

**WRITTEN QUESTION TO THE ATTORNEY GENERAL
BY DEPUTY J-A. BRIDGE OF ST. HELIER**

ANSWER TO BE TABLED ON TUESDAY, 5th JULY 2005

Question

Given that nearly one year ago on 6th July 2004, the President of the Home Affairs Committee responded to a question on the lack of implementation of the Young Offenders' Institution Rules and the Prison Rules, in the following terms –

“Implementation of the Young Offenders’ Institution Rules and Prison Rules has been delayed pending the receipt of advice from H.M. Attorney General on the question of whether to appoint an Adjudicator to replace the Prison Board of Visitors to adjudicate on matters concerning the discipline of prisoners, in particular where the loss of remission is concerned. Once this issue has been resolved, the Rules can be brought into effect.”,

and given that the President subsequently responded to a similar question posed on 1st March 2005, in the following terms –

“The Home Affairs Committee has yet to receive the advice requested of the Attorney General. There has, therefore, been a further delay in the bringing into effect of these Rules.”,

Would the Attorney General inform members –

- (a) whether he has since furnished the Home Affairs Committee with his advice on the Prison Rules, and, if not, when he proposes to do so?
- (b) whether the current Rules are Human Rights compliant?
- (c) whether the staffing resources in his department are sufficient to meet the demands made for legal advice by Committees, and, if not, whether this has had any impact in the implementation of policy as Committees wait for advice?
- (d) to what extent the availability of staffing resources in the Law Officers' Department impacts on legal advice provided to Committees, and what steps, if any, have been taken to address this?

Answer

- “(a) Advice on the question of whether the Human Rights (Jersey) Law 2000, when in force, will require that the Prison Board of Visitors should be replaced by an Adjudicator has been given to the Home Affairs Committee.
- (b) I do not believe I have been asked previously to advise on whether the current Rules are Human Rights compliant. It is presumably a matter for the Home Affairs Committee to determine whether it wishes to receive such advice from the Law Officers' Department.
- (c) It is, or ought to be, well known that the staffing resources in my Department are not adequate for meeting the various demands placed on the Law Officers.

In the Introduction to the Attorney General's Review of the year 2004, I concluded in this way –

‘I hear the calls of politicians and the public alike to produce cuts in spending and in the overall numbers employed without cutting services, but while I am in no position to assess the legitimacy of

such demands in relation to other Departments, I can say flatly that it is impossible in this Department to meet existing business demands on a timely basis yet alone additional demands year on year. I regret that it should have reached the stage that I feel it is necessary to put this in the public domain, but these things need to be said not only for the benefit of politicians but also for the benefit of the public. I appreciate that there are extreme pressures on government funds but it is my duty to warn that the Law Officers' Department cannot continue to meet the expectations of the States and the Royal Court without further resources. There is a cost to running government and that includes an adequate provision for legal services. That is not a luxury but an essential.'

I would like to add that comments of this nature have been made in most annual reviews and Business Plans since 2001. For example, in the Attorney General's Review of 2003, I pointed out that in every group within the Department the demands had been increased on those in 2002 and in many cases were at their highest ever level. There were more trials, more requests for advice from States Departments, more Notices issued under the Investigation of Fraud and International Co-Operation Laws, more new matters raised by the Children's Department, more requests for advice from the Legal Adviser to the Police and more cases presented by the Legal Advisers in that Court, in each case than since these statistics were kept. I said that the overall pressure under which the Department was working was such that additional staffing was likely to be appropriate.

In the Business Plan for 2005, the key risks identified in relation to nearly every strategic aim set down are that pressure of work and lack of resources will result in delay.

I am far from satisfied with the delay which was incurred in giving advice to the Prison Board of Visitors and the Home Affairs Committee in relation to the possible appointment of an Adjudicator. The subject matter of the advice was, as it turns out, quite complex, given that it required an analysis of decisions of the European Court of Human Rights by reference to different legislation and practice, if similar in some respects, which existed in the United Kingdom than has existed in Jersey. But I accept entirely, if it should be said, and even if it should not, that the delay was too long.

I add that although States members and civil servants have on the whole been very understanding when delays have occurred, it certainly gives no pleasure to the lawyers in my Department to feel they have constantly to apologise for a delay in dealing with particular requests for advice.

- (d) As I have indicated above, the availability of appropriate staffing resources in the Law Officers' Department has undoubtedly had an impact on the timely delivery of legal advice provided to Committees. I hope it is right to say that generally speaking the pressures on staffing resources have not had the result that the wrong legal advice has been given, although no sensible lawyer would ever claim to be perfect. In the last two months, approval has been obtained for the creation of additional jobs in the Department. These are a minimum, in my view, to meet the current demands, without regard to any future commitments which may arise from prospective legislation or other political initiatives. I should add that actual recruitment to the relevant positions will in some cases be straightforward, but in the context of recruiting qualified Jersey lawyers, one has to recognise that, despite some improvement through partially implementing the independent Powell review into salaries in the Law Officers' Department in 2003, there are extra difficulties built into effective recruitment by a salary structure which is not competitive with the private sector."