

**WRITTEN QUESTION TO THE CHIEF MINISTER
BY DEPUTY M.R. SCOTT OF ST. BRELADE
QUESTION SUBMITTED ON MONDAY 13th FEBRUARY 2023
ANSWER TO BE TABLED ON MONDAY 20th FEBRUARY 2023**

Question

“Following [concerns raised recently by the local media](#) regarding a perceived disparity in the application of the principle of open justice by the Jersey judiciary compared with the judiciary in England and Wales:

- (a) what action, if any, will the Chief Minister be taking to ensure the principle of open justice receives statutory recognition in Jersey?
- (b) is consideration being given to aligning the practice of Jersey courts more closely with the guidance issued by the Lord Chief Justice of England and Wales to the judiciary of England and Wales and related media law in that jurisdiction; and
- (c) does the Chief Minister support the implementation of measures that reflect the recommendations in the Justice Committee of England and Wales’ [Report](#) on Open Justice and Court Reporting in the Digital Age?”

Answer

The concept of Open Justice, and the right of citizens to know as much as possible about the operation of the courts, is a fundamental part of an effective and credible justice system. The European Court of Human Rights has set out that public trials are a fundamental principle enshrined by Article 6, with the transparent administration of justice contributing to the right to a fair trial¹.

Conversely, as the UK’s Law Commission has recently highlighted in its report on open justice, “*the principle of open justice has, however, never been absolute*”². Courts also have a responsibility to victims, vulnerable parties and some defendants to maintain the confidentiality of some proceedings.

The underlying principle in Jersey, as in the UK, is that proceedings should be open unless there is a pressing reason for them to be held in private. However, it is open to judges in the UK to hear matters in private where it is deemed necessary.

- (a) It would be an unusual step for Jersey to address this issue by statute. In the UK, as in Jersey, there is an expectation that the courts will be responsible for managing their own processes in these areas. Allowing the courts to proceed in private where necessary means that a decision can be taken in light of the particular circumstances of each case.
- (b) The ‘practice of Jersey courts’ is not within the gift of the executive to manage. The right of the courts to manage their own process is a fundamental component of their independence, and independent courts are a necessary check on the power of government.
- (c) The recommendations of the Justice Committee are wide ranging and concern court reporting rules, remote observation of court cases, open days, case law recording and more. Those recommendations are made against the backdrop of a different system of justice, administered by a different structure of courts. There is always room for improvement in

¹ Riepan v. Austria [2000] ECHR 575

² Khuja (Appellant) v Times Newspapers Limited and others [2017] UKSC 49

processes, but it would not be either appropriate or effective to import a set of recommendations made in a different context.