

**WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY SENATOR B.E. SHENTON
ANSWER TO BE TABLED ON TUESDAY 20th OCTOBER 2009**

Question

“Can the Attorney General give an estimate of the total prosecution costs in respect of the recent conviction of Curtis Warren and associates?

Can the Attorney General advise whether the defendants paid for their own defence costs or whether these costs were covered under the legal aid system?

Given that the legal aid system is normally financed by local law firms, can the Attorney General advise whether the taxpayer contributed to the defence costs in this case, and if so, give an estimate of the sums spent and, also advise under what criteria legal aid was authorised given the indicated substantial wealth of one of the defendants?”

Answer

The external prosecution costs have been £1,002,500 over the period 2007 to date.

My understanding is that the six defendants applied for and were granted legal aid. The defence costs were borne in part by the lawyers personally in the sense that they gave of their time either at no cost or at a lower than market rate and in part by the legal aid vote administered through the Judicial Greffier. The total defence costs to date charged to the legal aid vote were, I believe, in the sum of approximately £1,200,000.

I have asked the Judicial Greffier for the details to enable me to provide members with the facts, and have been advised as follows:

“LEGAL AID SCHEME

1. The Legal Aid Scheme in Jersey is administered by the Bâtonnier, the head of the local Bar, and most duties under the scheme are delegated to the Acting Bâtonnier. The Legal Aid Scheme is not statutory and has developed out of the obligations placed upon the legal profession, who are bound by their oath, to represent “*veuves, pauvres, orphelins et personnes indefendues.*” The scope of the scheme has over the years extended well beyond the obligation to represent “widows, the poor, orphans and the undefended”.
2. The system is now set out in the 2005 Legal Aid Guidelines of the Law Society of Jersey, containing detailed rules as to the availability of legal aid, the financial criteria for the granting of legal aid and the general administration of the Legal Aid Scheme.
3. The discretion as to whether to grant a legal aid certificate rests exclusively with the Bâtonnier (in practice, by delegation, the Acting Bâtonnier).

STATUTORY PROVISIONS

4. Under the provisions of the Costs in Criminal Cases (Jersey) Law 1961 the costs of a defendant for whom a lawyer has been appointed under the Legal Aid Scheme are paid from public funds where the defendant is acquitted. Payment is also made from public funds for a legally-aided defendant in connection with an appeal from the Magistrate's Court to the Royal Court and an appeal from the Royal Court to the Court of Appeal under the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949 and 1961 Law respectively, irrespective of the outcome of the appeal.
5. In the case of payment in relation to appeals an hourly rate specified by the Court is applied, these currently equate to hourly rates of £141 (£137) for an advocate who is salaried to £175 (£169) for an advocate who is a partner. (The figures in brackets represent the hourly rate in force between 1st June 2008 and 31st May 2009.)

The costs of an acquitted legally-aided defendant are not limited to the contribution (if any) that the defendant would be expected to pay his or her lawyer under the Legal Aid Scheme administered by the Bâtonnier.

LEGAL AID VOTE

6. The Legal Aid Vote is the fund administered by the Judicial Greffe from which necessary disbursements incurred by lawyers acting under the Legal Aid Scheme are paid. In a limited number of exceptional cases (of which there have been approximately 12 in the past 10 to 15 years) lawyers' fees in respect of particularly onerous legal aid cases are also paid from this fund. The basis of payment has changed over the years but nowadays payment is generally made (a) only after lawyers have completed at least 60 hours unpaid work, (b) at the legal aid rate fixed by the Court in connection with Legal Aid Appeals in criminal cases and (c) is subject to an informal taxation (or assessment).

The Legal Aid Vote also bears the costs of Court appointed *amicus curiae*. The hourly rates paid to a court appointed *amicus* are negotiated on a case-by-case basis but generally range from the external Crown Advocates' rate (£267) to a discounted commercial rate.

THE PRESENT CASE

The Deputy Judicial Greffier was satisfied this was a serious case which raised complex legal and other issues and would necessarily involve exceptional demands on the time of the lawyers appointed by the Bâtonnier under the Legal Aid Scheme. In short, the case would represent an unduly onerous legal aid burden for the appointed lawyers.

The Deputy Judicial Greffier entered into correspondence with the advocate appointed to act for the defendant Warren and obtained an affidavit from the defendant testifying that all his assets had been frozen in the United Kingdom by the English authorities pursuant to a request made by the Dutch authorities.

The Deputy Judicial Greffier also took into consideration potential human rights implications and other policy considerations including the likelihood of the Court appointing an *amicus* in the event that a defendant was not represented.

During the course of the pre-trial applications and appeals new lawyers were appointed by the Bâtonnier to certain defendants.

The total payments to eight lawyers who have acted for the six defendants, and to the lawyer appointed by the Royal Court and the Court of Appeal as *amicus curiae* when the defendant Warren was without legal representation, amount to approximately £1.2m. In this particular case the lawyers also agreed to limit the

basis on which costs would be claimed should the defendants be acquitted and the lawyers awarded costs under the 1961 Law.

The figure includes all disbursements claimed in relation to foreign law advice and expert opinion required by the legal aid lawyers.

The Deputy Judicial Greffier welcomes the fact that there is Ministerial discussion with the Law Society in connection with potential reforms of the Legal Aid Scheme.”

I add to this that the Island is bound in law to ensure that accused persons have a fair trial. In appropriate cases, this means ensuring that legal representation – not, as is sometimes said, legal representation of the accused’s choice – is available to the accused. At the same time, the position must be fair to the counsel involved, and the present scheme is intended to tread a path through these principles.

It should also be said that defence counsel have to be and be seen to be independent in their defence of the accused. One should expect them therefore to take all points which professionally ought to be taken. It is known that there are issues to be discussed with the profession, and like the Deputy Judicial Greffier, I welcome the fact that there is Ministerial discussion with the Law Society on this matter.