

STATES OF JERSEY
SCRUTINY PANEL MEETING
THURSDAY, 16th FEBRUARY 2006

[AGE OF CONSENT]

PANEL:

Deputy P.J.D. Ryan of St. Helier (Chairman)
Senator J.L. Perchard
Connétable D.J. Murphy of Grouville
Connétable J.L.S. Gallichan of Trinity
Deputy J Gallichan of St Mary

WITNESSES:

Senator F.H. Walker (The Chief Minister)
Senator W Kinnard (Minister for Home Affairs)

Deputy P.J.D. Ryan of St. Helier:

Good morning, everybody. Ladies and gentlemen of the public, thank you once again for joining us this morning. I hope you find the proceedings interesting. Good morning to Mr Chief Minister Walker. Good morning to Madame Home Affairs Minister. Welcome to you both. The two Ministers are joining us this morning together. First of all, if there is anything that Senator Kinnard would like to add to a question that Senator Walker has answered, there will be no problem with that. Senator Walker, when we move to Senator Kinnard there will be a set of questions that we want to ask - and vice versa - if you want to add anything. As a Panel, we will give you the opportunity at the end to add anything that we may have missed that you would like to add by way of evidence, or other angles that we have not covered. Just to remind members of the public, you are here as observers. This is a session where we are here to hear evidence from the two Senators, two Ministers. If you do, over the course of the events, have anything you would like to make known to the Panel, there are processes that are available to you through our two officers, Sam Power and Mike Haden. They are available in the Scrutiny Office at any time if you would like to give them any information and make it available to the Panel by way of evidence. Indeed, if we feel that there is something new that you are bringing up, we may, before we have finished our series of public hearings, call you before the Panel to hear whatever evidence you may have. There is no exclusion here; this whole process is owned by the public and we are at pains just to make sure that the public are aware of that. I should add that if there is anything that you would like to add that you do not want put on to the website, or that you want to keep your name confidential, as long as you provide us with your name, we would respect any confidentiality that a member of the public might require, so that you are not attached to anything publicly, so to speak. We do not accept anonymous submissions but we will respect your own privacy if you so wish. I want to explain, for the benefit of the public, when we have called members of the public in front of scrutiny panels we have to read out a statement. We do not have statutory rights at the moment, so any member of the public is not covered by Parliamentary privilege. However, as you Senators are Members of the States of Jersey, I do not need to read out the statement, but I would need to if it were a member of the public. Can I remind you also, you should have a copy of our terms of reference in front of you. We will try as far as we can

to stick to those terms of reference. I will allow a little bit of straying outside, but please appreciate the fact that I might ask you to stop a particular line of evidence that you are giving because it is outside of our terms of reference. I am not going to be totally black and white on this, because in the interests of transparency sometimes we need to stray a little bit, but I would like to try and keep as much as we can to the terms of reference. To start with, Senator Walker, I think that Connétable Gallichan has some questions he would like to ask you about the European Court of Human Rights.

Connétable J.L.S. Gallichan of Trinity:

Good morning, Chief Minister. Basically, just to examine the Island's current commitments under ECHR (European Court of Human Rights). Why should Jersey take account of the ECHR in deciding certain legislation?

Senator F.H. Walker (The Chief Minister):

I think what we need to do to answer that is go back to when we first signed up to the convention. The UK ratified the convention on Jersey's behalf in 1953, at the request of the Island authorities, so we are going back now very many years. It was an entirely voluntary act. The Island authorities of the day said: "We want you, the UK, to sign us up to the convention on our behalf". Entirely voluntary. Now, having done that, we entered into commitments. We said we want to be a part of this and so we took on the requirements of the convention. We committed ourselves to implementing those requirements to the best of our ability within our domestic competence, so we have a real commitment in that respect. A direct signatory on our behalf was the UK and they have the obligations in international law. The accepted constitutional practice is that we honour those obligations in our own domestic policy and our own legislation. In return, the UK respects our autonomy and our competence in this regard. That really, if you like, strikes at the heart of our constitutional relationship with the UK, which has developed now over a very considerable period of time. So, having committed ourselves voluntarily, we also committed ourselves to the jurisprudence of the European Court. That is the position. We have committed ourselves. In my view, there is no going back. In my view, there are no half measures. Having committed ourselves totally to the convention, Jersey cannot pick and choose which parts of the convention it is happy with and which parts it is unhappy with. In my view, we have an absolute binding commitment.

The Connétable of Trinity:

You have just about answered the three questions that I had (several inaudible words), which is basically that the Island made its own commitment, so that has been answered by you. Is there any margin of discretion in applying these principles to the ECHR within a particular space, where the government believes that weightier reasons, such as the importance of protecting vulnerable young people, should be taken into account?

Senator F.H. Walker:

Not really, no. There are issues that can be taken into account, but in our very firm opinion - and the opinion of all our advisors - they do not apply in this case. There are other issues, I would argue, regarding the health and protection and so on, but that is more an issue, I think for Senator Kinnard than it is for me, under the international aspect. In short, we do not believe we have any justifiable grounds for not implementing the legislation.

Senator W. Kinnard (Minister for Home Affairs):

Could I perhaps then assist, as I have more or less been invited to by the Chief Minister. There is the case that in certain circumstances, when you are dealing with matters under the European Convention of Human Rights that there are situations where you might have a margin of appreciation. In this particular instance we are dealing with Articles 8 and 14 of the Convention and Article 8 is obviously a fundamental right. When you are dealing with that, the only way in which it would be possible to

interfere would be in a situation where it was likely to involve the national security, or matters to do with serious crime, or that sort of thing. There has been sufficient case law now in the European Court, I think, to show us that any margin of appreciation in this area, in interfering with these sorts of fundamental rights, will basically not be tolerated by the European Court. I think that the thing that you need to bear in mind is that if one is going to seek to interfere with a basic human right you have to be able to persuade the Court that what you are doing is proportionate to the interests that you are trying to protect, and at the same time proportionate to the individuals that you will be affecting by constraining their right. It is clear from well-established case law that in this area it will not be possible to argue on the basis of a margin of appreciation. In fact, Austria tried it quite recently and the judgment against Austria was quite definite that they would have to change their legislation.

Deputy P.J.D. Ryan:

I would just like to expand a little bit here. I think there are - and I am sure you would agree - legitimate worries. I think I would just like to remind you of the debate that took place in the States in January. The charge was made (let us put it that way) that the Island would be bowing "to political correctness" in changing the laws regarding age of consent. That was what was said in the States Chamber. I am going to just remind you what was said in the States Chamber, ask you for your comments, and give you the opportunity to talk about that and tell us whether you think it is wrong. You are saying it is wrong, Senator, I appreciate that. I want to give you the opportunity to talk about that. There appeared to be a feeling that valid moral and social concerns were being ignored in pursuit of the principle of non-discrimination. So I suppose the question is, do you believe that the European Court of Human Rights sets down some fundamental and overriding principles which the Island is obliged to follow regardless of other considerations such as those?

Senator F.H. Walker:

It is up to us to deal with the concerns about children's safety, etc; that is within our domestic competence. But there is no doubt at all that the European Court has laid down fundamental principles. The Convention has laid down fundamental principles, which we have voluntarily confirmed we will abide by and we will implement. I do not see any room for choice here at all. We are either in or out. As I said before and I said in the States, we cannot pick and choose which parts of the convention suit us and we want to implement, and which parts do not. We are either in or out. I will come on to the consequences later, no doubt, about not complying and what that would do to our relationship with the UK Government. The other aspect of this is that we have developed an international position for Jersey in recent years, which is stronger and more highly respected or regarded than any position Jersey has had, in my experience, and going back for a very long time.

Deputy P.J.D. Ryan:

Could I just hold you there, because I think we are going to ask you about the relationship with the United Kingdom in more general terms.

Senator F.H. Walker:

I was not referring to the United Kingdom in this answer, but I will do that later. This is the general international position (overspeaking).

Deputy P.J.D. Ryan:

I am going to ask you to expand on that in a later question, so if we could stick to this particular question.

Senator F.H. Walker:

(overspeaking) is political pressure, no. Jersey has voluntarily agreed to honour the commitments that it entered into with the Convention. That is the straightforward position. What do you think of any country that signs up to a commitment, to an obligation, to a Convention - whatever it is - and then decides after a number of years of implementing most aspects of it, it is no longer going to comply? "We no longer want to play this game, sorry. We are going to pick and choose which parts of it we want to abide by and which parts we do not". Or, "We are going to walk away from our obligations altogether". What do you think of any country? What would other people think of a country, a nation, a community, an island like Jersey, who would behave in that way? I would say very clearly, our reputation would nosedive. That is something that would damage the Island in any number of ways, politically; constitutionally, economically, and ultimately socially as well.

Deputy P.J.D. Ryan:

The question was, do you believe that the European Convention on Human Rights sets down fundamental and overriding principles, which override any feelings of perhaps moral and social concerns around this issue that were being expressed? That was the question.

Senator F.H. Walker:

They have laid down conventions, obligations on us, which we are obliged to meet. It is up to us domestically to deal with the moral issues, the issues of our security, health, and so on.

Deputy P.J.D. Ryan:

Do you have anything to add to that?

Senator W. Kinnard:

Yes, quite a lot, if I may. Yes, we are dealing with fundamental human rights to which we have signed up. I mentioned earlier on both Article 8 and Article 14; if I just perhaps remind members that Article 8 is to do with the protection of family life. It kind of runs: "Everyone has the right to respect for his private and family life, his home, and correspondence. There shall be no interference by a public authority with the exercise of this right, except such as in accordance with the law and is necessary in a democratic society, in the interests of national security, public safety, or the economic well-being of a country." As I mentioned, it goes on to talk about serious crime and so on. It is a fundamental right that you interfere only after very, very careful thought. Article 14 is: "The enjoyment of the rights and freedoms set forth in this section shall be secured without discrimination on any grounds such as sex or any other status." Quite clearly we have set there, the two principles that we are facing and having to deal with. Now, you have mentioned that in the States it was asserted that what we were doing was bowing to some form of political correctness. I would say two things about that. Firstly, that is not true. We are actually trying to live up to the international commitments that we ourselves have made. If we in Jersey are going to have an international personality of our own and try to promote ourselves as a well-regulated jurisdiction, then I think it is incumbent upon us to live up to our responsibilities in terms of the commitments that we have made internationally. We have made those commitments, and it seems to me that going hand in hand with those commitments means that if we are going to achieve the status of international respect, then we must include ourselves within the umbrella of countries that would be considered to be civilised countries in the way that they treat minorities groups and so on. So, I think there are fundamental principles that are both moral and political. In terms of other concerns about political correctness, I do get rather irritated, if I may say, that on occasion the term "political correctness" is used as a way of almost rubbishing arguments because the opponents have not got the material with which to engage in proper debate. I am not going to say that that was what happened in the States, but I think it is too easy a term just to throw out as a very good headline, if you like. It does not, in my view, move the debate on. Really I (overspeaking).

Deputy P.J.D. Ryan:

It is an emotional statement rather than a ...

Senator W. Kinnard:

It is an emotional statement rather than one that seeks to engage with the arguments and the principles. On the issue of the moral aspects, I know the moral aspects that were raised in the debate tended to be around religion, or not agreeing with the idea of homosexual acts generally, or indeed anal sex between men and women. Of course there are other moral arguments about living in a society which seeks to treat others with fairness, and where we try to be a society that treats individuals and values them for their uniqueness and the contribution they make to society, and not to discriminate against them. So I think there is equally an argument in favour of saying that it is a moral thing to do, to seek to equalise the age of consent between heterosexuals and homosexuals. I think, indeed, that was an argument that was made in the House of Commons at the time the debate took place there. It was Tony Blair, prior to him becoming Prime Minister, who said: "Society has actually got used to the idea that we don't discriminate against other colours, other ethnicities, so that it isn't actually right to use the law to do that." In the same way he was saying: "In a civilised society we have got to come round to also accepting that we ought not to be using the law to discriminate against homosexuals." No matter what we might think personally - we are not going there - the issue is about whether or not we should be using the criminal law in a discriminatory way. Quite clearly there was a very strong moral argument put forward there for the case for change.

Deputy P.J.D. Ryan:

I do not want to go too far and too long down this line, because it is probably outside our terms of reference.

Senator W. Kinnard:

You did ask the question.

Deputy P.J.D. Ryan:

I did, however I did want to try and keep it under a certain amount of boundary.

Senator W. Kinnard:

I will try and be brief then. On the social concerns, indeed there are social concerns that were raised, some of which I think we could easily address and certainly I would seek to address. There are social concerns about the way that the law operates at the moment causing a great degree of distress and concern to those people who are being criminalized by the existing law. Leaving that aside, seeking to address some of the concerns that were raised in the debate about abuse of trust, it is quite clear that --

Deputy P.J.D. Ryan:

Senator, sorry, could I ask you to just round up there. I will tell you why; we are going to be asking you questions about this when we come to you in a second and you will have an opportunity to expand at that point. I think we have heard about your opinions on the question of political correctness that I think needed bringing out, because "it was said in the States". I felt that it was only right to give you the opportunity to talk about that, because we asked other witnesses last week on a similar vein, so we wanted to get your view on that. I think we have that quite clearly and I thank you for that. I believe the Connétable Murphy would like to ask a question.

Connétable D Murphy:

I am questioning the abuse in position of trust or sexual grooming. It was clear in the States' debate that many Members would have preferred that the question of the age of consent had been dealt with in the context of a broader review of sexual offences legislation. You have since indicated that in order to address these concerns in respect of abuse of trust, the provisions of Sections 16 to 24 of the UK Sexual

Offences Act 2003 will be incorporated into the Sexual Offences (Jersey) 200- law. That is in the minutes of the Council of Ministers of 26th January. Are you confident that this move will fully address the concerns raised by Members during the debate?

Deputy P.J.D. Ryan:

Sorry to interrupt, but I am trying to keep some order to the whole thing, some structure. If you do not mind me saying, I think you have moved on to some of the questions that we were going to ask the Home Affairs Minister at the end.

Connétable D Murphy:

Well, we were going down the moral route.

Deputy P.J.D. Ryan:

We were, but I want to come back to that in a second, if you do not mind, a little bit later on. One of the questions I think you wanted to ask of The Chief Minister was the history of legislation, to do with pressure.

Connétable D Murphy:

I thought we were doing that later.

Deputy P.J.D. Ryan:

No, we are going to try and deal with The Chief Minister completely, all the questions we have at first there, otherwise we will be jumping around in between. It is one of the disadvantages of having two Ministers in at the same time as joint witnesses, so to speak. That is one of the problems that we have to try to deal with.

Connétable D Murphy:

I am sure we have a reply already on my original question. If I can come on to the last one? This threat that seems to be hanging over our heads with regards the signing of the ECHR, I would like to know, firstly, what are the criteria for the UK coming to interfere and legislate on our behalf? Second, has this ever been done before? Thirdly, what was the result of that interference in our domestic affairs?

Senator F.H. Walker:

I do not accept the word "threat", let me say. I believe, as I have already said, that we have voluntarily signed up to certain commitments and other bodies who have also signed up to those same commitments have every right to expect us to honour those commitments. So I do not think we are looking at a threat here. I think we are looking at expectation, which I think is very different. I think it is a justifiable and totally correct expectation. To answer your question about the United Kingdom's right to legislate for Jersey, the UK has in the past - and we are talking about the dim and distant past - has legislated --

Connétable D Murphy:

Could you answer the first part, which was the criteria for them doing this. There must be written somewhere the criteria for interference.

Senator F.H. Walker:

There are no set criteria for them to legislate --

Connétable D Murphy:

We are not talking about revolution (inaudible)?

Senator F.H. Walker:

Yes, in that context you are correct. They could interfere in Jersey's domestic affairs if law and order had broken down in Jersey and if we were ultimately incapable of governing the Island. But I do not think we are in danger of going there at this particular point. By convention and by agreement - certainly for the last many, many years - the UK Government has not legislated for Jersey. They are clearly not in any way looking to legislate for Jersey. It is the last thing the UK Government wants to do in respect of Jersey. They do not wish to legislate for us. On the contrary, we have seen very clear evidence in recent months, of the UK Government encouraging Jersey to develop our own international position, our own international personality, to reach international agreements in our own name and so on. The only reason they are doing that is because they have confidence in our ability to legislate for ourselves and to govern our own affairs. That is the only reason they are doing it. If they did not have that confidence then they would not be encouraging us in that way. It would be exactly the reverse. The UK theoretically here has three options. It could withdraw from the European Convention itself, because Jersey, which is part of the United Kingdom's obligations, has breached the position, to effectively denounce the Convention. That is absolutely inconceivable and there is no way the UK Government is going to withdraw from the Convention. The second option open to the UK, theoretically, is that they might be compelled by order of council to legislate for Jersey. There is a huge question then about whether they can, and that is a legal argument that the lawyers should put to you, rather than me. There is a huge issue about whether they can. Frankly, it is one that Jersey does not want to see tested too deeply, because the very uncertainty of the constitutional agreement between Jersey and the UK is one of its greatest strengths. What we do not want to do is use an issue such as this to go down a road that tests the legal opinion, and there are differing legal opinions. So, theoretically they may feel compelled to try to legislate for Jersey. Whether they would be successful or not is another matter, but if we get to the stage where the UK Government feels that they are compelled to try and legislate for Jersey, then we would put Jersey in considerable danger in any number of ways: constitutionally, economically and, as I said before, ultimately socially. We are putting our whole constitutional position potentially at risk. That is not a risk that I feel any informed and any reliable and sensible States Chamber is going to take. It strikes at the heart of our constitution. It strikes the heart of the position we are creating for ourselves and have created for ourselves. Bear in mind that the UK would be under massive pressure from their other country to have signed up to the convention. The UK would be in breach and they would be under real pressure from the court, huge pressure. They would be embarrassed, to say the least, but under massive pressure as well. So the most likely scenario is that the UK would say, "Okay, Jersey, you have breached your commitments to us --"

Deputy P.J.D. Ryan:

Is this option 3 now?

Senator F.H. Walker:

This is option 3. "You have breached your commitments to us, you have breached your commitments to the European Court, you have breached your commitments under the Convention. We are sorry, we are just not tolerating that position. Do not forget that you, Jersey, voluntarily entered into those commitments in the first place. Nobody told you you had to - you volunteered to do it - so what on earth are you doing?" The most likely scenario would be that they would, as threatened in the not-too-distant past, they would bring huge pressure to bear on us politically and economically. That, again, would put Jersey in a position I personally would not wish to see us come anywhere near.

Deputy P.J.D. Ryan:

Is there any more on that particular line?

Connétable D Murphy:

Yes, on that particular line, is there not an option 4 that we could cut ourselves away from the UK signing on our behalf? If they are encouraging us to have an international identity of our own, we could

then renegotiate our position with regards the ECHR and ignore the United Kingdom's position.

Senator F.H. Walker:

No.

Connétable D Murphy:

So it is not an option?

Senator F.H. Walker:

Not an option, no. In any case, I would argue that even if we did - if we declared full independence from the UK - I would argue that if we want to be regarded as a sound, sensible, well-governed community, we ourselves would wish to remain signed up to the European Convention, or would sign ourselves up in the future. Again, I go back to the point that we wanted to sign up to the Convention. It was not because the UK Government pushed us into it. We wanted to. We felt in 1953 (and I do not believe that the position has changed) that it was in Jersey's best interest to sign up to the Convention. I believe that is still very much the case today.

Connétable D Murphy:

Do you think that if we were presented with the option of signing or not signing today, ignoring what has happened in the past, that we would sign?

Senator F.H. Walker:

Yes.

Connétable D Murphy:

You do?

Senator F.H. Walker:

Yes.

Senator J.L. Perchard:

Can I just follow up on that, Senator Walker? Are you aware of the statement made in April 1995 by the then-Deputy Edgar Becquet to the States of Jersey, after visiting the Home Office, with regards to (inaudible) legislation?

Senator F.H. Walker:

I am not totally au fait with it.

Senator J.L. Perchard:

It is so relevant to today's discussion, but you do not have to be to answer this question. The fact is in 1990 Deputy Edgar Becquet made a statement to the States of Jersey. Are you aware of any constitutional changes in relationship between the Island of Jersey and the United Kingdom Government since 1990?

Senator F.H. Walker:

No.

Deputy P.J.D. Ryan:

I think we have examined that particular area pretty well. I thank you for your frankness on that. Deputy, I think you want to move on to a slightly different subject.

Deputy J. Gallichan:

Yes, something completely different. In the (overspeaking) you were quoted as saying, “A citizens panel might, if it had been established, have been consulted on the issue of lowering the age of consent.” What do you believe a citizens panel might have contributed to how the States would reach a decision on this event?

Senator F.H. Walker:

I used this as an example (and you have said it correctly, Deputy) of an issue that might have been referred to a citizens panel had one existed. Some people interpreted my remarks as meaning that I thought it should be. I did not say that. I said had it been in existence then maybe it could have been. I think that a citizens panel - and my view is shared by the Council of Ministers - can have a great deal to offer the States and the Island in terms of considering important issues of the day, ensuring then that we do get a seriously representative view from the people of Jersey. This is just one example and there will be many others, of course, over the years. That is the position we are in at the moment. We have not set up the citizens panel. There is a certain amount of work to be done to get the mechanics, et cetera, right. It will be a few months, no doubt, before it is established but that is what we are aiming to achieve. Had it been in existence, I think this would have been a very useful issue to put to the panel, so that the States would know, maybe the Scrutiny Panel would know, the Council of Ministers would know, what a genuine and considerable cross-section of the Island community thought about the issue.

Deputy J. Gallichan:

If, for argument’s sake, a review had been conducted and it was highlighted that public opinion was against the lowering of the age of consent, bearing in mind the things that you have already said about our position, in your opinion would this have been just cause for objecting the proposition?

Senator F.H. Walker:

In this case, no. I think we always should be listening to the public and consulting with the public, but as I think (several inaudible words), my absolute belief here is that we have no choice anyway. So maybe if you want to look at it in that respect, maybe it was not such a great example to think of ... [laughter] However, it does not change my opinion in any shape or form; we have no choice.

Deputy P.J.D. Ryan:

Can I direct my questions to the Chief Minister only at this stage? Chief Minister, would a decision by the States not to lower the age of consent prevent the implementation of our Jersey human rights legislation?

Senator F.H. Walker:

No, it would not. We can still bring forward the human rights legislation, but we would still remain in breach of the Convention. As Senator Kinnard said earlier, we would then be charged, no doubt, of being in breach of Articles 8 and 14 of the Convention.

Deputy P.J.D. Ryan:

Have the Council of Ministers got a proposed date to bring the HR legislation to the States?

Senator F.H. Walker:

We have not got an exact date, but it is imminent.

Deputy P.J.D. Ryan:

What would be the result of that, just to be absolutely clear? I think we know the answer, but we would like to hear your view. You bring in the Human Rights (Jersey) Law and you are still in breach of the European Convention on Human Rights; what would follow? What would happen?

Senator F.H. Walker:

I think first of all we would look very stupid as a government, and that is not something I would be very happy about. Then we would be back to the position I outlined earlier, that is, our position with the UK Government would be called into very serious question. Our position under the convention would be untenable, basically, so it does not actually change that situation at all. Jersey has said we want to be bound by the convention. Jersey has said we want to and we need to introduce the human rights law. We need to be consistent here. There is absolutely inconsistency in seeking to introduce human rights law, while we know we are in breach of these two provisions.

Deputy P.J.D. Ryan:

I think I was looking for your opinion as to whether then we would end up with a series of challenges in the Royal Court, as opposed to being ...

Senator F.H. Walker:

Absolutely, yes.

Deputy P.J.D. Ryan:

That is what I was wanting your opinion on.

Senator W. Kinnard:

Could I add to that, if I may? We would end up with a series of challenges in the Royal Court, and the Royal Court would have no option, given that it would be bound by existing case law in Europe, to come to the same conclusion that we would be in breach of Articles 8 and 14. The only difference is that the case would take place here rather than in Strasbourg

Deputy P.J.D. Ryan:

Or both.

Senator W. Kinnard:

Or could indeed in both. But I think we still face the same constitutional difficulty, because of course we ourselves are not signatories to the convention. The United Kingdom has signed on our behalf. We have just said that we are bringing rights home by enabling people to exercise those rights in our domestic courts. So, the United Kingdom could still be hauled over the coals on our behalf before the European Court. I think *Sutherland* is the authority on this, where in that case a decision was made against the United Kingdom, even though there had been no prosecutions. At that stage costs were awarded, because the individual was given victim status, if you like. Costs were awarded against the Government and so on. So I could see a scenario where we would have a similar difficulty. Would the United Kingdom Government wish to try to defend us over something that it itself feels is undefendable; that it knows it is going to lose? The United Kingdom could then find themselves having costs awarded against them and then seek to recover those costs from us. It would be a total and absolute constitutional nightmare as far as I can see.

Senator F.H. Walker:

A disaster?

Senator W. Kinnard:

A disaster.

Deputy P.J.D. Ryan:

Senator, would you like to carry on?

Senator J.L. Perchard:

Yes, I would. Can I remind you that I would like to direct my series of questions to the Chief Minister? The Panel spoke last week with a witness who was bringing a challenge in the European Court of Human Rights. The case is being brought against the United Kingdom, rather than Jersey, for the reasons we all know. Jersey is not a state party to the ECHR. If the case is found in favour of the applicant, it is the United Kingdom, therefore, which will be in breach of its international obligations, as already has been said. It appears by ratifying the convention on behalf of the Island, the United Kingdom has taken an international obligation to ensure that Jersey is compliant, and that Jersey has either implicitly or expressly accepted that obligation. In your view then, has the United Kingdom Government a legitimate expectation that the Island will comply with international commitments?

Senator F.H. Walker:

Totally. In this context, absolutely.

Senator J.L. Perchard:

The United Kingdom Government has a legitimate expectation?

Senator F.H. Walker:

Yes. I go back to a point I made; that we ourselves asked the United Kingdom to sign up to the convention on our behalf.

Senator J.L. Perchard:

Or I will put it another way, Chief Minister: if the United Kingdom Government has the responsibility for the Island's compliance with ECHR, can the UK insist that Jersey take the necessary action to comply with ECHR?

Senator F.H. Walker:

Well, I think I have said that, yes. There are options, as I went through.

Senator J.L. Perchard:

The applicant last week told the Panel that he was confident that his case would be successful based on the previous case, as Senator Kinnard has said, *Sunderland v The United Kingdom* and other recent examples, Austria versus individuals as well. The applicant was quite confident. His advice was that he would be successful in his prosecution of his case. What would be the outcome for Jersey of a challenge such as this being successful?

Senator F.H. Walker:

I think we have covered that pretty much, have we not?

Senator J.L. Perchard:

Has the Island ever been the subject of any other ECHR challenges?

Senator F.H. Walker:

Yes, we have, on housing. In fact Jersey has been successful in those cases to date. However, this is an entirely different matter in that we were not bound by the convention in this context.

Senator J.L. Perchard:

Just housing? You are not aware of any others?

Senator F.H. Walker:

I am not aware of any others. I think it is just housing. I think that is better a question for the Law Officers.

Senator W. Kinnard:

I am aware of two housing cases.

Senator J.L. Perchard:

What would be the impact of the Island's international reputation were such a challenge successful?

Senator F.H. Walker:

Incalculable. Incalculable. The ultimate cost to the Island (not just financially, but the cost to us reputationally and socially) would be potentially immense. It would, as Senator Kinnard said just now, be a constitutional disaster, I would say. It would also be an economic and social disaster, as well.

Senator J.L. Perchard:

Just one other question. Senator Kinnard quoted Articles 8 and 14 of the ECHR; would you only quote Articles 8 and 14? This applicant also quoted Article 1. His advice was that we would be contravening Article 1 as well as 8 and 14.

Senator F.H. Walker:

I am advised that the principal Articles that we would be in breach of would be 8 and 14. Again, I think that is more a matter for the Law Officers.

Senator J.L. Perchard:

Your advice is just 8 and 14?

Senator F.H. Walker:

Yes.

Senator W. Kinnard:

Well, I think it depends on the circumstances of the case. Obviously, depending on the type of discrimination in the case, then you will be arguing under certain Articles. However, the main ones that obviously stick out very much are Articles 8 and 14. But it will depend, to some extent, on the actual circumstances of the case that is brought.

Deputy P.J.D. Ryan:

Mr Chief Minister, this was the point where I stopped you earlier from talking about the development of Jersey's international personality and I said that I would come back to it. This is the point where I was going to ask you that question, in fact, to round up and to sum up your evidence to us today. I would like to give you the opportunity to expand on that again. I know that you have covered it a little bit and we have started talking about Jersey developing its international personality; perhaps you would like to just expand on that? I think it does bear repeating, for the record, and to round off and to close our direct questioning of yourself this morning. This is where I wanted to end up. I wanted to just generally let you talk about Jersey's international personality, and how this particular issue relates to it for the future in general. That then would conclude, I think, unless there are any other questions you want to ask before I ask you to do that? I am getting a no. So what we would like to ask you is how do you see Jersey's place in the world in the future, and this issue as it relates to that?

Senator F.H. Walker:

To do that I think I need to go back a little way. Until the late 1990s Jersey did not really have much in the way of a truly international personality. We had a constitutional relationship with the UK, of course,

but we had no agreements in our own name with other member states. I have to talk to a certain extent here about the importance of our finance industry, because, as we know, it drives so much of our tax revenues and therefore our social services. Jersey was a huge success because we kept our head under the parapet. Really, not too many people internationally were aware of what Jersey was doing, nor did they take any particular interest. That changed when the Labour Government first came into power. You will recall that one of the early things that faced us then was the Home Office-inspired Edwards Report, which came to look at how well we regulated the finance industry, how susceptible we were to tax evasion and money laundering and so on. That was followed in quick succession by investigations by the Financial Action Taskforce by the OECD (Organisation for Economic Co-operation and Development), and more recently the IMF (International Monetary Fund), and also of course the EU (European Union). What Jersey has done, very successfully, is proven to all of those bodies that we regulate ourselves and we govern ourselves effectively and correctly. Had we not done so then we wouldn't be in the position we are in today. We would be an economic and constitutional pariah and the cost of that to Jersey, in all sorts of ways, is incalculable. So what has happened, apart from complying with best practice, and apart from convincing all those bodies that we are well-regulated and well-governed, on the back of that the UK Government's level of trust in Jersey has increased dramatically. You will have seen a recent statement by the Lord Chancellor. Indeed, you will no doubt have seen the speech, or read of the speech that he gave in Westminster, when we unveiled the second version of the hologram. The trust level has considerably increased, to the extent that Jersey has now signed international agreements in our own name, firstly with the USA, and much more recently with member states of the EU and, in the near future, subject to States' consent, we will be signing information exchange agreements with member states of the OECD. What this means is that Jersey's reputation is soaring internationally. Take, for example, the French Government. The French Government, until relatively recently, thought Jersey was a fiscal parody, sitting very close to the coast of France, draining off great swathes of tax revenues from France and from other countries. They no longer think that. They are aware of how well regulated we are and what we offer in terms of financial services. If we wish to protect our financial services - and with it essentially our economy and everything that depends upon it - we need to continue to develop that international position. It strengthens Jersey's position considerably. It gives us much more of a robust position and much more of a robust argument to promote ourselves (and indeed, if necessary, to defend ourselves) than ever we had before. That is fundamentally, for every single person that lives in Jersey, in their best interest. Now, if we risk a decision of non-compliance here, you are going to put all that in jeopardy. The UK Government we have already probably dealt with. EU governments would most certainly not then wish to proceed with signing agreements with us and enabling us to develop our position. "Pariah" may be too strong a word in this particular context, but we would certainly become very poorly regarded and the reputation we have so carefully nurtured over the last 5 or 10 years would be lost in a stroke. It is just a risk Jersey cannot possibly afford to take. We just cannot. It is inconceivable that we would be crazy enough, frankly, to take that risk. Now, if I can just go on, you asked me to sum up. If there are moral concerns, if there are concerns about breaches of trust, about security, about health, etc (which I accept there are) then we need to deal with them locally. They are within our competence to deal with them domestically. So what we need to do is sign up to this aspect, remove the discrimination, approve the legislation, and hopefully at the same time - or certainly with a commitment to do so shortly after - sort out those issues domestically. So we can do what we need to do internationally. We can reach our commitments and continue to be highly respected and enable us to develop our position and our economy, and at the same time we can address all the social issues that relate to this matter. They are completely within our own competence. That is where, in my view, the pressure from States Members should be applied. The pressure from States Members should not be not to introduce the law; that is flawed - a completely fundamentally flawed policy - with all the attendant dangers that I have talked about. The pressure from States Members should be to get all the issues within our domestic competence addressed, sorted, so that we can rest happy locally and know that we have fulfilled the obligations we voluntarily entered into internationally.

Connétable D Murphy:

One final question. Your views are pretty clear and pretty strong. If you were in a position that you had reliable information that two-thirds of the population of Jersey were against this particular law, would you still keep the same views?

Senator F.H. Walker:

Yes. I would do on the basis that two-thirds of the population of Jersey would not be aware of the consequences to them of not signing up to this legislation.

Senator J.L. Perchard:

Fortunately, Senator, that particular subject is outside our terms of reference, as is our international personality. We are looking simply at the applications of our obligations under ECHR. It does focus us more closely on the real issue.

Senator F.H. Walker:

You cannot possibly explain, I do not think, to the Island population as a whole, in the detail that you need to explain it, what the consequences, all the repercussions, and all the aspects of this proposal are. You cannot do it. So members of the public will be reacting to it from a moral standpoint, or a prejudicial standpoint, or whatever. They will not be considering the consequence on the Island as a whole from the international aspect.

Deputy P.J.D. Ryan:

I think it does fall under item 3 to review the constitutional position of the decision not to reform the current rule, so that was our particular term of reference that I was asking you to explain. Mr. Chief Minister, thank you very much. That is quite clear. I thank you for all of your various comments; they have been very well received. I would like to now move, if I can, to the Minister for Home Affairs, Senator Wendy Kinnard. Senator Walker, if you have anything you want to add afterwards, then please feel free to do so but, again, if we can stick to our terms of reference as much as we can. A lot of these questions, by default, might not be strictly within our terms of reference, so I would apologise to you and hope that you would accept that there may be times where I will ask you to just hold it and pull you back inside our terms of reference.

Senator W. Kinnard:

Having explained that, I will try to make it more relevant to your specific terms of reference.

Deputy P.J.D. Ryan:

Connétable Murphy, you started to talk about this, but if you would like to now continue.

Connétable D Murphy:

Just to follow on from what has been said, I think quite a lot of us were frustrated in that the other panel would not take on the implications of the social issues, because within our terms of reference we are in fact very constrained. I am disappointed that we cannot go into it further, however, we will do what we can. This is the question of the abuse of a position of trust, or sexual grooming. It was clearly stated that many Members would have preferred that the question of the age of consent had been dealt with in the context of a broader review of sexual offences legislation. You have since indicated that in order to address these concerns in respect of abuse of trust, the provisions of Sections 16 to 24 of the UK Sexual Offences Act 2003 will be incorporated into the Sex Offenders law. That is the Minister in the minutes of the Council of Ministers, 26th January, Act A10. Now, are you confident that this move will fully address the concerns raised by Members during the debate?

Senator W. Kinnard:

At the time that this piece of legislation was being thought about, back about 3 years ago in a previous legislation committee, I think the feeling then, from my understanding of talking to previous members of that committee, was that they did not go so far as to look at the abuse of trust provisions. This is because they felt the existing law relating to sexual offenders and the child protection provisions were quite strong in the way in which they are delivered in Jersey and I do not think they turned their focus to that. Having said that, we now have at Home Affairs a new Sexual Offenders (Jersey) 200- law, which is in its final draft. I am just reviewing it at the moment. That will deal with issues like the requirement to register and so on. It does indeed deal with individuals who may have been engaged in sexual grooming and so on. Having said that, it does not really focus on this concept of abuse of trust quite as I think the UK legislation does. I have also been reviewing the Isle of Man legislation, which again has provisions in relation to abuse of trust. What I would say is that I would be more than happy to give a commitment to come forward to the House sometime later this year (hopefully sooner rather than later) with an abuse of trust law. I think that that would be done on the same sorts of lines as the UK provisions and the Isle of Man provisions, which mirror each other. They deal with the idea that there would be a new criminal offence to protect young people between the ages of 16 and 17 years who may be particularly vulnerable, or where a relationship of trust between that young person and an adult is strong. Under that provision it would be an offence, therefore, for a person over 18 to have sexual intercourse or engage in sexual activity with a person under 18, where they were in a position of trust. Clearly, one has to define that position of trust quite carefully. It would be similar to what is done in the UK and in the Isle of Man legislation, where the concept is quite carefully drawn to ensure that it is not a sort of catchall and therefore unworkable. So, I would be quite happy to undertake to draft provisions similar to that, that is, in the section in the United Kingdom legislation and the Isle of Man and come back to the House with that. I think that that would deal with many of the concerns that were raised about that particular issue by Members. Also, those that might be engaged in sexual grooming of younger children up until the age of 16, that that would become a notifiable offence in the same sense that we have provisions for here in the draft Sexual Offenders (Jersey) 200- law. I think that that would deal with a lot of the concerns that were expressed in that area by Members.

Connétable D Murphy:

That has answered my second question as well about difficulties in terms of implementing these provisions. Has any local consultation taken place? Are you consulting widely with interested groups? I am talking youth clubs, schools, parent teacher associations.

Senator W. Kinnard:

On which particular aspect of the law?

Connétable D Murphy:

On the aspect of grooming. Are you getting input from them into this law that you are proposing?

Senator W. Kinnard:

Well, it would not ordinarily be the case when you are dealing with criminal law to consult in that way. You tend to consult with those that are, if you like, at the coal face of dealing with the criminal law; Magistrates, the courts, Law Officers and so on. I cannot see that anybody would be against the idea of having the provision to protect people from sexual grooming. Surely any person you would ask, would say, "Yes, that's a good idea" so I do not really see the point of consulting on that particular aspect.

Connétable D Murphy:

Surely, there again, the devil is in the detail, as usual? I am sure they would have some input and I am sure they would want to (overspeaking).

Senator W. Kinnard:

Well, indeed. Once something is up and running as a draft I have no objection at all to circulating that to all interested groups. In fact, we will at the end of this process, I am sure, have a list of people who have expressed an interest in this subject. Certainly it would be on the website - we put virtually everything on the Home Affairs website for people to comment upon - and I have no objection to that.

Deputy P.J.D. Ryan:

I think maybe one of the concerns, though, is if you are lifting something directly from UK law there is always a worry that it may not have local context to it. I think that was where --

Senator W. Kinnard:

Well, clearly that would be something that would hopefully be avoided on two factors: (1) is with advice from our own Law Officers and; (2) with our law drafting team, who are quite clear about what is required in Jersey provisions. I do not think this is a difficult job. I think it is fairly straightforward and that is why I am more than happy to undertake to bring something back to the House this year. In fact, because I consider this to be such an important issue in terms of reassuring Members, I would be prepared to put it to the top of my law drafting agenda and other things may have to slip if necessary.

Connétable D Murphy:

Would you see this going through the States contemporaneously with the (overspeaking).

Senator W. Kinnard:

I do not and I tell you why: because although I think it is a fairly simple matter, as you say, people wish to comment and that will all take time. There is time pressure on living up to our international commitments in terms of the amendment, in terms of lowering the age of consent. You will be aware that there is a case at the moment in the European Court, so there is a time critical factor in ensuring that we live up to our international commitments as soon as possible. Certainly, the advice that I have received from the Law Officers all along is that time is pressing on this matter. That is why I would make, in the report the newly crafted report of which I have a draft here, an absolute commitment to the States to bring forward this abuse of trust legislation this year.

Connétable D Murphy:

In the States debate you said there is no consent between the age of consent and abuse of position of trust, and that we should use education and information, rather than the criminal law, to prevent young gay men aged 16 and over from taking unnecessary risks. Are there any changes in this area that you would suggest, in order to achieve the overall aim of protecting the vulnerable young people?

Senator W. Kinnard:

As I mentioned, the abuse of trust legislation and also the Sexual Offenders (Jersey) 200- law that we are bringing forward is intended to deal with this too. What I was getting at there is that abuse of trust has gone on, unfortunately, irrespective of the age of consent. We have had terrible examples that have only perhaps in recent years come to light, where there has been the abuse of children in children's homes, by sections of the church and so on, which are clearly in a position of trust which has been sorely abused. That has been irrespective of whether the age of consent in terms of homosexual relations was 21, 18 or indeed 16. So there is not a direct connection at all. What I am saying to you is, the issue of abuse of trust is a serious issue and it is a serious matter that I think we would all wish to see that we can deal with appropriately, but I do not think there is a direct connection to the age of consent. That is one of the other reasons why there has been a feeling that the United Kingdom legislation, where they put in the abuse of trust provisions into their Sexual Offences Bill and passed the law lowering the age of consent, that in fact it might have been better had it been a separate provision. We will achieve that, in fact.

Senator J.L. Perchard:

You said that to introduce a sexual offences law and an abuse of trust law is not difficult and not complicated. You said that, because I wrote it down as you said it.

Senator W. Kinnard:

The abuse of trust provisions, to draft those I do not think will be complicated, because we have some very good models.

Senator J.L. Perchard:

I would be - and I am sure the public would be - a lot more satisfied if these two bits of legislation could accompany this Sexual Offences (Jersey) 200- law and come to the House at the same time. Is this not possible?

Senator W. Kinnard:

I do not believe that it is possible, for the reasons I have already outlined. One is that there is time pressing on the lowering the age of consent, and that is about our international commitments. What I am saying to you is, I am more than happy to make the commitment in terms of the abuse of trust, to say this will be brought forward this year. I do not really think that it would be reasonable to ask me to do more than that, because quite clearly there will be an amount of time in terms of drafting and in terms of consultation. I think the danger of holding back the change to the age of consent is that we will inevitably end up in the embarrassing constitutional position, because the case will go live if we are shown to be dragging our feet on it.

Senator J.L. Perchard:

You are aware that the introduction of the Sexual Offences (Jersey) 200- law would be much more acceptable if we could accompany it with these two other bits of legislation?

Senator W. Kinnard:

Given the experience of the debate, I would say yes. However, I have to say, at the start of this it was not particularly a consideration, because we were taking a very legalistic point of view about it and had felt that many of the debates had been had at the time when the age was lowered from 21 to 18. Having said that, given experience, I now see that it might have been easier had we brought in that provision. However, the advice that I received at the time was that this was not considered to be necessary.

Senator J.L. Perchard:

You are adamant (overspeaking).

Senator W. Kinnard:

No, all I am saying is I will bring it forward.

Deputy P.J.D. Ryan:

Senators, sorry, we are now getting off our terms of reference. This is the point where I am going to curtail discussion on this particular area, because we are getting outside of our terms of reference too much. Thank you for responding to those questions

Senator F.H. Walker:

Senator Perchard said just then to Senator Kinnard, "You're committed on this"; it is not really a question of being committed to bringing them forward together, it is just she may not be able to bring them forward together. It seems to me - and the tradition in the States suggests - that if Senator Kinnard stands up and gives a commitment to the States at the time the Sexual Offences (Jersey) 200- law is re-

debated, that she will bring the abuse of trust forward in this year. I would have thought that should be enough for States Members.

Deputy P.J.D. Ryan:

I am sure that is true and I am sure the Panel accept that.

Connétable D Murphy:

Can I just say that it all smacks of pressure and I think reacting to outside pressure to sort out our domestic situation is not a healthy way to run a government. That is my opinion and I am sorry, I should not be (overspeaking).

Senator F.H. Walker:

I disagree.

Deputy P.J.D. Ryan:

This is where I am going to call the meeting to order, if you do not mind. I would like to follow on from that. I would like you just to look at item 4 on our terms of reference: "To review previous and current legal challenges of the European Court of Human Rights". The question I am going to ask is just about that, because the status of those pending court cases depend, to some degree, on the impact of the current law on our young people. I would just like to ask you to expand what impact you believe there is of the current law on young people by having different ages of heterosexual and homosexual ages of consent at the moment? What impact do you think that is having on our young people currently?

Senator W. Kinnard:

Well, I speak of course from research that has been done in this area elsewhere and previous to us discussing it here today. Clearly, there is an impact in that people are potentially being criminalized from the ages of 16 to 18. Homosexual men are being criminalized. That is not a situation that pertains to young women. You have to think yourself into the scenario that young people are attracted to each other, they are going through the stages of getting to know each other and building relationships. These individuals who are affected by this law are obviously in a very difficult situation, because they know if they engage in a sexual act that otherwise would be acceptable if they were heterosexual, that this could lead to criminal proceedings. The fact that no proceedings have been brought in recent years, the European Court has made it quite clear that that is not sufficient, because the fact of the matter is that may be the view of the Law Officers at any given time, but that attitude could change with a change of Law Officer. So the threat is always there. Equally, it is possible that an individual could bring a civil case in such a matter. So, I think that that is no small burden that young people have to contend with. There is also, therefore, the attendant emotional and psychological aspects that go along with that, of not being free to express your love and your desires for people even of your own age. There must be, I think, a psychological impact on individuals in that circumstance. From the health point of view, certainly the BMA (British Medical Association), when it looked at this issue in the United Kingdom, came to the conclusion that it was a negative effect, having a difference of age and still having the criminalization of homosexuality between 16 to 18; that in fact it prevented young people from seeking medical help and seeking advice about sexually transmitted diseases. They came to the conclusion in their report that it was preferable, therefore, to lower the age of consent for homosexual sex down to 16.

Deputy P.J.D. Ryan:

That was another question I was going to ask you. I will let you carry on, because the two are related in many ways. I believe it is true to say that the BMA's views have changed over the course of the last decade or so in this area; would you concur with that?

Senator W. Kinnard:

Yes. Obviously people's attitudes do change through time. In fact, in relation to this particular issue you can very much easily chart the change in attitudes. If you take the Wolfenden Report of 1957, which was the first point at which homosexuality was decriminalized, there was a concern then that perhaps people did not know their sexuality, or that there were particularly vulnerable people. Often it was particularly vulnerable boys who would be unsure about their sexuality. But even the Wolfenden Report concluded that by the age of 16 they believed that people were set in their sexuality. With all the research that has been done, the BMA has come to the conclusion that a person's sexuality is set at a very much earlier age, but certainly by the age of 16 people know what their sexuality is.

Deputy P.J.D. Ryan:

We are getting slightly off the subject. The reason that this is important - and I am asking for your confirmation of this - is that this could quite easily be called as circumstantial evidence to a possible challenge in the ECHR. Inevitably this kind of information from the BMA would be used as supporting evidence.

Senator W. Kinnard:

Indeed. There were other cases that support the view as well of lowering the age to 16 (from the bodies representing psychiatrists and psychologists) who make similar conclusions.

Deputy P.J.D. Ryan:

As one always must do, I must ask you, are you aware of any contradictory research that leads in the other direction?

Senator W. Kinnard:

Well, the BMA did look at research in this area and had come to the conclusion that really it had become now generally accepted that people were sure of their sexuality (overspeaking).

Deputy P.J.D. Ryan:

So you are not aware of any other contradiction?

Senator W. Kinnard:

There has been contradictory research in the past, clearly, and that is discussed in quite some detail in The Wolfenden Report, but people's knowledge and attitudes change. You must realise that 1957 was before I was born, so attitudes have changed quite significantly during that period of time. They are the experts in this field - I am not - and all I can say is that they are experts in this field and this is their conclusion. Quite clearly, much notice would be taken of their conclusions in any court proceedings.

Deputy P.J.D. Ryan:

Continuing on this view of evidence that might be brought in by legal challenges in the ECHR by an applicant, can you tell me what you have had by the way of information from people locally regarding this particular area; Brook Clinic, Youth Service, perhaps even the NSPCC (National Society for the Prevention of Cruelty to Children), who I believe we have had some information from. Are you party to this information?

Senator W. Kinnard:

Yes, indeed. Obviously there have been people writing in as people have become much more aware of this issue. For example the NSPCC. This was in relation to a letter to an individual who is currently bringing a case to the European Court. This is what the NSPCC locally has had to say: "Thank you for your letter asking about the NSPCCs support of the reduction of the consenting age for homosexual activities. The NSPCC supported the provisions of the Sexual Offences Amendment Act (UK). These included the equalisation of the age of consent and the establishment of a new offence of abuse of trust

to provide additional protection for young men and women between the ages of 16 and 18. The age of consent has an important role in protecting children from possible physical and psychological harm, and in deterring adults from committing harmful acts. Sixteen is recommended as a significant age in a person's development. They can leave school, enter work, and marry, for instance. We believe it is also an appropriate age at which young people may be considered able to make informed decisions about their private consensual behaviour. Our experience shows the sexual abuse of children and young people is, in part, dependent upon maintaining a sense of exclusion, secrecy, low self-esteem and fear. Discriminatory practices, particularly of the law, encourages all of these key factors. The NSPCC believes that this will remove an obstacle to the delivery of important messages, including those around sexual health. We believe that there must, of course, continue to be adequate protection under the criminal law for children and young people assaulted by a person of either sex. We are supportive of the proposals by the Westminster Government to legislate for additional protection of young people aged 16 to 18 in situations where an older person abuses his or her position of authority, influence, trust, and to prevent unsuitable people from working with children." That was the view locally, which concurs with the one in the United Kingdom.

Deputy P.J.D. Ryan:

You kindly sent us that in your witness submissions, thank you. We will put that on the website.

Senator W. Kinnard:

We received a very helpful letter from Brook as well, saying that they are in favour of the lowering of the age of consent.

Deputy P.J.D. Ryan:

We have a copy of that one as well, which will go on the website. Is there anything other than that that you additionally, that we have not had in your written submissions? If there are, perhaps you could let us have them.

Senator W. Kinnard:

I am quite happy to pass everything on to you.

Deputy P.J.D. Ryan:

I have one final question before I hand over to Senator Perchard, who wants to ask you a few questions on a slightly different matter. Just to conclude, the impact of the current law on young people and as it affects the challenges that we may be facing in the ECHR. It is to do with how the reality of life amongst our youth in Jersey is, as far as criminalizing the different ages of consent. Without wanting to compromise anything that may be a confidential policy that you have with the States of Jersey Police Child Protection Team, are there policy guidelines that you currently have in place in the application of the current law?

Senator W. Kinnard:

Are you talking in terms of the young people engaging in sexual acts between the ages of 16 and 18?

Deputy P.J.D. Ryan:

I think we probably are. I do not want to compromise anything that you might have in the way of a policy that is confidential.

Senator W. Kinnard:

The policy in terms of whether or not something is prosecuted does not come from the Home Affairs Ministry and it does not come from the Police. It comes from, of course, the Law Officers. Although I have not seen it written down in detail, I am aware that the current policy in this area is not to prosecute,

as indeed, I think you will see that there have been the case in recent times.

Deputy P.J.D. Ryan:

Unless there are exceptional circumstances?

Senator W. Kinnard:

Of course. But in the normal circumstance, where it is young people of a similar age a prosecution has been unlikely. However, if there was something that was untoward, of course, it would be dealt with in the normal way under the criminal law. Quite clearly, no one is in favour of sexual grooming, abuse of children or anything of that nature. That is always dealt with, quite rightly, in the most strict and strongest terms.

Senator J.L. Perchard:

If we accept under our obligations to the United Kingdom and our obligations under ECHR that we have to come in line, are there any alternative options that we could explore accepting that as the guiding principle? For example, raising the age of consent to 17; I know in the States some Members felt it could go up to 17 or 18. In your opinion, Senator, what would be the implications of such a move?

Senator W. Kinnard:

It is possible theoretically, of course. However, I think in practical terms and also the recent advice that I have received from Law Officers is that it is not do-able. Firstly, if we perhaps focus on why it is not do-able from the legal point of view, is that we have always - or certainly for more than a century - had a heterosexual age of consent of age 16 years. If we were to now seek to equalise it to 17 or 18, we have then the difficulty where people who are homosexuals in the ages 16 to 17 or 16 to 18 (whichever you are choosing) are not going to be affected negatively, but those heterosexuals of the same age are going to be negatively affected. There are practical problems in what to do about transitional arrangements for those who are between the ages of, say, 16 and 18 who are already engaged in a sexual relationship? Suddenly they have to abstain, perhaps. It is very difficult to enforce. Also, you will be aware that it is possible to get married at age 16, so if you were to raise the age of consent for heterosexual sex, you then have to start dealing with special exemptions for the marriage law. Ireland was mentioned by some Members, I think, where the age of consent is 17. However, the age of consent has been 17 for heterosexual sex for a very long time in Ireland - you will find reference to that in Section 5 of the Criminal Law Amendment Act 1885 - so they were not quite in the same position. They had more justification, if you like, for only lowering it to 17, because the heterosexual age was 17. Indeed, they have a special dispensation for those who are engaging in sex if they happen to be married to a 16 year-old woman. The advice that I have also from the Law Officers is that in seeking to do this and then placing heterosexuals in a disadvantaged position compared to where they were previously, that this would probably not be considered to be proportionate in the eyes of the European Court; that it would be an abuse of their right to a private and family life. Therefore it would not solve any problems for us in this particular area. Certainly, the advice I have is that it is established by case law that any interference has to be proportionate; this would probably not be considered to be so, because you are making it much more difficult for females to have heterosexual intercourse. So from that point of view I really do not think it is going to be a practical proposition.

Deputy P.J.D. Ryan:

I think it is at this point that I will need to ask both Ministers, is there anything that we have missed that you would like to add?

Senator W. Kinnard:

I do not think so. I have been very impressed at how comprehensive you have been.

Senator F.H. Walker:

I would just like to pick up again Connétable Murphy's point, before Senator Kinnard answered her questions, that the perception is not good that we are giving in to outside pressure. We are not giving in to outside pressure. If the UK Government suddenly turn round and said to Jersey, "We've decided we're going to abide by this principle and we want you to do that as well", that would be pressure.

Connétable D Murphy:

I was referring to the timing.

Senator F.H. Walker (The Chief Minister):

Nevertheless, the issue of timing is the legitimate expectation, in my view, that we will conform to our own obligations. It is not really a question of outside pressure; it is a totally legitimate and, in my view, a totally understandable and correct expectation that we will meet our own obligation. I think there is a very real difference in that respect to a government - the UK Government or whoever - suddenly saying, "We want Jersey to sign up to this because we like it". This is something where we went to them in the first place and said, "We want you to sign up on our behalf", thereby creating an obligation for them and an obligation for us. We really have to deliver. We have been sitting on this since 2003. That was when the UK Government brought to our attention the rulings of the Court; when they said, "Now, what measures do you want to introduce? What are you thinking about in terms of how you should comply?" So assuming this goes through, we will be nearly three years on from the time that it was brought to our attention that we were are in breach of the Court ruling, so we have not exactly rushed it.

Deputy P.J.D. Ryan:

One of the problems that the Scrutiny Panel is facing is the pressure that we are under to report within the timescales that are required for this particular scrutiny review. We are still receiving a certain amount of information from the public and from other sources, but in the meantime we have to have public hearings to interview yourself, Chief Minister, and yourself, Madame Home Affairs Minister. In the light of information still coming in to us, there may be new things that we would want to put to you in the future and ask if you would be happy to respond in writing to them. I do not think it would be necessary to call you back again if there is any more information, but just to let you know. We have been very appreciative of the information and evidence that you have given us this morning. Having said that, are the Panel happy? Are there any questions that you would like to add?

Senator J.L. Perchard:

Perhaps the Minister for Home Affairs could look at the Article 1, as is claimed by somebody who is planning an action against (overspeaking).

Senator W. Kinnard:

Yes. I am aware of that particular action, but obviously I am not a legally qualified individual.

Senator J.L. Perchard:

But your opinion on it would be useful.

Senator W. Kinnard:

I am happy to look at that and come back to you with my comments.

Senator F.H. Walker:

I do understand that you have the Solicitor General or someone coming in from the Law Officers, so I think that is a question best asked of them.

Deputy P.J.D. Ryan:

I would like to wrap up this morning's session. Thank you very much for attending. It has been very interesting. Hopefully we can provide a suitable report in due course after we have finished hearing all evidence. Thank you, members of the public, for joining us this morning.