

Social Affairs Scrutiny Panel

Review of Centeniers' Role in the Magistrates Court

WEDNESDAY, 11th OCTOBER 2006

Panel:

Deputy F.J. Hill, B.E.M. of St. Martin (Chairman)
Deputy D.W. Mezbourian of St. Lawrence
Deputy S. Pitman of St. Helier
Mr. C. Ahier (Scrutiny Officer)

Witnesses:

Senator W. Kinnard (The Minister for Home Affairs)
Mr. S. Austin-Vautier (The Chief Officer, Home Affairs Department)

Deputy F.J. Hill, B.E.M. of St. Martin (Chairman):

Could I make a start and begin by welcoming you both here this morning. Thank you for coming. I would hope that possibly we need not be more than an hour. Could we begin by introducing ourselves? I think we are all familiar but, even so, for the record I am Deputy Bob Hill, the Chairman of the Social Affairs Scrutiny Panel. To my right ...

Deputy D.W. Mezbourian of St. Lawrence:

Deputy Deirdre Mezbourian of St. Lawrence.

Deputy S. Pitman of St. Helier:

Shona Pitman, Deputy for St. Helier No. 2.

The Deputy of St. Martin:

Also to my immediate right here is ...

Mr. C. Ahier:

Charlie Ahier, Scrutiny Officer.

The Deputy of St. Martin:

Could I just also give the apologies for 2 of our members who are otherwise engaged, but we are quorate and we are ready to go. Could I begin by reading out what our terms of reference are so we are aware of

what they are? The first is to assess the justification for why recommendation 4 of the Review of Criminal Justice Policy (that the role of the centenier in the Magistrates Court should cease) was not pursued by the Department of Home Affairs; to assess whether the role played by centeniers in the Magistrates Court meets the court's (and, consequently, the public's) expectations and requirements; to examine the system of training and assessment provided to centeniers for their work in the Magistrates Court; and, lastly, to assess the administrative support and advice given by the parishes, States Police, courts and Crown officers to centeniers for their work in the Magistrates Court. So could I begin by saying it is understood that the former Home Affairs Committee requested Professor Rutherford to carry out a review of the Criminal Justice Policy in Jersey because: "... it was widely agreed that the Island had no coherent criminal justice policy" - page 7 of *Rutherford*. I think we probably agree on that one. Professor Rutherford made 10 recommendations. The fourth was that: "... a public prosecution service be created under a Director responsible to the Attorney General; that the role of the centenier in the Magistrates Court should cease; and that the decision as to whether or not to charge an individual with an offence should reside with the public prosecutor and not with the centenier." Again, I am quoting from *Rutherford*, page 91. Now, in minute B9 of the former Home Affairs Committee minute dated 22nd May 2003, it is stated the Committee decided not to proceed with recommendation 4. Do you have a copy?

Senator W. Kinnard (The Minister for Home Affairs):

We will have amongst this lot, yes. Thank you, Steven.

The Deputy of St. Martin:

The first question I would like to ask, if one looks at it, there was no reason given as to why recommendation 4 was not proceeded with. I know it follows in other reports but I had better ask the question: do you know why no reason was given in the minute? It may be an oversight and you had not noticed, but it is an observation we did pick up.

Senator W. Kinnard:

Well, it just perhaps was not -- it was obviously discussed and I can certainly tell you the context of who was involved in those discussions, but obviously at that stage there was not the detail. But in terms of the Home Affairs Committee that was there, there is also an act of 27th March that makes reference to that.

The Deputy of St. Martin:

If you could give us that reference we would be grateful. It is just a bit of housekeeping. Could you give us the date of the Committee act, please?

Senator W. Kinnard:

27th March 2003. It makes reference, you see, in the 22nd May one.

The Deputy of St. Martin:

It does, yes. That is the one it refers to.

Senator W. Kinnard:

So I am just scanning it down here now. Here it is, yes, the rationale is actually in that minute of 27th March 2003. In relation to recommendation 4 it says that: "The Attorney General did not support the proposal to establish a public prosecution office, which he considered would be impractical in terms of financial and human resources. He was satisfied that the present system in the Magistrates Court worked reasonably well and that if the role of the centenier in presenting in guilty pleas was removed he would require at least 2 members of staff to fulfil those duties" and it goes on. So that was the detail.

The Deputy of St. Martin:

Could I just ask for the record purposes that we be given a copy of that? We can add that to our file because it really follows on from there. That was really a bit of housekeeping.

Senator W. Kinnard:

Sure.

The Deputy of St. Martin:

There are a number of references made. It says under page 11 of 201(?) of 2005: "This proposition of the Criminal Justice Policy." Again the July policy, it says: "Having consulted the Attorney General at an early stage in the policy-setting process, the Home Affairs Department will not pursue the *Rutherford* recommendations that a public prosecution service be created. This could not be justified on cost grounds and result in the centeniers losing their traditional role of presenting cases in the Magistrates Court." That is really an elaboration of your Committee act of 27th March 2003.

Senator W. Kinnard:

Of what I have just said, yes.

The Deputy of St. Martin:

That is fine. Could I then ask what steps other than consulting the Attorney General did the former Home Affairs Committee take to establish the viability of Professor Rutherford's fourth recommendation?

Senator W. Kinnard:

Okay. Obviously what we did was when we had Professor Rutherford's report we to some extent

performed a degree of scrutiny on it ourselves and part of that was setting up focus groups and so on, which I will come on to. But first of all obviously within the committee system - those who are not so familiar with it - in a sense that provides a forum where you can have quite a broad range of opinions brought together to discuss a particular issue. In discussing the recommendations of *Rutherford*, the Committee at that time included myself (at the time President of the Home Affairs Committee since 2000) and I had previously been a Youth Court panel member for 3 years before being elected from 1993 to 1996. So obviously I had some experience of the court process. One of the Committee members was a senior advocate of the Royal Court. We had 2 senior Constables who were also Committee members. Including the above, 4 members had also been centeniers at some point in their previous roles. The Chief Officer - who is my Chief Officer here today - had also been previously the Magistrates Court Greffier for a period of 7 years, and the Committee's other officers that were obviously involved in those discussions were the Police Chief, the Prison Governor and the Chief Probation Officer. So there were quite a wide range of perspectives which were brought to bear on discussing the various recommendations of *Rutherford* and, in particular, recommendation 4.

The Deputy of St. Martin:

I do not want to go on to the Attorney General because that will be the question that follows, but I just want to establish really that those people you discussed, did they go out and consult with anybody outside that group?

Senator W. Kinnard:

Yes, we did. We went further than that then, yes. Also in 2003 we had various focus groups dealing with the Criminal Justice Policy and we had a focus group on prosecution and dealing with offenders. That reviewed the role of the legal adviser in the prosecution process.

The Deputy of St. Martin:

Could I come back? Your decision to not go forward with *Rutherford* was made in March 2003 and what you are telling me is that you made some further inquiries after the decision. What I was asking was what consultation took place before you made the decision outside the information you got from the Attorney General?

Senator W. Kinnard:

Well, we had been obviously -- the Committee had made a decision quite early on, but there needed to be further discussions partly because we needed to take forward the twin proposal. Because in a sense you cannot divorce this proposal in *Rutherford* from the other proposal in *Rutherford* which was to, if you like, increase the role of the Parish Hall Inquiry system. Because his view very much was that he saw the Parish Hall Inquiry system as a remarkable institution, something that other jurisdictions did not have and actually we should value very much. His view certainly was that if we were going to remove

the centeniers from their role in the courts in terms of the prosecution process that we ought to ensure that they maintained a role within the criminal justice process by giving a greater role to the Parish Hall Inquiry system. Now, we had to actually discuss that with other stakeholders and as a result of that we continued to discuss the matter with the Attorney General and the Bailiff. We spoke to the Bailiff in 2002.

The Deputy of St. Martin:

Yes, could I just --

Senator W. Kinnard:

No, this is very important because you have to see the context. We spoke to the Bailiff in November 2002 to begin with. That was the --

The Deputy of St. Martin:

Yes, that is the point I am trying to get. Tell us how you got to the decision that you made on 23rd March, was endorsed in May, because bearing in mind the *Rutherford Report* was published in October 2002. It is just a quite simple question: who did you consult with before making that decision?

Senator W. Kinnard:

Okay. Well, we consulted with the Bailiff in 2002 and he was very much of the view that he was totally opposed to the removal of the centeniers from the court process. We consulted with the Attorney General in November 2003.

The Deputy of St. Martin:

Could I just ask again when you spoke to the Bailiff do you know if the Bailiff consulted anyone before coming to that opinion?

Senator W. Kinnard:

That I do not know. That is something you would have to ask him.

The Deputy of St. Martin:

So, basically what we are saying is that the Bailiff was asked an opinion as to whether he would concur with *Rutherford* and he said he would not?

Senator W. Kinnard:

Well, we consulted him on the whole of the *Rutherford Report* and, indeed, we did consult with the Attorney General and also my Chief Officer consulted at various times with the Centeniers Association and various centeniers.

The Deputy of St. Martin:

What I am trying to establish is what consultation took place apart from the Attorney General, which we will come to. I think they are separate because you acted on his advice, but what we want to know --

Senator W. Kinnard:

Well, not just his advice.

The Deputy of St. Martin:

-- is what consultation did you take or make to get to that decision yourself without asking the Attorney General?

Senator W. Kinnard:

Well, we discussed it with the Bailiff; we discussed it amongst ourselves as quite a wide-ranging group of people on the Committee. We had the input of the benefit of discussions that the Chief Officer had had with centeniers. So we had quite a bit of talking to stakeholders about --

The Deputy of St. Martin:

Can I just ask who the stakeholders were? Were they the Centeniers Association themselves?

Senator W. Kinnard:

Yes.

Deputy D.W. Mezbourian:

Did you speak to the Magistrate at all before making your decision or to any of the magistrates?

Senator W. Kinnard:

We did in the focus groups, did we not?

Mr. S. Austin-Vautier (The Chief Officer, Home Affairs Department):

Yes. I think it is relevant to say that bearing in mind where I have come from, that the dialogue with the Centeniers Association and the Magistrates Court was continuous. It was not the case that you suddenly have a meeting, although there were meetings, but over the period I was in constant touch with those people and then that was put into reports more formally for Committee members.

Senator W. Kinnard:

Yes, because Steven had obviously been in that role for 7 years.

The Deputy of St. Martin:

But what I am trying to get at, at the end of the day you really discussed this matter among yourselves; you did not go to a wider consultation and ask the centeniers for an opinion or the Magistrate?

Senator W. Kinnard:

Yes, we did.

The Deputy of St. Martin:

It was just something in the course of discussion, was it?

Mr. S. Austin-Vautier:

Yes.

The Deputy of St. Martin:

Have you any reports at all from the Magistrate asking their opinion or the centeniers asking their opinion?

Mr. S. Austin-Vautier:

They did not submit a formal submission at that stage, no.

The Deputy of St. Martin:

Did they at any stage at all?

Mr. S. Austin-Vautier:

Yes, at the time we came to the consultation process on the draft policy but that was much later.

The Deputy of St. Martin:

Ah, yes. Okay, I am looking at how you arrived at the decision, so really if we could say in summary that it was a matter that was discussed among the group of yourselves and your focus group, but you did not go out to a wider consultation like the Magistrate or to the centeniers specifically on that question.

Senator W. Kinnard:

No, we did. We did. You discussed it at length.

Mr. S. Austin-Vautier:

Yes, but not formally.

The Deputy of St. Martin:

So there was no formal, okay. Possibly we could move on to number 2.

Senator W. Kinnard:

Sorry to interrupt, but partly because we knew we were going to be sort of setting up focus groups anyway, but we had to make a decision quite early on about which of those recommendations we were going to spend time and effort on and which of those we felt really were not going to fit our purposes. It would have been very easy just to accept the report and just implement the recommendations *per se* but we were not prepared to do that. We had a report which came to us which we then looked at in the context of what we knew about what we believed would fit right with the Island's culture and heritage.

Deputy D.W. Mezbourian:

So although there was no formal reporting process, it was an informal procedure, what were the reasons given for those people that you discussed with to oppose the *Rutherford* recommendation?

Senator W. Kinnard:

Well, it was partly to do with the fact that it was felt that it would impact adversely upon the honorary system, in a sense; that if we were to remove the powers that the centeniers have in terms of their role in the court that we would be in danger of losing something which even Rutherford felt very much was important to preserve, which was that the honorary system that we have and in terms of the Parish Hall Inquiry indeed should be valued and should, in fact, be enhanced. But the problem was that the way in which he wished to enhance it or suggested within part 5 of his report was found to be as rather a misunderstanding of the role of the Parish Hall Inquiry. Certainly we had that clarified, but that clarification came somewhat later on. That, in fact, what we were moving forward to do - which was to, if you like, enhance the role of the Parish Hall Inquiry, the way in which Rutherford had suggested that should be done - it became clear from advice that we received that it was a misunderstanding of the role of the Parish Hall Inquiry; that the Parish Hall Inquiry could not sit as a judicial court as such; that we could then, therefore, run into problems with human rights. So the danger then I think in a sense is that if you took all -- if you did not enhance the Parish Hall Inquiry system at the same time as you were taking the powers away from the centeniers in the court, one could find oneself potentially undermining a system which everybody, including Professor Rutherford, thought was of great value and should be maintained.

The Deputy of St. Martin:

I think in actual fact possibly we may have the advantage of you because we have been doing a lot of reading and we are very much up to the fore with it. But I think you will probably find page 41 of *Rutherford* might not concur with what you are saying. But could we just move on then just to --

Senator W. Kinnard:

Well, perhaps you would, before you move on, refer to it so I can --

The Deputy of St. Martin:

We will cover it in the next question really, if we could.

Senator W. Kinnard:

Oh, fair enough. But, I mean, I doubt you are more up to speed with *Rutherford* than we are. We spent months, years --

The Deputy of St. Martin:

I know, but the fact is that you can spend months on it but water has passed under the bridge since then and we do have an advantage.

Senator W. Kinnard:

Well, I mean, if you draw my attention to a page and make a comment like that, I think it would be justifiable --

The Deputy of St. Martin:

Well, it will come out. Could we move on to the next question regarding the Attorney General, I think, because I think that is where it will come out.

Senator W. Kinnard:

No, that is about legal aid so why is that relevant to what I have just said?

The Deputy of St. Martin:

I think it is fair that you carried out a certain amount of consultation prior to getting the advice from the Attorney General. What I would like us to do now is to move on to the advice you got from the Attorney General, if I could ask Deirdre to lead us on to that one.

Deputy D.W. Mezbourian:

Senator, the minutes that you referred to earlier referred to discussion with the Attorney General. We have not had sight of that minute yet and I cannot remember everything that you said, but I did pick up on one of the points being that if the system was to change the Attorney General felt that he would need to have a further 2 staff. Did he give any costings when he spoke to you at all about extra human resources or any costings at all about how much he felt the introduction of a Crown Prosecution Service would cost the Island?

Senator W. Kinnard:

I am not sure we got the detailed costings but, I mean, you only have to think about the fact if you have got to have 2 further prosecutors to do that work at least, that is going to cost. Certainly - I can say this because I am married to a lawyer - lawyers do not come cheap, particularly in Jersey. Lawyers in Jersey are paid significantly more highly than they are in just about any other jurisdiction I can think of. So it would be costly and, indeed, it is not just a question of having legal prosecutors. They need, you know, secretaries and administration and so on, so it is not just even, I would say, confined to 2 individuals. They need accommodation; do you have office space to accommodate them, and so on. So it is not just even, in my view, a matter of 2 lawyers.

Deputy D.W. Mezbourian:

So following on from that answer, I think a question that Shona has would be pertinent.

Deputy S. Pitman:

Following the *Rutherford* recommendations, how did the former Home Affairs Committee ascertain what the costs would be to establish a public prosecution service?

Senator W. Kinnard:

No, we felt we did not need to because for the simple reason that if we were being told that as a minimum there was going to need to be 2 prosecutors, we knew that we were coming into a time of very severe budgetary restraint within the States and also we were very concerned about this issue about how that would impact upon the other role of the honorary system. So I do not think the 2 issues can be separated; the 2 were bound up together. I think that really I was very concerned not to undermine what I saw frankly as the jewel in the crown of the criminal justice system. I felt that if you were to start to tinker with one end of it, you then started to run into problems with the other. Once we were made aware that the changing role that *Rutherford* was suggesting for the Parish Hall Inquiry system could run into human rights problems, we realised that although we want to enhance the role of the Parish Hall Inquiry we could not do it in the way that he envisaged. Therefore, we really did not also want to go down the role of unpicking that system in terms of its role in the court.

The Deputy of St. Martin:

Could I go back again and ask, I think we have tried to work a sequence so we can get the answers to come out in a form that would be helpful. Can we move back on then from we have asked you what consultation, apart from the Attorney General. Could we come to the point now with the Attorney General? When you met with the Attorney General what we would like to know is did he give an explanation as to his conclusions, was it by a written report, was it a verbal report, oral report? How did we come to that arrangement?

Senator W. Kinnard:

Yes, he actually attended the meeting of 27th March and obviously gave us the benefit of his expertise. We had a letter of 7th July, a long letter or a relatively long letter, in relation to the Criminal Justice Policy but particularly he does mention that he expressed the view -- he says: "As you know, I expressed the view to the Committee that it would be inappropriate for the centenier to have an enhanced role in respect of" the reasons that he puts out about the Parish Hall Inquiry is not a court, there are human rights difficulties if it is converted to a judicial process and so on. So he in his mind all the time his focus on the nature of the centeniers' power sees the 2 issues together as well.

Deputy D.W. Mezbourian:

Is it possible for us to have a copy of that letter?

Senator W. Kinnard:

I would have to ask for his agreement.

Deputy D.W. Mezbourian:

Yes, if you get his permission. Are you aware of whether any consultation took place between the Attorney General and the Magistrate before he reached his conclusion?

Senator W. Kinnard:

I have no idea. That is something you would have to address to him, I think.

The Deputy of St. Martin:

We are just trying to clarify that so we will ask the Attorney General. Likewise, did you make any consultation at all or are you aware of any consultation taking place between the Attorney General and the Centeniers Association?

Senator W. Kinnard:

Again, you would have to ask him.

The Deputy of St. Martin:

No, but you had the Attorney General come to you and he gave you his conclusions.

Senator W. Kinnard:

Yes, as the titular head.

The Deputy of St. Martin:

Did you not ask him how he came to those conclusions at all?

Senator W. Kinnard:

Well, as the titular head obviously of the honorary service and also as the Attorney General, we felt it very important to consult with him and ...

The Deputy of St. Martin:

Yes, but did you not think that -- I respect the Attorney General's position. However, did you ask him how he came to that conclusion? Did you ask, for instance: "Did you consult with the Magistrate?" How did the Attorney General arrive at the decision? Was it a gut feeling or was it as a result of consultation?

Senator W. Kinnard:

Well, I think that is something you have to ask him.

The Deputy of St. Martin:

No, but you did not ask him?

Senator W. Kinnard:

Well, no, I mean, he gives his reasons in letters and in his comments to the Committee. I am not in the habit of cross-examining the Attorney General when he comes to Committee.

The Deputy of St. Martin:

Well, with respect, you were making quite an important decision and it would appear that you have a letter dated -- could you tell us the date of the letter?

Senator W. Kinnard:

That one is 7th July 2003, that particular letter, but that refers --

The Deputy of St. Martin:

Yes, but that letter was after the decision was made. What I am trying to get at --

Senator W. Kinnard:

Yes, but he did actually come to the meeting of 27th March 2003 where he made his points verbally and strongly.

The Deputy of St. Martin:

Yes, so there was no accompanying report on 27th March 2003?

Senator W. Kinnard:

From the Attorney General? I think it was a verbal report.

The Deputy of St. Martin:

Just a verbal report? But you did not ask him how he came to those conclusions? You did not ask whether he had consulted the Magistrate? You did not ask whether he consulted the centeniers?

Senator W. Kinnard:

I did not ask that because his conclusions were explained in, if you like, the cognitive deductive process that one might go through, that the Attorney General advised the Committee that he had reservations about some of the recommendations but he -- and he also said that those were supported -- which were not supported. Also he said his view that he had some reservations about the recommendations. He also said that those recommendations were not supported - and that includes obviously the one we are talking about - by the Bailiff, the Deputy Bailiff, the Magistrate or the jurats. So he obviously had worked closely with them to be able to express that view when he came to the Committee on 27th March 2003.

The Deputy of St. Martin:

Is it possible we could refer you to page 41 of *Rutherford*? This is where we mentioned earlier on about possibly not concurring with what you were saying. On page 41, could I draw your attention to the second paragraph? Probably the easiest way is to read it out: "There are now two full-time and two part-time legal advisers based at the States of Jersey Police Headquarters, who occupy posts established within the Law Officers' Department. Problems still arise where unqualified, inexperienced centeniers present the facts for guilty pleas. There can be a situation where the only lawyer present in the court is the Magistrate. With the increasing sophistication of prosecution in all areas, trained prosecutors are becoming increasingly necessary."

Senator W. Kinnard:

Sorry, I do not think you have got the same version of the report. Do you have the final version of the report there?

Mr. S. Austin-Vautier:

It might be an idea, Chairman, if you gave us the paragraph.

Senator W. Kinnard:

If you gave us the paragraph, then we could probably find it.

Mr. S. Austin-Vautier:

Or the chapter.

The Deputy of St. Martin:

Have you got *Rutherford* there?

Senator W. Kinnard:

Yes, we have.

The Deputy of St. Martin:

Go to page 41.

Senator W. Kinnard:

Yes, which says: "Legal Aid".

Mr. S. Austin-Vautier:

Is it 2 pages before perhaps? Is it headed: "Prosecution", the section?

Deputy S. Pitman:

Yes, it is.

Mr. S. Austin-Vautier:

Okay, it is the 2 preceding pages.

Senator W. Kinnard:

Can I just see what copy you have got there because I am not sure you have got the same one. Okay, let us just get the right section.

The Deputy of St. Martin:

It should be page 41.

Senator W. Kinnard:

"Prosecution", okay.

Deputy D.W. Mezbourian:

It is the fourth paragraph under "Prosecution".

Senator W. Kinnard:

"There are now two full-time ...". Yes, I have found it, yes. Thank you.

The Deputy of St. Martin:

That is what I have just read out. It says: "There can be a situation where the only lawyer present in the court is the Magistrate. With the increasing sophistication of prosecution in all areas, trained prosecutors are becoming increasingly necessary." Now this is important: "If centeniers are to continue prosecuting, consideration needs to be given to creating a branch of the honorary police service that specialises in prosecuting and that receives specific training in that regard. Such an arrangement would ensure better co-ordination of the honorary service and greater efficiency in respect of time. Alternatively, legally qualified prosecutors should present all cases in the Magistrates Court." Now, what Rutherford really was saying is possibly his first option would be that he would have a prosecution service with officers following through, possibly on the UK system. However, what is very important, he is saying: "Alternatively, if centeniers are to continue prosecuting, consideration should be given ...". So what action did you take as a result of that alternative suggestion or alternative recommendation he was making?

Senator W. Kinnard:

What actually we did, well, first of all I would say that what has not perhaps come out of here is that the centeniers are involved in presenting cases which are quite straight forward cases where there is a guilty plea. It is in complex cases where, anyway, we have lawyers from the Law Officers, Crown Offices, that present cases. So we have a hybrid system anyway. But what we have actually done anyway, we paid through the Home Affairs Committee for the centeniers for a lot of training. We paid for 2 years of training for the Honorary Police in terms of bringing them up to speed with new pieces of legislation and so on that they would need to be very much up to speed with. We did that, and also we saw all of these discussions as an ongoing process. You will be aware that we have yet actually to get the States to agree the Criminal Justice Policy, despite my efforts to try and get it to the States. So we have seen and our idea was that once we had a settled policy and if that was accepted by the States, then there would be further discussions particularly with the Honorary Police and the centeniers to take this forward.

The Deputy of St. Martin:

But that was 4 years ago, was it not?

Senator W. Kinnard:

Well, we did pay for 2 years of training.

Deputy D.W. Mezbourian:

Who carried out the training?

Senator W. Kinnard:

It was an ex-police officer.

Mr. S. Austin-Vautier:

It was ex-Chief Inspector John de la Haye.

Deputy S. Pitman:

Is that continued now?

Senator W. Kinnard:

It was continuing because we paid for it for 2 years and then the decision was that the honorary service ought to then put some input into it in terms of funding it themselves because it was training for them. We had actually paid for it, as I say, for 2 years and the agreement was that they would take over the funding of their own training from then on.

Deputy S. Pitman:

What cost was that to your department?

Senator W. Kinnard:

Steven, can you remember as the accounting officer? We would have to check.

Mr. S. Austin-Vautier:

I would need to look it up, yes, because I would not like to quote a figure.

The Deputy of St. Martin:

We will come back to training, but I would just like to continue the train that we were going through, that what *Rutherford* was saying was that really the first option would have been to look for professional -- possibly the UK system. If not, the centeniers would be trained. Are you aware of the Royal Commission on Criminal Procedure prepared by Sir Cyril Philips in 1981 which, in summary, was of the opinion that the police should no longer be acting as advocates in the Magistrates Court? Are you aware of the rationale behind the thought?

Senator W. Kinnard:

But I would say that we have got a different situation here because I would say that the Honorary Police actually cannot be seen as being the same as the police as such because they are the ones who decide whether or not to charge. You know, they are not the same as the States of Jersey Police and to some extent I would say that they provide something of a scrutiny role. So I would not say that when we are looking at the role of Honorary Police in our system that it can be directly equated to the role of the police in the United Kingdom system.

The Deputy of St. Martin:

I do not know if it will help but, again, we have the advantage because obviously we have done a lot of research and studying it. I think the rationale behind Sir Cyril Philips was the fact that you should have a separation of powers, so to speak, from the police and a public prosecutor. Are you saying really that in effect the Honorary Police are not police officers? Because they are still charging but you are saying they are different.

Senator W. Kinnard:

I think it is very important as well, I think it is very important to accept that we have a different system here in Jersey with a huge history and tradition. You cannot just transfer what goes on in another place to Jersey. You have got to actually be quite sensitive to the different types of community, the different history and traditions that we have. I think it is very important that we also recognise that that is why we approached *Rutherford* in the way that we did. Rutherford was asked to produce this report. He was advising the Committee in terms of his opinion of how we would review the criminal justice system, what we would need to look at in order to develop a policy. It was not there just for us to accept; it was there to inform our policy so we were not bound by every action or recommendation of *Rutherford* at the time. We were very clear about that because obviously Rutherford was a very highly respected person with a lot of expertise but at the same time he was not steeped in the local traditional system. We had to then take those recommendations and say: "How do they fit with what we know, with the way in which our system works?"

The Deputy of St. Martin:

Could I just come back again, though? The rationale with the Philips report was there should be a separation of police as being prosecutors or being responsible for the charging and that should be taken over by an independent body. Are you saying that you consider the Honorary Police to be an independent body of the police? Because there is a school of thought that the Honorary Police are police officers and, indeed, they can arrest you, they have the same powers as a States officer, and, in fact, their actions could have the same effect to a person whether they were arrested by a States officer or an Honorary Police officer. They are still police.

Senator W. Kinnard:

Well, that may be a school of thought but I would say to you that I believe that they do provide a different role, a certain role of scrutiny. But, again, our system is not the same. For instance, the Parish Hall Inquiry system does not exist at all in the United Kingdom and yet we have there something which Rutherford himself saw as something that should not only be preserved but enhanced and we should really value.

The Deputy of St. Martin:

I am trying to keep to --

Senator W. Kinnard:

What I am saying to you is the Parish Hall Inquiry system would probably not fit the criteria that you are suggesting we should use to judge this particular aspect. I do not think it is good to take something directly from the United Kingdom and say: "Okay, there is a certain set of recommendations there. We have to definitely slavishly follow those in Jersey." That is not to say that there are not points that we should not take on board, but I think it is important that we are confident that in our Island that we decide to take forward policies that are right for our Island, not just because somebody else from somewhere else seems to think it suits their system.

The Deputy of St. Martin:

The point I am trying to make is the fact that we still in Jersey have police making the decision to charge an offender or somebody accused. We are maintaining that.

Senator W. Kinnard:

Well, in the UK the police make the decision to charge. In Jersey we have got a different system in that a person is arrested by the States of Jersey police but it is actually the Honorary Police that are responsible for making that decision to charge. So we have actually got a separation to some extent there.

The Deputy of St. Martin:

Yes, but the separation really is the fact you are still separating one type of police force from another type of police force, whereas in the UK the decision to charge is taken by a prosecution service, not by the police themselves. You may not be aware of that; maybe we have the advantage over you. I do not think we need to labour the point because I think quite clearly you do not see it as an issue, really, the fact that the Honorary Police make a charge.

Senator W. Kinnard:

Well, I would say that -- well, the other thing I would say is that I have certainly had some concerns and read of some concerns about the prosecution service in the United Kingdom in relation to them choosing not to prosecute certain things. I know that they came in for some criticism some years ago in relation to rape and domestic violence, not taking forward cases when organisations involved with victims felt that cases should be pursued. So, you know, these are not a panacea to deal with all problems.

The Deputy of St. Martin:

Yes, okay. Possibly we could move on to 8, could we not, Deirdre?

Deputy D.W. Mezbourian:

Certainly. Senator, you have just told us that you are satisfied that the decision to charge rests with an honorary officer, in fact with a centenier.

Senator W. Kinnard:

Mm hmm.

Deputy D.W. Mezbourian:

What is your opinion of the fact that that centenier, when making the decision to charge and to take a case through to the Magistrates Court, may have had little or no training in law?

Senator W. Kinnard:

Well, as I say, we have funded the training for 2 years for the centeniers. They are now responsible for doing their training. The level of their training is perhaps something you would perhaps ask them about rather than myself. I mean, I am not aware of the level of training that all centeniers get, but I am aware of some of the training that was available for them certainly at the time when we were paying for it.

Deputy D.W. Mezbourian:

I would say that not only may they have had little or no training in law, indeed as the law stands at the moment a centenier may be sworn in at the Royal Court on a Friday morning and be expected to present a case in the Magistrates Court on the following Monday morning. What is your opinion on that situation?

Senator W. Kinnard:

Well, clearly any training for any job is preferable. I have to say I do not know whether it has changed now but when I became a Youth Court Magistrate we did not receive any training before we were judging cases. Whether that has changed since 1996 I am not aware. But clearly training is something that is useful and preferable in any kind of job that one is doing. Certainly if we had gone on at some point to take things forward in our discussions with centeniers that would have been an area that would have been part of our discussions.

The Deputy of St. Martin:

But it will follow because if you have taken a decision not to go forward with *Rutherford 4* that we will now continue in the sense where we have honorary officers making the decision to charge and to present cases in court.

Senator W. Kinnard:

Well, it is part of our Criminal Justice Policy, which as you know we are trying to get back to the States. It has finished its second round of consultation. Steven, perhaps you have got it there, have you?

Mr. S. Austin-Vautier:

No.

Senator W. Kinnard:

I am just trying to find the bit where we say we are going to ... in taking this forward, that we would be working with the centeniers in discussing what the needs would be in beefing up their system.

The Deputy of St. Martin:

Yes, but *Rutherford* was 4 years ago. People are still being taken to court today, being prosecuted.

Senator W. Kinnard:

That is on page 10. Well, I mean, as I say, *Rutherford* was something that was informing the Committee. We discussed with stakeholders. We came to a conclusion. We have been developing a Criminal Justice Policy which I have tried to get to the States before now. Some of these things have been taken forward anyway. They have received training. We paid 2 years of training and I believe they have had some training since then because that has been paid for by the honorary service themselves. So I think to say that there is no training at all, I mean, I would find that difficult to accept. [Aside] Oh, right. This is the *Rutherford Report* on page 27 - it will be a slightly different page for you - where it is talking about Parish Hall Inquiries. It is also saying that in many circumstances the centenier will take advice from others: "Where a Parish Hall Inquiry is considered inappropriate, because for example the offence is too serious to be dealt with at that level, a centenier will be called in to charge the individual and warn him/her for court." What we have got there is: "If the centenier disagrees with the recommendation he has the option to" and it goes on. But basically there is the ability there to take advice from others when making that decision.

Deputy S. Pitman:

Minister, we have just heard that an honorary officer may present a case in the court but with little training. We have heard that your department helped provide the training and paid for training for 2 years. How do you see the role of your department assisting with the current situation with possible lack of training with honorary officers presenting cases to the court?

Senator W. Kinnard:

Well, the training, it was agreed that the training would be taken over -- the payment of the training would be taken over by the honorary system itself. They took that on and that has been the situation since we stopped paying for it. So my belief is that training has still gone on, which has been paid for by themselves.

Deputy S. Pitman:

So you do not see a role there for your department in the future?

Senator W. Kinnard:

Not any more than we have done before. I mean, it seems to me that it is important that the training needs, such as they are, if there are areas we could discuss, if we can assist in any way -- in fact, I believe at the moment we are looking at ways in which States of Jersey Police can assist with training in terms of the introduction of the Ripple(?) legislation that is going to be brought into force. So we are assisting in that way.

The Deputy of St. Martin:

I want to try to keep it down to the role of the centenier because the role of the centenier, in fairness to the States Police, they could not be seen to be training an honorary officer in a role going to court because they do not go to court so they have no experience from that. So it would be unfair to expect the States Police to do that.

Senator W. Kinnard:

But training needs go wider than that, do they not, really?

The Deputy of St. Martin:

The States Police may be able to give police training in other fields but not civic because I think we all accept the fact that the role of a centenier in court is something separate from the States Police and the States Police have no involvement.

Senator W. Kinnard:

Well, that is part of the judicial system, really, rather than, I would say, directly my department. That is a separate area of the courts. That does not come under my umbrella. I mean, really, in a sense, as the titular head of the honorary system it is the Attorney General and in a sense perhaps it is him and his legal advisers who are the ones who would be most appropriate in being involved in that role because they deal with the court side of things. Within my area there is a very clear demarcation between the criminal justice system and what goes on in the judicial process.

Deputy D.W. Mezbourian:

As they are part of the criminal justice system, do you have political responsibility for the Honorary Police?

Senator W. Kinnard:

No.

Deputy D.W. Mezbourian:

Who does that fall under?

Senator W. Kinnard:

Each constable has responsibility for their own force.

Deputy D.W. Mezbourian:

Do you have political responsibility for the magistrates and the courts?

Senator W. Kinnard:

No.

Deputy D.W. Mezbourian:

That comes under ...?

Senator W. Kinnard:

Well, the Law Officers really. Treasury and Resources; it has moved about. Or is it Chief Minister's now? I think it could actually be ... [Aside] Treasury and Resources.

The Deputy of St. Martin:

I think it is fair to say we do have some sympathy with you because we do understand. I think the word "muddle" was the word that Mr. Le Marquand used when he spoke to us here. We do have some sympathy because we are trying to find out really who is responsible for certain areas within the courts. It would appear that it is, for want of a better word, a muddle because it is very difficult to have some line of responsibility and accountability, and possibly as a result of our review we may be able to lend some support to maybe making some recommendations that that line should be a lot clearer and people should really know in whose areas the areas of responsibility should lie.

Senator W. Kinnard:

Yes. It is certainly the case that when it comes to the courts and the court process, the judicial process, that is not part of my remit. So I am to some extent constrained in what I can achieve.

The Deputy of St. Martin:

As I say, I think it is fair to say we do have some sympathy with that and part of our role is really trying to find out how a decision was made and where we can go on from there. Because, again, we made reference to the fact that a decision has been made but there are other consequences as a result of not making that decision. That is what we are looking at. I just want to move on and I am conscious of the

fact that we are running late. Are you aware that there is a considerable amount of difficulty at the moment in recruiting centeniers to take part?

Senator W. Kinnard:

Yes, but there are equally difficulties in recruiting lawyers to work in the public service, particularly in this Island. I think we have to remember again the context of Jersey is quite different to, say, somewhere like Southampton because in Jersey lawyers have the ability to earn so much more in private practice that it is incredibly difficult to recruit people to the public service.

The Deputy of St. Martin:

Okay. We will try to keep to a pattern here. Are you aware that the magistrates themselves are expressing concern, as indeed centeniers are expressing concern, that they do not feel adequately trained to undertake the job they have to do in court? Has that filtered its way through to you at all?

Deputy S. Pitman:

What are your thoughts on it?

Senator W. Kinnard:

Well, we are aware obviously of this report, yes, and I have made the point that I think in any walk of life training is a very important aspect, quite clearly. But I am not sure that it is my remit to provide that.

The Deputy of St. Martin:

That is the point we are trying to get. We would like to find whose responsibility is it to ensure that people are adequately trained? If it does not come under your remit, could you tell us who you think it is? You think it could be Treasury and Resources?

Senator W. Kinnard:

Well, I think it is under the Attorney General and the Law Officers because they are the ones who deal with the court process. On my side of the fence, if you like, we deal with everything until it gets to court and we also deal with them when they come out the other side if they have to go up to La Moye. But in between the actual judicial process is not within my remit. You will be aware of the difference. I mean, the *Rutherford Report* was about reviewing the need for a Criminal Justice Policy and it was about the criminal justice process. It was not a judicial review. Previously judicial reviews have been done by Sir Martin Le Quesne, which was about the workings of the court and so on, which is a different, separate area and I am very aware of that from having previously been President of the Legislation Committee. *Rutherford* is not a judicial review document.

The Deputy of St. Martin:

We will come to that presently, but could we just try to move on, then.

Deputy D.W. Mezbourian:

I would just like to establish something, if I may. I may have missed it in one of your answers earlier. It really is who has political responsibility to ensure that the centeniers are fully trained before they present cases in court? Does anyone have that responsibility?

Senator W. Kinnard:

I am not sure politically they do. I mean, obviously they are responsible to the constables in their parish and possibly there is a line of accountability through the Attorney General as the titular head of the honorary service. But as a political responsibility I do not think it sits anywhere. On the financial aspect when it is Treasury and Resources, they are politically responsible for the financial probity and so on of the departments but they are not politically responsible for them.

Deputy D.W. Mezbourian:

I would just like to go back to when we were speaking about finances. You mentioned earlier, Minister, that it had been agreed that your department would no longer fund training. Who was that agreed with?

Senator W. Kinnard:

That was done through an FSR (fundamental spending review) process meeting. We had to come up with various savings and we had actually funded the training for a period of time but it was quite clear that as that was not one of our core activities for us, that we did not have a political responsibility for that area, that monies -- if there were going to be savings having to be made, as indeed there were, then quite clearly the things that were going to be cut or saved would actually be those things that were not our core responsibilities. But that was -- I mean, we went -- there was a lot of advance notice of that.

Mr. S. Austin-Vautier:

A year's notice.

Senator W. Kinnard:

A year's notice, Steven reminds me.

The Deputy of St. Martin:

I am getting a bit confused about the area of responsibility that you are in the Magistrates Court and if, indeed, you cannot answer the question because you do not think you are politically responsible for it, but it did say in *Rutherford* - in fact, it has been talked of by the magistrates since and indeed by the Magistrate since - that possibly to increase the efficiency, et cetera, in the Magistrates Court and to

ensure people are adequately trained, that one might look at maybe a pool of centeniers who may feel they could then use that expertise that they have. They have a number of things going for them; one is possibly - very important - they have the time they can give to it and certainly have the aptitude towards taking a case to court because I think that is important as well. We have heard from some centeniers they feel that it is quite daunting to go in. You would have a level of expertise. Have you any thoughts on that at all? Would that come under your remit, bearing in mind it was also mentioned on page 41 of *Rutherford*. I think he says that consideration needs to be given to creating a branch of the Honorary Police Service that specialises in prosecuting and receives training. Again, we are back looking at the alternative.

Senator W. Kinnard:

Well, again, because I do not have the responsibility or the powers to instruct what should be done, it would be a matter for the honorary service to decide whether they wanted to go that route. Clearly one of the things we envisaged was discussing with them further --

The Deputy of St. Martin:

But surely - could I just press you on this - the running of the Magistrates should be down --

Senator W. Kinnard:

They are very jealous, you know, of their powers.

The Deputy of St. Martin:

No, the good running, the orderly fashion, the way in which a court is run surely should not be down to centeniers. There must be someone accountable for their actions in court and we are trying to establish who is responsible.

Senator W. Kinnard:

Well, it is not me, that is all I would say. It is not me.

The Deputy of St. Martin:

So we do not know who has political responsibility for the good running of the Magistrates Court? It is not the Home Affairs?

Senator W. Kinnard:

No, it is not.

The Deputy of St. Martin:

Is this an area that concerns you at all or have you been made aware of it?

Deputy D.W. Mezbourian:

Steven, do you know?

Mr. S. Austin-Vautier:

I think, if I may --

The Deputy of St. Martin:

Mr. Vautier, of course you have previous experience.

Senator W. Kinnard:

He has lots of experience.

Mr. S. Austin-Vautier:

It is the word "politically" that you keep coming back to, Chairman, and it is not the way that the system has grown in Jersey. That is the point. The whole judicial process in the Island has grown up over decades through the Royal Court and downwards and it has cascaded down from there. It has not been a creature of politics at all. Now if you are trying to find a link you will have a long search, I think, because that is not historically and traditionally the way the court system has grown up.

Deputy D.W. Mezbourian:

So ultimately, as we know, the Attorney General is titular head of the Honorary Police and he has complete control over their actions and all the procedures that fall within that.

Mr. S. Austin-Vautier:

He issues guidance and directives.

Senator W. Kinnard:

He issues directives and guidance and so on.

The Deputy of St. Martin:

But, you see, if one wished to lay a complaint about the way in which the court is being run, who would one make that complaint to? Who has responsibility for it?

Senator W. Kinnard:

I imagine one would make the complaint to the judiciary, not to the Home Affairs Minister.

Deputy D.W. Mezbourian:

I think, Deputy, that when we asked the Magistrate who a complaint would be referred to if there was, indeed, a complaint directed at the Magistrate, his response was that it would be to the Bailiff.

Senator W. Kinnard:

As the head of the court.

The Deputy of St. Martin:

Could we look at number 15?

Deputy D.W. Mezbourian:

As the Honorary Police are part of the judicial system for which you do have responsibility, Minister, do you liaise at all with the Attorney General to discuss the running of the Honorary Police, to discuss whether it is working?

Senator W. Kinnard:

Well, this is a difficult one, is it not? Of course there are discussions that go on from time to time about particular issues which impact upon the workings of the Honorary Police, but at the end of the day I am very clear that the Honorary Police are answerable to their constable and to the titular head. They are not answerable to me. So basically at the end of the day it is a matter of discussion and agreement about how to take things forward. But we also within the Criminal Justice Policy have said that one of the actions that will happen under that is a forum for discussing Criminal Justice Policy which would involve the executive, the judiciary and the prosecution. So that really is a forum for any of those issues to be fleshed out in a sense and discussed and a way forward. I could see that that would actually be quite a useful forum. But I have to be very careful about where my powers end because this is very sensitive. You know, when you are dealing with issues about the judicial process it is very important that politicians do not seek to overstep into those areas where it is not appropriate for political influence to be. I think that is one of the difficulties I think sometimes, is that people do not necessarily accept that politicians actually do have some limits on their powers.

The Deputy of St. Martin:

But if there are concerns being expressed or possibly shortfalls, would it not be part of a politician - in particular the Minister for Home Affairs, who has a considerable responsibility for the administration of justice in the Island - not to be --

Senator W. Kinnard:

Well, it is not actually the administration of justice; that is not actually what I am responsible for. The administration of justice is something that is dealt with by the judiciary.

The Deputy of St. Martin:

I accept that, yes. Possibly the wording --

Senator W. Kinnard:

I am responsible for things like dealing with crime and prosecuting offenders and ensuring that they are locked up safely and successfully, which is actually a slightly different role.

The Deputy of St. Martin:

Could I come in there, then? Part of the prosecution service is part of the courts. Surely you cannot separate the difference. If someone is arrested, the due process then comes from arrest to court and court to whatever it is going to be, prison, et cetera, which does come in. We are trying to get into this area of the courts, the area of --

Senator W. Kinnard:

But I think you are asking actually the wrong person. I would say that if concerns came to me or if concerns come to me, that is where I would discuss that is in that forum of the executive, the judiciary and the prosecution. It would be that forum where those issues would be discussed, issues of concern, but I am not responsible for the courts and what goes on in the courts.

The Deputy of St. Martin:

But you have made a decision under *Rutherford 4* not to proceed with his recommendation, so what is going to happen to that void, that vacuum?

Senator W. Kinnard:

We decided not to proceed with that particular recommendation in consultation with others who were stakeholders in the system, in consultation with those others who are responsible for these other parts of the system. We did not make this decision just off the top of our head. As I say, amongst the Committee themselves there was a huge range of expertise and experience of the court process.

Deputy D.W. Mezbourian:

It seems somewhat ironic that you do not have responsibility for the courts and yet you were called upon to make that judgment, which would have had a great impact upon the court system.

Senator W. Kinnard:

Well, that is why we did not take it alone. That is why we -- again, we are talking about this forum; how do we get those issues discussed with the right people or the people who have the responsibilities in the right area. That is what we did: we discussed it with the Bailiff and we discussed with the Attorney General. So we did not make that decision alone.

Deputy D.W. Mezbourian:

No, I am not saying for a moment that you did because you have explained fully to us how you did it. What I am saying is that it does seem a conundrum that you do not have responsibility for the courts --

Senator W. Kinnard:

In some other communities there is a Ministry for Justice but that is not the same as necessarily a Home Affairs Department. We do not actually have one of those in Jersey. When I was President of Legislation people used to try and say that I should be turned into a Ministry for Justice then, so this is not exactly new territory for me. But the fact of the matter is we do not actually have one. It is being dealt with, as Steven has explained, and it has grown up almost organically within the Island and it is a different approach. But I am not the Minister for Justice.

The Deputy of St. Martin:

It obviously is part of the conundrum. Just to get back to you mentioned earlier, going way back, to the Attorney General giving advice about the costs, et cetera, and we talked about a possible need for 2 more lawyers. But at the moment in the court there are 2 full-time legal advisers and 2 assistants. Last week we had the benefit of getting someone here from the Crown Prosecution Service and we asked the simple question: if indeed one did away with the role of the centenier in the Magistrates Court, how could that be overcome and how could that be replaced? We were told that you probably would find the need for probably as few as 3 designated case workers. When we added up the sort of cost, again we do not know how much is too much because all we know from *Rutherford* or from the policies report is that it would be too costly but we do not know what that cost would be. Have you ever looked at the possibility of looking to see what the cost would be for 3 designated case workers or have you not gone beyond that?

Senator W. Kinnard:

Are you suggesting that the case workers would be lawyers or not? Because if they are not lawyers I do not see what the benefit would be, unless you have got --

The Deputy of St. Martin:

Well, the point is we are already paying for 4 legal advisers who are all lawyers. Given the workload - and we heard the amount of work that one operates in the UK, the workload they have, and we work out the number of centeniers we have here and also the amount of legal advisers we have here - it would appear that the cost might not be as considerable as one may have thought.

Senator W. Kinnard:

Well, that is something I think that would certainly need unpicking because certainly, as I have

mentioned, if you are talking about having lawyers in this role the cost of lawyers in Jersey is significantly higher than the cost perhaps of having lawyers doing this kind of work in the United Kingdom. But it is not just about costs, it is also about speed. Is it efficient, in a sense I suppose is the question to ask, to have your highly paid individuals dealing with rather minor offences? I think that what would also need to be looked at is whether if you were going to have a public prosecution service what likely effect, if any, that that would have in terms of the efficiency and speed with which the court actually dealt with cases. Because I think we are all agreed that justice delayed is no justice at all.

The Deputy of St. Martin:

Are you aware how fast they are working now?

Senator W. Kinnard:

Well, I am aware of some criticisms where minor cases are just not prosecuted because they have got so many other pressing, more serious cases. So, as I say, one has to look at the wider impact. Also, my concern was not just about the court; my concern was what would the effects of the *Rutherford* recommendations in this area have on other bits of the honorary service? I have to see it as a whole. That is why I do not feel it is right to divorce this particular recommendation from the other recommendations about the Parish Hall Inquiry.

Deputy D.W. Mezbourian:

In fact, you highlighted earlier, Minister, the error really that Professor Rutherford made in his recommendations because the centenier decides to charge and then takes the case forward to the Magistrates Court and those 2 roles really cannot be divorced. As the Magistrates both told us, I believe, when they came to speak to us, the diversionary role of the Parish Hall Inquiry, as you mentioned earlier, is greatly admired, I think, from outside of the Island as a system which relieves pressure upon the courts. If we were to remove the role of the centenier in the Magistrates Court as recommended by Professor Rutherford, that would leave us with the problem with regards to the Parish Hall Inquiry.

Senator W. Kinnard:

Well, that was very much how I certainly saw it at the back of my mind, was this concern that we must not - I mean, I hate to use these clichés - throw the baby out with the bath water. That was very much a concern of mine.

The Deputy of St. Martin:

Okay. I think, number 16, we have really asked that one. Could I just very quickly go to your letter which you sent recently about Mr. Le Marquand's comments. It is just to tidy up an issue. I think there may well be a little bit of a misunderstanding in what Mr. Le Marquand said in total than possibly what

might have been reported. At the same time, I think the thrust of Mr. Le Marquand's argument was that really there are some very good officers doing a very good job and there are some who in all walks of life are not quite so good, and possibly the highlight was given to those not doing the job quite so well as those who are doing a good job. But I think nevertheless the point was made there are deficiencies in the service and they were highlighted again on page 1 by Rutherford saying: "If you are not going to go ahead with the system of having a prosecution service, then you must make sure that the people doing the job are fully trained." I think it is in fairness to say that that is still a grey area as to whose responsibility it is, who should pay, et cetera, because I think we have heard from you this morning you say that is really down to the honorary system themselves.

Senator W. Kinnard:

Well, the honorary system and I would say the judicial system. If the concern is about the court it is certainly in that area.

The Deputy of St. Martin:

We are to see the Attorney General, but are there any points in the letter that you would like just to clarify at all while we have the opportunity and you are with us? Basically I think there was some concern and it may be a misunderstanding within the report itself. The report really does not mean to say what it said in such a way of coming to a conclusion. I do not think it is a great --

Senator W. Kinnard:

I cannot quite understand what he just said.

Mr. S. Austin-Vautier:

Yes. If I may, Minister, the one point that was helpful to us was that it exposed that in the writing of the executive summary we clipped something so much that we lost the sense of something and it could be misinterpreted. We are going to redraft that section because it actually contradicts what is in the main body of the report, so it was helpful from that point of view and we said that in the letter.

The Deputy of St. Martin:

Okay, that is fine. Possibly just to conclude, we touched on it earlier and it is on page 69 of the policy, paragraph 10. This is the area which I think we have touched on this morning really, is knowing who is responsible for where. It says in the policy overview chapter: "Comment was made that this policy should not be confused with a judicial services review and it is not the purpose of this policy at least on this occasion to review the prosecution powers and procedures of the Jersey court system. These aspects of the criminal justice process are covered in the *Rutherford Report* and need not be repeated here." But possibly as a result of the discussion we have had this morning and also discussions and meetings we have had with the centeniers and, indeed, with the magistrates, possibly this is an area that could well be

visited because I think it is fair to say there are concerns about the way in which the courts themselves are not very happy, that they feel that their situation could be improved. Is there any area which you think, with your Home Affairs hat on or within your remit, that there is some area that you could give some attention to?

Senator W. Kinnard:

If it is a judicial services review, I mean, in the past there was one done by Sir Martin Le Quesne, I think, in 1993.

The Deputy of St. Martin:

1990, actually.

Senator W. Kinnard:

Was it 1990? Okay. At that time when I was -- became a member of the Legislation Committee, it was in 1996. The Legislation Committee was involved in taking a lot of those forward. Now, the Legislation Committee when it disbanded sort of shared out some of its work amongst various different departments. Home Affairs took on some of that but that was mostly to do with things like drafting the various laws that impacted upon the police and so on. But most of the stuff actually went out to the Chief Minister's Department. It was shared with the Chief Minister's Department, so in a sense it would seem to me that any decision to make a judicial services review that would have been taken in the past by the Legislation Committee would have to be taken perhaps by the Chief Minister's Department now as that aspect of the Legislation Committee went to the Chief Minister's Department.

The Deputy of St. Martin:

I think in fairness to say again it is difficult --

Senator W. Kinnard:

Otherwise the danger is that Home Affairs becomes, if you like, the vehicle for doing absolutely everything, and I think it is very important to recognise that Home Affairs already has a huge remit. I think there is value in keeping separate the aspects of detecting and prosecuting crime from the judicial aspects. I think there is some value in keeping that separate. That is just a point I would make.

The Deputy of St. Martin:

But again, unfortunately you have made a decision on *Rutherford* to go ahead with and again we are back to the conundrum of who is responsible for it.

Senator W. Kinnard:

Well, that does not stop somebody else reviewing it and deciding to change matters. That was the

decision we made.

The Deputy of St. Martin:

Yes. Well, with that, again through the research we have done, we have come across what we call the *Le Quesne Report* of 1990 which made a certain number of recommendations. That lay dormant for almost 8 years. In 1998, under the Legislation Committee - which may well have been under your presidency - there was a *Magistrates Practices and Procedures Working Party Report*. Again, from that report a number of recommendations were made. Some are still outstanding, so we are looking from recommendations which were made in 1990, they were also endorsed by I think Clothier in the *Clothier Police Review* in 1996, supported again in 1998 about things like training, et cetera, making people feel confident. Who do you think should be responsible for making sure that these recommendations are implemented?

Senator W. Kinnard:

Well, under the old system it was the Legislation Committee, and I have just explained that that aspect of things went to the Chief Minister's Department. Again, it is to do with the role of the courts. It is not to do with detection and prosecution, taking forward a case to prosecution. As I say, there is value I think in keeping some separation of powers between policing powers in terms of what we do in terms of catching criminals and what the system does in terms of the running and smooth operation of the courts. I think that is a separate matter that ought not to be under a Home Affairs remit.

The Deputy of St. Martin:

Just with that, do you meet regularly with anybody to discuss where the 2 can marry?

Senator W. Kinnard:

Well, yes, and certainly that is one of the proposals and actions in the Criminal Justice Policy is a meeting between the judiciary, the executive and so on.

The Deputy of St. Martin:

Do you really need States' permission to get you to get something which is fairly obvious really?

Senator W. Kinnard:

We obviously do meet anyway on particular issues and we have met on particular issues which have impacted upon the honorary system. The idea within this action is to actually make that rather more formal than it has been hitherto. Obviously I would like to have the States' agreement to make that a much more formal event than perhaps we feel able to without States' agreement at this point in time.

The Deputy of St. Martin:

Have you got any further questions, Shona?

Senator W. Kinnard:

We were being pragmatic about it, I suppose.

The Deputy of St. Martin:

I know. I think one gets concerned, a bit frustrated about the time it takes to get to things. I think what is quite interesting here is we are not quite sure who should be taking things forward and I think that was the concern, that possibly we will have to see how we can address ourselves --

Senator W. Kinnard:

Well, I am quite clear that I am not responsible for the judicial services review. I am not at all confused about that.

The Deputy of St. Martin:

At the same time the judicial function itself, the administration of justice, the way it works its way through, the courts are certainly a very important aspect.

Senator W. Kinnard:

Absolutely.

The Deputy of St. Martin:

That is an area we will have to address. Thank you for your attendance, and I always ask people before they go, are there any questions you thought we were going to ask that were not and you would like to be asked so you can give the answers? Or have you got any other comments you would like to make?

Mr. S. Austin-Vautier:

Just out of interest, the cost and speed thing, speed is overlooked frequently as a factor in court process. I do not know what the CPS (Crown Prosecution Service) gentleman told you, but certainly here the best way I always describe it is that frequently in the court, when I worked in it, there were people who were roadside breathalysed at 3.00 a.m., intoxicated a few hours later, charged by the centenier in the early hours of the morning, in court at 10.00 a.m. and fined by 10.30 a.m. Those are aspects of the system we do not want to lose. That was all with the agreement of the person charged saying: "Yes, your Honour, I did it." You know, simple, all done and dusted.

The Deputy of St. Martin:

We had evidence to show that that speed is still functioning --

Mr. S. Austin-Vautier:

Of course, I am out of date but certainly in my experience --

The Deputy of St. Martin:

... things move on, but if you have nothing else --

Mr. S. Austin-Vautier:

But I would not be surprised if that does not still happen.

The Deputy of St. Martin:

Okay. If there is nothing else to add, can I thank you for your attendance? As you know, this is being transcribed and it will be sent to you at some future date. A report at some stage will follow. We are now going to meet the Attorney General I think on 6th November 2006. It keeps getting put back because of various reasons. Anyway, thank you again for your attendance.

Senator W. Kinnard:

Thank you.