



Care of Children in Jersey Review Panel

Redress and Accountability Systems in Jersey

Witness: The Bailiff

Wednesday, 10th March 2021

Panel:

Deputy R.J. Ward of St. Helier (Chair)

Deputy K.G. Pamplin of St. Saviour (Vice-Chair)

Deputy L.M.C. Doublet of St. Saviour

Deputy M.R. Higgins of St. Helier

Deputy M. Tadier of St. Brelade

Witnesses:

Mr. T.J. Le Cocq, The Bailiff

Mr. S. Cartwright, Chief Officer to the Bailiff

[13:01]

Deputy R.J. Ward of St. Helier (Chair):

Good afternoon, everyone. Welcome to what is the second hearing of the Care of Children Review Panel regards the Redress and Accountability Systems in Jersey Review. Today it is the Bailiff of Jersey. We will introduce ourselves first of all so everyone knows who we are. I am Deputy Rob Ward and I chair the Care of Children Review Panel.

Deputy K.G. Pamplin of St. Saviour (Vice-Chair):

I am Deputy Kevin Pamplin of St. Saviour District No. 1, and I am the vice-chair of this panel.

Deputy L.M.C. Doublet of St. Saviour:

Deputy Louise Doublet of St. Saviour 2, member of the panel.

Deputy M.R. Higgins of St. Helier:

Deputy Mike Higgins, St. Helier 3 and 4, and I am a member of the panel.

Deputy M. Tadier of St. Brelade:

Deputy Monty Tadier. I am a Deputy for St. Brelade, a member of the panel.

The Bailiff:

I am Timothy Le Cocq, the Bailiff of Jersey.

Chief Officer to the Bailiff:

Steve Cartwright, chief officer to the Bailiff.

Deputy R.J. Ward:

One of the things we are interested in is we had a very particular terms of reference for this review, which was about systems of complaints, redress and accountability. We are basing all of the hearings around that. Given that context, can you summarise your role and responsibilities for those who might be watching and for the public? In particular, in terms of how you are linked to complaints processes and so on?

The Bailiff:

Yes, you do not want me to comment generally on the Bailiff's duties and role per se, presumably just inasmuch as it relates to complaints and things of that nature?

Deputy R.J. Ward:

If you want to give a brief context that is always useful. I do not know if you can summarise it very quickly, but it is always a useful thing to do.

The Bailiff:

In summary form, the Bailiff of Jersey is the senior Crown officer within the Island. The Bailiff holds the functions of chief justice and of presiding officer of the States Assembly, and also as civic head which involves, of course public engagement in that latter capacity. In terms of complaints, I would be the first recipient of any complaints relating to members of the judiciary. Complaints made about individuals within my department would normally go first to the chief officer although could, come to me depending upon how the complainant wished to start the process off. Complaints that are made to the Judicial Greffier about Judicial Greffe staff, if they are not resolved, they can be escalated to me for further consideration.

Deputy R.J. Ward:

How would you characterise the way in which a member of the public can make a complaint in relation to the court system?

The Bailiff:

That is an almost protean expression. Many things fit within the term court system. Complaints in connection with the Viscount's Department, they will be made primarily to the Viscount. Complaints about the Judicial Greffe will be made at first instance to the Greffier. Complaints about the Bailiff's Chambers and the judiciary would be made at the first instance to me. Complaints about the court system, however, are not necessarily the same things as complaints about individuals and the way they function within the system. I suppose individuals might write to me and say certain things are wrong with the system, but that really is outside a complaints process. It is simply the engagement of the Bailiff's office with members of the public. There is no process relating to complaints about the system. That is a matter that would be raised, I am sure, with some of you on a political level if there are complaints about the system, and sometimes with me. If there are complaints addressed to me I do my best in most circumstances to answer them.

Deputy R.J. Ward:

Do you find that there are complaints that are made over outcomes that you have to address in terms of perhaps the decisions made within a court hearing or by a judge? The reason we ask is when we spoke to the Judicial Greffier today one of the things was clarity and what people are complaining about and where to go. That is one of the things that we have looked at quite a lot.

The Bailiff:

From time to time people will write to the Bailiff and say: "The outcome in my case was unfair, do something about it." Often what that means is they have no complaint about individuals involved within the judicial process or the system, but rather they do not like the outcome. In those circumstances, all I can do is to go back and advise them that they have to consider whatever rights of appeal or review within the legal process they may have available to them and sometimes, if they are litigants in person, as often they would have been, I will ask the Judicial Greffe to give them procedural advice. The Judicial Greffe cannot give them legal advice but can give procedural advice on what they need to do in order to lodge an appeal or a review application against the substance of the decision that they are complaining about.

Deputy R.J. Ward:

We are talking about the level of a judicial review if a complaint goes that far?

The Bailiff:

That is to do with review of administrative decisions. Judicial Review is a process for an individual to apply to the court to challenge an administrative decision when there is no right of appeal. Some administrative decisions have rights of appeal available. Generally, in civil and criminal matters there are certain rights of appeal enshrined, for example, in the Court of Appeal Law. Generally, for example, in civil matters an individual will have an automatic right of appeal against any final decision that disposes of their rights, one way or the other. If it is an interim decision, which does not finally dispose of those rights, then they may have a right of appeal but that will be subject to leave of the court below or, if unsuccessful, leave of the Court of Appeal itself. In other words, it is not an automatic right. There has to be a reason that engages the court, if it is not the final determination. But on the final determination of their matter there is in almost all cases, unless statute has taken it away, which is a decision for the Assembly of course, a right of appeal to the Court of Appeal.

Deputy R.J. Ward:

That sort of sums up the complexity of what we are dealing with here and the complexity for the public. This is one of the issues that we have uncovered, the public knowing the process by which they feel they can ... I think we are using the word "complain" but I think the word "appeal" or ask for perhaps a second opinion is a way of putting it. One of the things that we heard from the Judicial Greffe is that at some stage they may pass something up to you for final consideration. It does not happen very often we were told. Are you aware of that process and do you feel that that is a clear process as well?

The Bailiff:

I will come on to answer that. But first I think we must draw a distinction between complaints about individuals and their conduct within processes and complaints about the outcome of the process. What I have described in terms of appeals is what is a complaint against the outcome of the process. "I did not get damages ordered by the court", "I did not get that contract set aside and therefore I want someone else to review that, to look at that again." That is strictly an appeal. That is dealt with by the Court of Appeal through the judicial process in the normal way. Sometimes there is no right of appeal. There are no rights of appeal in certain administrative statutes. I cannot immediately remember what they are. Some decisions have no natural right of appeal to the Court of Appeal. In those kind of decisions you can bring a judicial review application to the Royal Court to conduct a judicial review of the decision as I have just said. That is normally a decision of a Minister or something of that nature. Coming now to your question, what you are saying about handing things up for me for final decision or final review would I think be the outcome of a complaint about an individual within the Judicial Greffe. The decision by the Greffier, or whoever is taking that decision that, for example, there is no case to answer, as it were, there has not been a misconduct or anything like that, an individual will be told: "If you want we will refer that to the Bailiff who will go through the

process of looking at it carefully again.” That has happened to me, I think, on one occasion in the last 12 months.

Deputy R.J. Ward:

I think that is a very important distinction. With the first one, with the appeal, does that appeal come from the person themselves; they generate that appeal?

The Bailiff:

Yes, we are talking now about appeals in court cases not complaints, there is no automatic move from the decision of the lower court into an appeal. You have to lodge an appeal. If an individual is legally represented that of course is not a difficulty at all because their lawyer will advise them on their rights of appeal and probably what the possibilities they have in terms of a successful appeal. If they are not legally represented then generally speaking they will be talking to court staff, by which I mean members of the Judicial Greffe dealing with their case so they can get before the court at all, and they will be told: “Yes, you can always appeal if you do not like this.” What the Judicial Greffe is good at, in my experience, is giving procedural advice. They cannot say: “You have a good appeal here.” They cannot say: “You can win.” But they can say: “If you think you want to appeal this is the process for doing it”, and they do.

Deputy R.J. Ward:

Yes, but realistically I suppose appeals would really need a backing of a lawyer if they were going to ... I mean we are right at the end of a process now. Are they tracked? Is there a tracking of how many appeals are made and perhaps even how many appeals were thought about but were not made?

The Bailiff:

No. Sorry, I did not mean to cut across you. The answer is once an appeal goes into the system it fits in the court system and its process is managed, and that is normally dealt with by the member of the Judicial Greffe staff who is clerk to the Court of Appeal. I cannot remember the detail of that process but, yes, it is formally in the court system and if it is an outstanding appeal it will be looked at and reviewed and dates will be fixed. Things have to happen within a particular period otherwise the appeal falls away naturally. But if an individual knows enough to lodge an appeal they will be told the timeframes and what they have to do in order to keep the appeal alive and move it towards a final hearing. But I am not aware of any way of monitoring whether an individual has thought about an appeal but has not brought one.

Deputy R.J. Ward:

I think I mentioned yesterday, like a R.A.G. (red, amber, green) rating system so that you can keep some sort of track of how close some things were coming to appeal and whether there were any obstacles to that appeal, particularly with people who are in person themselves and do not use a lawyer. Because one of the things we are thinking about is what obstacles there may be, in the end, to accountability. That is where we are coming from with that in terms of that tracking system. Because there may be a stage where you think: "We need to give greater access to appeal here because there were some cases that could maybe have been robust enough to have got a second decision" regardless of what that outcome was because that is not to be judged in advance obviously.

The Bailiff:

People appeal or do not appeal for a variety of reasons.

[13:15]

Some people, who one might think on the surface, have a very good case choose not to appeal because they just want to put it behind them and wash their hands of it and walk away. Some people who do not have a very good case at all nonetheless want to appeal because they feel particularly aggrieved and they wish to be vindicated, and they do not think they have a poor case. In a sense, the filter process is what the Court of Appeal ultimately decides about it, I suppose. But certainly anyone who wants to think about an appeal will be advised as to process at least by the Judicial Greffe.

Deputy R.J. Ward:

I suppose just the additional thing now, from some of the evidence we have heard, when people get to that stage of feeling they should appeal and they do not they often feel quite aggrieved that nothing has happened even though they did not go through with the appeal. Do you think there should be processes in place to support that non-outcome as much as an outcome in terms of the ... because it can become very encompassing in people's lives when they feel aggrieved? Do you think there is enough there to follow up and that is why we are talking about a tracking process to say that they did not get that it is ...

The Bailiff:

I am not sure how that would work. The court's function, and I am talking purely about the court's function here, is to resolve a dispute between one side and another; to say one side is right or the other side is right or the correct position is somewhere in between. It is a dispute resolving process and that is the same at the Court of Appeal level or at the Royal Court level or any other court. It is not a more pastoral process such as, for example - if I can call it a pastoral process – some forms

of dispute resolution where people try and reach a measure of consensus and agreement. When it gets to court the court is not there to foster consensus and agreement unless it is obviously a case where you can send the parties away and say: "Look, you are really not that far apart, go away and have a meeting about it." That does happen from time to time. But for the most part, the court is there to resolve disputes when parties have not been able to sort it out between them. If one works on the assumption every successful party will be happy and every unsuccessful party would be unhappy, I am not quite sure how the court has the facilities to engage in a pastoral way to individuals, in a sense, to give them counselling or whatever it may be for having been unsuccessful. There may be a place for that in society but I am not sure it is a place that can be fulfilled by the court.

Deputy R.J. Ward:

I just wonder whether there is any process with lawyers to say the court has made a decision, do not take it any further, although that is a different question. I have not really worked on that question.

The Bailiff:

I will answer it, if it helps. If an individual has legal representation their lawyer will almost certainly advise them on the prospects of appeal. Unless the individual says: "I do not want to go anywhere with this, that is it, I am done" if the individual wants to think about how strong the appeal would be the lawyer would automatically be expected to advise them. At some levels it is possible to get legal aid to get a second opinion about rights of appeal or prospects on appeal. That is as far as I can go, I think, at this point.

Deputy R.J. Ward:

I think a discussion on legal aid we could be here all day.

The Bailiff:

We could do.

Deputy R.J. Ward:

That is about everything I have on complaints. Deputy Pamplin, do you want to start your area of questioning, unless any other members of the panel have got some questions there that I have missed out.

The Bailiff:

Chair, could I just ask where we are with this? I am sorry to put a question to you. What I am largely talking about is judicial process, which is to do with the resolution of claims properly brought before the court. I have not been talking about - complaints directed to the behaviour of the judiciary or

indeed possibly the behaviour of members of my Chambers. That is not what I have been speaking about. I just wanted to make it clear that we did not think we were covering that ground as well.

Deputy R.J. Ward:

We dealt with a lot of that with the Judicial Greffe yesterday and it was clear to us that when they are not resolved they come to you. Perhaps we will touch on that later when we come to some other areas of the questions as well. I think that was a useful distinction and that is one of the reasons we are having this hearing. That is great. Deputy, do you want to start your area of questioning?

Deputy K.G. Pamplin:

We are going to touch on - we just started to talk about it there - about staff and accountability of staff. These same set of questions we are asking every person that we are meeting in these hearings just for consistency. Could you give us a brief overview of the policies and procedures that are in place in order to hold staff both maybe on the front line or senior management under you to account for their actions?

The Bailiff:

Do you include with that members of the judiciary?

Deputy K.G. Pamplin:

Yes, everybody that falls under your, as you have described, office.

The Bailiff:

Members of the judiciary can be easily explained. Members of the judiciary are expected to adhere to the judicial code of conduct. A failure to do so equates to misconduct. That is the definition of misconduct within the complaints procedure. All members of the judiciary are subject to the complaints procedure, which is applied by my office. Complaints about me or about my Deputy have a very similar process, also published, but that goes to His Excellency the Lieutenant Governor because obviously I cannot mark my own homework, and it is right that somebody else looks at it and he takes whatever advice he needs. In terms of my staff, they are subject to the usual civil service code and to the civil service complaint process. If there are any complaints made against members of my staff they are dealt with in liaison with the Human Resources Department of central government, and that will be primarily through Mr. Cartwright, my chief officer.

Deputy K.G. Pamplin:

That goes on to the next follow-up question. Say, for argument's sake, there is a member of staff in breach of policy or procedures, what is the process in place to deal with this? How does that process go, as it works currently, and then how is it ensured that that is consistently applied at all times?

The Bailiff:

Can I touch on that last point first? In the almost year and a half that I have been Bailiff I am aware of 2 potential complaints that have come through. So we are not talking about a high volume and we cannot really talk about consistent application because we cannot point to a track record of lots of complaints. Similarly, maybe one or 2 complaints have come in which may have fallen under the judicial code. But really very few and very far between. Under the judicial code quite often people mistakenly complain about a person when they are really complaining about the outcome of their case, not about the behaviour of a judicial officer. But I am very happy if Mr Cartwright wants to answer the general process question that you have raised.

Chief Officer to the Bailiff:

As the Bailiff alluded to there, we would follow the usual process outlined by the Government of Jersey under the civil servants. I will not go into any specific cases, it is by example, and keep this general if that is okay because again by nature this office only consists of 11 civil servants so I would not want to be able to identify anybody by those examples. But in the event of somebody airing a grievance or highlighting a shortcoming on one of the members of staff usually that complaint would come directly to me. I would consider the severity of that complaint. Could it be dealt with immediately or is it a case where we need to involve H.R. (Human Resources). If it was a case where we needed to involve H.R. that would be then managed by H.R. case management where the business partners for each department assist the chief officers or the managers in completing that process. There is very much a strict chronology of what happens. Every case is different but what I would say is there would be a very clear and thorough audit trail following that complaint to completion irrespective of the outcome. I think all parties would be kept apprised of what was going on and the circumstances which they are allowed to operate during that. For example, that could be suspension, it could be the fact that you are not allowed to make contact with other members of staff, for example. But all of that would be outlined very clearly.

Deputy K.G. Pamplin:

We are just touching into an area, and we are aware that members of the public are watching. For those, unlike us, who this is our world, we understand it, but when they are hearing the Bailiff's office is working with the Government of Jersey with policy procedure, there will be some people who may be watching this thinking: "Woah, hang on a minute, I thought the Bailiff and Government are separate." So could you just explain, while that is a utilised source to support what you just outlined, just the definitions of that for anybody who is watching.

The Bailiff:

I think it might be helpful then to say that we have lots of computers in our Chambers but, we do not have a separate and independent I.T. (Information Technology) Department to service those computers. We rely upon the resources of central government to make sure we can function. We do not have H.R. specialists who are fully familiar with all of the details of H.R. practice and procedure. We have good generalists, in the form of my chief officer, but not specialists. What will happen is we will call upon central H.R. resources to make sure we have the latest H.R. thinking on the way to deal with these matters at our fingertips. We are not in the slightest influenced by, touched on or do we speak to anyone with political power or, indeed, at very senior civil service levels because we are dealing with the front line H.R. resource that any department would have recourse to. Does that help, Deputy?

Deputy K.G. Pamplin:

Yes, I think that is just helpful for clarity of understanding. As always really helpful. Culture of staff is really important. We have just gone through something completely unprecedented and it has exposed various things of society. You have touched upon it yourself. You are the new guy on the block, you have replaced somebody who was in office for a period of time, you want to bring your stamp on the role and the changing society around you. Is there anything in that, in your observations of the last year and your short time in office so far, in accountability of change and how we hold accountability to each other in our workplace and how we do other jobs, particularly in your experience?

The Bailiff:

I think we have become, all of us, much more alive to the duties we owe to each other. The duties we owe in terms of fairness, the duties that we owe to children, for example, to bring that into focus. These were things, if you went back a number of years, were perhaps more embryonic in their thinking. Now they are much more developed and that is something that we all have to think about and do think about. But I think we operate in a very open way, so far as we can, given that some of the things we deal with are, by their nature, confidential and must remain so. But other than that, our processes and procedures are open but they are sometimes sophisticated and sometimes difficult for members of the public to readily understand. What I would like to achieve is, for example, making the access to justice rather more accessible and processes and procedures ... the digitalisation of the courts, for example, is a project that we are moving ahead with as quickly as we can with a view to making access to courts easier of members of the public who are able at least to operate on line. That is a very large answer to give, Deputy, and I know it is not particularly focused. I would have to give that further thought, I think, to come back with a tighter answer than that.

Deputy K.G. Pamplin:

Again, I think it is really helpful because it takes the public inside to your office, like we are doing virtually now by the camera, so it is really helpful. Quickly going to touch upon redress before handing to Deputy Doublet. This is also part of the review and these are the same questions we are asking everybody: what forms of redress are there for a member of public that makes a complaint, which is upheld in relation to how you have been outlining the processes today?

The Bailiff:

As to the court process, the form of redress available to a member of the public who successfully appeals the decision that has been made against them is a reversal of that decision. If any adverse costs order has been made by a court against them a reversal of that costs order and an award of costs in their favour. That is the standard redress that one might hope for if you go successfully through the appellate process. You might, if you are going through a judicial review process, it is not directly an appeal but against some form of administrative decision by a Minister or Government that you wish to be reviewed by the court where no right of appeal strictly exists, then that might be to have that particular decision changed, reversed or remitted back to the decision maker to be looked at again.

In terms of complaints against the judiciary or members of staff, the concept of redress is a much more uncertain thing because the nature of a disciplinary process is that the person complaining does not get compensation, does not get anything physical given to them.

[13:30]

The most they can reasonably hope for is the satisfaction that their complaint has been accepted, acknowledged, and either an appropriate disciplinary sanction has been visited upon the person who has been at fault, if there has been fault, and that might stretch from an apology to, in extreme cases, dismissal. Or it may simply be that they have had the chance to vindicate their complaint through a complaints process. But redress is difficult as a concept because that implies that in some way they will be compensated and compensation is not a part of a disciplinary process.

Deputy K.G. Pamplin:

Again, this is the same question we ask everybody what the procedures are in order to ensure if it did come to this that they were applied in a consistent and fair manner, that if anybody wanted to review that there is a paper trail, whatever, and I am sure there are but ... I have lost my audio.

The Bailiff:

I think I have not entirely heard what the question was if there was one.

Deputy K.G. Pamplin:

Sorry, that was my fault. The internet froze here. What process and procedures are there in place to ensure redress is applied, if it is applied, is consistent and fair?

The Bailiff:

If it is on the basis of an appeal against a judicial decision then, as I say, that is what courts do. They reverse decisions or they uphold decisions, if you are an appeal court. In a sense, you will not get a position where an appeal court says: "Yes, you have won, but we are not going to do anything about it." The appeal court will say: "Yes, you have won and we reverse therefore the decision of the court below." Or in part if you have been partly successful. No one makes a decision to offer redress. It is inherent in the process of making the decision that you are successful or not. But a consequence to your benefit flows if you are successful. I am not sure how to answer that question, if you are talking about disciplinary kinds of issues because, as I said, a disciplinary process is not really there to give compensation. It is there to bring poor behaviour to the attention of those responsible for making sure it does not happen and for that to be the result, if it is proven.

Deputy K.G. Pamplin:

That is an answer, it is again helpful. I am going to throw back to the chair and then Deputy Doublet is next.

Deputy R.J. Ward:

I think you answered the question I was going to ask. This is difficult because we are talking about obviously internal disciplinary and complaint systems. We are going to touch on the wider issues of the court because, in the end, it will come to you for judicial reviews and so on. Do you think it is more complex when children are involved, when families are involved, and you think that more could be done in terms of assisting that process so that the outcomes are ... it must be very difficult to have something reversed when a child is involved, if that happens. I suppose we are getting into the slightly pastoral role but I think it is particularly important when it comes to families.

The Bailiff:

I do not disagree with that at all. The courts, and I may miss something out here unintentionally, but the courts touch the lives of children in a number of different ways. One of the ways in the criminal process. That is almost exclusively the sphere of the Juvenile Court, and never reaches the Royal Court. The Royal Court may get 18 to 21 year-olds when we have to give particular consideration but in terms of under-18s I am not sure I can recall ever having dealt with an under-18 criminal case. I may have done but I cannot bring it to mind. That is in the criminal arena.

In the civil arena, the primary way the court touches on children are either in public law children's cases or private law children's cases. By private law children's cases I mean disputes between carers as to care, residence, contact, all of those things within the context of a family dispute. By public cases, I mean those cases brought by the Minister for Children and Housing for supervision orders, care orders, and those kinds of things. In the public law cases, almost invariably the child has a J.F.C.A.S. (Jersey Family Court Advisory Service) guardian appointed to represent their interests who speaks for them and also gives an independent expert view to the court. The child is kept out of the proceedings in other words, does not physically come to the courtroom. That intermediation by a guardian enables the child to express themselves in the terms that they are capable of to a highly skilled and able guardian who can then speak for that child in court. In complex cases the guardian will ask for the benefit of a legal adviser and the court almost invariably will say yes and a lawyer will be appointed to represent the interests of the child. The guardian is normally perfectly comfortable to explain the child's wishes and say this is what the child wants me to say and this is my professional judgment. If it is rather more complicated where there is cross-examination or legal argument and then we will appoint a lawyer to represent the child. That is nothing to do with legal aid. That is part of the public law children's case process. Very rarely I might have done this about 4 or 5 times since I have been a judge - a child will be old enough and will want to come and talk to us. Now in those circumstances, if it is agreed by the parties that that is a sensible thing, we will make facilities available. A child may want to come and look around the courtroom where decisions will be made about the child's welfare, the child will come and look around the courtroom. They may also, not want to come to court but they may want to see the room where it is going to be dealt with. They may want to have the opportunity of telling us what they think and in those circumstances the court, myself, for example, and 2 jurors, will take our robes off, we will go and sit in a quiet room somewhere around a table and the guardian and possibly the relevant social worker will come in with the child and we will chat to the child and the child will tell us what they want to tell us. Sometimes that works well, sometimes the child understandably gets tongue-tied but they all would have had the benefit of saying what they wanted to say to their guardian who can, as I say, intermediate between the child and the court. I think that is as sensitive as we can be and I do not think there is anyone sitting in the Royal Court who does not have experience with children or grandchildren themselves and are able to bring that experience to bear.

In Private law, cases similar processes can apply and quite often the court will have an independently appointed guardian to advise it as to how disputes between parents or disputes between carers could and should be resolved. Under the Children (Jersey) Law the interests of the child are paramount. We must only make a decision if we believe it is in the best interests of the child, and that includes making no decision at all if we believe that to be in the best interests of the child. That is something that is inherent in not only the statute itself but all of the case law that is put before us in deciding any particular case, the principles we should apply. So that is what we do.

Some of those decisions can be enormously difficult, as you will appreciate. But we are there ultimately to make a decision in the best interests of the child in all children's cases. I am sorry that was a bit long-winded as an answer. Hopefully that was helpful.

Deputy R.J. Ward:

I think it is important to get an overview of the process because it is complex and there are those concerns. I jumped in there just before Deputy Doublet was going to do some questions regards the submissions that you have made.

Deputy L.M.C. Doublet:

I wanted to ask about the code of conduct, which helpfully is available on the website and I think it can be found easily so when I Googled "code of conduct judiciary Jersey" that comes right up, so it is there. But could you just talk about how members of the public might know that a code of conduct exists so that they know to go and look for it?

The Bailiff:

The way that it normally works, and I say "normally", but it happens seldom. But the way that it normally would operate is that a member of the public would write to me and say for example: "Commissioner X has behaved badly. Commissioner X did A, B and C" or whatever it may be. I would then write back to the person who has made the complaint and say: "Here is a copy of the judicial code of conduct, here is a copy of the judicial complaints process, this is the way you need to put a formal complaint. Do you want me to treat your letter as the formal complaint or would you rather now, having seen these documents put it in a different way?" That is normally the process that I would apply. So that is how a member of the public would become aware. They become aware by saying: "We are not satisfied, we think we have been badly treated." If they were not told by somebody else there is a judicial code of conduct they will be told by me.

Deputy L.M.C. Doublet:

Do you think that there is a point maybe at which people are having contact with the courts? Can you think of maybe a convenient or practical point whereby people could be made aware of that code of conduct before they felt they had a problem? So that it was like a matter of course that everyone who was having that contact would know the code of conduct exists.

The Bailiff:

I do not know whether these exist or not. Clearly it is on our website, as you have seen, and I should say that we are moving in the direction of an enhanced website, which is hopefully going to be much more user friendly. That is one of the project streams for the next 12 months or so to create a clearly separate website and it will perhaps be more accessible. I do not know whether there is a direction

to the judicial code of conduct on the Jersey Legal Information Board website, the one that contains all the case reports and other legal materials. That could easily be put up and I cannot see any difficulty with that at all - if it is not there, but I do not know if it is or not - on the Judicial Greffe website. In the ground floor of the Judicial Greffe, where members of the public might come in for paperwork and to talk to members of staff, there is a rack of pamphlets and leaflets, which contain information on a number of things, various "how to" documents. If it's not there I see no reason why a handful of copies of the judicial code of conduct could not be put there as well. I cannot think of anything else though off the top of my head.

Deputy L.M.C. Doublet:

That is helpful, thank you. Where you say the leaflets are displayed, would you say that everyone who comes into contact with the court would see those leaflets and have a chance to take them?

The Bailiff:

No. Only if they go to the Judicial Greffe. The Judicial Greffe is housed within the Royal Court building but not everyone that comes through the court system will necessarily come to the Judicial Greffe. They may go straight from outside to the courtroom. But there will be no reason why a stand of relevant documentation could not be accessible outside courtroom or in a central place within the court building. In principle, I have no difficulty with that. I do not think we have that at the moment though.

Deputy L.M.C. Doublet:

That is great that you were thinking about considering that.

The Bailiff:

I am sorry, Deputy, I think my chief officer may be telling me I am wrong.

Chief Officer to the Bailiff:

Not at all. It was just to add to that. All staff within the front-facing element of the Royal Court building are aware and briefed that if there was a member of the public coming in with a complaint, they are mindful that it could be difficult for that person to talk about so if there is a complaint they are generally directed to the Bailiff's Chambers immediately as a first port of call rather than sending them to pick up pamphlets. Although those pamphlets are available within the Judicial Greffe reception what we would do is try and give more of a personable approach so the person could at least have some advice and guidance immediately. Then we may signpost them to those leaflets. Under normal circumstances, pre-COVID and hopefully post, the Judicial Greffe is a more open and accessible reception so we did not have the appointments, people could just come in. Those leaflets are very, very apparent and very, I would say, accessible and obvious that when you do go in there

you can see they are available. I just thought I would add that. Further, just to clarify, with regards to anybody making a complaint or contacting the Bailiff's office, I would hope that one of the first mediums would be to go via the Government of Jersey website. Within that there is a non-ministerial section and you can just search the Bailiff's Chambers. That provides not only the direct contact numbers but also the email address as well.

[13:45]

Which is picked up by both myself and my immediate staff so we can react to that quickly and hope that we do provide a quick service to those initial queries.

Deputy L.M.C. Doublet:

Thank you, that is helpful. Just to go back to the Bailiff, it is great that you are open to adding more information and making it available. That is very helpful to see that you have got that open approach. Is it something that you could possibly reflect on with your officers to find a point within the process that perhaps everybody could have a copy of that code of conduct or be made aware of where they can find it? Just a standardised contact point before any problems arise just so that everybody has the full information that such a code does exist because while we might all be used to the concept of codes of conduct, I think it might not be something that a lay person might even be able to conceptualise that it is in existence. Is that something you could possibly reflect on and look into doing?

The Bailiff:

I am entirely happy to do that. As you were speaking, Deputy, I was thinking that maybe there could be a very basic fact sheet for every litigant in person who comes before court. In other words: "You should call the judge this, you should do this, you should do that. There is a judicial code of conduct which says how judges are meant to behave. It can be found here." Perhaps on one side, of a page which could be handed out. I cannot see the difficulty with that at all and I think that might be helpful to people.

Deputy L.M.C. Doublet:

That sounds like a great idea. Thank you. I think in your submission to the panel you explained to us that the judicial code of conduct is currently under review and I was wondering what the timescale for this review is please?

The Bailiff:

The existing judicial code of conduct has been in place for a number of years. I personally have found it to be fit for purpose but we can always improve. We have been looking, in the last few

months, at revising the draft code of conduct. It is now in draft, a much thicker document than the original code of conduct. But it needs some work yet for it to be made user-friendly. It refers to, for example, extracts of case law and things like that, which I do not think is particularly helpful to a member of the public when they are reading it. It needs to be simplified. That is a work in progress. I have asked one of the commissioners, an experienced Royal Court judge, to do that work on my behalf. That commissioner has agreed to do it and that has been with them for some weeks.

Deputy L.M.C. Doublet:

Sorry if I missed this, but is there a final date by which this will be finalised?

The Bailiff:

No, we are going through a process of getting it right. Like the thousand other things we are doing at the same time, we are trying to get it done as quickly as we can. But all of these things have to be slotted in and sometimes more urgent things come up.

Deputy L.M.C. Doublet:

Do you think a year or 2 years?

The Bailiff:

No, bar COVID, it probably would have been done by now. I am not going to pray COVID in aid of any kind of delay, but the fact is we have had to do things differently and grasp that particular challenge. No, I am thinking in terms of a month to 3, something on those lines. Then it would need to be finally consulted upon. I would normally hand it to all of the judiciary who may be affected by it. That would include members of the Court of Appeal who are non-Jersey-resident members of the judiciary, who will bring their unique jurisdiction's perspective on these kind of codes to any comment on it.

Deputy L.M.C. Doublet:

That was going to be my next question; who are you consulting. You mentioned that you were consulting the judiciary. How much of an impact will they have on what is in that code of conduct? Also, in terms of consultation, will you be consulting with anyone who has used the court system or maybe had to use the code of conduct for a complaint or young people, anyone like that?

The Bailiff:

No, I will not. It is not really practical to do so. This is a code prepared by judges who bring to bear their understanding of the best judicial standards in the way that they should operate. They will put together that code. As for the influence of other members of the judiciary, the answer is yes, and we will pay particular regard to those members of the judiciary who are not homegrown, who can

bring different perspectives to bear. Such as members of the Court of Appeal who are not Jersey-resident, who are senior judges in their own right, very experienced practitioners, who can look at this and say: "Does that really work? What does that really mean?" things of that nature. But, ultimately, although it is my responsibility to promote this, if you look at the existing code of conduct, the preamble to the existing code of conduct reflects that it is the Jersey Judicial Association, with my approval, that has adopted the code of conduct and ethics. That is what will happen with the new one. The Jersey Judicial Association, which includes every judge, will have to adopt it. That effectively means that every judge must have signed up to it.

Deputy L.M.C. Doublet:

I just wanted to ask if the rest of the panel have any questions on the code of conduct before I move on.

Deputy R.J. Ward:

No, that is fine. I just note that we have about 38 minutes left and there are some questions to come. I would say, one of the things we heard was the development of a website that will help litigants in person is being developed to give more information by the Judicial Greffe. Perhaps the code of conduct can appear there as well. It seems the simplest thing to do.

The Bailiff:

Absolutely. If it is not already on the Judicial Greffe website, there is a lot of work going into streamlining and providing guidance notes to litigants in person so they can access the courts without the benefit of legal advice. The Master of the Royal Court is the senior procedural judge of the court, has done a lot of work on that, preparing these kinds of things, with a view to moving towards digitalisation, but simplification as well. Absolutely no reason we should not put the code of conduct there, if it is not on the website already.

Chief Officer to the Bailiff:

If I could just come in there again on accessing the Bailiff's current websites. There are a number of highlighted points there within the main webpage and it does signpost the code of conduct immediately, along with a number of other helpful points, including the complaints procedure as well.

Deputy L.M.C. Doublet:

In your submission to the panel, you also explained that judges can undertake courses to further their own knowledge and skills. Is there a regular training schedule or is this up to specific individual judges to access themselves?

The Bailiff:

The answer is yes to both parts of those questions. There is a modest budget within my department for training. But when that budget is exceeded, if there are any training costs needs identified, they will be met out of the general budget on an ad hoc basis. The 12 jurats have 2 training days a year. It is normally expected that I, my Deputy, and the other commissioners, if the training days are covering areas we would benefit from as well, then we would go to that training as well. It is a relatively inexpensive exercise, I can say, because a lot of the people give their training time for free. They come along and they train because they believe that is what they should be doing. There is also ad hoc training, depending upon when that is thought to be needed and necessary. For example, we have had training on the new hearsay and bad character provisions in the criminal law, which have a history of being applied in the United Kingdom, but no history of being applied in Jersey. So training was given to the judges as to how to apply that and how it was done in the United Kingdom by bringing over 2 different experts, 2 senior counsel, and one lecturer and author on the subject, to train us as to how to apply it and how we should approach it. That would apply to all potential aspects. That is just one example. In addition, from time to time, members of the judiciary say: "Hang on, I think we should be trained about this" or: "I have just seen a fantastic course, perhaps we should try to bring that person over here to train us." We do those sorts of things but it is on an ad hoc basis. It is slightly frustrating because we were hoping to be trained by a family judge on the latest approaches in children's cases. Although the Royal Court judges are pretty experienced now in children's cases, we are always anxious to apply the up to date received understanding. But unfortunately COVID and the strictures there have postponed that. I cannot remember when it is coming up. It was meant to be this month or last month and it has now moved 2 or 3 months hence. But it is within the relatively short horizon.

Deputy L.M.C. Doublet:

Has the judiciary ever undertaken unconscious bias training or any training around the issues around being gender-sensitive or anything in that area?

The Bailiff:

I reach behind me for the jurats manual, which is a manual prepared by the jurats and given to every new jurat. We have part 1.5, Judicial Code of Conduct; 1.2, Conflicts of Interest and Perceived Bias; 1.7, Unintentional Bias. These kinds of things are part of the thinking of judges of the court. Whether any judges have had formal training on unconscious bias, I am familiar with it as a concept and an idea, but I am not sure whether there has been formal training on it.

Deputy L.M.C. Doublet:

What is your view on whether what is in the manual is enough or do you think there is more needed?

The Bailiff:

It is one of those things that we can always improve upon. We can always increase exposure to these concepts and always, in a sense, be looking over our shoulder as to what the assumptions are that underpin the kind of decisions that we make. That is a really important thing. The Children's Commissioner has come along and spoken to us all. There is an ongoing process. I cannot say it is an intensive process; it is not. But there is an ongoing process of exposure to these ideas.

Deputy L.M.C. Doublet:

I have just become aware of some recommendations made by a working party of the Royal Court to introduce fixed renewable 6-year terms of office. Can you comment on that please?

The Bailiff:

The College of Jurats looks quite hard at itself with a view to doing the best job. Recently, jurats were going to be retiring, thought was given to how to recruit jurats. One of the ways was for the Jurats who when retiring to go and give interviews to explain to members of the public what the job really entailed. It can seem a little bit distant for members of the public, people of a similar age in red robes, and to explain that and to put a human face on it. Also, it was thought that one of the things that might be an impediment was the fact that jurats, once they take the oath of office, are there until their 70s. Of course that meant that there inevitably be limitation to the demographic who might be interested in standing for that role. So it was thought that we should explore this and we are in the process of looking at what drafting instructions might look like. It is an ancient office. We want to be careful in the way that we deal with it and do the right thing to get to the place we want to be, which is encouraging a broader range of individuals to give their time. We thought if we make it a finite time, as opposed to: "You are in this volunteering on a rota basis until you are in your 70s" that would probably be one step at least in the right direction.

[14:00]

At the moment, the drafting instructions have been finalised and we will look at the draft law when it comes in and ultimately will make whatever changes to it we think may be appropriate.

Deputy L.M.C. Doublet:

It is great to hear about your intention to try to improve the diversity in terms of age. Are there any other characteristics that you feel more could be done in terms of diversifying?

The Bailiff:

it is difficult to do that in terms of gender because the College of Jurats is already 50:50. There are the same number of women as there are men. Whether that will be the case after the next election, jurats are replaced one at a time, so it depends who is elected and we may have more women than

men or more men than women for a period. But, in principle, we achieve equality. It is open to anyone to seek election. It will be open to people from other parts of our community to do that. There are certain requirements inherent in the role, which will be a certain intellectual rigour, a certain approach, which one would characterise as the highest integrity, the ability to put personal feelings to one side. All of those kinds of things. To approach a case on its merits. If you were suggesting, for example, that one might co-opt particular members of different communities, some of the immigrant communities, to be Jurats of course they can stand for election. Of course, you could not say: "On any case involving an individual from that immigrant community, one of the jurats needs to be from that immigrant community." That just is not going to be practically possible for the operation of the courts to do that.

Deputy L.M.C. Doublet:

That is everything I have on that area. I do not know if the chair wants to add anything.

Deputy R.J. Ward:

You have covered everything we were going to ask. There are some more questions now from Deputy Higgins, some miscellaneous questions he wants to add. Deputy Tadier has just put in the chat that he has a question. Deputy, do you want to ask something?

Deputy M. Tadier:

Yes, it was just a supplementary based on Deputy Doublet's question on the different nationalities and diversity within the court. I know this is something that all institutions grapple with and there are no easy solutions but I noticed it was something the Bailiff touched on earlier. It is still the case I think that the British nationality requirement is in place for all jurats as well, so you cannot have jurats who are non-British nationals. Is that something that the court at some point might wish to look at?

The Bailiff:

I am sure there is a British nationality requirement. I cannot remember what the 1948 law says off the top of my head. I would be surprised if there was not one. Is it something we would be prepared to look at? Certainly, it is something we would be prepared to think about. It does not immediately strike me as something that necessarily requires changing. I would much prefer to see a broader age range, for example, within the jurats, more reflective of society. It is almost a philosophical argument as to whether people who sit in judgment should be invested in society in terms of being a local citizen. I am very conscious the Assembly itself has had this debate in recent times. I do not particularly want to get drawn into that. But, in my view, it is something we could look at and think about. But I have not given it any thought up to now, I have to say.

Deputy M. Tadier:

It was just to add that I suspect that, not exclusively, but being a jurat is one example of honorary service and it is quite notable that the law was changed for Honorary Police as well as States Police. We know that the Constables have often praised the diversity within the honorary system, not just from members of the other community, so to speak, but the fact that they do not necessarily need to be British and that they seem to add a lot to their team. So I just thought I would add that it does not need to be political in the sense of the States debate that is ongoing.

The Bailiff:

No, not at all. I am going to have a quick look at the Royal Court Law and see if it is a requirement. Perhaps you have looked at it. I am not sure. I probably should know the answer to this off the top of my head.

Deputy M. Tadier:

Thank you, Chair. I did not want to take too much time with that.

Deputy R.J. Ward:

No, it is a really interesting area of question in terms of diversity as well, because it is something we have talked about a lot recently. You are absolutely right. I am conscious that we are running out of time and Deputy Higgins has some questions that he wanted to add. Can we get Deputy Higgins to ask some of those and then we can always come back at the end? Do you want to move on, Deputy?

Deputy M.R. Higgins:

It is almost like the old days when the Bailiff was Attorney General and I can now ask him some direct questions, because we cannot at the moment.

The Bailiff:

Hopefully, I will be just as helpful as I was then, Deputy.

Deputy M.R. Higgins:

I might add, you were very helpful in many ways. Mine are the more controversial questions, so brace yourself. Could I ask you, in terms of whether you feel the people in Jersey have sufficient access to justice in the Island and your reasons for thinking whatever it is you are going to say?

The Bailiff:

I have no reason to feel that people in Jersey do not have sufficient access to justice in terms of the right to access justice and the right to access justice at the right level and in the right way. What we

could improve on is making access to justice easier for individuals, which is why in part the digitalisation project is a good thing. Particularly for young people who are very comfortable in that medium. Do I think it is possible to improve? Yes, I do. We do think about these things and, as I have said, the Master of the Royal Court has been preparing a lot of things to make these things more straightforward for people to access. In that way, yes, we can do better, we can improve, but we are on that journey we believe.

Deputy M.R. Higgins:

Many people in the Island feel that getting justice is unaffordable. Because of the £450, £500 an hour that advocates are charging, most ordinary people cannot afford to go to court or to bring an action. Because even a letter might cost you £250. Do you think that you need to do something in this area? If so, what would you suggest?

The Bailiff:

I am not sure I have an answer to that. Quite clearly, for the majority of people in the Island, an hourly rate of £400, £500 if that is the actual rate, would make cases too expensive. Of course, there is a legal aid system and, if you fit within that legal aid system, then those considerations do not apply to the same extent at all. Similarly, any individual can bring their own case before the court. What the court's responsibility has to be is to make that as accessible for them as possible. So really I come full circle to the idea that what we need to be doing is creating a process, which is easier for people to interact with the courts and, if they cannot afford to and do not have access to legal aid, to do it as litigants in person.

Deputy M.R. Higgins:

I will briefly come on to that because I feel very strongly about people getting access to justice. As you know, I have helped a number of litigants in person. One of the problems with being a litigant in person is you are not familiar with the Royal Court rules, all the procedures, filing times, the way documents have to be presented, and even presenting your case in a court, when you are going up against experienced advocates. Many people fall foul of this and they do not realise what is involved. Equally, they have trouble, and one of the troubles is getting access to transcripts. So if there has been an earlier trial, first of all if you want a transcript you have to ask the permission of the judge for a transcript, or even to listen to the tape. Why should the judge have to give his permission? Why should it not be an automatic right that you can get access to these things?

The Bailiff:

The answer is that, if you are party to a case, then you would always be given the ability to listen to the tape. The preparation of a transcript is an expensive exercise, someone has to sit down and type one up, and if it is a lengthy hearing that is a long exercise indeed. The need for the judge's

consent generally streams from the fact that people who are not parties to the proceedings will come along and say: "Can we please have a look at that, listen to that." Those are facilities that have to be offered by the Judicial Greffe and it goes to the judge to say: "Is there any reason why not?" My own practice is that, if there is no reason not to, then I simply say: "Approved" and an individual can come along and listen to that. What is important though is that it is not misused. So an individual can take away a transcript; an individual can go and listen, and in some cases, if they need to, can even have a recording made. But it must be on the basis that it is not further disseminated generally outside the legal process.

Deputy M.R. Higgins:

In terms of the cost of this, because people that I have helped in the past who are on very limited means could not afford the cost of either paying for a transcript or even a tape.

The Bailiff:

I am not sure what the costs are. I do not know if they are prohibitive or not. If you say that people have had difficulty with that, then I am sure that they can ask the court for a dispensation and have it provided at no charge.

Deputy M.R. Higgins:

That is good to hear. The other thing too is trials in Jersey in the past have been held in secret. How common are these for cases other than child protection?

The Bailiff:

Can you assist me with which cases have been held in secret? I do not think I have ever held a case in secret. There are certain cases, which are held in-camera or in private. That is not the same as secret. In private would cover childcare cases. They would normally cover interdiction-type cases, so if you are dealing with a delegate, someone who is mentally incapable, and that is done to protect their identities, things of that nature. There are certain administrative-type trust cases, which are dealt with in private. That is because they are not there to resolve a dispute between the parties. The court is there in its capacity as a supervisor over trusts and trustee decisions. The court can be asked for approval of various things. Because that deals normally with very detailed information about members of the beneficiary's families or things of that ilk, or the strengths and weaknesses of litigation that trustees might want to embark upon or defend, those are done in private, so that the anonymity is protected and they can take the steps in open court while having told the court giving the blessing all the information that court needs to know. There are other things that would be in private, private family law proceedings. There would in theory, although they are so exceedingly rare I have never sat on one and I do not know of anyone else who has ever sat on one, certain proceedings to do with national security and special process and procedure

cases, which would be completely behind closed doors in the United Kingdom. In theory, we have the power and ability to do that here under certain of legislation. I have never known it done.

Deputy M.R. Higgins:

I accept those positions. Can I just reference a specific case, and that was the data protection case involving a former Member of the States of Jersey? States Members, when we found out about this case, because it was not published, we even asked what the cost was, how it was brought, and we were given no information by anyone. To many people in the Island, myself included, it is a black hole. There should be transparency on these things because we wonder what is going on behind the scenes. So I would ask, if you are not familiar with it, if you could make yourself familiar and perhaps you can explain to States Members why it was kept in that way? I will just move on from that one. I will let you look at that if you would please.

The Bailiff:

I am going to say: "No". I am not going to look at that because I am not going to go along and find out about a case that clearly, whoever was dealing with it, thought it was appropriate that it should not be revealed, and come along and talk to States Members about it. If you can tell me what the case is and you can tell me why it is appropriate, but I do not think I should be called upon to go before States Members in whatever forum and say: "This is what happened in a previous decision of the courts and this is why." I do not think that would be an appropriate thing for me to do.

[14:15]

Deputy M.R. Higgins:

I will leave it hanging then. We have a case involving a former States Member for breaches of the Data Protection Law and was prosecuted. I will follow on with that if I may. Not only was he prosecuted for that, and no information was revealed either to the press or to the States, including costs or who brought the case, but equally it was another example of a case where injunctions were given against the parties. We have had some people, if I may add this, who wanted to give evidence to this particular panel, who feel that they are bound by injunctions issued by the court, which would prevent them speaking. Could you advise us how long an injunction would last and whether it would prevent anyone giving evidence before a parliamentary body?

The Bailiff:

The short answer is an injunction will last for as long as it, on its terms, is expressed to last. Some injunctions are perpetual, some are temporary. So the answer is: unless I know the terms of the injunction, I cannot advise you on that part. Nor can I advise you on whether or not it would prevent someone giving evidence before a parliamentary body. That depends upon the parliamentary body.

It depends upon its terms of reference and on any number of things. But, if someone is enjoined from saying something about a specific case, then I well understand why they will be extremely reluctant to breach an injunction of the court. But the fact that it has been subject to an injunction, and you are telling me things that I am not familiar with, you are telling me these facts as you understand them, the fact that it is subject to an injunction, it would have been subject to an injunction for a good reason and that would have been in proceedings, which would have been amenable to the Court of Appeal in the event that someone believed those injunctions should not have taken been granted. I can only assume that, if it is a data protection case, the injunction was there to protect the personal data of the individuals whose data may or may not have been infringed. I can understand why an injunction would exist to protect the revealing of personal data from individuals who have come before the court and said: "This is not right" and the court has agreed. One of the remedies might well be an injunction to say: "You cannot reveal this any further. You cannot talk about it." But I cannot help you further than that because I am not aware of the specifics.

Deputy M.R. Higgins:

I will come back to you at some point. Let me move on then to judgments. Not all cases are reported. You have non-reported cases and not all of them are accessible. I can understand that in children's cases. But should justice not only be seen but also heard and all judgments be published? In fact, is it not a requirement of the European Convention on Human Rights?

The Bailiff:

Almost all, and I cannot immediately think of those that are not, judgments are published. I think that more judgments are published in Jersey than are published almost anywhere else in the world. Any decision of the Royal court, if they do not fall within categories such as interim care orders, trustee type administrative actions of the kinds that I have mentioned, will be published on the J.L.I.B. (Jersey Legal Information Board) website. What they will not all be is reported. There is a distinction between a published judgment and a reported judgment. A published judgment is one that has been published by the court, it goes on the website, and anyone who can look on the website can find it. A reported judgment appears specifically in the Law Reports. That is normally reserved for judgments that deal with principles of law or practice for the first time, where it is useful to have it in a formal Law Report. You can go on the website and you can find many judgments, which do not appear in the reported judgments, but they are published. Some of them are anonymised; that is true. Quite often children's cases, the final orders are published, but they are anonymised. There are a rare number of cases, which are issued what they call "File and parties." Those are where judgments are given by the court but they are not published because they relate to highly-sensitive matters relating, for example, to children and they are interim orders made. They are usually short and they do not deal with any main principles, just the facts of that specific case, but they are sent to the parties involved.

Deputy M.R. Higgins:

Can I move on? I mentioned the European Convention on Human Rights. Can you tell us what the current situation is? With Brexit, are we still a member of the European Court of Human Rights and can actions be heard there from Jersey?

The Bailiff:

I am not aware of any effect of Brexit on the Convention. We are certainly subject to the European Convention on Human Rights because the Human Rights (Jersey) Law is domestic legislation and that enshrines in Jersey domestic law the principles of the European Convention on Human Rights. I cannot say whether Brexit has had any effect on the right of recourse is when the domestic courts have been exhausted. I am not aware of any. By “domestic courts” I mean the Royal Court, the Court of Appeal and the Judicial Committee of the Privy Council.

Deputy M.R. Higgins:

Coming on to another area, do you think there should be a political Minister for Justice in the Island to oversee the resourcing of the judiciary rather than going through the Bailiff’s Chambers and leave the operational justice matters to yourself, in the same way that the chief of police has responsibility for operational policing? So, in other words, politicians not getting involved in telling you how to do your job, but in terms of the resourcing of the courts and so on, as opposed to you having to have that administrative burden as well?

The Bailiff:

I do not personally carry that administrative burden. That is dealt with by my chief officer, Mr. Cartwright, who is an accountable officer under the Public Finances Law, and operates to all of the same protocols and requirements as does any accountable officer within Government. So we have a budget, the budget is in the usual way applied for each year. It is allocated to us and he administers that budget. He does so without recourse to me very much at all. He does so in accordance with the appropriate principles. That is the same, I believe, with this Judicial Greffier and with the Viscount’s Department. They are the accountable officers under the Public Finances Law. So, in a sense, I do not think there would be any benefit from that. But the Chief Minister carries the responsibility for representing the non-ministerial departments within the States Assembly should that be necessary.

Deputy M.R. Higgins:

But again he would find it very difficult answering questions, which cannot be directed towards the courts.

The Bailiff:

People like to ask questions. Not all questions should be answered within a legislative Assembly. Some should, but not all.

Deputy R.J. Ward:

I just want to say we have a short time left. These are questions that I do not have on the paper, just to know how many more you have, Deputy Higgins?

Deputy M.R. Higgins:

I typed them in. I thought you could see them. Four questions I want to ask and then that will be it. Just carrying on then: can you explain the process and procedures in place to manage conflicts of interest within the judiciary and, in that, I mean in terms of a judge hearing a case and the participants in the case?

The Bailiff:

Firstly, there is a requirement to consider conflicts of interest under the existing judicial code and in the draft of the new judicial code. That is front and centre for any judge. Conflict of interest is managed in a number of different ways. The first way is simply when the case is allocated. I will give you an example from my own situation. When I get a court list, which says what I am doing next week or the week after or I have a court list with the fixtures for the next year, I will go through it and, if I see a name I recognise, I say: "Is that X or Y?" Inquiries will be made and, if it is X or Y, I will simply decline to sit, I will say: "No, I am not going to sit. I know that person too well or they are connected to me in some way, shape or form, and it would not be appropriate for me to sit." I do that. The Deputy Bailiff will do that. All of the commissioners will do that. The jurats will do that when these things are identified. Sometimes, it is not apparent on the surface of the title of the cases who is involved, who the witnesses may be or what the connected parties may be. In those circumstances, it may be close to the trial when the papers are available to us that we look through and think: "Hang on, I really should not be sitting on a case where my third cousin twice removed is giving evidence. I did not know they were going to be giving evidence." So, in those circumstances, again we would step down and my judicial secretary is adept at moving judges around to ensure that there is no difficulty. Similarly, the other way in which it is dealt with is by the parties. Either a party will, when they are listing a case, say: "We are aware that the Bailiff knows Mr. X" or "Commissioner X knows Mr. AB. They should not sit." They will not be allocated to the case. That will be taken at face value. If, notwithstanding all of those things, there reaches a point where a judge is sitting on a case and one party or another says that they should not be sitting on a case, it is open to that party to make a recusal application. You make it to the judge and you say: "judge, you should not be sitting because you have a conflict or an appearance of a conflict and you should not do it." The judge will apply the proper legal process and analysis set out in various cases. We

have the same test as they have in the United Kingdom, the same legal tests. If the judge agrees, he or she will recuse themselves and they will step back from the case and the case will have to be relisted before different judges. If the judge does not agree, then the case will continue to be heard, but then that refusal to recuse can be challenged before the Court of Appeal.

Deputy M.R. Higgins:

Do you keep a record within the Judicial Greffe, for example, of where a recusal has been asked for or conflicts of interests are discussed or the reason a judge does not feel he should recuse himself?

The Bailiff:

If there is a recusal application, the judge will give a decision as to why he is not or is recusing himself. That will be a report of the court proceedings in the same way anything else will be and will be reflected possibly in a judgment, possibly in an act of the court, or both. If it is done informally on the list, no, the judicial secretary will simply take at face value the judge saying: "I should not sit" or will not allocate it to a judge if the parties say there is a good reason the judge should not sit. Sometimes my judicial secretary might come to me and say: "Advocate X says you know Mr. Y. Perhaps you should not sit on this case." I might ask for further information but normally I will take that at face value and simply will not sit on the case.

Deputy M.R. Higgins:

I have one final question. Many of our laws are written in French, as is case law, and a previous Bailiff ordered that they should be translated into English. Can I ask if you have continued with this process and are the laws continually being translated?

The Bailiff:

I do not know the answer to "continuing". I am aware that what are thought to be the most important cases and laws have been translated into English and are available on the J.L.I.B. website. I think it is an ongoing process. Having dealt with the main statutes that were in French, being translated into English, any more will be approached on an ad hoc basis and probably slightly more slowly than might have been for the more important statutes. Some have very little current use and purchase. Some are used all the time and those are the ones that were translated and are translated first.

Deputy M.R. Higgins:

That ends my questions. Thank you. I have enjoyed it once again.

The Bailiff:

As have I.

Deputy R.J. Ward:

We are coming to the end; we said we would finish at 2.30 p.m. and I know people have to leave the meeting anyway. I would just finish by saying: are there any areas in terms of redress, accountability, that you would want to see changed? That you would think would be addressed and would be productive, both in terms of enabling you to perform your role and enabling people to have confidence in the fact that they can address issues, particularly when they are unhappy with outcomes? Because that is a difficult situation to be in.

The Bailiff:

I think “unhappy with outcomes” is a challenge to the decision that the court has made in one direction. The way to address that is simply to make sure people understand what their rights and abilities to appeal are. The courts cannot solve everyone’s problems and they cannot solve everyone’s distress. What they are equipped to do is to make a choice between one case and another and make that choice in accordance with settled legal principles. That will not always provide the answer that a litigating party wants. There is a limit to what can be achieved in that end.

[14:30]

In terms of outside of the court system, then that is a matter of communication. That is a matter of letting people understand what they can legitimately hope for and how they can get to what they might legitimately hope for. This conversation has helped me focus a little bit on being able to provide more access to information for individuals so they know that there may be rights of appeal. They have to think about that. But there also may be rights of complaint for breaches of the judicial code of conduct. But can I finish, if I may, Chair, by saying these things are passing rare. There are very, very seldom complaints about members of the Bailiff’s Chambers, their behaviour, or members of the judiciary, that amount to anything other than a dispute as to what the outcome was, rather than how the member of the judiciary has behaved. I would not like anyone to be left with the impression that there is a significant problem that is not being addressed. Where we may fail, and where the legal profession may have failed in the past, is communicating; letting the position be better understood by members of the public. That is something that I would like to see change and would work towards.

Deputy R.J. Ward:

Just to say thank you for your time, both yourself and Steve. We have a number of hearings to do and each of them brings its own area of interest and information for us. Scrutiny has a process that we go through, not often easy, but a long process as well. So thank you for that. Unless there are any other questions from the panel.

Deputy L.M.C. Doublet:

Can I just say thank you for your answers?

The Bailiff:

A great pleasure.

Deputy K.G. Pamplin:

Thank you, you have both been very helpful.

Deputy M.R. Higgins:

I just want to say exactly the same, thank you very much for the answers you have given us.

Deputy R.J. Ward:

Unless there is anything else that you want to ask us, we finish 2 minutes over, but that is not so bad, we finish on time. I will call the hearing to an end and say thank you to everybody. We can end the hearing. Thank you very much.

The Bailiff:

Thank you very much indeed. Good-bye.

[14:32]