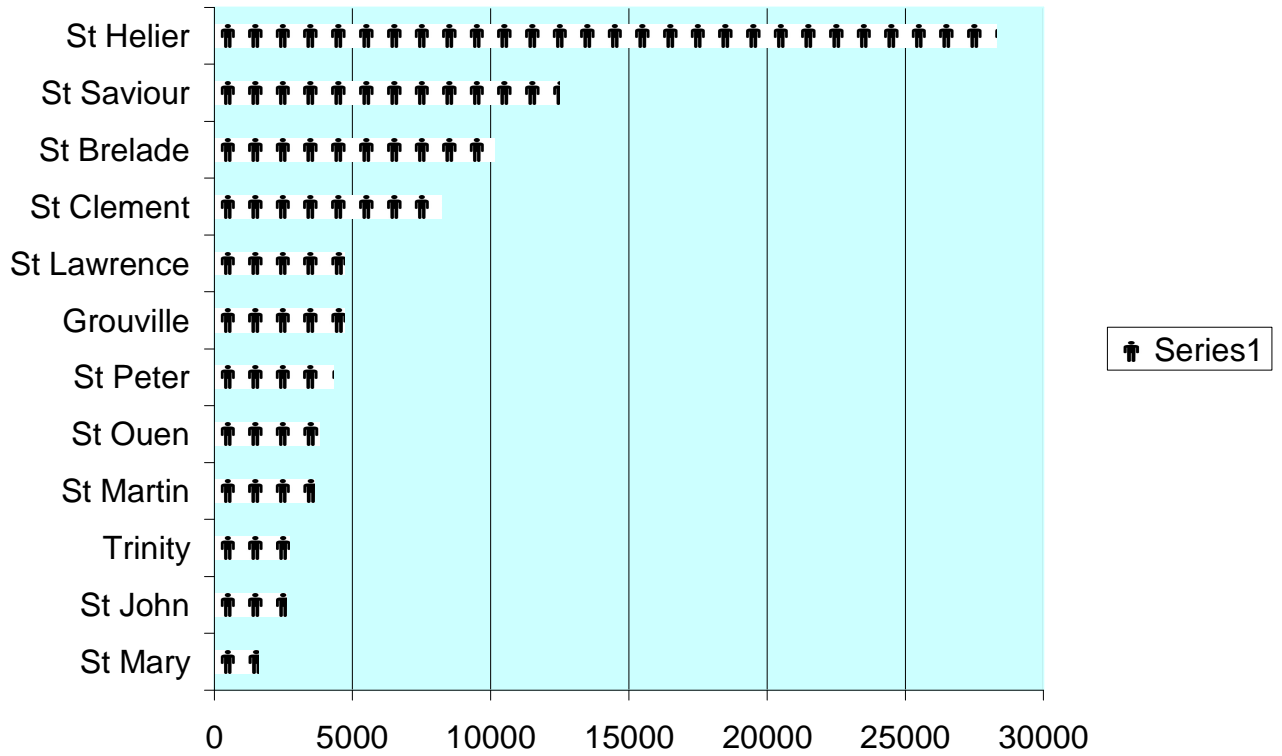
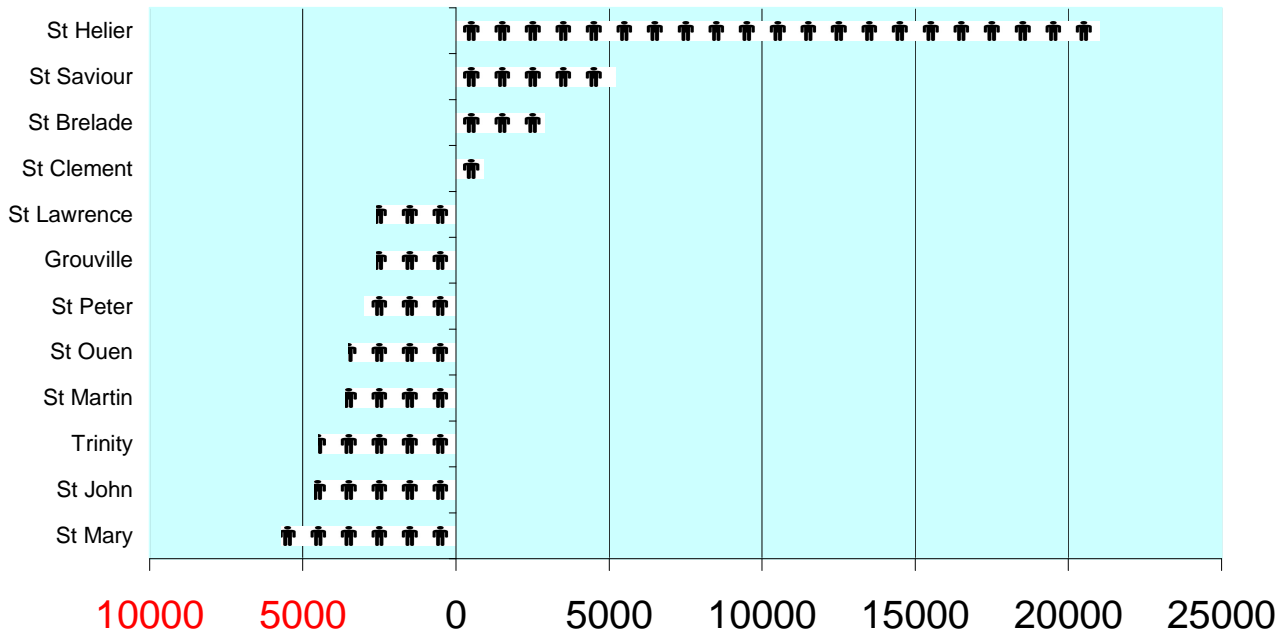


Chart 4 CONSTABLES ONLY – AS NOW – OVER- AND UNDER-REPRESENTATION

Disproportionality of representation for constables



People to the left of the line have representation even though they don't exist.

People to the right of the line have no representation though they exist.

NOTES TO CHARTS

- All population figures are from the 2001 census. The population is estimated to have increased to 91,800 by 2008 ('Jersey in Figures, 2009', page 33). If anything I believe this will have made either no difference to these proportionality figures, or if anything, will have increased the under-representation of the urban areas.
- Graphs 1 and 2 show under- and over-representation by comparing the number of constituents per representative (for each parish) to the number of constituents each representative should have according to the principle of proportionality. For example, as regards Chart 2 above:

Currently there are a total of 41 parish representatives (29 Deputies and 12 constables). According to 2001 census figures, the total population was 87,186. If each member represented the same number of constituents, there should be 2126 ($87,186 \div 41$) people per representative.

However, St. Mary has in fact 796 people per representative – a difference of 1,332. This means that there are approximately two-thirds ($1332 \div 2128$) fewer people per representative than there should be. St. Mary is over-represented by about two-thirds: 62.59%.
- Charts 3 and 4 show the same data in a different way.

DATA FOR CHARTS

The tables on which the charts are based are copied below.

CHART 1

CONSTABLES ONLY			
Parish	Parish Population	Number of Connétables	percentage over (or under) proportionate, per representative
St. Mary	1,591	1	78.10%
St. John	2,618	1	63.97%
Trinity	2,718	1	62.59%
St. Martin	3,628	1	50.07%
St. Ouen	3,803	1	47.66%
St. Peter	4,293	1	40.91%
St. Lawrence	4,702	1	35.28%
Grouville	4,702	1	35.28%
St. Clement	8,196	1	-12.81%
St. Brelade	10,134	1	-39.48%
St. Saviour	12,491	1	-71.92%
St. Helier	28,310	1	-289.65%
Totals	87,186	12	
Average			7,266

CHART 2

CONSTABLES AND DEPUTIES – AS NOW – PROPORTIONALITY				
Parish	Parish Population	Current number of Deputies + Connétable	population per representative	Percentage deviation from average
St. Mary	1,591	2	796	62.6%
St. John	2,618	2	1,309	38.4%
Trinity	2,718	2	1,359	36.1%
St. Lawrence	4,702	3	1,567	26.3%
St. Martin	3,628	2	1,814	14.7%
St. Ouen	3,803	2	1,902	10.6%
St. Saviour	12,491	6	2,082	2.1%
St. Peter	4,293	2	2,147	-0.9%
Grouville	4,702	2	2,351	-10.6%
St. Brelade	10,134	4	2,534	-19.1%
St. Helier	28,310	11	2,574	-21.0%
St. Clement	8,196	3	2,732	-28.5%
TOTALS	87,186	41		
Average			2,126	

CHART 3

Parish	2001 population
St. Mary	1,591
St. John	2,618
Trinity	2,718
St. Martin	3,628
St. Ouen	3,803
St. Peter	4,293
Grouville	4,702
St. Lawrence	4,702
St. Clement	8,196
St. Brelade	10,134
St. Saviour	12,491
St. Helier	28,310
Total:	87,186

CHART 4

Parish	2001 population	difference in people from proportional	
St. Mary	1,591	-5,675	These are all people who have representation even though they don't exist.
St. John	2,618	-4,648	
Trinity	2,718	-4,548	
St. Martin	3,628	-3,638	
St. Ouen	3,803	-3,463	
St. Peter	4,293	-2,973	
Grouville	4,702	-2,564	
St. Lawrence	4,702	-2,564	
St. Clement	8,196	930	These are all people who have no representation though they exist.
St. Brelade	10,134	2,868	
St. Saviour	12,491	5,225	
St. Helier	28,310	21,044	
			(if we only had constables)
TOTAL	87,186		
AVERAGE	7,266		

TERMS OF REFERENCE FOR THE CLOTHIER REVIEW

To consider whether the present machinery of government in Jersey is appropriate to the task of determining, co-ordinating, effecting and monitoring all States policies and the delivery of all public services;

including –

- the composition, operation and effectiveness of the States Assembly;
- the composition, operation and effectiveness of the Committees of the States;
- the role and respective responsibilities of the States, the Committees and the Departments in achieving an efficient and effective strategic and business planning and resource allocation process;
- the role of the Bailiff;
- the transparency, accountability and democratic responsiveness of the States Assembly and Committees of the States; and
- whether the machinery of government is presently subject to checks and balances sufficient to safeguard the public good and the rights of individuals;

but excluding –

- the constitutional relationship between the Bailiwick and the United Kingdom; and
- the constitutional relationship between the Bailiwick and the European Union;

and to make recommendations to the Committee on how the present machinery of government could be improved.

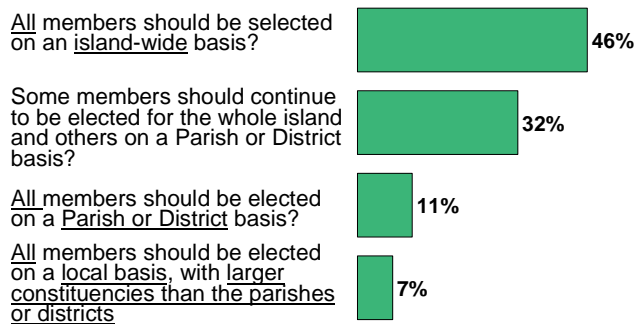
CHART SHOWING VOTER PREFERENCES FOR DIFFERENT CONSTITUENCIES – MORI 2006

Here is the chart from page 12 of the report accompanying PPC’s P.72/2009.

3.3.3. *Type of constituencies*

Chart 20 - Constituencies

Q *At present, some members are elected by the whole island, while others are elected on a Parish or District basis. Do you think that:*



Base: 1,295 Jersey residents aged 18+, interviewed by telephone, 20 July – 24 September 2006 Source: Ipsos MORI

It can be seen that those preferring that “All members should be elected on a Parish or District basis?” as put forward by Clothier, total just 11% of the 1,295 Islanders polled, far, far fewer than those who want to see the all-Island mandate kept.

Even if you add the numbers favouring the option “All members should be elected on a local basis, with larger constituencies than the parishes or districts”, you get a total of 18% – hardly a resounding vote for this type of change.