STATES OF JERSEY

COMMITTEE OF INQUIRY: HISTORICAL CHILD ABUSE (P.118/2012) – COMMENTS

Presented to the States on 31st January 2013
by H.M. Attorney General

STATES GREFFE

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COMMENTS

A. Introduction

1. The purpose of these comments is to provide legal advice to members considering the Terms of Reference of the Committee of Inquiry into historical child abuse.

2. These comments will deal first with the legal framework of a Committee of Inquiry and then provide legal advice and comment on matters that arise from the Terms of Reference at paragraphs 6 and 10 of the proposed Terms of Reference set out at Appendix 1 of P.118/2012.

B. Legal Framework of a Committee of Inquiry

3. A Committee of Inquiry is established by the States to enquire into a "*definite matter of public importance and report on it to the States*".

4. There is a presumption that proceedings before a Committee of Inquiry will be held in public "*unless the Committee, in the interests of justice or the public interest decides that all or any part of the proceedings shall be in private*".

5. Standing Order 149 provides that a Committee of Inquiry may, if it considers it desirable, give leave to any person appearing before it to be represented by an advocate or solicitor. There is currently no provision for a Committee of Inquiry to give leave for anyone to be represented by a lawyer who is not either an Advocate or Solicitor of the Royal Court. Depending on the eventual remit of the Inquiry, it might be necessary to consider amending this Standing Order to permit representation by English lawyers because appropriate arrangements will need to be made for adequate legal representation and it is unclear whether there will be sufficient legal firms able to provide local lawyers who have no conflict of interest.

6. There is nothing, however, to prevent a Committee of Inquiry seeking legal assistance or guidance or indeed representation for itself by one or more lawyers who are not advocates or solicitors and it is likely to be necessary that the Committee does this.

7. A Committee of Inquiry has broad powers to procure evidence and documents, to examine witnesses, to conduct its proceedings in public or in private and generally to regulate its procedure. Witnesses giving evidence have a legal privilege against civil or criminal liability for what they say (other than perjury) in order to ensure they can speak freely. A summons issued by a Committee of Inquiry has effect in Jersey but cannot be enforced outside the Island.

8. Although the Standing Orders are silent on the matter of the payment of the legal costs of parties represented before a Committee of Inquiry, the normal principle adopted by Committees of Inquiry where individuals are given leave to be legally represented, is that the costs of that legal representation are met as part of the costs of the Inquiry. This is because the matter is by definition one of public importance and it follows that the public should pay what is

necessary to ensure that it is properly investigated. In general, costs are paid for legal representation of anyone who may suffer significant prejudice or be subject to accusations. It seems highly likely that anyone accused of abuse or of professional failure, as well as a complainant of serious sexual or other abuse, would fall into this category.

9. Unlike in criminal cases where anonymity is the norm, a complainant witness would only have anonymity if the hearing of evidence relating to him or her took place in private.

10. At the conclusion of its deliberations, a Committee of Inquiry reports back to the States Assembly. It does not, however, make any finding of guilt or innocence in a criminal sense nor does it determine a legal right. Accordingly, whilst a Committee of Inquiry is a public body and is subject to judicial review and it has to give effect to the European Convention on Human Rights ("ECHR") generally it does not need to be compliant with Article 6 ECHR. Experience in the UK has shown that some inquiries can be substantially delayed by costly judicial review proceedings to challenge the procedure that it adopts.

11. Neither the States nor a Committee of Inquiry can give directions to the effect that criminal proceedings should be brought in any particular case or give any direction relating to the investigative or prosecutorial process.

C. Comments on Paragraph 6 – Evidence of Abuse

12. Paragraph 6 of the draft Terms of Reference anticipates that the Committee of Inquiry will hear evidence from witnesses who suffered abuse or believe that they suffered abuse as well as from staff who worked in the services together with other relevant witnesses. It is left to the Committee of Inquiry as to whether or not such evidence will be heard in public or in private. The Committee of Inquiry has a discretion in the interests of justice or in the public interest, to hear matters in private, although the presumption is that evidence before a Committee of Inquiry will be held and heard in public.

13. The Terms of Reference presuppose that evidence will be given not only by people who have suffered abuse but by people who "*believe that they have suffered abuse*". It must accordingly be anticipated that not all allegations heard before the Committee of Inquiry will be well-founded, and there is nothing to prevent witnesses making ill-founded allegations which are mistaken or simply wrong. It seems equally likely that persons who make allegations that have suffered abuse will wish to name their alleged abusers. One must therefore anticipate that anyone so accused will wish to have the opportunity to challenge the accusations made against them and to defend themselves.

14. In order to give people accused by complainants in an Inquiry an effective chance to defend themselves, it would, as a matter of basic fairness, be necessary for them to have similar protections as are available under the criminal law. Thus, they should have disclosure of information against them and notice of what was being alleged against them. They would also need the opportunity to be legally represented, to put evidence on their own behalf and to challenge evidence given against them. This will potentially amount to a

number of trials within the context of the Committee of Inquiry. The Committee of Inquiry will not necessarily reach any conclusion on the evidence before it in every case. Nonetheless, particularly where the hearings are to take place in public, but possibly even if the hearing is in private, it is difficult to see how a person accused, whose reputation, employment and life may be materially affected, should not have the fullest opportunity to defend themselves.

15. If the Committee of Inquiry is to hear evidence at length, then it seems likely that the evidence-hearing stage will be preceded by an evidence-gathering stage, a disclosure stage and, possibly, a statement-taking stage, so that the lawyers advising the Inquiry can prepare for any hearings and persons will know if they are to be accused and accordingly prepare their defence. It may be that the statements, either in full or redacted, made to the police by complainants can be made available to the Inquiry if the complainants consent. It is difficult to anticipate how long that process of evidence-gathering will take.

16. It is accordingly not difficult to anticipate that paragraph 6 of the draft Terms of Reference might potentially result in an extended process with significant evidence being given and challenged. It would be difficult to anticipate a situation in which a robust challenge would properly be prevented by the Committee of Inquiry and accordingly the process of taking evidence may be confrontational and challenging for all concerned. Further, it may be anticipated that such a process will be very costly.

17. An alternative method would be, should the Committee of Inquiry believe it appropriate to do so, for that evidence to be given in private with the Committee of Inquiry then determining the nature of the report that it should make back to the States Assembly. This *may* make it possible for the Committee of Inquiry to place more strictures about the way evidence may be given in private and the extent to which it may be challenged, which might obviate the need for the potentially confrontational approach mentioned in the preceding paragraphs.

18. It may accordingly be appropriate that the Chairman of the Inquiry should be consulted at length on the correct process for dealing with paragraph 6 before any final decisions are made.

D. Comments on Paragraph 10 – Prosecution Process and Decisions

General Principles

19. As presently drafted, paragraph 10 seeks to establish the process by which prosecution decisions were taken arising out of the historical child abuse enquiry and to establish whether or not that process –

- enabled those responsible for deciding on which cases to prosecute to take a consistent and impartial approach;

- was free from any political influence or interference at any level.

20. The inclusion of this amongst the terms of reference is of course a matter for political decision. As set out above, the terms of the Standing Orders dealing with Committees of Inquiry require that before members decide to establish such a Committee, they must consider that there is a "*definite matter of public importance*" to be investigated. The Law Officers are not aware of any evidence that any of the prosecution decisions were taken other than on a proper basis, following a proper process. Differences of view are, of course, entirely possible because there are judgment calls to be made where reasonable people might reasonably reach different conclusions. Nor are the Law Officers aware of any political or other interference or influence of any kind in that process. Undoubtedly, some individuals who believe that their accusations should have resulted in a prosecution, will be disappointed if that did not happen. Such disappointment, however, does not give rise of itself to a sufficient reason to be concerned that the decision was not properly taken.

21. Members may recall that the former Attorney General made a number of public statements in this Assembly relating to the basis on which decisions whether or not to prosecute had been taken. They are annexed hereto as Appendix 1.

22. The prosecution service is an important public service. If members think there is genuine public concern that those taking the prosecution decisions were not competent, or did not carry out their duties with integrity or were subject to political interference, then we would support the decision to appoint a Committee of Inquiry into these matters.

23. It is legitimate to enquire into a process surrounding the taking of a prosecution decision, it would be wrong as a matter of principle to subject individual prosecution decisions to public scrutiny either by a political assembly or by a body set up by such an assembly. There is a fundamental principle that the prosecution process should be free from any political influence or interference in any way (see the answer of the Attorney General given in the States Assembly on 6th July 2010 attached as Appendix 2). In the light of the public statements concerning process attached as Appendix 1, it may be difficult to see how this question will be addressed practically by any Committee of Inquiry.

24. No determination by the Committee of Inquiry could require any further prosecutions although it will be open to the Attorney General to re-open matters if there is, in his opinion, a sufficient basis to do so.

25. In one case the Royal Court has already considered an application to review decisions not to prosecute cases of alleged child abuse. The Court proceeded on the assumption that judicial review was theoretically possible although in that case the application was also rejected because it was too late. In that case, the presiding judge made observations relating to the public statements made by the former Attorney General and, specifically, at paragraph 72, the judge, an independent Commissioner, now a Judge of the Supreme Court, said this –

> *"…On the 26th August, 2008, the Attorney General made a public statement relating to those six cases. Charges were laid in relation to three of them. A decision was made on the fourth that no charges would be brought. Subsequently, on 3rd June, 2009, the Attorney*

General announced that in the remaining two cases, no charges would be brought. In those cases where no charges were brought, the reason was said to be that there was insufficient evidence to justify a prosecution. The reasons for this conclusion was summarised, and legal advice was said to have confirmed it. An attempt to force the re-opening of a criminal investigation now, more than two years later, would be highly prejudicial to the proper administration of justice, unjust to those under investigation who had been exonerated, and quite possibly distressing to victims and their families, who have not themselves sought to challenge these decisions by way of judicial review. No grounds have been given by ……., either in his Order of Justice or in his evidence, for believing that the Attorney General and his advisers were wrong in the view that they took on the available evidence."

Some of these considerations would be, of course, relevant to any reconsideration by the current Attorney General in any particular case at this stage.

In relation to the historical abuse enquiry, no alleged victims have attempted to make such an application.

Considerations if an Inquiry is to be conducted

26. A decision to prosecute is a serious decision which has to be taken on a proper legal basis. The test applied, and features of the decision, are as follows.

27. Any decision is taken on the papers. The decision-taker does not hear evidence. The decision is taken on the basis of the sufficiency, credibility and admissibility of the evidence disclosed within the prosecution file. It is open to the decision-maker to revert to the police for further information which will supplement the file.

28. In making a prosecution decision, the decision-taker first applies what is termed the evidential test. This means that he must decide that there is sufficient admissible evidence to give a reasonable prospect of conviction for each of the charges that fall to be considered. In doing so, he will have to bring his experience of the prosecution process to bear, apply his knowledge of the laws of evidence as far as they relate to criminal matters, identify any problems with the evidence such as inconsistency between witnesses or facts which undermine the credibility of key witnesses (including previous convictions) supporting the counts and other relevant matters relating to the evidence.

29. Only if he is satisfied that the evidential test has been passed, will the decision-maker then go on to consider whether or not it is in the public interest for a prosecution to be brought.

30. If, and to the extent it is necessary for individual prosecution decisions to be reviewed, then in order to reach an accurate assessment, they should be reviewed on the same basis that any prosecution decision is taken. That would require an assessment by an independent expert in criminal prosecutions.

31. It would be structurally unsound for the Committee of Inquiry, the majority consisting of laymen, to purport to assess individual prosecution decisions as it will not, without more, have the necessary expertise and experience. It is also not in the same position as the prosecutors were. It will have heard evidence given under paragraph 6 of the draft Terms of Reference, and it is wholly unclear whether all that it may hear would have been legally admissible in a criminal case.

32. Any assessment should be confidential. If not, then any decision will possibly give rise to a public discussion on the merits, including a discussion on the credibility of the complainant and the behaviour of the alleged accused. This would amount to trial by public opinion and would be both unfair to everyone including the complainant and the alleged accused and would undermine the independence of the prosecution decisions.

33. Accordingly, the Assembly will wish to ensure that a system is put in place that allows any decision to be assessed on a proper basis. This may need to be a different form of inquiry from the inquiry dealing with paragraph 6 of the draft Terms of Reference.

APPENDIX 1

Press Release – Jersey Historical Abuse Investigation

On 24th June 2008, a man and a woman were arrested on suspicion of criminal assaults against children and subsequently released without charge. The allegations against them were not of a sexual nature but essentially were allegations that they had used excessive force in a quasi-parental situation. Although this investigation was part of the overall child abuse investigation that is continuing, there is no connection between this case and the Haut de la Garenne Children's Home.

Subsequently the independent lawyers – a Jersey Crown advocate with extensive experience as a barrister in the UK, and barristers from one of the London chambers specialising in criminal law – responsible for considering case files arising from this investigation received a full police file for their consideration. This file, which was received on 18th July, contained important statements and information not available on 24th June. Their job was to consider whether the evidential test was passed – that is, whether a court or jury, properly directed as to the law, would be more likely than not to convict on the evidence which was available. If the lawyers considered that the evidential test was passed, they had authority to arrange for charges to be laid without reference to the Attorney General. If they considered the evidential test was not passed, they were required to present a full evidential review to the Attorney for consideration. It is to be remembered that in a criminal trial, charges need to be proved by the prosecution beyond reasonable doubt if a conviction is to be secured.

On 6th August the Attorney General received advice in relation to this file from the independent lawyers he had retained. Three complainants, who were all in the care of the couple at the time of the alleged offences, which took place between 30 and 40 years ago, alleged that they and other children who were also in their care were subjected to excessive corporal punishment between 1967 and 1977. In this case, there is a significant conflict of evidence, which is naturally important in relation to the evidential test which had to be considered. Some of the witnesses, who have been named as victims, deny that the couple ever used any excessive force by way of lawful chastisement or at all, and speak in very positive terms about the quality of care and support which they received from the couple. Some of those who have told the police that no violent behaviour took place, and who speak very highly of the couple, include two of the siblings of one of the complainants.

For medical reasons, an interview with the woman was not completed by the police. The man, however, was interviewed and denied any wrongdoing; and there is significant other evidence and information that undermines the prospects of a successful prosecution. Although numbers of witnesses are not a conclusive test at all, it is to be noted that while there were three complainants who were alleging that offences had taken place, there were broadly speaking seven witnesses, including the prospective defendants, who would give relevant evidence substantially in favour of the defence.

The independent lawyers appointed to assist the police in this investigation have advised the Attorney General that there is insufficient evidence to pursue a prosecution in this case. In accordance with the arrangements that have been put in place to review all cases where the lawyers think that there is insufficient evidence to prosecute, the Attorney has conducted, with a colleague in this Department – who also has extensive experience with the CPS in England – a careful review of the evidence

in this case. The officer in charge and the detectives have also been consulted about the proposed course of action.

Taking everything into account, the Attorney has decided that there is insufficient evidence to bring a prosecution in this case.

The Attorney General said: *"I realise that this decision will come as a disappointment to the complainants in the case and possibly to others who have made statements to the police or are considering doing so. I am obviously aware that assertions have been made, without any basis or foundation, that justice will not be done in the child abuse investigations that are taking place. Indeed, it is for that reason that I am making this full statement as to why a decision not to prosecute has been taken in this case. The evidential test has not been passed, and it would be simply wrong to bring the prosecution. I would however like to emphasize that the evidential test is based upon an analysis of the evidence that the police have taken and which might therefore be available to a court. I urge all those who have any relevant evidence to give in the current child abuse investigation to contact the police and to make statements. That is the only way the prosecution will be able to reach a fully informed decision on the evidential test in the various cases that come before us for consideration."*

Law Officers Department, Jersey
26th August, 2008.

Statement from H.M. Attorney General

Jersey Historical Abuse Investigation

3rd June 2009

The Attorney General last made a statement on 26th August, 2008 when he announced that of the six files which had then been received by the prosecution lawyers, charges had been laid in respect of three of them, one file had been returned to the police for further investigations, and a decision had been taken in relation to one of the remaining two files that no charges would be brought. Further police investigations have now been conducted and a decision has now been made that for legal and evidential reasons, no charges will be brought in respect of either of the two outstanding files. A full statement of reasons is set out below.

Cases of this nature are often difficult. There is rarely any independent evidence, and often the cases come down to being the word of one person against another. In a criminal trial, it is not a question of the Magistrate or the jury deciding which version of events they prefer. The prosecution must prove its case beyond all reasonable doubt, and if there is any doubt, an accused person is entitled to be found not guilty. Before bringing a criminal prosecution, there must be sufficient evidence such that there is a realistic prospect of conviction. A decision not to bring criminal proceedings does not necessarily mean that those who have made complaints are not believed, not does it necessarily mean that any account given by a suspect has been believed. A decision not to prosecute means only that the Attorney General, having fully considered all of the available evidence and other information, has decided that an acquittal is more likely than a conviction.

A decision not to prosecute is capable of being perceived as denying the complainant the right to be heard. Indeed, this can lead to a pressure to allow the complainant to have his or her day in Court. However to succumb to such pressure would mean that the prosecution was not applying the evidential test which is its function to apply. The Courts are entitled to know that they are not faced with prosecutions which even the prosecutor thinks will not succeed. The criminal justice system as a whole requires each part of that system – police, prosecutors and Courts – to fulfil its functions professionally and properly. To compromise the test to allow evidentially weak cases to proceed is not an exercise of the objective approach which is demanded of prosecutors by the Code on the Decision to Prosecute. It is not fair to anyone – the complainants, the accused, the witnesses or the public – to do otherwise than apply the evidential test professionally and objectively.

Case 5

Nine complainants have made complaints against Mr. A, now a middle aged man who spent approximately 5 to 6 years as a junior trainee and then employee at Haut de la Garenne in the 1970s and 1980s. The complaints relate to incidents which are alleged to have taken place between 20 and 30 years ago. Four of them contained allegations of different types of sexual offending, some of it of the most serious nature; all but two were alleged to have taken place at Haut de la Garenne.

The police have conducted a very thorough and detailed investigation tracing and interviewing all known witnesses before submitting the papers to the independent lawyers instructed by the Attorney General.

In none of the cases is the complaint corroborated by any independent evidence, and none of the complaints is sufficiently similar in nature to suggest that they might supply mutual corroboration.

In two cases, the employment records show that the complainants were not at Haut de la Garenne at the same time as Mr. A. In two of the cases, the makers of the statements were not those against whom the alleged crimes were committed, the alleged victims no longer being alive.

In three of the cases, the complainants were intrinsically not credible for different reasons, one of them being that the complainant described assaults taking place in a cellar, in the bath and with the use of the shackles described in the media reports, the statement being made for the first time after the media reports had been published. In another case, the complainant described sustaining 300 to 400 cigarette burn marks and a branding which required a skin graft, but there is no physical sign of any injury nor do the records show that Mr. A was at Haut de la Garenne at the same time. In those circumstances it was inevitable that it be concluded that this complaint was incapable of belief. It is this complainant who makes the most serious allegations of sexual offending. In another case, the complainant's mother, who was allegedly present at the time and gave her permission for the assaults, says they never took place.

Furthermore, the police investigation shows relevant defence material including the fact that a significant number of witnesses speak well of Mr. A describing his popularity with the children and his good qualities in dealing with the children generally. He received consistently good reports from those responsible for monitoring and evaluating his performance.

The papers have been carefully evaluated by those lawyers, by a senior lawyer in the Law Officers' Department and by the Attorney General personally. None of the lawyers who have looked at this matter considers that the evidential test is passed.

Case 6

Background

In about May 1997, police received information that there was suspected historical child abuse committed by a man and a woman between 1980 and 1990 upon various ex-residents of a Children's Home in St. Clement, Jersey. The woman had been employed as a "*house mother*" and although her husband was not employed in any such capacity, it appeared that he played a full part in the running of the Home, which closed in 1990. Following a police investigation in 1997, a number of charges of grave and criminal assault and common assault were brought against both the man and the woman in the Magistrate's Court. Following an initial hearing, the Magistrate dismissed some of the charges on the grounds that there was no sufficient prima facie evidence to commit the accused to the Royal Court, but in respect of other charges, the defendants were committed for trial in the Royal Court.

When the matter was received in the then Attorney General's Chambers, the case file was passed to a private sector Crown Advocate with the request that there should be a full evidential review. The Crown Advocate carried out that review and concluded that

there were evidential problems. In the circumstances he recommended that the prosecution should go no further.

On receipt of that review, the then Attorney General convened a case conference which was attended by the private sector Crown Advocate, a departmental lawyer, the police officer in charge of the case, a representative of the Children's Service and the Attorney General himself. The meeting analysed the evidence on each charge having regard to the memoranda prepared by the private sector Crown Advocate. The then Attorney General concluded that there was insufficient evidence to have any realistic prospect of conviction and that in the circumstances it would not be right to proceed. No-one dissented from this view, which indeed was positively endorsed by the other two lawyers present. Although all present were aware of the assertion that one of the couple was suffering from a terminal illness, this possibility was expressly *not* a factor taken into account in reaching a decision, which was taken entirely on an assessment of the evidential test.

Following that meeting, the Crown formally abandoned the prosecution before the Royal Court in 1998 on the grounds that there was insufficient evidence to support it.

Developments in 2008/9

Between 29th April and 9th July, 2008, the independent prosecution lawyers instructed by the Attorney General were provided by the police with a number of statements in relation to this case. These included both the original material arising out of the 1998 investigation, and an amount of new material. Those lawyers provided advice to the Attorney General on 18th and 22nd July, 2008. At the request of the police in the autumn of last year, the Attorney General made an application for mutual legal assistance from the French Authorities to enable an interview with the couple to take place in France. In February this year, the necessary confirmations from the competent authorities in France were obtained but the attempts to interview the couple proved unsuccessful. The decision has thus been taken based on the evidence available in July last year.

The present case raises the difficult question of what approach ought to be taken when a prospective defendant has been given a clear indication by the prosecuting authorities that s/he will not be prosecuted.

The Attorney General has noted that in a written answer given in the House of Commons on 31st March, 1993, the Attorney General of England and Wales, responding to a question relating to the re-institution of proceedings which had been terminated said this:

> *"The fundamental consideration remains that individuals should be able to rely on decisions taken by the prosecuting authorities. The policy of the Director of Public Prosecutions is that a decision to terminate proceedings or not to prosecute should not, in the absence of special circumstances, be altered once it has been communicated to the defendant or prospective defendant unless it was taken and expressed to be taken because the evidence was insufficient. In such a case it would be appropriate to reconsider the decision if further significant evidence were to become available at a later date – especially if the alleged offence is a serious one.*

Special circumstances which might justify departure from this policy include:

(i) rare cases where reconsideration of the original decision shows that it was not justified and the maintenance of confidence in the criminal justice system requires that a prosecution be brought notwithstanding the earlier decision; and

(ii) those cases where termination has been effected specifically with a view to the collection and preparation of the necessary evidence which is thought likely to become available in the fairly near future. In such circumstances, the CPS will advise the defendant of the possibility that proceedings will be reinstituted."

The Attorney General has also noted the Crown Prosecution Service website at paragraph 12, which reads as follows:

"12. Restarting a Prosecution

12.1 People should be able to rely on decisions taken by the Crown Prosecution Service. Normally if the Crown Prosecution Service tells a suspect or defendant that there will not be a prosecution or that the prosecution has been stopped, that is the end of the matter and the case will not start again. But occasionally there are special reasons why the Crown Prosecution Service will restart the prosecution, particularly if the case is serious.

12.2 These reasons included:

(a) rare cases where a new look at the original decision shows that it was clearly wrong and should not be allowed to stand;

(b) cases which are stopped so that more evidence which is likely to become available in the fairly near future can be collected and prepared. In these cases the Crown Prosecutor will tell the defendant that the prosecution may well start again; and

(c) cases which are stopped because of a lack of evidence but where more significant evidence is discovered later."

These appear to be well founded and sound principles upon which in the Attorney's view the prosecution in Jersey should also proceed. The Attorney is of the view that, as in the United Kingdom, the damage which would be done to public confidence if people in Jersey could not rely upon decisions taken by the office of the Attorney General, particularly if those decisions were simply undone as a result of a change in the identity of the holder of the office, would be very significant indeed. For all these reasons, as a matter of principle, the Attorney General has adopted the approach which has been taken in the United Kingdom.

Accordingly, two particular lines of approach have been considered:

1. Given that the case in 1998 was not stopped so that more evidence might be likely to become available in the fairly near future, was this a case where it might be said that the decision taken in 1998 was clearly wrong?

2. Alternatively, could it be said that, although the case did not proceed because there was a lack of evidence in 1998, more significant evidence has been discovered subsequently which makes a difference to that decision?

On the first of those questions, the Attorney General has received written advice from both the private sector Crown Advocate and from leading Treasury counsel practising at the Central Criminal Court in London. A review has also been carried out by a senior lawyer in the Attorney's Department and by the Attorney General himself. Having thoroughly considered this review and these advices the Attorney General has concluded that without any shadow of a doubt the decision in 1998 cannot be said to be one which was not justified, nor was it one which was clearly wrong.

One of the particular features of the advice received from senior Treasury counsel in London was that there was a strong probability that re-opening a prosecution in 2008 on the charges which could have been brought in 1998 would be struck out as an abuse of the process of the Court. Indeed, a defence submission that there was an abuse would only be overcome if there were very compelling and completely new evidence capable of removing the reasons for the 1998 decision, and if there were a good reason for the evidence not having been available before. Leading counsel took the view that the material which has become available since 1998 fell far short of providing any such exceptional justification, and that in the circumstances it would not be proper for the Attorney General to seek to reinstitute the criminal proceedings.

Attention was then given to whether or not there was any other significant new evidence which has been obtained. In particular, consideration was given to allegations of sexual assaults which had not previously been made. The advice received from the private sector Crown Advocate was that the evidential test was not met in relation to any such allegation. On his recommendation, the Attorney suggested that he take leading counsel's advice from London to identify whether that view was shared. That advice was duly taken, and leading counsel has confirmed that, in his view as well, the evidential test is not met. These opinions have been further considered both by the Attorney General and by the senior lawyer in the Law Officers' Department assisting him in these cases. Nothing in that further consideration has led the Attorney General to express any view contrary to the advice which has been received in respect of these sexual allegations.

In the circumstances, the Attorney General considers that, applying the above principles, there is no reason sufficient to re-open the decision taken by his predecessor in 1998.

The Attorney General realises, of course, that the complainants will be very disappointed with this decision, which has, of course, also been discussed with the police.

Nevertheless, hard decision though it may appear to some, the Attorney General is sure that a decision not to prosecute is the right and appropriate decision in these cases taken on the legal principles set out above.

3rd June 2009.

Law Officers' Department
Jersey

EXTRACT FROM STATES OF JERSEY 'HANSARD' TRANSCRIPT OF 2ND JUNE 2009

2. Oral Questions

The Greffier of the States (in the Chair):
We come now to Oral Questions. There was one question deferred at the request of the Attorney General at the last meeting and I will take that question in addition to the 90 minutes allocated for the questions listed for today's meeting.

2.1 Deputy M. Tadier of St. Brelade of H.M. Attorney General regarding criteria for the pursuit of so-called 'historic' child abuse cases:
Will Her Majesty's Attorney General inform the Assembly of the criteria used to judge whether or not to pursue cases in relation to the so-called historic child abuse and, where the likelihood of conviction principle plays a part, roughly what percentage of certainty is usually required?

Mr. W.J. Bailhache Q.C., H.M. Attorney General:
I would like to thank the Deputy for his courtesy of agreeing a deferral of this question from 2 weeks ago when I was out of the Island. The decision to prosecute an individual is a serious step. Fair and effective prosecution is essential to the maintenance of law and order. Even in a small case, a prosecution has serious implications for all involved: the victim, the witness and a defendant. I have published on the Law Officers' website a code on the decision to prosecute. As will be seen from that code, there are 2 stages in a decision to prosecute, the evidential test and the public interest test. I have already said in relation to the historic child abuse investigation that it would be surprising if a decision were to be taken not to prosecute on public interest grounds, although that possibility is not ruled out. So far no decisions not to prosecute have been taken on public interest grounds. The evidential test is that the prosecutor must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each defendant on each charge. It means that the prosecutor must consider whether a court or jury properly directed in accordance with the law is more likely than not to convict the defendant of the charge alleged. The expression "more likely than not" means that the test is applied on the balance of probability. These rules apply to all prosecutions whether for historic child abuse or for other cases. The assessments are judgment calls made on a professional, objective basis. It should be emphasised that any decision taken to the effect that a particular allegation should not result in charges does not mean that the allegation is rejected as untrue, nor does it mean that it is considered in some way not to be a serious allegation. All it means is that the prosecutor has reached the view that an acquittal is more likely than a conviction.

2.1.1 Deputy M. Tadier:
Is the fact of whether a suspect is not currently present in the Island a consideration when deciding if a case should be pursued?

The Attorney General:
If a suspect is not currently in the Island that can give rise to questions as to whether it is feasible to get the suspect back to face trial, but the evidential test and the public interest test as to the decision to prosecute are applied before one thinks of the difficulties, if there are any, in getting somebody back from outside the Island.

2.1.2 Senator S. Syvret:
The Attorney General has explained how there is a degree of judgment call in deciding whether to prosecute. For example, say in a case where there was substantial evidence from a number of victims about such things as being beaten, badly injured, being battered to the floor and held down while Dettol was poured down their throats and including the sexual abuse of some female children, would the Attorney General say that a case of that nature, which is evidenced by about 2 substantial lever-arch files of evidence, would merit prosecution?

The Attorney General:
I am certainly not going to discuss any particular cases before this Assembly, and the Senator is trying to encourage me to make a response on the basis of what he believes to be the facts in a particular case. All I would emphasise to the Assembly is that the prosecutors take the decisions sensitively, objectively and professionally; language which the Senator may no doubt wish to adopt at some point.

2.1.3 Deputy T.M. Pitman of St. Helier:
I am just interested in what the Attorney General has told us about the difficulties with other countries. Could the Attorney General just explain whether France is one of those countries where there would be problems in extraditing people to face investigations?

The Attorney General:
France and Jersey, through the United Kingdom, are members to the Council of Europe Convention on Extradition, and I would expect that the terms of the Convention should enable in any proper case extradition from France to be possible. Indeed, there have been numbers of occasions when there has been extradition from here to France and the other way round.

2.1.4 Deputy P.V.F. Le Claire of St. Helier:
In the instance where it has been decided by Her Majesty's Attorney General that a case should not proceed due to the evidential test not having been met, would that be revisited if new evidence surfaced?

The Attorney General:
The Deputy is another Member who is seeking to put the facts of a particular case to me in the guise of ...

Deputy P.V.F. Le Claire:
On a point of order, I certainly am not. I strongly refute that. That was just a general question. I am not trying to assert any particular case. I do respectfully suggest that Her Majesty's Attorney General has completely misread my supplementary. I was just asking for general ...

The Attorney General:
I am very pleased to have that reassurance. The position is that whenever a decision has been taken not to prosecute the probability is that there would need to be a very significant reason for reopening that decision. That may arise because there is new evidence that was not available and could not reasonably have been ascertained at the time of the original decision. Broadly speaking, when a decision not to prosecute has been taken, there is a very strong public interest in maintaining that decision. It is right that members of the public should be able to rely upon a decision which the Attorney General has taken.

2.1.5 Deputy R.G. Le Hérissier of St. Saviour:
Under what circumstances would the Attorney General refer a possible prosecution case for review from outside of his department?

The Attorney General:
I expect the Deputy is aware that in the historic child abuse investigation I have already made it plain that in all those cases the files are first going to be considered by private sector advocates who are, therefore, naturally by definition outside my department. It is only if those Crown Advocates consider that the evidential test is not met or that for some public interest reason the prosecution should not be brought that the case would be referred to my department. When it comes into my department in these particular cases, it is then reviewed by one of the senior lawyers in my department. It is also reviewed by me and there are some occasions when we have thought it appropriate to get outside advice as well.

2.1.6 Senator S. Syvret:
Would the Attorney General inform the Assembly as to on what grounds a decision not to seek extradition may be taken? Would he agree with me also that anyone who has made a formal, credible complaint to the police of criminal conduct has a right to be informed of the status of that complaint, whether it is being fully investigated, whether it has been decided that there is no merit in the complaint, or whether it has been parked, whether it is going to be taken forward for prosecution? Can the Attorney General state whether complainants have a right to that knowledge and would he also undertake personally to write to the victims of the 2 abusers in France and explain to them what is going on?

The Attorney General:
There are about 100 questions in there. The general rule is that the police do try to keep complainants informed about the conduct of the case, about the way in which the investigation is going – the progress of the investigation – and what the likelihood is of a prosecution and, once a prosecution decision has been taken, to advise the complainants of that decision. Where the decision is taken not to prosecute, the police are very careful to advise not only the putative accused but also all the complainants so that they do not receive this information via the media or on the radio or reading it in the *Jersey Evening Post*. That is a sensitive approach which is to be commended and it is one of the reasons why I am simply not going to discuss particular cases in this Assembly. I think the first part of the question was the extent to which objections can be made to extradition or something of that kind. Perhaps the Senator would repeat that part of his question.

Senator S. Syvret:
The grounds upon which the decision would be made whether to seek extradition. The Attorney General said in answer to an earlier question that it would, in fact, make things more difficult to make a decision to prosecute if it had to involve extradition.

The Attorney General:
The position there is that if the decision is taken to prosecute and the prospective accused are outside this jurisdiction, I will do everything in my power to ensure that they come back to face trial. If – and it sometimes is the case – getting such people back from the other jurisdiction is impossible, either because there is no extradition treaty or convention or for some reason the extradition arrangements turn out not to be able to work, then, of course, the Attorney, the Crown is stuck with that position. But

once a decision to prosecute is taken, if it is possible to bring such people back by making an application for extradition, I would.

2.1.7 Deputy D.J. De Sousa of St. Helier:
Can the Attorney General inform the House who, how many are involved in making a decision, and what criteria is used to decide that it is not in the public's best interest to prosecute?

The Attorney General:
I do not understand what decision is being talked about.

The Greffier of the States (in the Chair):
Are you able to clarify, Deputy?

Deputy D.J. De Sousa:
Any decision not to prosecute, sorry, in the public interest.

The Attorney General:
Numbers of decisions are taken by Centeniers at Parish Hall Enquiries. Particularly where the prospective accused is a person under age, it is thought there is a better way of dealing with the particular incident than by having a prosecution take place before the court. So, the first part of the answer is that Centeniers in effect apply a public interest test week-in, week-out in deciding whether or not to prosecute before the Parish Hall Enquiries. Otherwise, the lawyers in particular cases who are handling a prosecution may well take a view that the public interest requires that the prosecution should not proceed or should be withdrawn. In sensitive cases or cases which the lawyers believe to be sensitive, those decisions may be referred to the Law Officers for review. If they are referred up to the Law Officers for review, then that may be considered by the Law Officers personally or it may be considered by the Principal Legal Adviser who is the senior criminal lawyer in my department. I am afraid the question is really too wide to give a better answer than that.

2.1.8 Deputy M. Tadier:
The last question is a simple one: are there currently any extradition applications pending in relation to child abuse that has happened in the last 30 or 40 years?

The Attorney General:
No.

The Greffier of the States (in the Chair):
Very well. We come now to the Oral Questions tabled for the present meeting.

EXTRACT FROM STATES OF JERSEY 'HANSARD' TRANSCRIPT OF 15TH JULY 2009

3. Statement by The Attorney General regarding historic child abuse prosecutions

3.1 Mr. W.J. Bailhache Q.C., H.M. Attorney General:

I have made no statement about the 11 cases in which I have recently directed that there should be no further action at present and which were the subject of a media report last week. It is not generally my practice to comment in relation to decisions not to prosecute. That practice was only departed from recently because decisions had been taken in relation to cases which were already in the public domain. I do expect to make a sufficiently detailed statement, however, at the end of the investigation once all decisions have been taken and there can be no impact on potential prosecutions. As at present advised I expect that position to be reached by about the beginning of September. Members will remember my earlier statements that right at the beginning of the investigation I appointed an experienced private sector Crown Advocate to act for the prosecution. He had instructions to prosecute no matter who the prospective accused might be if the evidential test was met, unless he thought that there was some exceptional public interest factor that ought to be brought to my attention. However, if the independent lawyer thought the evidential test was not passed, his decision was not to be the end of the matter. He was required to submit a detailed written opinion which, with the appropriate case file, would be reviewed by a senior lawyer in my department with extensive experience in the Crown Prosecution Service in the U.K. The file would also have a high level review by me personally. The private sector Crown Advocate has invariably in these cases had a preliminary opinion from a barrister in London as well before he completed his work. In the 11 cases referred to, therefore, 4 lawyers have independently reached the view that the evidential test was not passed. Though it is not their decision in every one of those 11 cases, the police have agreed that the evidential test is not met and have agreed, therefore, with the decision not to prosecute. I put the system in place generally with regard to prosecution decisions in this investigation to ensure that those decisions were not only taken fairly but could be seen to be taken fairly. The same evidential test is applied here as in the United Kingdom. Prosecution decisions are taken dispassionately and not emotionally. It is not the case that complainants are entitled to their day in court at the expense of the public. The existence of the evidential test recognises that beginning a prosecution is a serious matter for the witnesses, for the accused and for the public. If it is not more likely than not on all the evidence which is properly admitted before a court, that a conviction will be secured, it is not right to prosecute. I see an awful lot of negatives there. Perhaps I can put that the other way around. It is only right to prosecute if it is more likely than not, on all the evidence which is properly admitted before a court, that a conviction will be secured. Over the next 6 weeks I expect decisions will be taken in respect of the outstanding files, some of which are with my department, some with the independent lawyers and some still with the investigating police officers. This will take place during the recess, but that is by chance and I wanted to bring Members up to date with the position before the summer break is upon us. I would like to add this in relation to the question of civil claims as there appears to be some misunderstanding about my role in this respect. If there is civil liability on the part of the public towards a claimant, it is no part of a Minister's duty nor part of the Attorney's duty to take steps improperly to defeat that claim and thereby save public money. Secondly, although I believe there was little risk of conflict in my office handling civil claims after the criminal cases had been concluded, I recognised in the middle of last year that there was a risk of mischief makers

wrongly asserting that decisions in criminal cases had been influenced by our dealing with the civil claims. Accordingly, I spoke with, and later wrote to, the Chief Executive to ask him to procure private sector representation for Ministers facing such claims. This has been done. Thirdly, although the Council of Ministers had the historic child abuse investigation as a regular agenda item during its meetings last year, I almost invariably absented myself from those discussions. This was both because I thought there was nothing at that stage for Ministers to determine and partly because I wanted to keep my own role quite separate from Ministerial involvement. Finally, Ministers will need advice at some point, not on individual claims but on structural matters such as the terms of reference for any committee of inquiry or whether there should be established a redress board or a claims commission or some such. I do not see any conflict in the law officers giving this advice however, as I hope is obvious from what I have said already, the question of conflicts or perceived conflicts is kept under review and if, at a future date, that looks like causing a problem we will take steps to deal with the matter appropriately.

3.1.1 Deputy S. Pitman:
I will ask the Attorney General does he not see a conflict acting as a judge as to whether or not he should be pursuing States employees and former employees and then acting as chief adviser to the Council of Ministers?

The Attorney General:
I would ask the Deputy to repeat the questions. I just did not hear most of it.

Deputy S. Pitman:
The Attorney General has decided not to prosecute for various reasons any former or current States employee who has been involved in these child abuse cases. He is also chief adviser to the States. Does he not see there is a conflict?

The Attorney General:
I am not sure I have got much to add to the statement I have just made. No, I do not think there is a conflict because the decisions which have been taken in relation to prosecutions first of all have been taken in the first instance by the independent private sector Crown Advocates. Only if they have decided the evidential test is not met is it referred to my department where it is reviewed, first of all, by one of my senior criminal lawyers and then by me, personally, as a high level review. In the cases concerned so far, in every case not only have all 4 lawyers thought that the evidential test was not met, but also the police have thought the evidential test was not met. Insofar as that is concerned, it seems to me to be perfectly clear. As I am not advising Ministers on the civil claims, the second part of the Deputy's question simply does not arise.

3.1.2 The Deputy of St. Martin:
I draw reference to the third paragraph for the Attorney General where the Attorney General says: "I appointed an experienced private sector Crown Advocate to act for the prosecution. He had instructions to prosecute no matter who the prospective accused might be if the evidential evidence was met unless they thought there was some exceptional public interest factor that ought to be brought to my attention." Could the Attorney General explain what exceptional circumstances may lead to no prosecution being taken?

The Attorney General:
I think the statements that I have made previously were that if the evidential test were passed we could be satisfied that the case could go ahead. It would be very, very rare indeed that any public interest factor would determine that there should not be a prosecution, but I think the example I have given previously is that if one were faced with a person who, on established evidence, was in the last week or month of their life, it might not be appropriate to prosecute.

3.1.3 Senator B.I. Le Marquand:
Is the Attorney General able to confirm that the test as to whether not to prosecute namely the evidential test is a high test and whether it could not be defined as requiring more than a 50 per cent chance that 10 out of 12 jurors in the case of a jury trial will be sure that the person is guilty?

The Attorney General:
Yes, I thank the Minister. The test as I have always expanded it is more likely than not that a court or court would convict, but of course that does mean because of the rules of criminal trials that one has to persuade 10 of the 12 members of a jury in a jury trial, at least, that they must be sure, they must be satisfied beyond all reasonable doubt that events happened as the prosecution asserts.

3.1.4 Deputy M. Tadier:
First of all I would just like to thank the Attorney General because I believe the second part of his speech is effectively an answer to question 17 on the order paper yesterday which I submitted and which could not be answered due to a lack of time. So I do acknowledge that on the part of the Attorney General. The question I would like to ask though is in particular reference to 2 words which are slightly alarming on the back sheet, second bullet point. There is a reference to 'mischief makers' and it says: "Wrongly asserting that decisions in criminal cases have been influenced by our dealing with civil claims." There is a slightly different context. I would just like to get a confirmation from the Attorney General that he does not believe that anybody who questions a conflict of interest, be they a politician or a member of the public, or questions the process is necessarily a mischief maker?

The Attorney General:
I am certainly not been intending to accuse the Deputy by asking the question yesterday of being a mischief-maker, if that is the point.

Deputy M. Tadier:
It was not so much me, but just in general terms to emphasise that there can be more than one motivation for questioning processes.

The Attorney General:
I agree entirely that there are frequently more than one motivation. **[Laughter]**

3.1.5 Deputy R.G. Le Hérissier:
At the risk of asking the Attorney General to over-generalise, could he outline to the House, based on his review of experiences in other comparable jurisdictions, what are the factors that make for a successful prosecution in this particular category of cases?

The Attorney General:
It is well-known that historic abuse prosecutions are difficult because there frequently is any lack of direct corroborative evidence. Where one has an investigation these days for an offence such as rape, for example, usually you would expect to get some forensic evidence, DNA evidence, or whatever it happens to be, which is some independent corroborative evidence and of course if one is looking at an investigation of circumstances which took place a long time ago, that sort of evidence is unlikely to be available. It is possible that you can have what is regarded as similar fact evidence where there are a series of complaints by more than one person against the same suspect or accused, where the law allows the evidence given on one charge to support the complaint in relation to another charge, but those circumstances do not apply always and certainly in the cases we have looked at so far the lawyers have taken the view that it has generally not been possible to adduce similar fact evidence. When I say so far, in the cases where we have decided not to prosecute. So, the absence of any independent evidence is usually a prime difficulty and I put it that way because of the way the Minister for Home Affairs put it to me a moment ago, that you have to persuade 10 out of 12 jurors that they should be sure that the events happens as the prosecution claim because if one is left at the end of the day with a complainant who gives evidence very fluently that the allegations are correct, that the assault or rape or whatever it is took place, and the accused gives evidence just as fluently that it did not, and that is the only evidence which the jury have to face, it is quite difficult at that point to take the view that any reasonable jury could be sure beyond reasonable doubt that the accused had committed the crime. So, that is very often the problem which is faced in deciding whether or not to prosecute.

3.1.6 Deputy P.V.F. Le Claire:
If I can ask this of the Attorney General; this statement talks about non-prosecution of 11 cases. Could I ask, because I am a bit foggy on this and I am sure some Members probably are as well, there certainly have been some prosecutions in my understanding and I wondered how many there have been and how many were active.

The Attorney General:
There have been 3 persons charged so far. One of those persons was subject to 2 trials and was convicted in both trials. The second one changed his plea and admitted guilt, and the third one is coming up for trial in August. I cannot say, at the moment, whether there will be further prosecutions; there may or may not be. As I have indicated in the statement there are a number of files still outstanding either with the police or with the independent lawyers, or in my office.

3.1.7 Deputy M. Tadier:
I was going to ask the same question, but perhaps a supplementary on that basis. Could the Attorney General confirm whether the number is greater than those that have been dropped, or if it is significantly less, or perhaps even just give us an actual number of how many are outstanding. I believe it is in the public interest and that the public would like to know this.

The Attorney General:
I think there are about – so give me a margin of 20 per cent – 12 files outstanding.

3.1.8 Deputy R.G. Le Hérissier:
Could the Attorney General say that even though the evidence may not have met the tests that he has earlier defined, have there been instances where enough evidence has been brought forward that while it may not be put to a criminal trial it could be used, for example, in disciplinary proceedings?

The Attorney General:
The usual rule is that evidence which you obtain in the course of a criminal investigation is not available for other purposes, unless it is made plain to the witness, at the time of giving the statement, that the statement might be used for other purposes. Of course there is no reason why the witness should not be approached again later and asked if they consent to that statement being used for other purposes, but there is an assumption that the witnesses will be prepared to assist the police for the purposes of criminal investigation, but might take a different view if it is in relation to another purpose and that is why the consent is, I think, an important part of that process.

APPENDIX 2

EXTRACT FROM STATES OF JERSEY 'HANSARD' TRANSCRIPT OF 6TH JULY 2010

3.1 Deputy D.J.A. Wimberley of St. Mary of the Attorney General regarding the influence of the prosecution process by members:
Following cases of politicians attempting to influence the prosecution process, could Her Majesty's Attorney General explain why it is considered inappropriate for Members to attempt to influence the decision whether or not to prosecute given that the normal process of politics is to try to influence events, policies and outcomes.

[09:45]

Mr. T.J. Le Cocq Q.C., H.M. Attorney General:
I thank the Deputy for deferring this question so that I could answer it. I will start by quoting from the leading text on the subject, the book *The Law Officers of the Crown* by J. Edwards which itself quotes the following statement by the then Prime Minister, Harold Macmillan, made to the House of Commons in 1959. He said: "It is an established principle of government in this country and a tradition long supported by all political parties that the decision as to whether any citizen should be prosecuted should be a matter for the prosecution authorities to decide on the merits of the case without political or other pressure. It will be a most dangerous deviation from this sound principle if a prosecution were to be instituted or abandoned as a result of political pressure or popular clamour." The decision whether or not to prosecute or continue a prosecution is a matter for the Attorney General or those acting on his authority and the Attorney General alone. It is not unlawful for any person, including a politician, to bring to the Attorney General's attention any material relevant to the prosecution decision but it may be inappropriate to take steps which have an impact on the prosecution, especially where there has been a contact with a defendant directly by a politician with political responsibility for the law which provides the basis for the prosecution or which goes beyond a statement to the Attorney General of factors which the politician thinks the Attorney ought to take into account in exercising the discretion, he alone has, as to whether there is a prosecution. Of course, any attempt to influence or interfere with my decision for political or personal ends would, obviously, be wrong.

3.1.1 The Deputy of St. Mary:
I thank the Attorney General for that clarification. That made matters a lot clearer and the Attorney General made a distinction between it being lawful for a citizen or any of us, indeed, to bring material that is relevant to a prosecution which the A.G. (Attorney General) might have missed or whatever to the A.G.'s attention. That seems to be the position; but if we are to try and influence the decision directly then that is wrong. I hope that is more ... and so my supplementary question would be that in this Chamber we often debate questions surrounding prosecutions, for instance the Haut de la Garenne affair and I just wanted to be clear where that is legitimate and, obviously, what is in my mind with this question, the whole questioning, is Senator Le Main's approach. What was wrong with that? Because it seems to me that if I knew that there was some daft thing that the A.G. seemed to be doing, it would be right for me to say: "Look, this does not seem to make sense." So I just want a sort of re-statement, a clarification, of where the boundary lies because it is not quite clear to me.

The Attorney General:
There is no bright line boundary where I can say to the Deputy: "On one side there is an improper interference, on the other side there is not", in terms of a simple definition. It will all entirely depend upon the facts of the individual situation. Any observations made in the Assembly about general prosecution matters, it seems to me, are perfectly all right and I take them into account or I ignore them as I see fit in making any individual prosecution decision. Any statement in the Assembly which seeks to put pressure or persuade me to exercise an individual decision in one direction or another would, in my view, have quite firmly crossed the line and would be wrong. In terms of the position of the former Minister for Housing, I do not wish to be drawn into the specifics of that case. It seems to me that factors that can bear upon whether or not any kind of intervention is proper or not can relate to the relationship an individual politician has to the laws that are being dealt with in the prosecution, the connection between an individual politician to the person who may be prosecuted or may not be prosecuted depending upon my decision and various other factors. In identifying those general factors, I make no specific reference to the situation involving the former Minister for Housing.

3.1.2 Senator B.I. Le Marquand:
I wanted to ask a question of the Attorney General as to whether he thinks that Members of this House could benefit by some training or some guidance notes, particularly new Members who have not had experience in this kind of area, and whether he might consider producing some guidance notes for the assistance, particularly, of new Members.

The Attorney General:
I am most grateful to the Senator for that suggestion which I am very happy to take on board. It seems to me that from time to time these kind of questions do come about and people do touch on these issues and questions in the Assembly, and the fact that there may be some form of generalised guidance – I would emphasise it would not be capable of drawing a bright line – but generalised guidance might well be of assistance and I will certainly give that my attention.

3.1.3. Deputy P.V.F. Le Claire of St. Helier:
In that guidance, I wish to ask if Her Majesty's Attorney General could provide us with a clear understanding as to what areas *sub judice* relate to when we are talking about debates in general. We are always told that we cannot enter into discussions upon matters because they are before the courts and, in some instances, that is quite clear and it is quite obvious but there certainly have been circumstances where *sub judice* has been raised as a bit of a red herring in some debates, I would put to Her Majesty's Attorney General, and I would appreciate some clear guidance on that if it is possible, please.

The Deputy Bailiff:
Before the Attorney General replies to you, I disallow the question.