

STATES OF JERSEY

Education and Home Affairs Scrutiny Panel

Review of the Prison Board of Visitors

THURSDAY, 26th MARCH 2009

Panel:

Deputy M. Tadier of St. Brelade (Chairman)

Deputy T.M. Pitman of St. Helier

Connétable J.L.S. Gallichan of Trinity

Miss S. Power (Scrutiny Officer)

Witnesses:

Senator B.I. Le Marquand (The Minister for Home Affairs)

Mr. B. Millar (Governor, H.M.P. La Moye)

Deputy M. Tadier of St. Brelade (Chairman):

First of all, welcome. Thank you for coming down. We will just reintroduce ourselves as a panel.

Connétable J.L.S. Gallichan of Trinity:

I am Constable Gallichan of Trinity.

Deputy T.M. Pitman of St. Helier:

Deputy Pitman, St. Helier No. 1.

Miss S. Power:

Sam Power, Scrutiny Officer.

Deputy M. Tadier:

I am Deputy Montfort Tadier. Okay. So, again, thanks for coming down. Also, just to let you know, we were at the prison last week, I think it was, or a week last Monday. It was very useful for us, and thank you again, Mr. Millar, for that opportunity. So, we are going to jump right in. The first question we have for you, Minister, and it is really we are going to grab the bull by the horns: is the board of visitors, as it is currently made up, human rights compliant in your opinion?

Senator B.I. Le Marquand (The Minister for Home Affairs):

Well, I do not formulate opinions on matters of law now that I am a Minister; I take advice. Although I am perfectly competent to formulate my own opinions, it would take me a great deal of time and it would be embarrassing if there was a conflict of opinions between myself and my legal advisers. So, I generally follow legal advice unless I think it is wrong, clearly wrong, in which case I would go back to my advisers and ask them to think again. I have a letter of advice in front of me from March 2005 from the current Attorney General to the Deputy Bailiff in relation to this very area. Now, this was provided to me yesterday on a confidential basis, you understand. I have no objections in your seeing it, but it has been provided to me confidentially. I think you will have to ask the Attorney General himself for what his opinion is. That letter of advice actually goes in some detail into the matter and concludes that provided there are certain safeguards in place in terms of procedure and so on which ensure that there is a distancing of jurats who are sentencing people from jurats who are dealing with people in terms of the appellate functions in relation to internal discipline matters dealt with by the Governor, that the Attorney General does not think it is incompatible with human rights provided there are these safeguards in place. Now, I follow advice these days; that is the advice that I have been given. I was aware that this matter was being considered around about 2005 because I was then magistrate and there were questions being asked as to whether it was possible for the magistrates to take the appellate role, as it were. We were of the opinion that that was not feasible because that would create a situation where we could have access to information in terms of disciplinary matters which we should not know about if we were dealing with sentencing or other matters in relation to the same individual. The difference, I think, qualitatively with jurats is that there are 12 of them, whereas there are only 2 stipendiary magistrates. Therefore, they are a larger grouping. Only a certain number of them, in fact, are on the prison board of visitors and it should be possible, provided there are appropriate safeguards in place, to ensure that there is not a conflict. The essence of the area, I see ... if there were to be conflict, I see the most difficult area being potential conflict between their role as sentencing judges or appellate judges - because you must recall that with appeals which take place to the Superior Number as opposed to appeals that go to the Court of Appeal, that they might be sitting on an appellate basis as well as possibly sitting as part of the Inferior Number on sentencing - I think that if there is a difficulty it would be in relation to issues of fair trial there, and also, conversely, in relation to the potential issue of fair trial in relation to appeals against

disciplinary decisions made by the Governor. Now, quite a lot of this letter of advice goes into some detail as to whether or not, in fact, for human rights purposes their involvement in terms of disciplinary matters constitutes a criminal matter for the purposes of human rights. You understand that there are slightly different principles that apply to criminal matters as opposed to civil matters. Principles of fair trial apply generally, but they are more specific in relation to that, and the advice does not actually express a final view on that.

Deputy M. Tadier:

That is useful. We will move on from there. First of all, I would say that we would be happy to receive that advice in confidence if you were ...

Senator B.I. Le Marquand:

I am not free to give it to you because it has been given to me in confidence. I am not being difficult, but if I have been entrusted with something on a particular basis ...

Deputy M. Tadier:

Sorry, I misunderstood. I thought you were making ...

Senator B.I. Le Marquand:

No, if I have been entrusted on a particular basis, it would be wrong for me to deal with this on a different basis to that on which it has been given to me.

Deputy M. Tadier:

Okay, that is helpful. If we perhaps applied a different test or a different wording to human rights compliance and if we said, for example, in terms of best practice, if we imagined that we were creating a model from scratch, would we opt for this overlap between the judiciary and effectively what is a scrutiny body and appeals body for the prison?

Senator B.I. Le Marquand:

I think that we probably would not adopt a situation in which those who were sentencing people were subsequently involved with appeals in relation to disciplinary matters. I suspect if one was designing a system from scratch, one would not want to do that. The issue in relation to the third function, which is really the hearing prisoner requests or concerns and investigating prisoner complaints, I do not think there is so much of a difficulty there. I do not personally see such a conflict in relation to that, particularly because you are dealing with a group of 12 people. The jurats are very experienced lay people, many of them having expertise in their own rights, completely independent of their role. Having a group which carries some clout, some weight, is undoubtedly useful in terms of issues like people who are having problems getting hold of their lawyers. If one of the jurats rings up a law firm to complain on behalf of a person that the lawyer simply has not come and seen him, there is going to be action, whereas one doubts whether there would be the same reaction if it was an entirely lay person.

Deputy M. Tadier:

If I can interrupt you, I do take on board that argument and that was certainly one we heard quite recently. Presumably, any alternative body that was set up, whether that included jurats or not, would in time be given that weight and that power to have good relations with ... whether it be advocates or the department.

Senator B.I. Le Marquand:

I do not know; it would depend. It would depend upon how it was set up. It would depend upon mechanisms. The fact is that the jurats are very good value for money in anything that they do. You have very capable people coming towards the ends of professional careers – not necessarily professional careers - who give up their time and serve the Island in what is fundamentally an honorary capacity. They receive some allowances, but they are not very great. They are a very useful group of people to have involved with things because they are wise, because they have experience and because they carry clout. So, if you are asking me if we were designing a system as from scratch, would I want to have a third body of people, as it were, one body of people dealing with the prisoner appeals, one body of

people dealing with sentencing, and one body of people dealing with prisoner complaints, I think I would want to separate the appeals function but I am relatively comfortable with the visitor aspect.

Deputy M. Tadier:

Okay, thanks. Has anyone got any comments or any questions?

The Connétable of Trinity:

No, not really, not on that.

Deputy M. Tadier:

Well, I will move on to the next question. Mr. Millar as well, if you do want to jump in, if you have anything ...

Senator B.I. Le Marquand:

Are you happy with what I have said so far?

Mr. B. Millar (Governor, H.M.P. La Moye):

Yes.

Deputy M. Tadier:

There will be questions that we will direct to you as well.

Mr. B. Millar:

Yes, that is fine. I think my response to that last question would have really been it depends what you want the body to do in how the body should be constituted. I would agree with the Minister's comments and separating the roles between a watchdog role and a role that might be involved with disciplinary cases. But obviously it would require a change in the law, so I think we would have to think carefully about what we want the board of visitors or the role you want that body to perform, and that might

inform how best to make up that body.

The Connétable of Trinity:

While we are on that, when we did visit the prison last week, the people that we interviewed seemed to find sometimes they did not really know who to go to, you know, for the quickest response, and we were just thinking between ourselves would it be an idea to have a ... not a book, but a guideline that if you want to see the board of visitors, is that to go to the board of visitors or is that to go to a warden or is that to go to the prison governor, because they seem to say sometimes: “Actually, we got a quicker response from the warden on duty than going to the board of visitors.” It just seems to me are they dealing with virtually everything that goes on in the prison or there should be sort of guidelines: “If you have a problem with that, that should go to that group. If you have a problem with not getting your lawyers, you should go to the jurats. If you have some other problem, you should go to another ...” It just seemed they were not ... you know, it is pretty short notice when they do come in and they are not too sure, actually, where to go to.

Mr. B. Millar:

Well, they are advised on the most appropriate referral during their induction. They are advised of the role of the board of visitors. They are advised on how to action complaints or requests. They generally go to everybody. Prisoners will try the officer in the first instance, then the hall manager, then the Governor and if they feel their complaint or their grievance is not satisfied they will then go to the board of visitors. They will generally inform whoever they speak to that nobody else can deal with it but them.

The Connétable of Trinity:

So there is like an unwritten way forward now, you start with the warden, then you go on and you go on and you end up with the board of visitors?

Mr. B. Millar:

But it is not unwritten. They are actually given that advice in writing. They are advised about it, and it is in their induction booklets about the, you know, proper sorts of referral.

Deputy T.M. Pitman:

Can we move on, though, please? Sorry.

The Connétable of Trinity:

That is fine, as long as there is something written down, that is fine.

Deputy T.M. Pitman:

In noting that the prison board of visitors is made up of jurats, a submission to the panel has made the following statement: “It is hard to imagine how they can be totally neutral and objective adjudicators of prisoners’ complaints and concerns when it is they who have sentenced them and sent them down.” How would you respond to that view? Is that a view you would share, Minister, from a prisoner’s perspective?

Senator B.I. Le Marquand:

Well, of course, it is not necessarily them who sent them down. This is part of the issue of having a different group of people and having safeguards in place. Actually, conversely, people who work in and around the criminal justice system - and that includes jurats - actually probably have a greater understanding of the sort of issues that arise and problems which are faced by prisoners than lay people would have. That may surprise you, but you pick up an enormous amount of information in sentencing - background reports, the details of that - which helps you to understand in general terms the sort of issues.

Deputy T.M. Pitman:

I would probably accept that and so would the panel, but I think from the prisoners’ perception would you not concede that that is clearly going to be there: “Well, this is part of the judicial system, the reason

why I am here,” although obviously the crime is why they are there, but do you see that link? Do you see there could be that conflict and possibly a deterrent to prisoners using the board?

Senator B.I. Le Marquand:

Only if people do not understand that this is the same group of people but performing a different function. I mean, in life people very often will perform many different functions and it so happens that when they are sentencing they are performing a sentencing function; when they are visiting and dealing with complaints they are performing ... it is not exactly a welfare function, but it is almost a welfare function, not precisely a welfare function. It is just a different role. Politicians perform many different roles in reality. If you think about the different roles that perhaps I might perform as a States Member in the House, as a Minister, on the Council of Ministers, and the P.P.C. (Privileges and Procedures Committee), you could find all sorts of conflicts in those roles if you wanted to.

Deputy T.M. Pitman:

But to be fair, many members of the public will not fully appreciate what we do, so the point is for a prisoner who probably has got very little idea of the system other than what he or she has seen, do you not concede that that could be a deterrent to them using the system as it should be?

Senator B.I. Le Marquand:

Some prisoners might ... some prisoners might ... I think I could concede that some prisoners might see jurats as being some sort of establishment figure or pro prosecution figure or whatever that might be a hindrance, but it is not the reality, of course, of the role that they perform.

Deputy M. Tadier:

If I can just interject, Trevor, if that is okay, one comment earlier, and I think it is a valid argument again about the jurats being in the system so they know how the system works, they know the history of the inmates, so to speak, there is also a counter argument, of course, that they could be too close for comfort, so that if somebody has been very closely involved with a particular case, the prisoner may not

feel that there is sufficient independence there. That is certainly what came through.

Senator B.I. Le Marquand:

I agree with you and, in fact, I attempted to correct myself in mid sentence to avoid the impression I was talking about knowledge of individuals. I am talking about knowledge of the sort of problems that the prisoners have. Any competent judge of criminal matters will pick up an understanding of the issues which drug addicts have and their sort of needs, et cetera. They do not need to know specifically where an individual person is; it is the sort of information that you gather as part of the process of reading reports and learning.

The Connétable of Trinity:

Does it ever happen that if a jurat happened to go to the prison and really did have a very close connection to one of the prisoners, he might say: "Well, I think, really, this is not my place"? It does happen?

Senator B.I. Le Marquand:

That is right. They will perhaps deal with that ...

Mr. B. Millar:

The jurats will declare ... are quite open in the fact that they have had an involvement in that case. The prisoner will be informed of that and the prisoner will be asked if they are content to see that particular jurat or if they would prefer or they request to be referred to another jurat. But the jurats as individuals will always come forward and state: "I have had involvement in this case" and they will actually request that we ask the prisoner if they are content to see that particular individual or if they want it to be referred to someone else.

The Connétable of Trinity:

So it is taken into account?

Mr. B. Millar:

Yes. I mean, I do understand the point of where you are coming from, but in practice it has never proved to be a problem. I do not think there is any evidence, at least I have not seen any in my time here, to suggest that prisoners have a problem with the board of visitors being made up of jurats. Because much of their areas of interest are outwith the prison, they tend to view the jurats as being in a good, strong position to be of assistance to them.

The Connétable of Trinity:

Is that basically because they can open doors quicker than most individuals?

Mr. B. Millar:

Well, the prisoners seem to believe that. Whether that ... we could evidence that as fact or not, I really could not say. But I can say that because of a fairly recent case where one of the jurats was extensively involved with an individual prisoner's case. It was put to the prisoner and the prisoner's response to that was: "Well, they know the case and I would prefer it was them that I saw because I do not have to start from scratch and explain the background to them."

Deputy T.M. Pitman:

Could I just interject there and say if contradictory evidence was put forward, substantial, to suggest that for the prisoners it was a problem, would that be something that both of you would take on board?

Mr. B. Millar:

I think if I became aware of that, I would be advising the Minister and suggesting that we need to seek a change in the law because the body would not be able to perform the function it was set up for.

Senator B.I. Le Marquand:

Yes.

Mr. B. Millar:

But I do not get a feel for that at this stage.

Deputy T.M. Pitman:

So, thus far, you have had no indication, really, at all?

Mr. B. Millar:

None.

Deputy M. Tadier:

I think that is why it was certainly useful for us to be able to see the prisoners as we did. We saw 6 of them in confidence and in private.

Deputy T.M. Pitman:

It was very useful.

Deputy M. Tadier:

That was useful. If we move on, if everyone is happy to do so ... just quickly, though, a comment that I almost forgot to mention. There is always this dichotomy whenever there is a conflict or a perceived conflict that, in fact, something could be hunky dory. We know that dual roles in Jersey are not uncommon, we have them in the legislature and the judiciary, and that is another bone of contention.

The reason I bring that up is to make a comparison. There is always the argument that, in fact, there may be no conflict but there is a perceived conflict and to what extent, if there is a perceived conflict, if there is a sense in the public and among prisoners that there is a kind of incestuousness going on, to what extent do we as a government have to make sure that there is not even a sniff of any impropriety?

Senator B.I. Le Marquand:

I do not think we ... I do not think we must be too sensitive in this area because if we were, and particularly in a small place like Jersey, it would become impossible for certain things to function. I mean, if I can give you the example of my own previous role as magistrate, one of the difficulties, of course, of having a stipendiary magistracy, as we have in Jersey, in a small place where you have 2 full-time magistrates, is that the magistrates are going to see about half of the cases each. Now, that means particularly at the Magistrate's Court and the Youth Court, where there is quite a fast turnover of the same people, you are going to see the same people over and over again. If you were too quick in terms of recusing yourself and saying: "Well, I know something about this person I should not know about them" then you would not be able to function as a magistrate. But sometimes the point does arise where the magistrate recognises that actually there is something that they know about the person or they have seen them so often that they actually do not think they can reasonably and fairly act any longer. So, what I am saying is that that kind of principle applies right across the board. Interestingly enough, it also applies in the Youth Court to a degree with the youth panel members because, although they sit far less often, the repetitive offending of certain youngsters is such that actually they all get known by the panel members. So if you are going to apply a sort of test that we must not under any circumstances have any knowledge or memory of some earlier case which we might accidentally take into this, then we simply could not ... the whole of our existing lower court system simply could not function, is what I am saying.

Deputy M. Tadier:

I take that into account.

Senator B.I. Le Marquand:

Now, you might take that view at a later scrutiny hearing.

Deputy M. Tadier:

But there is surely a difference of having the accidental or an occasional overlap as opposed to having a system which is directly set up so that both bodies automatically overlap.

Senator B.I. Le Marquand:

Well, it is going to happen automatically in the Magistrate's Court. Now, of course, what has been reckoned there is, of course, that the professionalism of the magistrates as professional lawyers who are skilled and experienced allows them to put out of their mind anything that they might know from any other matter which is irrelevant. To a certain extent, of course, that principle applies to the jurats because although they are lay people they do over a period of time on the bench become very experienced and will have the same sort of issue coming up from time to time where they will have some knowledge of a particular person or a particular case or whatever. I am talking about in sentencing. They probably read the *J.E.P. (Jersey Evening Post)* and they may have some knowledge of some previous case which they then have to put out of their mind. So, actually, they are quite a good body of people to exercise that sort of discipline if it is really necessary.

Deputy M. Tadier:

Very quickly to Mr. Millar, what are the main roles and responsibilities of the prison board of visitors, if you can summarise them?

Mr. B. Millar:

To summarise, they actually support the Governor and the establishment in terms of ensuring that we make good use of public funds, so we run the place efficiently; to be available and accessible to prisoners; to make sure that there are no abuses of any description and that prisoners are actually being fairly and justly managed; to inform the Minister if they do identify any abuses of the system; and to ensure that we care for prisoners, you know, and we look after their welfare, so sort of anything that we do within the prison or as the prison itself having an adverse effect on the prisoners' health, and if that is the case they should bring that to the Minister's attention as well. That is their primary role, really, is to monitor whether we make good and efficient use of funding and we treat and manage prisoners fairly and consistently. They have the lesser role now on the adjudication side now that they do not have the power to actually deal with misconduct reports, but they are an appeal body for any misconduct reports

that are dealt with by the management team.

Deputy T.M. Pitman:

If I could interject there, should any problems be perceived, rightly or wrongly, by the board, where is the decision made whether they go first to you or all the way to the Minister? How does that work?

Mr. B. Millar:

In my experience, they consistently address it with me in the first instance. They will raise it. They have a formal monthly meeting at the prison and they will raise it there and then. They also do visits outwith that monthly meeting and if they do come across something they will make a point of speaking to me before they leave the establishment. To date, and again bear in mind I have only been in the post for just over a year, they have never had cause to take an issue directly to the Minister, in my experience.

Deputy T.M. Pitman:

Thank you.

The Connétable of Trinity:

How severe would it have to be? You know, if they come in one month and they say: "Look, there is something not quite right there," if they do not see it has been done within that month, would they come and see you again and say: "Look, you know, we did tell you about this"?

Mr. B. Millar:

Yes, that would be my expectation. They do not have any executive authority over how I manage the prison, so obviously they are limited in terms of how they can force me to address issues, but they clearly ... I mean, as Governor I welcome that kind of objective, independent input, you know, and matters that I do not catch sight of, I want them to be brought to my attention, so clearly we will try and address them. They have raised with the Minister in their quarterly meetings issues that may have

caused them concern, and that tends to be the way in which they will do it. The next meeting with the Minister they will agenda the item, but I am quite sure, though, if they came across something that they were deeply concerned about, they would make immediate contact.

Deputy M. Tadier:

Minister - and, Mr. Millar, you can answer this if you feel that you want to as well, and you may have partly answered this already so do not feel obliged to go over the same reasoning - in your opinion is there any reason that a jurat should be better placed than any other individual in society to perform the functions of a member of the board of visitors?

Senator B.I. Le Marquand:

I think I have probably answered that both in ...

Deputy M. Tadier:

But maybe I can turn it ...

Senator B.I. Le Marquand:

... both in terms of clout and in terms of experience and understanding of the system. So it is probably best if I pass over to Bill if he has any extra thoughts.

Mr. B. Millar:

I mean, I think there are some areas where they are particularly experienced and able to respond very quickly and open certain doors for prisoners. There are other aspects of their role that could be done perfectly adequately by, you know, other appointed members of the public. I think the position actually gives them sort of privileged access to certain areas that can be helpful to prisoners and, you know, other independent individuals may well develop these kind of links and communications through time. So, could you replace the body ... remove the jurats completely and replace them with independent personnel and still get the same kind of service? I think to the prison and to the management side the

answer to that would be yes. I think to individual prisoners some of them might feel that they have suffered and lost out because of the sort of privileged access that they perceive that the jurats might have.

Deputy T.M. Pitman:

You may be surprised by the evidence that we heard, but I am sure there are 2 sides to the argument.

The Connétable of Trinity:

Yes, I would say the balance would be to add a few lay people to the jurats and then that way, if anyone had a conflict with a jurat, you could actually just ask the lay ... because it is one of those things, it is a learning curve, is it not? You just do not go into the prison and just suddenly become an expert. It is something that would have to be sort of pretty rigid training but you have to have knowledge of the system and the judicial system as well before you could think of even going into there.

Mr. B. Millar:

I agree. I mean, I think the issue for me is does it merit a change in the law and would a different constituted body definitely perform the function any better or provide a better support to the prisoner side of things, and the jury is out on that for me, to be honest. I mean, I think to go through the process of changing the law I would want to know that it was necessary, but that is not to say that another body could not do equally as well.

Deputy M. Tadier:

Can I just press you on the issue, Mr. Millar, because we are privileged in the sense that you have a wealth of experience outside of Jersey in the prison service. Presumably the prisons you worked in in the U.K. (United Kingdom) did not have jurats on their board of visitors or the equivalent, the independent monitoring boards?

Mr. B. Millar:

No.

Deputy M. Tadier:

Did they still function all right without that ... with the equivalent?

Mr. B. Millar:

Yes. I mean, I have to say that I suppose much of it is peculiar to Jersey because of the nature of the Island and how the judicial system works here. My experience is in Scotland, and there is such a variety and number of courts throughout the country in Scotland that prisoners would not get the same kind of service from ... and they are visiting committees in Scotland rather than boards of visitors ... that they do from the jurats here, but that is peculiar to the structure of things in Jersey, I think. The kind of matters that they raise with the board of visitors here they would probably raise with their legal representatives in the Scottish system and that would probably be true in England as well. Here, as I say, they probably feel they get that more privileged access because of the role of the jurats. They are not the kind of complaints they would normally take to a board of visitors in England or in Scotland or anything.

Deputy M. Tadier:

Maybe I will just rephrase the question because I think the Minister is correct, he had answered the question, but if I were to put it another way, is there any reason that no other member of society could be equally as well placed as a jurat? Let us imagine that we are talking about doctors, headmasters or people with good standing in local society and with a wealth of knowledge. The point I am getting at is that it almost seems unfair that these people should be precluded from serving on such a board, which may or may not be made up of a mixture of jurats and lay people, from actually contributing. That is the premise that I am putting to you, Minister.

Senator B.I. Le Marquand:

I think they probably could. There would be a longer learning curve to get up to speed and so on. Whether or not members of the legal profession would treat them with the same respect I cannot say.

Certainly, if the jurats start complaining that lawyers have not been out there, things move. That is probably right.

Deputy M. Tadier:

Surely that would be a systemic problem. If advocates are only treating jurats in a certain way and only being forthcoming with information, then surely that in itself is something that would need to be looked at and remedied if there were a change.

Senator B.I. Le Marquand:

Well, that is an issue in relation to the Legal Aid Scheme and the duties of lawyers under that.

Deputy T.M. Pitman:

Obviously you are a new Minister so you have a lot to do ahead of you, and you, although you are very experienced, you are new to Jersey. Would either of you concede maybe there is a feeling from within that if it is not broke, it does not need fixing?

Senator B.I. Le Marquand:

Yes, because frankly I have so many important things to do which are really important. I could start a list of names of laws, like the Sexual Offenders Law and like the ... I have forgotten its name, the law for transferring prisoners out of the Island, the law in relation to creating a proper parole system ... I will not go on, but I have 7 or 8 major pieces of legislation to deal with, not to mention court procedure laws, the vetting and barring stuff. I mean, if it is the will of the House that priority be given to this, then so be it, but it would not actually be a great priority in the normal course of events because so many of those other pieces of legislation are higher priority.

Deputy T.M. Pitman:

Accepting the important nature of many of those things you have mentioned, is there a danger there, though, that something like this could get overlooked because it is not seen as a priority?

Senator B.I. Le Marquand:

Well, I think that ... I think my own approach is to try to achieve quickly minor things that could be changed relatively easily and then alongside that to run with the larger projects. This, a change of this, would actually take some time to think through in terms of setting up a wider board of people or whatever, setting up a different appellate system. It would actually take time and quite a lot of work to work through. It is in the “nice to have” category in my thinking but ...

Deputy T.M. Pitman:

Nice to have?

Senator B.I. Le Marquand:

Yes. I mean, if you start with things which are absolutely essential to do, things which are highly desirable and nice to have, this is in the “nice to have” if it is nice to have.

The Connétable of Trinity:

What would actually make you - stimulate you - to move it forward, some major dysfunction, would it?

Senator B.I. Le Marquand:

If there was clear evidence that prisoners were feeling deprived of access to the right sort of advice and assistance, then obviously that would be a matter for me to weigh very carefully.

The Connétable of Trinity:

But that would actually come mostly from the ...

Senator B.I. Le Marquand:

No. See, the trouble is that you almost need a poll, do you not? The subcommittee has seen 6 people, but actually the trouble is that depending on how you go about it, you may find that you have seen 6

malcontents, as it were, if I can put it that way, because the people who will turn out sometimes are those who are dissatisfied with something and you may have 100 and whatever who actually think the other way.

Deputy M. Tadier:

If I can interject, Minister, I believe that they were selected randomly, were they not? They were selected from ...

Mr. B. Millar:

Yes, they were.

Senator B.I. Le Marquand:

Oh, were they?

Mr. B. Millar:

They were a completely random selection from a list of about 60, I think, who had seen the board of visitors and it was a random selection by our H.R. (human resources) manager who did not know any of the names.

Senator B.I. Le Marquand:

Oh, that is good.

Deputy T.M. Pitman:

I do not think anyone could accuse us of, like, weighing what we were going to see in our ...

Deputy M. Tadier:

I do not think that is what the Minister ...

Senator B.I. Le Marquand:

No, I was not saying that. It was just if you ask: “Does anybody want to see the subcommittee?” one tends to then get ... but actually that is a perfectly good process.

Deputy M. Tadier:

No, that was not the case. Also, from my A level maths days, which is quite a long time, I think if you are selecting 6 from a sample of random ... 60 at random and then for all of them to be malcontent would be highly improbable.

Senator B.I. Le Marquand:

Absolutely.

Mr. B. Millar:

Well, except that malcontents is possibly too strong a word. They generally only go to the board of visitors if they have, you know, a complaint or a grievance or a concern in the first place. So, all the ones who go to the board of visitors start off as their starting point that they have an issue that they want to raise.

Deputy M. Tadier:

I fully accept that point, but we are obviously not naïve. When we went in there we realised that any complaints may have ... that it may well be if the entire board were made up of laypeople that the same grievances would still have been raised.

Mr. B. Millar:

Yes. I mean, from my knowledge of the prisoners that you saw, there were 2 who had very, very strong and recent issues but, you know, any 6 you pick that may have been the case. My response to the question of, you know, is there an attitude that it is not broken so do not try to change it, I mean, certainly I feel a bit like that because it depends what the motivation for change is and what you change

it to might not be as effective as what you have just left. So if it was not broken ... One of the reasons might be to head problems off at the pass, and if you feel that there are issues with the construction of that panel or that board that may lead to human rights problems in the future, then yes, there is justification in looking at that and trying to address it.

The Connétable of Trinity:

You are very content at the moment at the way it functions?

Mr. B. Millar:

My problem is that ... it is not a problem, but the fact is, you know, I have only been here a year and in that year there is nothing has been brought to my attention that would suggest, you know, that I should go to the Minister and say: "This really has to change" or that prisoners or, you know, the management staff of the prison have any issues or concerns about the way the board of visitors operate. That may change, you know, through time and if it does then I would be making suggestions or recommendations for change.

Deputy M. Tadier:

Do you also concede, though, that the benefit of having an independent ... I say independent body like us, as independent as we can be, is that we can get access to certain areas and procure information? I would say that we do work on an evidence-based scrutiny so, although we perhaps do have our own opinions, we do go and we get evidence and that is effectively what we are doing here today.

Mr. B. Millar:

There is ... the bit that you actually do not know and one of the points you raised earlier, are there prisoners who do not come forward to the board of visitors because they have concerns about the fact that they are jurats and they might not be impartial or independent, I actually cannot answer that question. There may well be prisoners in the background who have that attitude. You would think we would be aware of it, though, if it was the case because you think, you know, staff will often advise a

prisoner to go to the board of visitors and if they had concerns they would probably tell the staff: “I cannot go to them because I do not believe them to be independent or impartial” or whatever. There does not appear to be a history of that.

The Connétable of Trinity:

Can I just ask ... this is mostly a silly question anyway. Obviously you have a new wing being built now. That is 100 per cent better than the old wing. Do the ones who are in the old wing complain more or happen more to go to the board of visitors? Because, as I say, the new building compared to the old one is far superior. Does that actually help in that because they are living in better accommodation that the grievances are not quite so bad or ...?

Mr. B. Millar:

To be honest, it is one of the big surprises to me when I arrived here, is that prisoners in the old areas tend to be very accepting of the conditions there and they do not complain a lot about the conditions. They are aware of what is happening and they are aware of the changes that are ahead and they are looking forward to that, but it is a surprise to me that we do not get a lot more complaints about these conditions but they just do not. They tend to accept and, of course, many of them have been through La Moye so many times over the years they just accept that that is what they are going to move into.

Senator B.I. Le Marquand:

Conditions of accommodation with slopping out are completely unacceptable. They are just completely unacceptable.

The Connétable of Trinity:

We agree with that, but I was just thinking that if I had been in the new part I would not have ... I would have certainly been moaning a lot more in the old part, I think.

Deputy T.M. Pitman:

I am conscious that time is moving on, so if we could ... Does the board make unannounced or unaccompanied visits to La Moye and, if not, would you see this as a function that the board should fulfil, Minister, or both of you?

Senator B.I. Le Marquand:

My understanding that Bill has given me is that they do not, but perhaps Bill could deal with the details.

Mr. B. Millar:

No, they do not make unannounced visits. They tend ... the monthly meeting is scheduled so they will always come on that date, and one of the members will visit between the monthly visits and they will generally contact us in advance to tell us they are coming. There are practical reasons for that as well because they want to be met by an officer escort and be taken round the establishment without, you know, too much delay and so on. But it is also to signal so that we can signal to prisoners that they are in the establishment and they will see prisoners while they are in the establishment. They do not tell us which parts of the prison they are going to visit, so there is a degree of randomness there in that the management do not know where they go. They are obviously free to visit any part of the prison they so choose and that is exactly what they do.

Deputy T.M. Pitman:

But does this system differ vastly from your experience in Scotland?

Mr. B. Millar:

No. Visiting committees in Scotland tended not to make unannounced visits. It was a very similar process. England is slightly different and it varies. You know, some establishments train their board of visitor members so that they can carry keys and can move around the establishment without escort. The same happens in Scotland but the visiting committees themselves and individual establishments make the decision about whether they want to be key trained and carry keys. There are more who opt not to than there are who carry keys in the Scottish system. I do not know if that is the same in England. But

certainly the feedback I have had in the last 2 prisons where I was governor in charge and offered both visiting committees the opportunity to carry keys, one it was mixed, half of them did and half of them did not, and in the other none of them wanted to carry keys. But part of it was because they like an officer to go with them when they go round because they ask all sorts of questions everywhere they go and, you know, to have somebody there that can give an immediate response they find very helpful. There is the security side as well because a lot of them tend to be quite elderly and ...

Deputy T.M. Pitman:

This would have been my next question.

Mr. B. Millar:

... and mixed gender and some are just frightened to actually go round the establishment on their own. They do not want to, you know, so they generally would go with their own escort.

The Connétable of Trinity:

Is there an age limit in the U.K.? Because there is an age limit in Jersey because obviously jurats retire at 72. So, once you are 72, you are no longer a jurat. Is there an age limit on ...?

Mr. B. Millar:

There is not an age limit as such for the visiting committee members, but what would limit their age is that they are serving councillors. So there may well be age restrictions on serving councillors.

The Connétable of Trinity:

County councillors?

Mr. B. Millar:

Yes. Each local council nominates a member to be a member of the visiting committee, and that probably would impose an age limit.

Deputy T.M. Pitman:

To move that on to a slightly different area, what arrangements are in place for members of the board to be called urgently to the prison if, say, you had a riot or a suicide or some really serious incident?

Mr. B. Millar:

I mean, there is no requirement for them to attend, you know, an incident; it is not part of their role. But our practice would generally be to inform the chairman as soon as practically possible that there has been some kind of occurrence and we have all of their contact numbers to facilitate that.

Deputy T.M. Pitman:

But there is nothing in stone that that must be done or it is not part of the ...?

Mr. B. Millar:

It is part of the custom and practice to inform the chairman of significant events, but what we would not do is summon them to the establishment. I mean, we may if we felt they could be of assistance, but it is not the custom and practice to routinely do that.

Deputy T.M. Pitman:

Thank you.

Deputy M. Tadier:

If I could just quickly go back to ... hold that thought. I was slightly concerned by your previous comment when you said that certain members of the board of visitors would be scared to go round on their own. Surely if they are a board of visitors which has at least the theoretical possibility to make unannounced visits it does not seem very satisfactory that the board, which we all know comprises mainly elder people, if we can call them that, may be scared to actually make unannounced visits if they want to. That in itself seems worrying.

Mr. B. Millar:

Yes. Well, first of all, apologies for causing you concern but my reference there was when I was talking about visiting committees in Scotland. They are of mixed gender and quite elderly. The jurors, probably again because of their position, have a greater understanding of prisoners' criminal activity, criminal behaviours, they are generally more confident, more confident individuals. So that would probably apply less to Jersey than it does to appointees in England and Scotland. Of course, just because you appoint them to a role, you cannot make them confident to go round a prison. Prisons are very intimidating places, as I am sure you found yourself when you visited. You cannot always make an individual comfortable in that environment.

Deputy M. Tadier:

But surely an unannounced visit does not change anything? I mean, they could still be escorted by a security guard or prison officer even though the visit would be unannounced.

Mr. B. Millar:

Yes. The issue that I was speaking to was whether they should be accompanied or not and whether they should go round on their own with keys, not about unannounced.

Deputy M. Tadier:

Okay, thanks for clarifying.

Senator B.I. Le Marquand:

Is there any objection to ... sorry, I am asking Bill if there would be any difficulty or objection if the jurors or board of visitors wanted to turn up announced.

Mr. B. Millar:

No, it will not present us with ... I am assuming that the ... any problems would be for the individuals

themselves in that allowing them immediate access could be a problem depending on what was happening in the establishment at the time, but it would not cause me any concern whatsoever, you know, for members to turn up unannounced and to ask to go to any part of the prison.

Deputy M. Tadier:

Before John comes in, very quickly because it is relevant to the fact that no unannounced visits are made, one of the critics that we have had and the reason that we are doing this investigation is mentioned, and I will quote: "It is surely relevant that the Jersey board of visitors seems to have made no major contribution in highlighting the inadequacies of La Moye so clearly pointed out in the 2 H.M. Inspector of Prison reports, and this is an indicator of their failure to carry out a rigorous and much needed system of monitoring." So, the board of visitors has been around for a long time. Why have they never picked up any of the same concerns that the 2 prison ...?

Senator B.I. Le Marquand:

I do not know the answer to that because I was not the Minister, of course. I would be very surprised if they had not been regularly talking to past Ministers about the concerns of the inadequacy of the accommodation. I think that if there is a downside on the role of the jurats on the welfare side, it is that actually they would feel constrained by their role as jurats to not in any sense become involved politically as a pressure group. That could be a downside because I assume from what Bill is saying from his experience in Scotland, where it was county councillors who were on board, that actually there are certain advantages in that that actually they would be people then playing a political role at least on a local basis who could take issues up. I actually find it quite shocking that it has taken so long for Jersey to provide decent accommodation for its prisoners and I am delighted to be coming in ... to have come in as Minister almost at the point where that is being solved, but it is actually quite shocking that it has taken so long.

The Connétable of Trinity:

But to be fair, that was nothing to do with the jurats. That was the political system we were in, I am

afraid.

Senator B.I. Le Marquand:

That is nothing to do with the jurats but, as I say, the only issue in my mind is whether a non-juratical - if there is such a word - group of visitors might have been more actively engaged politically.

Mr. B. Millar:

If I might respond to that question, I think that my first response would be that the observer is factually incorrect. I know for a fact the board of visitors do raise concerns and issues with the Minister. What they do not do is seek to make that public and, you know, have that presented to the media. But I am quite sure you will access Minister meetings; you will evidence for yourselves that they have frequently raised issues of concern about the conditions in La Moye and the lack of investment over a long number of years.

Deputy M. Tadier:

Okay, thanks for that.

The Connétable of Trinity:

What are the training requirements of members for jurats to be on the board of visitors? Any training at all?

Mr. B. Millar:

There are not technical requirements at present, at least nothing that is specified. There are certainly what I would regard as prison training requirements that any new members appointed I would want to offer to them and put them through a form of induction, but my understanding is that has not applied in the past.

Deputy M. Tadier:

Does that, again, differ from your experience of ...?

Mr. B. Millar:

Yes. There would generally be a form of induction in every prison but there would also be, because the visiting committees or boards of visitors in England have an association in their own right, they would generally have some form of induction programme for new members themselves and then there would be an induction to the prison, you know, that that member is appointed to. Obviously Scotland and England benefit from having these associations and a range of experience around a large number of prisons and having to manage boards of visitors and that, you know, Jersey does not benefit from that. But, you know, it is not difficult to put in place and certainly we will be having new members fairly soon because we have some retirements coming up. I would want to put them through a form of induction into the role, partly on the prison and I am sure the board of visitors themselves would have areas that they would want to address as far as an induction programme is concerned.

Deputy T.M. Pitman:

It would seem a logical step, I would suggest.

Mr. B. Millar:

Yes.

Deputy M. Tadier:

Thank you. We are almost done, so I just want to change tack slightly, and this would mainly be for the Minister, I think. We just recently received correspondence from our officer in regard to the optional protocol to the U.N. (United Nations) Convention against Torture and Other Cruelty, which the Minister may be aware of, that Jersey is not currently signed up to. The reason I raise this here is that one of the reasons as far as I can tell that Jersey has not signed up to it was on a practical level. The argument was given that unannounced and independent bodies would be needed to actually monitor any kind of institution that would detain people, so that could be the prison; it could also be St. Saviour's Hospital or

what the equivalent is nowadays, Greenfields, et cetera. It was a concern that it would be too much of an onerous task to set these bodies up. Now, obviously this has an implication for us looking at this. If that is the main reason and the only reason that we are not signing up to a protocol, albeit an optional one, we would be concerned that this would have an impact on our review. Have you got any comments?

Senator B.I. Le Marquand:

Well, I have not seen the protocol - in fact, I did not even know it existed until you mentioned it to me - so it is difficult for me to express a view without the text of it in front of me.

Deputy M. Tadier:

Okay. Is it something you would be happy to liaise with us about?

Senator B.I. Le Marquand:

Delighted. If you would let me have a look at the text of it and I could then take it up. It may have come up before. Very often these things go round in cycles and so ...

Deputy T.M. Pitman:

It was declined in 2007 so possibly there has been a move since. It was just referred to us actually I think last night. We received an email purely because it does have potential implications for what we are doing in this review.

Senator B.I. Le Marquand:

Okay. It is like a lot of these things that sometimes we have difficulties in the implementation of the detail in quite the same way because we are a small jurisdiction. But even if one cannot implement the detail, one seeks to implement the principles of such things. But I would be delighted to have a look at that. Thank you for mentioning that.

Deputy T.M. Pitman:

Okay. Well, I will just ask if there is any additional information that members need.

Deputy M. Tadier:

No, I do not think so.

The Connétable of Trinity:

No, that is fine, thank you.

Deputy T.M. Pitman:

It just remains for me to say thank you, gentlemen, for coming in. It has been useful and we appreciate your time.

Deputy M. Tadier:

Yes, thank you.

Senator B.I. Le Marquand:

Okay. Thank you very much indeed. I should have said ... I am sorry, I should have explained that while I am the Minister, the lead person in dealing with matters relating to the prison is my excellent assistant, Deputy Hilton.

Deputy T.M. Pitman:

We will grill her next time. **[Laughter]**

Senator B.I. Le Marquand:

So, it is my overall responsibility, but she is, in fact, playing the lead role in terms of regular meetings.

Deputy T.M. Pitman:

Well, we appreciate you being here as well.

Senator B.I. Le Marquand:

Yes. Thank you.