

**WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY DEPUTY T. M. PITMAN OF ST. HELIER
ANSWER TO BE TABLED ON TUESDAY 1st MARCH 2011**

Question

“Will the Attorney General clarify whether a judge/magistrate having a link through family members to an individual who was a witness; a police complainant; or perhaps stood to gain either financially or otherwise in the event of a conviction would have to excuse him or herself from presiding over a case; further still, under what aspect of which law is this outlined, and does Jersey legislation on such matters differ from that in the UK?”

Answer

The test for recusal is well established at customary law and follows the English common law: see Syret v Attorney General [2009] JCA 181 for the Jersey Court of Appeal’s consideration of the subject.

There is no general rule and each case must be determined on its own facts.

The Judge must first ascertain all the circumstances which bear on the suggestion he was (or would be) biased. The Judge must then ask himself whether those circumstances would lead a fair-minded and informed observer to conclude that there was (or would be) a real possibility that the judge was (or would be) subject to bias.

A fair minded observer is not unduly sensitive or suspicious. The assumptions that the complainer makes are not to be attributed to the fair-minded observer unless they can be justified objectively. The fair minded observer is the sort of person who takes the trouble to read the text of an article as well as the headlines. He is able to put whatever he has read or seen into its overall social, political or geographical context. He is fair-minded, so he will appreciate that the context forms an important part of the material which he must consider before passing judgment. But the fair-minded observer is not complacent either. He knows that fairness requires that a judge must be, and must be seen to be, unbiased. He knows that judges, like anybody else, have their weaknesses. The standing of the Judge and his oath of office are relevant considerations.

The question does not identify the nature of the ‘link’ between the Judge, his or her family and the third party. There is a myriad of possibilities and therefore it is impossible to comment. One can imagine many scenarios when any link is so tangential or insignificant that there is no difficulty in the Judge continuing to hear the case. In any event, it is a matter for a Judge to determine as and when the issue arises. If a party is unhappy with the decision, then there is a right of appeal.