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THE JERSEY RISING IN THE "JERSEY WAY"

Phew – 2016 has gone. For many it was a dreadful year. It was the year in which many icons shuffled (or sadly sprinted) off this mortal coil; the very existence of Europe was placed in peril by readers of the Daily Mail and a geezer called Nigel; certain celebrity tushes (and other cosmetically enhanced body parts) managed to actually break the internet and then there was the small matter of a reality TV star becoming the most powerful man in the Western world.

Well, at least, in little old Jersey such seismic events have had little impact or influence. We still have one man who is our civic head, speaker of the house and the head of the judiciary; our politicians appear to believe that they have a voice in the Brexit negotiations (bless their optimism); we have had the longest of debates to determine the location of one of the most fundamental buildings in our society – a hospital and no politician/civil servant has been required to resign notwithstanding mismanagement of public finances. In a world of extraordinary change and consequence, it is comforting (or perhaps terrifying) that our beautiful rocky outcrop appears to be immune from any form of revolution or even modification...or does it?

The existence and provision of Legal Aid, that most toxic of social assistance subjects, may be undergoing a small insurgency this year.

Of course, the issue of Legal Aid in the UK (and elsewhere) has been part of a national narrative for many years. As previously mentioned, in England and Wales it has caused Mulberry swinging barristers to demonstrate in the streets of London. Their anarchistic placards were grammatically without parallel. In Jersey, the Legal Aid debate has been simmering for some time but as per the "Jersey way" has never quite exploded, perhaps until now.

The Jersey legal profession determined last year that a simplified Legal Aid scheme should be implemented. This would result in a reduction in the number of areas of law or criminal offences which are eligible for Legal Aid assistance. Therefore, minor criminal offences and minor motor related offences would not be covered. In addition, matters pertaining to ancillary relief (where there are no dependant children) or divorce (where there are no children) and a number of other areas would no longer be eligible for Legal Aid.

The profession agreed a more robust application process would apply and that the level of personal contributions towards fees would be decided at the outset based on the assessment of documentary evidence in respect of income. Other changes were also discussed.

These changes to the current Legal Aid scheme were to be implemented this month. We will have to wait and see whether this occurs or whether third parties will seek to maintain the status quo and the years of tradition. To my mind, what is clear is that change is inevitable. The question is whether that change will be orderly or violent. One has in mind Kafka's assessment that "every revolution evaporates and leaves behind only the slime of a new bureaucracy". If there are to be changes to Legal Aid, they need to benefit all. They need to be clear. They need to work. Any changes must not simply be watered down into a meaningless "slime".

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In the UK, the big issue in 2017 is, undoubtedly, the triggering (or not) of Article 50.

At the time of composing this piece, the Supreme Court is sitting to hear the Appeal against the High Court's decision that Parliament alone has the power to trigger Brexit. Importantly, however, since the decision of the High Court, the Supreme Court has said that lawyers from Wales and Scotland can join the party at the Appeal and they are fighting their respective corners.

I understand, for example, that Nicola Sturgeon, Scotland's First Minister, wants to be involved for a number of reasons including the fact that the triggering of Article 50 will deprive our Scottish brothers and sisters of rights and freedoms which they currently enjoy.

Given that Jersey is also likely to lose such rights afforded under EU treaties without having had any democratic say in the process, perhaps we too could/should have intervened in the legal process rather than just relying on Mrs May et al to protect our interests. In Jersey, we are losing those rights without any democratic process, Court approval or otherwise. Is this right?

Mmm … 2017 is indeed going to be a very interesting year. Perhaps revolutionary, even for Jersey.

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