

STATES OF JERSEY

OFFICIAL REPORT

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[9:31]

The Roll was called and the Dean led the Assembly in Prayer.

PUBLIC BUSINESS - resumption

1. Draft Sexual Offences (Jersey) Law 201- (P.18/2018)

The Greffier of the States (in the Chair):

The first item of business this morning is the draft Sexual Offences (Jersey) Law 201- brought by the Minister for Home Affairs, P.18/2018. I ask the Greffier to read the citation.

The Assistant Greffier or the States:

Draft Sexual Offences (Jersey) Law 201-. A Law to make new provision about sexual offences, to amend the law relating to certain sexual acts, to amend the Sex Offenders (Jersey) Law 2010, and for connected purposes. The States, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law.

1.1 Deputy K.P. Moore of St. Peter (The Minister for Home Affairs):

I am very pleased to be able to bring this Sexual Offences (Jersey) Law to the Assembly. This is part of a package of legislation designed to modernise Jersey's criminal law and criminal procedures. The States have already approved the Criminal Procedure (Bail) Law last year and the Criminal Procedure Law yesterday. I am grateful to Members for the consideration they have given to these important matters. The law in relation to sexual offences in Jersey has, in some respects, not kept pace with developments in society and modern criminal justice practices. While most types of sexual offending can be addressed using offences in existing statutes or customary law, this draft law consolidates and codifies a number of offences in order to provide a clear, modern suite of offences to protect Islanders from harm. One of our priorities has been to raise awareness of the issues, to ensure that citizens are protected from domestic and sexual abuse. In order to deliver protection for all the law is framed on the basis that offenders and victims can be of any sex, and offences are gender neutral, unless there is a good reason for them to be otherwise, such as the specific issue of female genital mutilation. The overall objective of the draft law is to adequately meet the needs and expectations of the police, prosecutors, modern Jersey society and international standards. One of the objectives of this draft law is to ensure that as an Island we are compliant with a number of international conventions. These include the optional protocol to the United Nations Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; the United Nations Convention on the Elimination of All Forms of Discrimination against Women and the Council of Europe Convention on Preventing and Combating Violence against Women and Girls, known as the Istanbul Convention. The new law has been comprehensively researched and reviewed to reflect current best practice. It will ensure that the safeguards that exist elsewhere will be available here in Jersey. Sexual offences are part of our criminal law that deals with the most private and intimate part of life, sexual relationships, when they are non-consensual, inappropriate or wrong. As such, they reflect society's view of what is right and wrong in sexual relations. Jersey's current sexual offences legislation is dealt with by a number of customary law offences, including the offences of rape, indecent assault, sodomy, gross indecency, outraging public decency and incest. It also comprises a number of offences created by statute, including most recently the offences in relation to indecent images of children, included in the Protection of Children (Jersey) Law 1994 and the offences in respect of grooming found in Sexual Offences (Jersey) Law 2007. Although piecemeal change has been made to Jersey's sexual offences law over time it has not been the subject of overarching review to ensure that as a whole it meets the needs of victims of crime and provides the police and prosecutors with the tools they need to fulfil the expectations of modern Jersey society in relation to such offences. Elsewhere in the British Isles comprehensive reviews of sexual offences legislation

has led to the enactment of substantial reform, reflected in the new Sexual Offences Act in England and Wales, and Scotland also. A similar approach to codification has been taken in Northern Ireland. The experience of other jurisdictions has provided a useful starting point in the development of our local legislation, however in developing the draft law care has been taken to identify both strengths and weaknesses in approaches taken in the U.K.(United Kingdom) and to build on the former. In particular, it is noted that the Scots' Sexual Offences Act 2009 made a number of improvements both in terms of clarity and brevity on the English legislation from 2003. Having reviewed the changes that have been made in the U.K., it was recognised that in some instances improvements were required to our law to address some types of behaviour that do not amount to an offence in Jersey at present. For example, offences related to exposing a child to sexually explicit material, it was also noted that certain offences that are in use in Jersey are archaic in that they are limited to behaviour towards one gender or rely on terminology and old statutes or case law that is no longer appropriate to use and certain offences have inappropriate maximum sentences. I will briefly outline the themes covered by each of the 10 parts of the draft law. The draft law covers most sexual behaviour that ought to be criminalised in Jersey. Some matters were left outside the scope of the draft law, for instance, measures relating to prevention of sexual offending, including safeguarding notification, restraining and protection from and travel requirements for sex offenders, all of which are covered in other legislation. Part 1, Articles 1 to 4, contains provisions concerning the interpretation and application of the draft law. Of particular importance, this defines consent in statute for the first time. The definition of consent to ensure that it provides appropriate and clear protection of victims, including where they may have consumed alcohol. Part 2 provides for a series of offences where one of the parties to a sexual act has not freely agreed to being part of the sexual act and the other party does not reasonably believe consent has been provided. Each of these offences can be committed by or against an adult or a child of any age. Part 3 deals with offences by adults over the age of 18 against young children who are aged 12 or younger. The child's consent is irrelevant to guilt as would be any belief by the adult that the child was older. Part 4 deals with offences by adults against older children aged 13, 14 or 15. The child's consent is again irrelevant to guilt but in each Article there is a defence of reasonable belief that the child was aged 16 or older. Part 5 deals with sexual offences against children aged 15 or younger. Some, but not all, can be committed by children, some only by adults, and some by either. The approach adopted deals with the difficulty of children under the age of sexual consent having consensual sex with each other, as well as children at very similar ages but border each side of the age of consent. That is covered in Article 13. Part 6 criminalises sexual behaviour where there is a defined relationship between an adult and a child which creates a position of trust on the part of the adult towards a particular child. The list of defined relationships has been brought forward from the Sexual Offences (Jersey) Law 2007 with some amendments, including the addition of a coach, in light of the deficiency in the law as brought to the attention of the public on the exposure by global media of a number of high level coaches abusing their positions of trust.

[9:45]

Part 7 details those offences that relate to prostitution, replacing some old legislation and adding new provisions. Prostitution itself is not illegal, it is the conduct of both prostitute and the person to whom the prostitution service is provided which can constitute an offence under the draft law. An offence can also be committed by a person who controls prostitution or a person who lets property knowing that it will be used for the purposes of committing prostitution offences under the draft law. Part 8 prohibits F.G.M. (Female Genital Mutilation), it creates offences of carrying out or facilitating F.G.M. and requires certain professionals to report apparent F.G.M. Part 9 provides for miscellaneous sexual offences to include incest, exposure, voyeurism, bestiality, administering a substance to commit a sexual offence, committing an offence in order to commit a sexual offence. Article 41 also provides that certain persons who commit certain sexual offences outside Jersey will

be guilty of those offences as if they were committed in Jersey. Part 10 contains repeals and amendments to other legislation and also makes provision preserving ability to elect for jury trial where a person is charged with an offence under parts 2, 3 or 4 of the draft law and restricting the admission of evidence as to a complainant's past sexual history in a sex offence case. The draft law amends the Protection of Children (Jersey) Law 1994, the Marriage and Civil Status (Jersey) Law 2001 and the Sex Offenders (Jersey) Law 2010. The draft law also abolishes a number of customary law offences, including rape, indecent assault, sodomy, gross indecency and incest. The draft law has been developed in collaboration with the Law Officers' Department, the States of Jersey Police have been consulted on the proposals, as have the judiciary. A public consultation was undertaken between 1st September last year and 13th October. Other interested parties, including charities and those working within the field of sexual health took the opportunity to comment on proposed changes and identify concerns. The responses received were constructive. All were considered and taken on board where appropriate. I also met with some of these bodies with the Assistant Minister. I am grateful to the Education and Home Affairs Scrutiny Panel once again for their involvement, both before and after the draft law was lodged with the Assembly. Their active interest in this vital piece of legislation has provided helpful amendment. The draft law must tread a delicate balance between the protection of those who might be exploited physically or emotionally and the vital interest in protecting each individual's liberty to engage in consensual sexual relations. The draft law deals with these delicate issues in a clear and concise way that builds on the experience of other jurisdictions that have developed new sexual offences legislation. It provides protection to individuals of all genders and most particularly aims to protect children in Jersey from abuse and exploitation. The draft law makes new provision on sexual offences replacing most, but not all, of the existing statutory and customary law offences and creating new offences as well as amending provisions on sexual offences in other legislation. I would be more than happy to take any questions from Members at this stage and move the principles of the draft law.

The Greffier of the States (in the Chair):

Is the draft law seconded? [**Seconded**] Does any Member wish to speak on the principles?

1.1.1 Deputy T.A. Vallois of St. John:

I thought it appropriate to speak on the principles of the law. I am the lead Member for the Education and Home Affairs Scrutiny Panel who scrutinised the Sexual Offences (Jersey) Law so I am going to respond to this legislation with 2 hats on: one as that Member and as a Back-Bencher. Firstly, as the lead Member for the Scrutiny Panel who have been working diligently with the Minister and relevant officials to scrutinize this legislation within an appropriate timescale, we would like to put on record our thanks to all involved, especially the Law Officers and draftsmen for their time and commitment in assisting us in carrying out our work in a timely manner. I would also like to take this opportunity to recognise the hard work and dedication of our own officer who has had a variety of areas to cover during this review and he has been nothing but exceptional in his work ethic and determination in ensuring the support we have had on this Scrutiny Panel has been second to none. Members will note that the panel have made 3 amendments to the draft legislation, one of which I stated last night we would withdraw and I will just explain briefly why we are withdrawing that amendment. We lodged this with the intention of trying to clarify and making it explicitly clear within the legislation that it should not matter that you are married or in a particular relationship when it comes to sexual offences. Further to the comments that the Minister has provided advising that they sought further advice we wanted to clarify that advice, we have had that clarity and we are therefore at this point in time happy to withdraw that amendment in recognising that the legislation covers free agreement. But I think it is a conversation for another piece of legislation which I understand will define domestic abuse hopefully coming in the future. That is the reason for withdrawing the third amendment. I will speak on the other 2 amendments when addressing the appropriate Articles so I will not go into

those in particular now. Suffice to say, this has been based on evidence obtained during the course of our review and further examination of the meaning behind some of the Articles. As a panel, we welcome the new legislation and believe it to be a huge step forward for the protection of both complainants and defendants during the process of criminal proceedings for sexual offences. It creates clarity and most importantly a definition of consent around the role of what constitutes a sexual offence. I would also like to draw Members' attention to our comments. I know they are 28 pages long but I am sure Members are used to reading substantial documents by now. We have briefly gone through the legislation and tried to explain where our evidence answers to questions have been obtained from. You will see that we specifically refer to areas such as the voyeurism, abuse of trust, the sexual history evidence, which I would just like to obviously state that there is an ability in future for the States to bring forward regulations under the sexual history evidence so there will be further discussion around that. Image-based sexual abuse we have also referred to, which was one of the submissions that was made by Professor McGlynn. We have been given the understanding that this would be covered under the Telecommunications (Jersey) Law. I think it is important that bearing in mind the information that was provided from the submission on image-based sexual abuse I think there is, going forward, probably some room for improvement and possibly putting this into the Sexual Offences (Jersey) Law. The submission provided by Professor McGlynn stated: "Including this type of offending within the Sexual Offences (Jersey) Law is important because how laws are framed has serious ramifications in terms of understanding the nature of the offending. It is serious harm. Informing educative and preventative responses, focus on issues of sexual consent, and sexual double-standards. It also means that other protections from sexual offending, such as prevention programmes and reporting or notification requirements cover this form of abuse." I am also aware that, of course, somebody who is a member of the public who has reported an incident of image-based sexual violence is not particularly happy around the mechanisms in terms of the sentencing or the charging around those particular issues. I think this is something that we need to grapple with within society and have a bigger conversation around this and then potentially considering whether it is worthy of clarifying that in the Sexual Offences (Jersey) Law in the future. Another area which is covered is prostitution, which refers to the Nordic model. Female and male genital mutilation: now a submission came to us pretty late on in our review. There is a view that there is potential for expanding genital mutilation to males also. It is not in this legislation but, of course, this raises issues and it has raised issues around the world with particular cultures and religions. We have not amended it at this point because, like I say, it was submitted to us very late in the day and we thought, again same as the image-based, it deserves further discussion with society and determination of whether male genital mutilation should be considered as an offence, as is female genital mutilation. That is a wider discussion with the public before embedding it in the legislation. On the basis I will finish that from the Education and Home Affairs Scrutiny Panel, but I would like the opportunity just to say a couple of comments, myself. I took the opportunity to get in touch with a young lady - I have already mentioned her - a member of the public who has taken it upon herself, what she feels is a public duty, and she is being called a vigilante. I do not particularly like that word, I do not think it is appropriate. But she feels she is doing her duty in protecting children in the Island. I have been in touch with her and I want to take the opportunity just to say something on her behalf because I think it is appropriate to do so. It is very difficult to try and suggest or demonise these people who feel like they have to play a part in protecting their community and their society. Very basically and very generally, she stated that she believes the sentences should be higher even for the attempting to meet a child. "These men believe they are meeting children and nothing else. It should count the same as if it were a real child. As you know, if it were not for them getting lucky and it being me it would have been an innocent child. I am not sure what else to say on it other than Jersey needs to get up to date on the times. It says something when parents come to me over the police or have been shoved-off by them so decide to come to a member of the public for help." That is absolutely her words and I thought it was appropriate for me to state this because she has taken it

upon herself ... it is a safety issue, I think we have to recognise it in this particular concern. But, of course, within the legislation we cover sexual grooming. I believe it is under Article 16 of the law. Sorry, it moved because it was originally 15, I think. No, Article 15. So sexual grooming of a child. This embeds liability, the actual sentence in terms of imprisonment for a term of 10 years into a fine. Of course it qualifies the reasons behind that. I think we have a duty to recognise the concerns that are out there about what is clearly deemed as predators who are seeking out our children for these types of acts. I have to put on record I totally deplore it and I think we have a duty to step up to the game and ensure that we are doing the right thing for the children of our Island. I will just move briefly on to a couple of other things. It was interesting when the legislation first came out, I was having a conversation with my family around where you draw the line in terms of protecting children, because in this legislation what it does is it completely criminalises for children 12 years and under and then it creates a defence for 13 to 15 year-olds. This was where it made me slightly uncomfortable because my son is 11, my stepson is 14 and I sit there and put myself, as I try to do, in somebody else's shoes and I have to question whether it is right to have a defence for 13 to 15 year-olds. I completely understand the arguments, I know that there may be some 15 year-olds that go out there, they look older than what they are, they may play on that particular issue, but I find it very uneasy that you say absolutely criminalise for a 12 year-old or under but imagine they turn 13 the next day, there is a defence mechanism.

[10:00]

Or they look older or there is this defence mechanism put in there. I just feel completely uncomfortable with it. I am fully supportive of the legislation and this is purely from my own point of view, from my children, my stepchildren and, of course, my nieces and nephews. I look at it from that point of view where I cannot believe that we ... I do not think the argument is strong enough for having that defence mechanism in for 13 to 15 year-olds. That is my own view. So finally on my last point, I am just trying to cover everything in the in principle debate, my last concern is of course I think doing a great deal of research around sexual offences, around complainants and defendants and the way that justice is pursued in these particular cases, there was one particular question I remember asking in the Scrutiny hearing with the Minister in terms of what is the victim's view of justice? I think that is another conversation; that is a bigger conversation because unless you have been a victim yourself you know how intimidating a court process may be and this is a conversation that is being had around the world about how we deal with sexual offences and whether the court process is the appropriate way forward. I just want to say that because I think it needs to be at the top of people's minds when we are talking about sexual abuse, sexual offences because, at the end of the day, these people have to go through horrid events in the first place to get to the point of going to court and then having to relive the tales of what has happened. I could not imagine being in their place and what that must feel like. I just want to raise those particular points and I thank the Minister and all other Members involved on behalf of Scrutiny, and myself. I look forward to hearing other Members' comments on the Sexual Offences (Jersey) Law.

1.1.2 Connétable D.W. Mezbourian of St. Lawrence:

Having seconded the principles I am pleased to rise to wholeheartedly support this law which has been a long time coming. I am sure everybody agrees that we need a sexual offences law that is modern and sends out a very positive message to victims of any gender. I think I will wait until [Interruption] ...

Connétable S.A. Le Sueur-Rennard of St. Saviour:

Could I make a suggestion? We have in our mix a gentleman who looks after all the parish timepieces, why do we not send Deputy Kevin Lewis up and see if he can help?

Senator P.F.C. Ozouf:

There is saying that in Las Vegas they do not want you to know what time of day it is and maybe there is a subliminal message that somebody is saying.

The Greffier of the States (in the Chair):

You may be close to the mark there, Senator. I am not sure Deputy Lewis is volunteering to clamber up there at the moment. The clock is broken. I think that looks about right, thank you.

The Connétable of St. Lawrence:

The point I was making earlier was that we need a sexual offences law that is modern and sends out a very positive message to victims of any gender. We need a law that will comply with international conventions so that we can stand proud with other jurisdictions, but we also need a law that recognises Jersey as the jurisdiction that puts victims at the heart of our justice system and is not afraid to tackle different issues. I briefly refer to the principles in part 1: “This law defines consent and free agreement” and clearly sets out where free agreement is absent and addresses the difference between consent and submission. In parts 2 and 3, the law also sets out that agreement by a child is not free agreement. The law is a key part in protecting our children and young people from sexual exploitation and I am sure all here today will agree that there is no defence for sexual acts with a child. I am also pleased that we address within this law the abuse of positions of trust. That can be found in part 6 and, of course, many of our children of all ages attend clubs, be they sporting clubs or youth clubs and they are coached either in groups or singly. As the Minister has said it is important to ensure that children aged 16 and over, as well as our younger ones, are still protected. Both the parents and, more importantly, the children themselves have a right to expect to be safe and that the person in authority over our children is both trustworthy and knowledgeable. The Deputy of St. John mentioned the act of female genital mutilation. That is something that to me is incomprehensible and I fail to see any justification for it. I therefore support wholeheartedly the message that we are sending out in part 8, that this Island will not tolerate this practice. I do not want to say to much more on the principles other than, as we know, this law has been a long time in coming but when it is enacted we will know that it will provide protection to individuals of all genders, but most particularly it will provide protection to children in Jersey from abuse and exploitation. That is what we are here for, which is to protect our children from abuse and exploitation. I am pleased to commend the principles of the draft law to the Assembly.

1.1.3 Deputy M.R. Higgins of St. Helier:

I will say first of all that I welcome the law and the vast majority of the provisions in it. As we come on to the Articles I will be paying particular attention to removing the right to a jury trial, which does concern me because I think it is a major issue. But so far as the law itself is concerned, I welcome it, it is long overdue and there are some very good provisions in it, but I will have to be convinced of the amendment that the Scrutiny Panel come forward with and that the Minister has accepted it, I believe.

The Greffier of the States (in the Chair):

Does any other Member wish to speak on the principles? Deputy Tadier.

1.1.4 Deputy M. Tadier of St. Brelade:

I would like to focus on the F.G.M. part of this as well. Like the Constable of St. Lawrence who spoke in her capacity as Assistant Minister, I think it is completely an alien concept and also a heinous concept that this can go on at all. What I understand from having listened to discussions on the radio in the U.K. and also dramatizations of young women who have been through that process, the first point to say is that as far as I understand F.G.M. in the U.K., while being illegal, there has not been any convictions for F.G.M. even though it is a very big country. Perhaps that can be confirmed. But certainly on the research I have just done says that there has not. If that is old information there are

very real difficulties around that issue. I think it is absolutely right that we do an up to date law in this regard. I would hope that in Jersey we do not ever get any convictions because it does not occur at all in the Island. But if there are instances of it we need to make sure that it is does get dealt with. What I am not sure about is how we deal with the wider principle of why it happens at all in the first place. It is quite apparent that this gets passed down, obviously in certain religious circles. Why are there people teaching that it is okay to do that? The other tragedy is that it gets passed down from mother to mother. You will hear from the personal experiences of people who have been through it that they are taken to the doctor at the command, if you like, of their particular religious order and that it is normalised and they suffer obviously physically, and sometimes it is very physical, but it is also psychological and emotional. Those are the issues that we need to look at. On that basis, having looked at Article 31 and the Articles that deal with it, the list of professionals who are asked to report if they come across it, I am surprised that there has not been included on that list a responsibility for religious clerics in that regard. It says professionals and it lists them as teachers, doctors, nurses, *et cetera*, have a responsibility if they become aware of or hear of it happening, have evidence of it, that they need to report it to the authorities, but it seems to me that it is inherently incumbent on people in the religious community, whatever those denominations and religions are, because they are probably the ones that might come across it. It is reasonable to assume - and let us not beat around the bush here - that F.G.M. is linked to a certain brand of religion. It is not necessarily linked to the overall religion but the sub-denominations of that religion and to the people who are most likely to know about it are the people who adhere to that particular brand of religion and their leaders in any given community. I think it is important both that within the law and within the wider strategy - and perhaps the Minister can talk to this when she sums up - I know there is an ability to add people to the list but why they have not been put on the list in the first place as far as I can see. Also what the wider strategy is for engaging with the community in which female genital mutilation is most likely to happen to make sure that the risk is diminished and eradicated, because it cannot just be from a legislative point of view. This, if you like, is to deal with the consequences of something when it has happened but is there going to be a proactive strategy to make sure that this practice, if it does occur in Jersey, is eradicated and if it does not occur yet that it never does come to our Island.

The Greffier of the States (in the Chair):

Does any other Member wish to speak on the principles? Senator Ferguson.

1.1.5 Senator S.C. Ferguson:

I would just follow up the comments made by Deputy Tadier. Some years ago I was on the board of a charity which operated in Africa, particularly in Kenya, and one of the things that bothered them was the incidence of F.G.M. In their investigation they discovered it was the only source income for the old lady who was performing the operation. Therefore, they had to think of some way of giving her an income, giving her a responsibility and therefore diverting her attention from F.G.M. They were extremely imaginative. What they did was convert the old ladies, changed their profession to being health visitors. They gave them a bicycle, a white coat and a schedule of places to go and look at the health of villages and give them some pills, these sort of things and they found the incidence of F.G.M. fell considerably. This is possibly something that overseas aid might like to look at, or the Commonwealth Women's Association.

[10:15]

Basically, it is not entirely a religious thing, there is, as I say, this business where it is the only source of income an old lady has and therefore how do you change the emphasis of her income source to prevent such an unpleasant operation that effectively gives women a disability for life. I do not know whether anyone has read Ayaan Hirsi's books. She is a Somali who is now in America and she is

quite straightforward about the effects of F.G.M. I just suggest that the problem is wider than just a religious one.

The Greffier of the States (in the Chair):

Does any other Member wish to speak on the principles? Deputy Labey.

1.1.6 Deputy R. Labey of St. Helier:

Leading on from what the Deputy of St. John was saying, I am interested to know if with the vigilante paedophile trapper, does an arrangement exist between the States of Jersey Police and this lady and what is that arrangement? One is bound to ask if what this vigilante is doing is acceptable to the courts and in law, I think the community would say she is providing a service, it begs the question why are the States of Jersey Police not doing it themselves? This may be a question for the Attorney General but is there is something in law which prevents the police from engaging in the kind of entrapment that the vigilante is doing but that once that is done by the vigilante they can take it on and it goes through the courts. My concern is if thought has been given to the safety of this woman, because what if something goes wrong. She poses as a male paedophile online in social media meeting sites, dating sites, and she grooms the victim as a paedophile would. I have read some of the transcripts and they make ... I am sorry, the other way around. She is being the groomed underaged child - of course, absolutely right - and the transcripts make horrific reading when they are published in the *Jersey Evening Post*, they really do. What if somebody cottons on? What if when she goes to meet and take pictures of the person who is coming to the meeting, rendezvous ... the hearsay that I picked up over this whole issue is that she has to do this because the police will not. I would just like to know if that is true and why, legally?

The Greffier of the States (in the Chair):

Does any other Member wish to speak on the principles? The Constable of St. Brelade.

1.1.7 Connétable S.W. Pallett of St. Brelade:

I am only going to speak once in this debate and I will probably do it now. I know it is specific to Article 18 and abuse of trust but it is only right that I do say something. Article 18 does deal with abuse of trust and specifically with children aged 16 to 17. I think we will all be fairly aware of some pretty high profile cases both in the U.K. and U.S.A. (United States of America) regarding sports coaches. The case in the U.S.A. with the gymnastic coach was quite horrific. Watching testimony of young women involved and what happened to them and the suicide attempts, guilt, psychological damage caused, anybody watching that I think would be nothing short of heartbroken. The judge, when sentencing, said that he had just signed this particular person's death warrant and in many ways should have done. The football coach in the U.K. again dating back to the 80s and 90s, I think that case was also harrowing, so clearly we do need laws that protect young people and we do need laws that protect children between the ages of 16 and 17. What I would say, though, is that all those involved in sport need to understand what this new law is setting out to achieve and the parameters they must operate within. As I say, these profile cases I mentioned were clearly black and white, clearly unlawful but it should be noted that coaches within many sports are getting younger or maybe I am just getting older. I know that I have been privileged to see coaches in their teenage years in Jersey providing excellent support to athletes of all ages. These coaches will need to be supported and guided through the potential risks if they are not to fall foul of Article 18 in particular. A change in the law that I agree is absolutely needed. An 18 year-old football coach, for example, could be coaching a 16 to 17 year-old girls' football team. There is absolutely nothing wrong with that and it is fantastic that we have got young people prepared to give their time up supporting people in sport. Clearly there is going to be virtually no age difference between the coach and the players and it would not be difficult to understand if there were attractions between boys and girls of a similar age, but under this law any act that was sexual between an 18 year-old coach and 17 year-old player would

be an offence. Absolutely right, I have absolutely no issue with that but it would be vital that those in coaching positions fully understand what a position of trust requires and means. There cannot be grey areas and those within the authority, within each sport, have a responsibility to ensure that all their coaches are properly guided and supported. Clearly any relationship of a sexual nature between a coach and an athlete aged between 16 and 17 needs to be avoided for the best interests of sport and to ensure children are properly safeguarded, but it is right that I highlight that age differences between coaches and athletes may be very small and not as seen in these recent high profile cases. Coaches of all ages, whether they are 18 to 80 need to be made fully aware of what is acceptable when coaching children of any age in regards to hands-on coaching if we are to retain many of the army of volunteers involved in sport in Jersey. What we should try to avoid are laws designed to protect children and creating a climate of fear for coaches here in Jersey. Coaches here, nationally and internationally, are conscious of the risk of touching a young person in any way and are becoming more worried and fearful that their actions could lead to repercussions. We certainly need, I think, to avoid at all costs in an Island that is so proud of its volunteer community, putting off those that want to give something back to the community and specifically, in this case, sport. I do worry within sport that showing what body position is correct, be it in cricket, football, swimming, or helping a child in danger could be construed as a sexual act that could be covered under Article 18. I believe it would be a backward step in sport if all hands-on coaching was deemed to be too risky and became a thing of the past. I know from my own point of view some of the support I was given and some of the guidance I was given was hands-on and totally appropriate. It would be wrong if we were to lose that. There have been cases in the U.K. where coaches have been prosecuted for innocent acts of support but we in sport need to accept that the recent dreadful cases must not happen again. I fully support the law but merely ask that authorities are sensible when considering complaints and there will be a need to support and guide especially our younger coaches who are doing a fantastic job in keeping this Island fit and active.

1.1.8 Deputy S.M. Wickenden of St. Helier:

I applaud this law coming before us. It is about time. This is all about defining consent which I think is absolutely needed. We quite honestly have been failing in this area for far too long. We have been failing young people, and young women especially, in this Island by not having these things properly defined. I will go more into that in one of the amendments later on. What I was going to ask the Minister is where it defines coaching, is that just on a sports basis or would that also cover things like music and curriculum tutoring where young children can be in isolation with a person of trust as well. That is, I guess, the question I want to be answered in summing up, please.

1.1.9 Deputy K.C. Lewis of St. Saviour:

I just wish to speak briefly on the delicate subject of F.G.M. I do not know if any instances in Jersey where this has occurred but I know it is a religious/cultural thing. It has happened quite a few times in the United Kingdom and this procedure, for want of a better word, is done without anaesthetic with unsterilized equipment and when it does come to light it is usually because the child is taken to hospital with acute blood poisoning, which in itself can be life threatening. It is a horrible thing. I know we do not have anything in Jersey like at that the moment but it definitely needs to be on the books to ensure that it does not.

The Greffier of the States (in the Chair):

Does any other Member wish to speak on the principles? Deputy Maçon.

1.1.10 Deputy J.M. Maçon of St. Saviour:

Our lead Member has already spoken to much of this so I do not want to repeat what she said except to endorse her comments about our scrutiny officer who has worked incredibly hard for us over the past couple of months with all the projects that we have been dealing with and also to thank the

Minister and her team for the support that they have given to the Scrutiny Panel and helping us with our work. While a big significant section on this law does cover the matter of consent, I hope the Minister, when summing up, will also explain how simply the law itself is not enough and there is still a lot of work that needs to be done in the promotion and understanding of consent, especially how going forward within education I would hope that we would hear, particularly with our young boys, how important it is to teach them what is and is not appropriate and that type of behaviour. I would not want to give Members the understanding that while this law, of course, is a significant improvement that this in and of itself is not going to tackle the issues it is looking to do and there is still a significant role for education going forward. I hope the Minister does agree with that. Thank you.

1.1.11 The Very Reverend M.R. Keirle, B.A., Dean of Jersey:

I just want to make a very simple point really. While I thoroughly agree that much of F.G.M. happens within religious communities I think we must be very alert that it is not just there where it happens, this is a religious/traditional/cultural issue and we must be very careful where we look. I am also deeply concerned about several comments I have heard: “We do not have this in Jersey.” The fact of the matter is that my experience of living in Africa is that F.G.M. happens behind closed doors, secret and hidden in communities. The fact of the matter is we have absolutely no idea whether this is happening in Jersey or not. Part of this legislation is that it is important that we are raising awareness of it.

The Greffier of the States (in the Chair):

Does any other Member wish to speak on the principles? Deputy Brée.

1.1.12 Deputy S.M. Brée of St. Clement:

It is really following on from the very important and interesting point that the Connétable of St. Brelade raised. While no one wants to see any kind of abuse of trust of any child by any person who is in a position of trust, it does raise a slight question in my mind of the definitions used within Article 18 and then the definition used in Article 19 of who is in a position of trust. I just use a scenario, you have obviously a lot of, say, 18 year-olds, 19 year-olds who want to go into coaching a sport particularly. We will use the example the Connétable used. You have a 19 year-old young man coaching football to a team of girls aged between, say, 15 and 17 - I am using the analogy if I may. We live in a very small Island. That coach aged 19 then happens to meet the 17 year-old who is above the age of sexual consent while they are out on an evening out. They then form a relationship. Perfectly properly there is nothing wrong with that. However, the parents of the 17 year-old girl do not like her chosen boyfriend.

[10:30]

Is it possible then that those parents could use this particular Article to attempt to bring a conviction against the 19 year-old because he happens to be the coach of the football team that their daughter belongs to? That will cause a problem because we do live in a small Island. Being a father myself and knowing my 19 year-old son, when he was 19, he was out a lot, meeting a lot of people and formed relationships. I am just a bit concerned because we are saying, as an interpretation in this law, that a child is aged 16 or 17, i.e. above effectively the age of sexual consent, whether or not we are creating a possible problem here with this particular scenario. I would hope that the Minister could allay any fears that I may have on that.

The Greffier of the States (in the Chair):

Does any other Member wish to speak on the principles? If not, I call on the Minister.

1.1.13 The Deputy of St. Peter:

I thank all of those Members who have taken the opportunity to speak so far in the debate. I am most grateful. Some Members have strayed somewhat into discussion of specific Articles and I do not know whether the Assembly would prefer to take those issues now or later as appropriate. I would also be willing, if the Assembly were so minded, to take some of the Articles separately if Members would prefer, but we will come on to that in good time. Sexual images were raised firstly by the lead of the Scrutiny Panel. I think this is an area where there is currently a great deal of change. We do, as the Deputy rightly pointed out, have some facilitation in the Telecommunications law and this is a point that is being closely followed, I think, and perhaps a matter for a future Assembly if there was a desire to look at this again and respond to any of the experiences that members of the public have had to date in dealing with this aspect. The Deputy went on to discuss the issue of grooming and some of the actions that have been taken by a member of the public. I think that was perhaps more a matter for the Attorney General. The Deputy raised the point of entrapment or perhaps that was raised by another Member at a later point and there is a specific issue there with the police obviously not being able to undertake entrapment. I wonder whether the Attorney General would like to give more advice to the Assembly on that point?

1.1.14 Mr. R.J. MacRae, H.M. Attorney General:

I am grateful. The position of entrapment is a difficult one and the courts have traditionally drawn a distinction between members of the police and the members of the public and the courts have discouraged the police from encouraging people to commit an offence that they would not otherwise have committed. To give an example which is divorced from the facts that were mentioned earlier on there will be no difficulty in prosecuting someone who offered a plain clothes police officer a drug in a nightclub, but in circumstances where a police officer undercover badgered a member of the public to supply them with a pill in a nightclub, which they would not have otherwise have done, then the courts might have difficulty with that approach. I hope that gives a distinction between entrapment in the sense of encouraging someone to commit an offence they would not have otherwise committed and simply a more innocent involvement by law enforcement in such cases. I do not think I want to go into the facts of this particular case for obvious reasons but I hope that answers the question the Deputy asked.

The Deputy of St. Peter:

Thank you to the Attorney General. I was also going to thank the Dean for his intervention and comments in relation to F.G.M. I think that was very helpful. I would like to confirm that I am aware of some cases in relation to F.G.M. that are underway and have been undertaken in the United Kingdom. Also to confirm to Deputy Tadier that carrying out the surgical operation of female genital mutilation is an offence under this law, I would just like to make that absolutely clear. Members also raised the issue of coaches and the abuse of trust provisions. I would at this point like to make clear that someone who is engaging with a young person for the purpose of education training would also be covered under the abuse of trust provisions. It is a more sensitive point and I do take the comments very seriously that were raised, particularly by the Constable of St. Brelade in relation to current and recent high profile cases. Of course one would never wish anybody to be put off giving of their time and helping and assisting with sporting endeavours of young people and we are very grateful to those members of our community who commit an incredible amount of time, effort, energy and enthusiasm into this very valuable part of our community. However, there is always a fine line to be adopted between ensuring that somebody is able to go about their life with the very best of intentions and safeguarding for those times when somebody does take an opportunity to abuse that position of trust. I hope that Members, when we come to debating that point of the law, will be able to support the measures here that allow for somebody who does abuse that position of trust. Deputy Maçon also raised education regarding consent. Consent is a very important part of this law and makes it, for the very first time, clear that the sexual relations between adults consent is absolutely vital. It outlines

some of the factors that may, in the past, have been considered to remove consent from that decision. There has been today a great deal of education, particularly from Prison Me! No Way! and Members might recall some of the liveried police vans that have been around the Island with the ‘Ask. Listen. Respect.’ campaign that was promoted, particularly with the help of the Jersey Rugby Club, for which we were very grateful. That education programme will and must continue because it is a vital part of education, particularly in social and moral education. The draft law treads a delicate balance between public protection and individual liberty. I think our discussions have already raised some of those issues and we must, as an Assembly, respect the wishes and feelings of the survivors of sexual violence. That is one of the main principles that I hope Members will keep at the forefront as we continue with our deliberations. At this point I would move the principles.

Deputy R. Labey:

The Minister got in very quickly there after the Attorney General and I wonder if we could have the opportunity to question the Attorney General on the answer he gave.

The Greffier of the States (in the Chair):

Yes.

Deputy R. Labey:

Thank you. That was understood by the Attorney but if the courts do not look kindly upon police officers entering into entrapment to secure a conviction, how is it okay for a member of the public to do so? If this is a regular occurrence and the police might be said to have an arrangement with this person, this person is almost vicariously an agent of theirs, who is liable if she gets hurt, attacked, in the course of her duties?

The Attorney General:

I am sorry, I really do not think I can talk about a specific case, and even if I could I would not know enough about the specific details of this case in order to do so. It would not be right to talk about a specific case. In terms of a member of the public whose actions resulted in someone committing an offence they would not have otherwise have committed then again it is a matter for the court’s discretion about the evidence that was produced as a consequence of the actions of that individual. But I do not think I can go further than that in relation to a specific case.

The Greffier of the States (in the Chair):

Did I hear the appel called for, Minister?

The Deputy of St. Peter:

You did not but I would call for the appel, please.

The Greffier of the States (in the Chair):

Excellent, the appel has been called for. I ask Members to return to their seats. The vote is on the draft Sexual Offences (Jersey) Law, the principles of the law, and I ask the Greffier to open the voting.

POUR: 37		CONTRE: 0		ABSTAIN: 0
Senator P.F. Routier				
Senator A.J.H. Maclean				
Senator I.J. Gorst				
Senator P.M. Bailhache				
Senator A.K.F. Green				
Connétable of St. Helier				
Connétable of St. Peter				

Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				
Deputy S.Y. Mézec (H)				
Deputy A.D. Lewis (H)				
Deputy of St. Ouen				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

The Greffier of the States (in the Chair):

Now, it is possible for the Scrutiny Panel at this point to call it in. Deputy Maçon?

Deputy J.M. Maçon:

No, thank you.

The Greffier of the States (in the Chair):

So we now move to the Articles. There were 3 amendments lodged. Deputy Vallois has told us that one has been withdrawn and I think the first amendment, I understand that has been accepted and will be read with the first Article, am I right in thinking that? So it will not be separately debated?

The Deputy of St. Peter:

If the Assembly is content for me to take that as read we can do so.

The Greffier of the States (in the Chair):

So we start with Article 1 and I invite the Minister to decide how to proceed. Article 1, Minister.

1.2 The Deputy of St. Peter:

Thank you, yes, I was going to start with Articles 1 to 4. Part 1 deals with preliminary matters and effectively sets the scene making the required provisions through the remaining parts of the Articles

to have proper effect. I am going to explain some of the provisions in more detail than in later Articles but the terminology is to set the context for the remaining of the draft law. So we start with Article 1, which is an interpretation provision, as Members would expect, it defines the words and expressions used in the law. Important terms are defined such as an adult is defined as a person aged 18 or older, a child is defined as a person aged 17 or younger, an act is considered sexual if a reasonable person would, to all of the circumstances in the case, consider it to be sexual. Touching includes acts treated as touching but also the acts of ejaculating semen, emitting urine or saliva on to another person and the definition of touching is deliberately not exhaustive but, as the Assembly has noted, we accept the amendment of the Scrutiny Panel in relation to this Article. Article 2 raises the issue of consent and makes special provision for the interpretation of consent. In this draft law this is defined as free agreement. The law does not prescribe how a person may express free agreement, however the draft law sets out a list of cases which agreement cannot be treated as free. This includes cases where there is violence or the threat of violence is used to coerce a person to engage in a sexual act; or a person is unlawfully detained; a person is deceived as to the nature or purpose of the act; a person impersonates someone else; consent is also absent if the person is asleep, unconscious, rendered incapable of consenting by alcohol or by any other substance. This applies both at the time when consent is given and at the time of the act for which the consent is given. So if a person gives consent while awake, conscious and capable for an act to take place, once that person has become asleep, unconscious or incapable that will not count as consent to the act for these purposes. If consent is given it can be taken back at any time before the act, if that act then takes place it does so without consent. Consent can be withdrawn at any time during the act, if that happens and the act then takes place, it does so without consent. The rule on alcohol applies whether or not the person has voluntarily consumed alcohol or any other stupefying substance. The absence of consent is often a key element in sexual offences such as rape and sexual assault. This definition makes it much clearer what the jury or the Jurats will need to determine in these situations, based on the evidence as to whether there was free agreement to the sexual acts in question. Our definition of consent has been informed by experience elsewhere, particularly the English and Scottish laws and by recommendation by Dame Elish Angiolini in a recent 2015 report.

[10:45]

We move then to Article 3, which is defences and reasonable belief of consent, age or absence of exploitation. A number of the offences in the draft law make it an ingredient of an offence the defendant should lack a reasonable belief in the complainant's consent to a sexual act. In some other cases, including for the offences in part 4 of the draft law concerning older children, it is a defence to an offence if the defendant reasonably believes that a child is aged 16 or over. The purpose of this provision is to make clear where the evidential burden of proof of defence rests. Questions around consent will be determined according to all of the circumstances, including whether any steps were taken by the defendant to ascertain whether the other person consents and what those steps were. Similarly, questions around whether there was reasonable knowledge of the victims age will be determined according to whether the defendant has taken any steps to ascertain their age and what those steps were. Questions around whether a person is being exploited in relation to performance of a prostitution service will be treated in the same way. This provision makes it clear that where a defendant wishes to rely on a defence he or she need only raise sufficient evidence that there is a factual basis for the defence. The burden of proving that the defence does not apply beyond a reasonable doubt then rests with the prosecution, along with proving the ingredients of the offence, which include the act and intention. Then Article 4 deals with accessories and children. This Article ensures that a child aged 15 or younger cannot be criminalised for being forced to carry out act encouraged by an adult. It also ensures that a person, such as a doctor, prescribing contraception is not guilty of an offence of aiding, abetting or counselling the commission of a sexual offence by someone else against a child when the person is acting to protect the child's sexual health or physical

safety, prevent a pregnancy or give advice about emotional well-being. It would, of course, be an offence if such a person were acting for the purpose of sexual gratification or to cause humiliation, distress or alarm. I move Articles 1 to 4.

The Greffier of the States (in the Chair):

Are those Articles seconded? **[Seconded]** Does any Member wish to speak on Articles 1 or 4? Those Members in favour of Articles 1 to 4, kindly show? Those against? They are adopted. Minister.

1.3 The Deputy of St. Peter:

I will now move on to Articles 5 to 17, if I may, although the question was raised in relation to Articles 11 and 12 about the defence relating to age. If Members would like me to take those separately we can perhaps then deal with Articles 5 to 10 next. So this is part 2 of the draft law. In each of these the offence is only committed if the other person does not consent to the act concerned and the defendant does not reasonably believe that the other person does consent. I have already explained in detail the meaning of consent and reasonable belief so I do not propose to repeat those definitions. Behaviour that falls within the scope of the offences in part 2 would currently be covered by a range of customary law offences where the maximum penalty is at large. As statutory offences, there is now a maximum penalty for each offence. Article 5 replaces the customary law of rape with a statutory offence that covers a broader range of behaviour. It carries a maximum sentence of imprisonment for life and unlimited fines or both. Article 6 creates an offence of sexual penetration without consent, similar to rape but limited to anal or vaginal penetration and that may be committed where the penetration is with a part of the body or an object. It carries a maximum sentence of imprisonment for life, an unlimited fine or both. Article 7 creates an offence of sexual touching without consent. This carries a maximum sentence of imprisonment for 10 years, a fine or both. Article 8 creates an offence of causing someone to engage in a sexual act without consent. This carries a maximum sentence of imprisonment for life or for 10 years depending on the circumstances. We move now to part 3, Articles 9 and 10. This part makes special provision for children aged 12 and under. Consent is irrelevant to the offence and reasonable belief in the age of the child is also not relevant. Article 9 creates offences of penile penetration and other sexual penetration punishable by imprisonment for life. A lesser offence of sexual touching carries a maximum sentence of 14 years. Article 10 creates the offences of causing or inciting a sexual act with a young child. Again, there is a maximum penalty of 14 years. The maximum term of imprisonment is life if the offence involves penetrative acts. I move Articles 5 to 10.

The Greffier of the States (in the Chair):

Are those Articles seconded? **[Seconded]** Does any Member wish to speak on Articles 5 to 10? Those Members in favour of Articles 5 to 10, kindly show? Those against? Those Articles are adopted. Minister.

1.4 The Deputy of St. Peter:

Now we will deal with Articles 11 and 12 separately. This is part 4 and this part deals with offences committed by adult against older children. Again, the child's consent is irrelevant to guilt but in each Article there is a defence of reasonable belief that the child is over the age of consent, for example, aged 16 or over. Article 11 creates the offence of unlawful sexual intercourse with sexual penetration of or sexual touching of an older child. Article 12 creates the offences of causing or inciting a sexual activity with an older child. In this part there is a maximum sentence of 10 years and I move the Articles.

The Greffier of the States (in the Chair):

Are these Articles seconded? **[Seconded]** Does any Member wish to speak on Articles 11 and 12? The Deputy of St. John.

1.4.1 The Deputy of St. John:

Just briefly, just because I mentioned in this in the principles, I do not think it is as simple as being able to vote against the particular Articles because I think it is still an offence against 13 to 15 year-olds. By merely taking the defence out of it, which would be, for example, Article 11, paragraph 4, I did mention the fact that of course you have that ability, say, for about 15 year-olds who may look 16 and older. What I was questioning was the 13, 14 year-old side of things. That is what I am uncomfortable with. I will not be voting against these Articles but I think there should be serious consideration in the future for, I believe, possibly moving that up to 14 and then for the 15 to have the defence. Thank you.

The Greffier of the States (in the Chair):

Does any other Member wish to speak on the Articles? Deputy Hilton.

1.4.2 Deputy J.A. Hilton of St. Helier:

I may have misunderstood so I would like the Minister to explain why an adult who commits an offence against a person aged 13, 14 or 15 and an adult is somebody aged over 18, so it could be an adult of 60 having sexual intercourse with a 13 year-old which may be consensual or may not be, why the imprisonment term is only 10 years when we have just agreed that under Article 5, if a person is found guilty of an offence is liable to imprisonment for life? Could the Minister please explain the difference in the sentencing?

The Greffier of the States (in the Chair):

Does any other Member wish to speak? Minister.

1.4.3 The Deputy of St. Peter:

I thank the Deputies for their questions and the points made. In answer to the Deputy of St. John, it is a sensitive and difficult area and that is why there is a defence and it would be, I think, for the court to give consideration at the time to the various issues around this because, of course, as Deputy Hilton rightly alluded, some of these offences may be conducted by an older person with a proximity of age and also there are issues where it is difficult to determine somebody's age at first glance and, of course, a person may not always say they are the age that they actually are and that is why there is that issue of defence. Deputy Hilton raises a very interesting point in relation to the sentencing. It is something I have to admit I have pondered on myself. There is, I believe, a good reason for that and that is in relation to the proximity of age. The Attorney General may be able to give further clarity on that.

1.4.4 The Attorney General:

To assist Deputy Hilton, if the offence is rape of a person, including a child, the maximum is life imprisonment and if it is what used to be called unlawful sexual intercourse of a child under 13, under Article 9 it is life imprisonment. As she currently says, if it is unlawful sexual intercourse by which we mean because in law the child cannot consent but it is not against the child's will, in the sense of rape, then the maximum is 10 years. The current maximum under the existing law is 5 years, so it has been doubled to 10 years, which was thought to be appropriate. But, of course, that is a matter which will be kept under review if in a particular case we find that not to be the appropriate maximum sentence.

Deputy J.A. Hilton:

I just wanted to make a comment on that, because when grooming happens and you have a much older adult grooming a child of 13, it seems to me - and there may be numerous offences of grooming of a young child - that an imprisonment term of 10 years is wholly inadequate and I think this is

something that maybe should be looked at again. It certainly concerns me, I do not know if it concerns other Members. I really do think that 10 years is not an adequate sentence, especially when there is multiple offences against a child.

The Attorney General:

Of course, if there is a series of offences the court is entitled to impose consecutive sentences. So the maximum could exceed 10 years in those circumstances. But for an individual offence the sentence could not exceed 10 years' imprisonment.

The Deputy of St. Peter:

I hope that clarifies the position and I move Articles 11 and 12.

The Greffier of the States (in the Chair):

Those Members in favour of Articles 11 and 12, kindly show? Those against? The Articles are adopted.

1.5 The Deputy of St. Peter:

Shall we now move Articles 13 to 17. Article 13 creates an offence of an unlawful sexual act between children. The approach adopted deals with the difficult issue of children under the age of sexual consent having consensual sex with each other, as well as children at very similar ages. The difficulty arises because this offence must necessarily cover consensual relations between teenagers where it may not be in the public interest to prosecute, but also these instances where children closer to the age of 18 have sexual relations with children who are aged 13 or 14. Perhaps in exploitative circumstances, which should be addressed through the criminal justice system, it is clear that the latter requires sufficient statutory regulation to prevent sexual exploitation of children but needs to be framed and penalised in such a way as so not to deter children from seeking guidance about sexual health and relationships. The reasonable belief in age defence applies. The offence carries a maximum sentence of imprisonment for 5 years. Article 14 makes it an offence for an adult to cause a child, aged 15 or younger, to watch a sexual act or be present during a sexual act. Article 15 creates 2 separate offences with respect to the grooming of a child aged 15 or younger. There is a defence in respect of both offences if the child was 13, 14 or 15 where the adult reasonably believed that the child was aged 16 or older. The offence in Article 15(1) is cancelled where an adult communicates with a child and then intentionally meets or travels to meet the child with the intention of engaging in unlawful sexual conduct with the child. The maximum penalty for this offence is 10 years imprisonment. The offence of Article 15(5) does not require travel to take place to meet with the child, it is committed if an adult communicates for sexual gratification with a child aged 15 or younger. This communication can occur anywhere in the world. The communication itself has to be sexual or encouraging the child to make sexual communication. The maximum penalty for this offence is 5 years' imprisonment. Article 16 creates an offence for a person of any age to pay for the performance of a sexual service by a child under the age of 18. There is a defence if the child was aged 15, 16 or 17 where the adult reasonably believed that the child was 18 or over. The maximum there is 14 years' imprisonment. In Article 17, it creates an offence for a person to cause, incite, control, arrange or facilitate child prostitution anywhere in the world. I move Articles 13 to 17.

[11:00]

The Greffier of the States (in the Chair):

Are Articles 13 to 17 seconded? [**Seconded**]

Deputy R.J. Rondel of St. Helier:

Could I ask for the appeal on this one?

The Greffier of the States (in the Chair):

Your request is noted when we get to it. Does any Member wish to speak on Articles 13 to 17? Deputy Brée.

1.5.1 Deputy S.M. Brée:

I just seek a point of clarity on Article 13, and perhaps it is my misreading of it. Article 13(1)(c) talks about if the other person is aged 15 or younger and yet Article 13(3) says: "It is a defence for the defendant to show that the other person was aged 13 or older." I am just slightly confused. There seems to be a disparity between ages there, or am I misreading it?

1.5.2 The Deputy of St. John:

Could I possibly ask the Attorney General just to clarify Article 15 for me, please? The sexual grooming of a child. I just want it absolutely clear in my mind with regards to this particular Article, as to whether it creates an offence for people such as the lady I was mentioning earlier who was called a vigilante for media purposes but I would just like absolute clarity from the Attorney General and that this Article does not create an offence for the role in which she plays in the community. In the Scrutiny Panel's comments we did ask a particular question, which is also Article 15, it refers to paragraph 3(f), which is on page 38. It refers to an offence under Article 11(14), breach of child protection laws or interim child protection laws or proscribed order of the Sex Offenders (Jersey) Law 2010. The question that was asked, of course, was surely if someone on a sex offenders' register has broken their order the offence should be considered more severely than that of a first time, should they have a defence? The answer we received was in other jurisdictions a defence is available and we have taken a similar approach. In sentencing the judge will take into account all the relevant circumstances. I would just like to identify from the Attorney General, just to understand, relevant circumstances in that particular context.

1.5.3 The Attorney General:

In relation to Article 15, the first half of Article 15 covers the circumstance where an adult intentionally meets the child or the other person and the part that is new is Article 10(5) which criminalises conduct where there is no meeting, there is grooming, as it were, over the internet. So in relation to the role of the vigilante or agent provocateur, I really cannot comment on an individual case. It would be quite wrong for me to do so and attorneys never do. All I can say is that for there to be a prosecution of such a person there would need to be good evidence that they aided and abetted the offence and, in addition to that, there would need to be a view that it was in the public interest to prosecute that person. It may be that it simply would not be in the public interest to do so. So I really cannot say more than that in relation to individuals involving themselves in that sort of action. In relation to sexual grooming of a child, the question asked by Scrutiny, which we see on their helpful comments for the purpose of the law: "If someone on the sex offenders' register has broken their order, should the offence be considered more severely than that of a first time?" Absolutely it should be. There are 2 recent cases before the Royal Court of defendants breaching orders made under the law and they were treated significantly more harshly than a first offender would have been.

1.5.4 Deputy J.A. Hilton:

I am really pleased to see included under Article 15 an adult commits an offence and is liable to imprisonment for a term of 10 years if that person travels with the intention of meeting the other person in any other part of the world. I am really pleased to see that included because Members will be well aware that there are, indeed, lots of adults who travel to places like Thailand and the Philippines to engage in sexual activity with very, very young children. I am really pleased to see that. One of the questions I have around that is has Jersey ever investigated any cases where that has happened and what was the outcome of that investigation. Also I wanted to ask a question about

Article 16, paying for sexual services by a child. A person commits an offence and is liable to imprisonment for 14 years but it does not stipulate that that act can take place anywhere in the world. I am looking for clarification that does include that offence taking place anywhere in the world. Thank you.

The Greffier of the States (in the Chair):

Does any other Member wish to speak on these Articles? Deputy Tadier.

1.5.5 Deputy M. Tadier:

It is just to seek clarification either from the Minister or the Attorney General about how different scenarios under 13 might act out, especially give the fact that the public interest has been mentioned. This is specifically unlawful sexual act between children. Can the Attorney General perhaps, in the first instance, talk about whether presumed consent between 2 children is a concept, given the fact that we know that there is not any legal consent for an adult who sleeps with somebody under 16? That is what one might call statutory rape, I do not know if we would call it that. But if there is a scenario, looking particularly at 13(3)(a) where it says a defence could be if the other person was aged 13 or older and the defendant reasonably believed that the other person was aged 16 or older, it seems to me that you could have, for example, a 12 year-old and a 14 year-old who engage in some kind of relationship, and let us say it was a 12 year-old boy and a 14 year-old girl who were engaged in a relationship, it could lead to a strange scenario whereby the 12 year-old, and let us presume there was some form of consent here, there was not any coercion, might say: "Well, I can prove that the person that I was engaging with was older" and it could lead to some bizarre scenarios. So what is envisaged as the problem and what people are trying to protect in those scenarios, given the fact that I am sure at school people do engage in relationships. Are people going to be criminalised or is the definition of unlawful sexual act something different?

1.5.6 The Attorney General:

I think I should deal with that question now because Deputy Tadier raises an important point about a difficult provision of the law which took a lot of time to draft to ensure that it was not unfair, and this is how it works. If you have Article 13 in front of you, which I am sure everybody has, it involves children - so a child, that is someone 17 years of age or younger, so let us think of a 16 year-old boy for these purposes - commits an offence and you would see how he would commit it. If the other person is aged 15 or younger, we do not have statutory rape but, as we know, children cannot consent to sex as a matter of law. Under 13(3), which I think answers the question that Deputy Brée asked earlier on, it is a defence for the defendant, that is the 16 year-old boy in my example, to show that the other person was aged 13 or older. That is to preserve the point which goes through the whole of the law that there is never any defence in relation to age in relation to a child under 13. So it is a defence for the defendant, the 16 year-old boy, to show that the other person, let us say a girl, was aged 13 or older and the defendant reasonably believed that the person was aged 16 years of age or older. So the 15 year-old boy in my example would be entitled to be acquitted if he could show there were reasonable grounds for him believing the girl to be 16 or older. That only applies, that defence, if she is in fact 13, 14 or 15. Going on to the second point that Deputy Tadier raised. Under the existing law, where of course we have indecent assault, which is preserved by this law, and of course unlawful sexual intercourse with a child under 16, prosecutions of children are few and far between, and they will remain few and far between because it is not often in the public interest to prosecute children in relation to consensual sexual activity, absent evidence of oppression or other behaviour which warrants the involvement of the criminal justice system, and that is an approach which I am sure will continue. I hope that provides him with some comfort as to how this provision will work in relation to acts between children.

Deputy M. Tadier:

I guess the scenario which is more commonplace is the one where, let us say, there are 2 15 year-olds who engage in a relationship and engage in the acts listed in 13(1)(a)(i) to (iv). Technically under the law they are committing an offence which both of them can be imprisoned for 5 years. I am just wondering if that Article could have been drafted in a different way because it does not distinguish between voluntary and involuntary. It just talks about whether somebody intentionally touches another person or engages in an act with another person but of course we know that there is a world of difference between 2 15 year-olds where there are these acts which are not wanted and not consensual for those purposes and where they are simply the natural consequence of a normal relationship, albeit between 2 people who are under 16. Albeit I know that in reality those circumstantial factors will and are taken into consideration both by in deciding whether there is a prosecution or a public interest test. But I think certainly the way the law is drafted it does not allow for any distinction between those 2 scenarios, both of which are fundamentally different.

The Greffier of the States (in the Chair):

Does any other Member wish to speak on these Articles? I call on the Minister.

1.5.7 The Deputy of St. Peter:

I particularly thank the Attorney General for his helpful responses. So he leaves me with very little to address. But I will firstly, perhaps, discuss the age of sexual activity that I think is what Deputy Tadier is raising, because the examples he has given are examples of people who are beneath the age of consent engaging in a relationship. There was consideration between myself and the Assistant Minister as to whether there should be a question taken out to consultation in relation to the age of consent, whether that should be lowered, but it was decided, after some careful consideration and consultation with different bodies, that it was not appropriate to do so. However, as the Attorney General has described, such a consensual situation would be dealt with in a sensitive fashion.

[11:15]

Deputy M. Tadier:

Would the Minister give way? Just for clarity, there is no suggestion that anyone should reduce the age of consent. That is not what I said obviously. But it is simply in regard to these considerations where young people are engaging in some kind of physical activity; just about how the consequences and the public interest test would be applied in those cases.

The Deputy of St. Peter:

I think it is an issue of the age of consent because if the act is between people who are below that age it is, in definition of the law, an illegal act because it falls under the age of consent. That is what our society deems to be the appropriate age and that is where it is defined. As I have said, and I think the Attorney General has also, these matters are dealt with in a sensitive fashion and it is appropriate. I will move on, if I may, to deal with Deputy Hilton's point about travel. I would not be aware of whether any cases of such travel, following the purpose of grooming, has been investigated locally but I am sure we can perhaps ask that question. But in relation to Article 16 and the question whether the clause being ... if somebody travelled somewhere else in the world and there performed an act against a minor that, I believe, would be a matter for the courts of the jurisdiction, where the act actually took part. It is the grooming in Article 15 that would be relevant, no matter where in the world that act took place. I hope that clarifies the points raised by Members. I thank them for their intervention and I move Articles 13 to 17.

The (in the Chair):

The appel was called for on Articles 13 to 17. I ask Members to return to their seats and I ask the Greffier to open the voting.

POUR: 43		CONTRE: 0		ABSTAIN: 0
Senator P.F. Routier				
Senator A.J.H. Maclean				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Connétable of Trinity				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				
Deputy S.Y. Mézec (H)				
Deputy A.D. Lewis (H)				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

1.6 The Deputy of St. Peter:

I thank Members. I would now like to take Articles 18 to 40 please. Part 6 outlines the circumstances in which an adult is considered to be in a position of trust in relation to a person aged 16 or 17, so that a sexual relationship between the adult and child will be criminalised. The list of defined relationships is, with some amendments, brought forward from the 2007 Law. A significant change is the addition of coach to this list of relationships. This has already been mentioned by Members.

This is intended to remedy the deficiency of the law highlighted by the exposure by the media of a number of high level coaches abusing their positions of trust. Offences in this part do not apply where the child is aged 15 or younger. This is because sexual acts carried out by an adult against a child aged 15 or younger will already be offences pursuant to parts 2, 3 or 4 of the draft law. Any abuse of trust would be considered to be an aggravating factor by the court, which would be taken into account when sentencing for offences under those parts. To be in the position of trust a number of conditions need to be satisfied. Article 8 creates an offence of abuse of a position of trust when an adult in relation to a child aged 16 or 17 and 4 defences: that the defendant reasonably believed that the victim was an adult; that the defendant did not know or suspect and could not reasonably be expected to know or suspect that there was a position of trust; that the defendant and the child were spouses or civil partners, that a lawful sexual relationship already existed before the position of trust came into being. Article 19 defines position of trust and the conditions that must be satisfied to prove that an adult is in such a position and also the premises where the activity takes place. These include that the adult looks after children in children's homes, nurseries, hospitals and schools. This includes a person who looks after a child on an individual basis and is engaged, paid or in a voluntary capacity in coaching, motivating or training a child for a sport, hobby, career or competitive event. Article 20 defines various terms. It also allows the States to amend the conditions under which an adult is in a position of trust by regulations. The maximum penalty is a custodial sentence of 5 years. In part 7, this relates to prostitution offences and this part provides for offences related to prostitution replacing some old legislation and adding new provisions. Prostitution itself is not illegal. Conduct connected to prostitution and exploitation of sex workers may constitute an offence under the draft law. In relation to causing and citing or controlling prostitution for gain the draft law introduces a new statutory offence to replace the offence in the 1895 Law. The new offence has a maximum penalty in line with that in place in England and Wales. This part also considers premises used for prostitution. The current 1895 Law provides that it is an offence to keep or run a brothel. The maximum penalty is a £250 fine and a 12-month prison sentence. Laws in England and Wales, as well as Scotland, still provide for laws in relation to brothels. This issue with legislation concerning itself with the concept of brothels is that the concept is largely outdated. The draft law modernises the terminology and provides more appropriate penalties in line with practices elsewhere, particularly in England and Wales. Article 21 defines the prostitution service as a sexual act that is performed by one person for another in return for a payment. It is irrelevant whether the payment is made or promised, whether it be by another person on their behalf or whether it is the person performing the act or to someone else. Article 22 makes it an offence for a person to pay for a prostitution service performed by a person who has been exploited. However, there is a defence if the purchaser reasonably believed that there was no third person who had again engaged in any exploitative conduct likely to induce or encourage the person to perform or offer to perform the service. Exploitative conduct is defined in this Article as any form of coercion, use of force, threats or the practice of any form of deception. This offence carries a fine of level 3, which is currently £10,000, on the standard scale. Article 23 creates an offence of offering or seeking a prostitution service in a road or public place. It only applies if the contact or loitering takes place in a road or public place, including within a vehicle. This offence carries a fine of level 3 on the standard scale. Article 24 creates an offence of advertising prostitution services on or in the vicinity of a public structure. The offence carries a fine of level 3 on the standard scale. Article 25 provides an offence causing, in citing or controlling prostitution services for gain other than for the person performing the service. This offence now carries a maximum sentence of 7 years. Article 26 concerns controlling or facilitating entry to premises that are used to provide a prostitution service. This approach has been taken as an alternative to an offence of brothel-keeping as we think it provides a more modern and appropriate basis for restricting the way in which prostitution services are provided. It creates an offence of controlling or facilitating entry to premises where it is known that a person is entering to receive or perform a prostitution service. This means that a brothel operator, who is not a prostitute, commits

an offence. It does not apply where the person controlling entry is the only person who performs the service in the premises. So prostitutes working alone are not criminalised. It also does not apply if the person is one of only 2 persons who perform a prostitution service on the premises. This means that prostitutes are not forced to work alone, which is considered to be important for their safety. This Article carries a maximum sentence of 7 years and an unlimited fine. Article 27 creates an offence of letting premises for the use of a prostitution service or failing to prevent that use where the letter knows or has reasonable grounds to suspect that a person intends to use those premises to perform a prostitution service. This applies to any person entitled to let the premises, including the owner or a letting agent. The penalty for an offence under this Article is 6 months' imprisonment and a fine of level 3 on the standard scale. In part 8, we move on to female genital mutilation Articles. This part prohibits female genital mutilation, known as F.G.M. As Members are clearly aware it creates offences, requires certain professionals to report cases where F.G.M. is apparent and allows the court to make orders to protect persons from F.G.M. This may include preventing travel to countries where the practice is prevalent. To the best of our knowledge, no cases of F.G.M. have been reported in Jersey, nonetheless, it is important that our laws are able to deal with the practice should it arise and to comply with the treaties that I have previously mentioned. Article 28 creates the offence of carrying out F.G.M. on another person. A surgical operation conducted by a relevant practitioner is not considered to be F.G.M. in prescribed circumstances. The offence carries a maximum sentence of 14 years, an unlimited fine or both. Article 29 prohibits assisting F.G.M. The offence carries a maximum sentence of 14 years. Article 30 provides an offence for failing to protect a child from F.G.M. It applies to everyone who has a formal parental responsibility of a child. There is a defence that the person could not reasonably have been expected to be aware that the child was at risk of F.G.M. The offence carries a maximum sentence again of 7 years. Article 31 imposes a duty to notify the police of apparent F.G.M. Certain professionals are included in the list of regulated professionals. Those are doctors, midwives, nurses, teachers, social workers and registered body piercers and tattooists. The notification will not be treated as a breach of confidentiality or of any other restriction on disclosing information. Failure to notify the police of apparent F.G.M. carries a maximum penalty of a level 3 fine, which I will remind Members is £10,000. Article 32 provides for the Royal Court to make an F.G.M. protection order. This can contain any terms that the court considers appropriate and may apply to contact outside Jersey. Article 33 creates the offence of breaching an F.G.M. order and carries the penalty of imprisonment for 2 years and an unlimited fine or both. In part 9, we deal with miscellaneous sexual offences. This part relates to a number of miscellaneous sexual offences, including penetrative sex with an adult relative, which is formally known as incest; exposure, voyeurism, penetration of or by an animal, which is formally known as bestiality; administering a substance to stupefy or overpower a person for sexual purposes. It also makes provision for sexual offences committed outside Jersey. Article 34 provides that it is an offence for penetrative sex to take place between blood relatives aged 16 or older. There is a defence that the defendant did not know of the relationship. The offence carries a maximum sentence of 5 years' imprisonment. Article 35 provides the offence of exposure. It applies if a person exposes genitalia intending them to be seen and intending to cause distress, humiliation or alarm, or to obtain sexual gratification without a reasonable belief that all of the persons who may see it have consented to seeing it. A note here is breasts are not considered genitalia and therefore not captured by the offence. The offence carries a maximum sentence of 2 years' imprisonment. Article 36 provides for offences of voyeurism. This is observing another person without reasonable belief in their consent in a place that would be expected to provide privacy. These include where a recording device is used and also deals with the modern practice of up-skirting and down-blousing. Offences in this Article carry a maximum sentence of 2 years' imprisonment, an unlimited fine or both. Article 37 provides for the intentional penile penetration of or by a living animal. The offence carries a maximum sentence of 5 years' imprisonment, an unlimited fine or both. Article 38 provides the offence of administering a substance for the purposes of stupefying or overpowering a person for sexual

purposes. This might form part of a date rape offence. The offence carries a maximum sentence of 10 years' imprisonment or an unlimited fine or both. Article 39 provides an offence of committing any other person for the purpose of committing a sexual offence under parts 2, 3 or 4 of the draft law. For example, breaking and entering into premises with the intent to commit a rape. The offence carries a maximum sentence of 10 years' imprisonment. Article 40 makes it an offence to commit an act outside of Jersey that would be a sexual offence if committed in Jersey and can accordingly be tried by the Jersey courts. I move Articles 17 to 40.

The Greffier of the States (in the Chair):

18 to 40, I think. They are seconded? [**Seconded**]

[11:30]

1.6.1 Deputy J.A. Martin of St Helier:

I thank the Minister for a really clear interpretation of most of the laws and this, hopefully, the Minister can answer. But if not, I hope the Attorney General can. I do not know whether these are right but I have some concern that Articles 18, 19 and 20 seem to carry a term of 5 years' imprisonment. Now, I would like to know if that is going to be 5 years or should it say "up to 5 years"? If it is 5 years, is that about right? Is it what they do in the U.K. because I then turn to Article 22, paying for prostitution. I would not know if this is right either, establishing premises for use of prostitution is imprisonment for 7 years and a fine. The 18, 19 and 20 are all about positions of trust, children's homes, and it is I think a maximum of 5 years. So my question is: is this about right? What is it now and what do they do in the U.K. and why the difference between? It is only 2 years but it is more for establishing a place of prostitution than it is for positions of trust. I just find that a little concerning and I would like an explanation please.

1.6.2 Deputy S.M. Wickenden:

I shall ask the question, it is probably more for the Attorney General, but the Minister can decide. Under Articles 21 and on about prostitution. Is it covering services where somebody is offering their service on a website that could have multiple people and you would not be aware whether they were being coerced? I was made aware some 12 months ago by a constituent that they had found prostitution services for the Island being advertised on a website. How does that also cover things like using a hotel, because it covers brothels, as in a set leased building, but the use of a hotel, would there be any offence in that basis and how would that be covered?

1.6.3 Deputy K.C. Lewis:

Just a quick question for the Attorney General regarding offences committed outside of Jersey. Where does the actual jurisdiction end, especially when that particular country may have its own laws, penalties may be greater or lesser than Jersey's.

The Greffier of the States (in the Chair):

Attorney General, are you ready to deal with these various queries?

1.6.4 The Attorney General:

I will deal first, if I may, with the question Deputy Martin asked. In relation to the prostitution offence that she mentioned and the maximum sentence of 7 years' imprisonment, that is the maximum in England and Wales, in relation to the identical offence. The corresponding old Jersey offence had a much lower maximum sentence, as I recall. In respect of the abuse of trusts Articles 18, 19 and 20, it is quite important to bear in mind that in most areas we have not followed England and Wales strictly. What we have done of course is borne in mind throughout that in relation to persons who are under 16 any sexual conduct in relation to them is covered by other parts of the law. So the

abuse of trust provisions in part 6 only relate to those aged 16 or 17 who, absent these provisions, would of course be able to and are able to form relationships with any adult. So that being the case, the 5-year maximum was thought to be appropriate in the circumstances. I hope that explains the 5-year maximum there. In relation to the question that Deputy Wickenden asked: firstly, I think in relation to Articles 23 and 24, those criminalised offering or seeking prostitution in a road or public place and advertising on public structures, and accordingly do not cover contact over the internet. As regards the use of hotel accommodation, an offence may be committed by the owner of the premises under Article 27 if he has knowledge of the use the premises he is letting are being put. In relation to the question from Deputy Lewis of St. Saviour in respect of sexual offences outside Jersey, under Article 40, that does in common parlance deal with the question of sex tourism and all the persons who are affected by the provisions of Article 40. If they carry out sexual acts, which would be an offence in Jersey, then they were guilty of an offence in Jersey and can be prosecuted in Jersey. To take an example, which I think arises from the question, if a defendant were to go to a jurisdiction where it was not unlawful to have sexual intercourse with a very young child he could, nonetheless, be prosecuted in Jersey under Article 40.

1.6.5 Deputy D. Johnson of St. Mary:

An extension of the answer just given by the Attorney General, could he clarify section 40 because my interpretation is that a British national is subject to different rules than a non-British national who is officially resident here. Am I right in thinking that a non-British national living here, who goes to a jurisdiction where, say, child prostitution is legal is not guilty of an offence in Jersey?

The Attorney General:

Article 40 extends to British nationals who habitually live in Jersey and also to non-British nationals who also habitually reside in Jersey. So it extends beyond British nationals and, in short, applies to all those who habitually reside in Jersey, subject to the condition set out in that Article.

The Deputy of St. Mary:

Sorry, I perhaps did not make my point clear. Subsection (3)(c) of section 40 says this relates to someone who is not a British national if the act constitutes an offence under the law of that jurisdiction. My reading is if it is not an offence under the law of a South-east Asian country then the person who is habitually resident in Jersey is not, in fact, committing an offence in Jersey.

The Attorney General:

That is correct in relation to non-British nationals who reside in Jersey and, to some extent, this provision is modelled on the equivalent legislation from England and Wales.

1.6.6 Deputy J.A. Hilton:

I just had a question around Article 18, abuse of trust by a sexual act against a person aged 16 or 17. Obviously it is very, very important that as parents we entrust our young people to teachers, coaches, and various other individuals and we want to know that they are safe. Can the Attorney General tell me, in the circumstances where an offence is committed against a 16 or 17 year-old by a person in trust of that young person, where an offence is reported but then it is decided by the young person and the parents that they do not want to continue with the offence how would the prosecution service deal with that individual who had been accused of doing something? What mechanism is there in place to remove that person from that position of trust? I am just very interested to know what happens in those circumstances because ... I do not know whether it still happens, but certainly with domestic abuse cases a number of years ago, as long as the prosecution service had the evidence that the domestic abuse had taken place and the victim became a hostile witness, the prosecution service would continue with the prosecution to secure ... as long as they had the evidence to secure a

conviction. I am interested to know what happens in these circumstances. Also, could the Attorney General tell me whether the offence of abuse of trust could be retrospective?

The Attorney General:

Yes, these offences can apply to past acts, which predate the passing of this law. In relation to the question that Deputy Hilton asked more generally, in circumstances where a complainant and her family were to withdraw the support for the prosecution, the prosecution could indeed continue. That will be made easier by the law that the Assembly passed yesterday in relation to criminal procedure. In circumstances where a prosecution was no longer passing the evidential test or the public interest test then one would hope that other action could be taken in relation to the employment of the person in question, in any event, which would prevent him or her having contact with children at risk. While we are looking at Article 18 - I did not respond in full to the question that Deputy Martin asked earlier - I would like to confirm that liable to imprisonment for a term of 5 years means up to 5 years. I would also like to indicate that the maximum sentence of 5 years in Jersey is about the same as that which applies in England and Wales for this offence.

1.6.7 Deputy M.R. Higgins:

I am just seeking clarification from the Attorney General. If I heard correctly, he said that this law could be retrospective. My understanding of the Human Rights Law is you cannot make laws retrospective because it would be a denial of people's human rights. If it was not an offence at the time they committed it they should not be going back. Could you please clarify what the position is on the law being retrospective?

The Attorney General:

I will come back to that in a moment, if I may.

1.6.8 Deputy S.M. Brée:

I merely wish to raise the point that I raised previously when we were discussing the principles about Article 18, and perhaps my question is better directed at the Attorney General. In the event that you have a, say, 19 year-old male coach who is coaching girls aged between 16 and 17, bearing in mind the size of the Island, if the relationship between the 2 people, both of whom are above the age of consent, commences outside of the place or venue that the person of position of trust normally would occur, and yet that young man continues to coach that young lady, who is an adult under the age of consent basis, but not within this law, it is still within this law considered to be a child under part 6, what defence would that young man have should a complaint be made against him by a third party or whoever? What defence would he have? Because it seems to me here that we are saying under no circumstances whatsoever is it allowed for a person in a position of trust, irrespective of their age, to have any form of relationship with a person who is over the age of consent.

[11:45]

I just was seeking what defence would that young man have.

The Attorney General:

I would like to correct the answer I gave about the retrospective effect of the abuse of trust, it would not have retrospective effect because of course these acts would not be criminal until this law was passed. So there would not be a retrospective effect in relation to these particular provisions. In relation to the point that Deputy Brée makes. It rather echoes a point that Deputy Tadier made in a question earlier on. Of course it is right that drafting sexual offences legislation is difficult because it is a blunt instrument to cover a wide multiplicity of circumstances, some of which should obviously be criminalised and others which are more difficult. The circumstance which he raises of a young man befriending and then beginning to see a 17 year-old, of course, as he says, it is covered by

Article 18 and obviously in those circumstances one would look carefully at any complaint, if there were to be one, and would examine carefully if it was in the public interest to take any action of a criminal nature in those circumstances.

1.6.9 Senator P.M. Bailhache:

Listening to Deputy Brée and to the Attorney General’s response, I wonder if I might just add a postscript because it might come more easily from the mouth of an elected Member than from the Attorney himself. It is, as the Attorney General has said, extraordinarily difficult for legislation to legislate for the huge range of human conditions, which obtain in relation to sexual behaviour. Ultimately, the defence which the community has is that we expect the Law Officers’ Department, the prosecutors, to behave sensibly and that is why they have a discretion. It would be inconceivable, to my mind, to prosecute a young man of 19 who had a relationship with a person who was being coached of the age of 17, where there was absolutely no evidence of coercion or abuse of authority or abuse of power and where it was a perfectly natural relationship between 2 young people. The Attorney General would not prosecute in such a case. One would hope that no Attorney General would prosecute in such a case but if he did, and it came before a court, one would expect a court to grant an absolute discharge as a means of expressing their disapproval of a prosecution, which had been improperly brought. That ultimately is the protection that we all have.

The Greffier of the States (in the Chair):

Does any other Member wish to speak on these Articles? If not, I call the Minister.

1.6.10 The Deputy of St. Peter:

Thank you to Members and particular thanks to the Attorney General. I do warn Members that he is only able to attend upon us for another 12 minutes, according to the clock ... [Aside] 42 minutes, that is excellent. Okay, so we might get to the end of sexual offences by that time, let us hope. I move the Articles 18 to 40.

The Connétable of St. Brelade:

Can I ask for Articles 18 to 20 be taken separately and the appel?

The Greffier of the States (in the Chair):

The appel on 18 to 20 as a block?

The Connétable of St. Brelade:

As a block.

The Greffier of the States (in the Chair):

The appel has been called for on Articles 18 to 20. I ask Members to return to their seats. I ask the Greffier to open the voting.

POUR: 42		CONTRE: 0		ABSTAIN: 0
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator A.J.H. Maclean				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Clement				

Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				
Deputy S.Y. Mézec (H)				
Deputy of St. Ouen				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

The Greffier of the States (in the Chair):

We move on to 21 to 40, is the appel called for on those? Yes, in which case the appel is called for on Articles 21 to 40 and I ask the Greffier to open the voting.

POUR: 43		CONTRE: 0		ABSTAIN: 0
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator A.J.H. Maclean				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Senator A.K.F. Green				
Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				

Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Deputy J.A. Martin (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				
Deputy S.Y. Mézec (H)				
Deputy of St. Ouen				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

The Greffier of the States (in the Chair):

We now come to Article 41 to which there is an amendment, so I am going to ask the Minister to move the Article first before we get to the amendment.

1.7 The Deputy of St. Peter:

Article 41, before discussing this Article, which performs 2 roles, it is worth explaining the background to the first role. Under the law of Jersey defendants facing customary law offences, therefore those offences which are not created by statute have the right to elect for trial by jury. Defendants facing statutory offences do not have this right unless specifically provided for in statute. The draft law abolishes a number of customary law sexual offences, including rape and replacing them with statutory offences. Article 41 is drafted to preserve a defendant’s right to a jury trial for those replaced offences by creating the new statutory offences as if they were still customary law offences. However, as the Greffier has explained, the Education and Home Affairs Scrutiny Panel has lodged a second amendment to replace Article 41, which will result in all offences under the draft law being heard before Jurats, which on reflection I have decided to support, and I move the Article.

The Greffier of the States (in the Chair):

Is the Article seconded? **[Seconded]**

2. Draft Sexual Offences (Jersey) Law 201- (P.18/2018): second amendment (P.18/2018.Amd.(2))

The Greffier of the States (in the Chair):

There is an amendment, as the Minister has said, the second amendment lodged by the Education and Home Affairs Scrutiny Panel and I ask the Greffier to read the amendments.

The Deputy Greffier of the States:

Page 55, Article 41 – For Article 41 substitute the following Article – “41 Mixed indictments: mode of trial: (1) For the purpose of the *Loi (1864) réglant la Procédure Criminelle*, on an indictment falling within paragraph (2), the Royal Court is to decide, having regard to the nature and gravity of the offences and after hearing any submissions from the defence and the prosecution, the method by which the defendant is to be tried. (2) An indictment falls within this paragraph if it charges 2 or more offences, of which – (a) at least one is an offence under customary law; and (b) at least one other is an offence under any part of this law.”.

2.1 The Deputy of St. John (Education and Home Affairs Scrutiny Panel - rapporteur):

As Members have probably now seen the Minister’s comments to our amendment, it pretty much blows my speech out of the water because it was very much based on exactly the similar comments. I am going to propose this amendment by talking to the submission that the Education and Home Affairs Panel received, particularly from the Jersey Action Against Rape. They submitted to us their views that they are delighted with the fact that the Sexual Offences Law is coming in. I am not going to try and say their words otherwise ... I am going to speak from what they submit to us. “J.A.A.R. (Jersey Action Against Rape) is unsurprisingly delighted that the Jersey legislature has taken the important step of putting the prosecution of sexual offences on to a statutory footing. Jersey has been crying out for the law in this area to be modernised and it is hoped that this is the first step of many that will ultimately see the complete overhaul and modernisation to the prosecution of sexual offences in Jersey, leading to a system and process that stands up to scrutiny. Jersey Action Against Rape is particularly heartened that the notoriously difficult issue of consent has now, for the first time, been clearly defined by statute. It is hoped that the Jersey courts avoid any wholesale incorporation of English jurisprudence on the topic, seize the opportunity to learn from the difficulties that have arisen in England, and develop the law of Jersey robustly and with clarity. Jersey Action Against Rape sincerely hopes that the advent of this law will see an increase in successful prosecutions for sexual offences in Jersey. J.A.A.R. is disappointed to learn that despite the obvious advantages of trials before the Jurats the offences of rape and inciting sexual acts with young children (*inter alia*) will still be heard before juries. Jersey Action Against Rape wish to be clear that it has no difficulty in principle with the concept of a trial by jury. However J.A.A.R. remains concerned that the practical impossibility of effectively educating potential jurors about some of the commonly held misconceptions regarding rape and sexual assault in general will mean that it still proves extremely difficult to secure convictions for those indicted for such offences. J.A.A.R. feels that there can and should be no objection to the idea that for certain criminal cases a specialist and well-educated tribunal should be empanelled. J.A.A.R. cannot see that there can be any sensible objection to empanelling a specialist tribunal to hear a complex fraud prosecution, for example, which will potentially involve the tribunal being tasked with making decisions in relation to complicated accounting issues. Taking that example, how could it be said that a trial could possibly be fair, either for the defendant or the complainant, if there is a risk that the tribunal simply does not understand the issues at hand. Similarly, with prosecutions for rape or other sexual offences, particularly where the issue of consent is central, there are in fact a myriad of complex issues at the heart of that issue, which the vast majority of people are unfortunately not well-informed about. One only has to reflect on the well-known misconceptions in relation to rape and other sexual offences to realise that this is true. If it was the case that at least some sexual offences, such as rape and indecent assault, were always to be tried by Jurats, it would be eminently possible to ensure that a specialist tribunal was always empanelled to hear these cases. This would ensure that all of the issues that arose, such as

those which often arise with questions of consent, would be fully understood by the tribunal. This would also mitigate the risk of any misconceptions resulting in a not guilty verdict. Ensuring that the tribunal is well-informed about difficult issues can only lead to a fair trial for both defendants and complainants; if we cannot be sure that the tribunal is well-informed how can we be sure that the trial process is fair? J.A.A.R. nevertheless notes the likely increase in the incidence of sexual offences being tried by Jurats and would welcome any opportunity to work with the current pool of Jurats.” That was the submission that the Education and Home Affairs Scrutiny Panel received and is one of the main reasons for us bringing this particular amendment. I know there are a number of people that have approached me and spoken to me about this and are particularly uncomfortable and I have been asked many times: is it right that somebody can choose not to be tried by a jury? That is already the case. There is a position where in criminal cases that people are tried only by a judge and Jurats. The reason why I believe this should be treated in a similar vein to those particular areas is that what we have done today, what we are doing with the Draft Sexual Offences Law, is creating a technical piece of legislation, which codifies consent, which codifies a defence in particular circumstances, and I think we should not underestimate how complex these cases can be. The issue here in itself adds to the difficulty of a jury’s job as these disputed sexual acts tend to take place in private, resulting in little availability of witness or C.C.T.V. (closed circuit television) evidence at crucial points in time. Further still, unlike other crimes, D.N.A. (Deoxyribonucleic acid) evidence in rape cases where the accused is known to the victim is often of little value displaying only that the sexual act happened, not whether this took place with consent. Arguably even more damaging are the negative attitudes jurors in society more generally hold towards victims of rape, where the victim’s, not defendant’s, actions come under the most Scrutiny. Substantial research has shown inaccurate beliefs around how a real rape victim behaves and typical motivations for claiming rape are so profound that judges now routinely warn jurors against drawing upon these rape myths when making decisions at trial.

[12:00]

However, the extent to which these instructions are taken into consideration remains questionable. Of course it is very difficult, once a case is over, and if a verdict has been found of not guilty in these cases, to ask the jury how or why they deliberated and why they ended up choosing this particular path. It is very difficult to know exactly what went wrong during that case and whose argument beat whose argument, and why the juries fell on that basis. But there has been research done. There has been extensive research done right across the world, especially in recent years, which is the psycho-legal analysis and it is referred to in the Minister’s comments, whereby they have done mock trials and they have done psychological analysis on why people think the way they do during a criminal case, such as rape. It has been shown that there is an amount of bias. It is quite a large proportional amount of bias rather than considering the actual legal context in which the arguments are made in court. That is as summarised as I can make this. I hope Members will ask any questions that they feel they have to. I will try and answer them in the best vein that I can. I hope Members will be respectful of course of the particular issues around this. I am not bringing this because I do not believe the public are not capable. I do not believe this because I do not believe in juries. I am bringing this for exactly the summary that I have given to Members and I look forward to hearing comments.

The Greffier of the States (in the Chair):

Is the amendment seconded? **[Seconded]**

2.1.1 Senator P.M. Bailhache:

I do not believe that the Minister should have agreed to accept this amendment for a number of reasons. Firstly, it is not an amendment which is based upon rigorous and balanced examination of the facts, which is the standard duty of a Scrutiny Panel. The Scrutiny Panel accepted a submission

from an interest group, which has very worthy objectives. Who would not be against rape? But the solutions that the group have suggested are not, in my view, appropriate and certainly should have been considered more carefully by the panel, and if I may respectfully say so, the Minister as well. The Minister discussed this with the Council of Ministers a few days ago and was aware that the research had not been carried out by the Scrutiny Panel. The Minister endeavoured to compensate for that failure to carry out research by going to see the Bailiff so as to obtain a view from the judiciary. I do not wish to touch on the views expressed in the Bailiff's note circulated this morning to the Assembly, but I only wish to make the point that consultation should be done in a timely way to give people the opportunity to reflect upon the advice that they are giving to those who are consulting, and that did not happen in this case. It appears that we are being invited to take another decision without the opportunity to give it proper and mature consideration. Secondly, and more seriously perhaps, it seems plain from what the chairman of the Scrutiny Panel has said, although I am not clear whether it is the view of the panel or whether she was merely reciting the views of the interest group, that the purpose of the amendment is based upon a desire to obtain a higher success rate, which is a euphemism for obtaining more convictions. It does not matter that that purpose is unlikely to be successful. Trial before the Jurats might very well yield exactly the same results as trial before a jury. It is just that to propose an amendment to the law with the purpose of securing a higher success rate in criminal proceedings is, in my view, improper. It is certainly contrary to the overriding objective in criminal proceedings, which we were discussing only yesterday, which is to do justice. Doing justice means that one endeavours to ensure that the guilty are convicted but also that the innocent are acquitted. One cannot assume that merely because a prosecution has been brought that the defendant is guilty. The purpose of a criminal trial, I repeat, is to do justice. Thirdly, I do not believe that juries are as unreliable as some might suggest. Each trial is of course different, but Members might find it helpful to learn what a trial judge says in a standard direction to the jury in a rape trial, and what I am going to quote to Members comes from material which is on the internet, available to be looked at, and is the kind of direction which would be given by a judge in a rape case. He or she would say this: "Please also remember this, it is obvious but it is important. A drunken woman, if you think the complainant was, is just as entitled not to be raped as a sober woman. The consumption of alcohol does raise issues, which will be addressed later, but rape is rape, whether you personally could envisage yourselves ever getting into the position in which the complainant found herself when she took herself off to the defendant's bedroom or not. So I must give you this warning, it is understandable that you might come to a trial of this kind with preconceived notions of what constitutes rape or what kind of person is a rapist or is raped or how a person who is raped would behave. It is important that you leave any such assumptions or preconceived notions behind you. Some victims of rape noisily object and fight. Others are silent. Others freeze. Experience has shown us in the courts that the offence can take place between all kinds of different people who react in a variety of different ways. Please make your judgment entirely and strictly on the evidence that you have heard." A jury of 12 people drawn at random from a list is likely to be a group of people with widely different experiences coming from widely different backgrounds in life. They are, in my view, just the sort of people who are appropriate to draw a judgment on the behaviour of their fellow human beings; fairly and objectively. Mostly, in my experience, I must say juries tend to get it right. The fourth point I want to make is that right to trial by jury is an important constitutional right. It should not be swept away on a whim without very serious consideration and the opportunity to look at the proposal in the round. This is a proposal that has not been given that kind of consideration and, in my view, it should be rejected, and I am certainly going to vote against the amendment.

2.1.2 Deputy M.R. Higgins:

I am pleased to follow Senator Bailhache and the comments he has made. We should be aware that trial by jury has been around since Magna Carta. Article 39 of Magna Carta, 800 years ago, said that

people should be tried by their peers. I think it was to stop the injustice of King John and the Crown at that time. So trial by jury is a fundamental right, as far as I am concerned. I know there are some exceptions in certain areas but I think it should be maintained. I cannot agree with the Scrutiny Panel on this particular issue. Evidence has been given from the Scrutiny Panel that studies have said that juries are unreliable. I have seen some of those studies, but I have also seen contrary information. The Ministry of Justice in 2010 researched into: are juries trustworthy? A report on it was in the *Guardian*. It said: "Arguments against juries are misinformed. Trust people with responsibilities of citizenship and they will rise to the occasion." That research involved analysing 68,000 jury verdicts. They looked in depth at dozens of cases in greater detail. Basically it says are juries fair? The answer was, quite simply, yes, they are. It said on almost every count the verdict on the jury is positive, even on issues where juries are popularly thought to be failing. Juries make up their minds properly. They convict more than they acquit, even at courts with a reputation for leniency. It goes on further than that. It says that they take much care in considering a defendant's state of mind. Juries convict more than they acquit in rape cases. Even all white juries do not discriminate against ethnic minority defendants. Another point that was interesting, women jurors changed their minds more than men. There are concerns, it did mention, it said proper concerns remain, not enough jurors understand judges' legal instructions and too many jurors surf the internet for help. It says in high profile cases, media reporting affects the process. These are solvable problems. In most respects, the jury is not guilty as charged. Many of the problems lie elsewhere, with the police or lawyers. The broad implications are even more heartening. The criminal justice system is not going to hell in a handcart, though politicians do not need to fan foolish fears. Trust the people with the responsibilities of citizenship and they rise to the occasion. It says there is a positive lesson for politics there as well as for justice. As I say, I welcome most of the draft law. It is needed and has been needed for a very long time. However, I do have a fundamental disagreement on this particular amendment. I would go slightly further than Senator Bailhache, because I have a copy here of the letter that the Bailiff sent to every single Member of the States this morning. I think it is worthwhile reading out some of it. I might add, he is not trying to influence the States, he felt there were some misconceptions about what the panel were told and he wants to make it clear.

[12:15]

One of the things that really stood out to me was he said: "Indeed some may find it surprising that as an important matter such as the availability of jury trial should come on for debate with only a few weeks and minimal consultation possible. I believe Members are entitled to know from me as the Chief Justice what the position of the judiciary is in relation to the amendment of the Scrutiny Panel, to the effect that offences under sexual offences laws should be tried in the Royal Court before Jurats." He said: "I suspect the misunderstanding has come from the speed with which all the parties concerned have had to consider this particular piece of draft legislation, both Minister and Scrutiny Panel. I believe it emphasises the need for the States to find a better way of dealing with new legislation." I would add here, we all know what the agenda is for this session and the next one. We have far too many laws, very complex laws, very important issues and we are deciding on them. It is wrong, because I believe we are going to get it wrong in many cases. This should never happen again. He went on to say: "At all events, I am grateful for the Minister for seeking to consult the Court at very short notice to ascertain our views and for accommodating some of the comments which I made on her draft summary of our meeting." The 2 misunderstandings in question are ... I might as well read it all. It says: "At page 3, the Minister's comments, paragraph C and D are raised as separate points. When I made these points at our meeting I did not intend them to be taken separately. They reflect one point, which is this: sexual offence cases raise high emotions and public profile, which they do, are liable to draw Jurats and therefore the Royal Court into public criticism whatever decision they take. It is unlikely that such criticism will always be fair. There is a high degree of probability that some of the criticism will be based on gender or age; criticisms which cannot be

brought in relation to juries. It is, in my view, undesirable to expose the Jurats to such a possibility. This risk is made greater by the fact that Jurats are not anonymous as jurors are. In fact, one only has to look at the first 2 comments on an online report of the proposal to see that this is exactly the approach which has been adopted by 2 of its readers. What happened in the abstract without any particular case being involved?" I will just miss the part he has mentioned about the use of court. He also mentions about Jurats and it is argued that there would be a balance between male and female Jurats. He has mentioned that although there are 6 male and female Jurats it is unlikely that they will always be available to the case you would have a balance between male and female. Just at the bottom, it says: "I would like only to add this: one does not construct a system of criminal justice to ensure that there are more convictions. It is constructed to ensure a fair trial. If it is the case that the purpose of the amendment is to secure more convictions that would be an improper purpose and indeed it is inconsistent with the view expressed by the Minister with which I agree. Both modes of trial are fair and just ways of determining guilt or innocence. Yet, if it is not the purpose of the amendment to secure more convictions it is not clear what the purpose really is." Jersey Action Against Rape, I think is a very, very good organisation. But, as Senator Bailhache has mentioned, they come from it with a particular view. They are helping the victims and many of them have been victims of rape themselves. They obviously want to secure more convictions, more people dealt with. I think we all feel that if the person is guilty of rape then they should face the consequences. However, I agree with Senator Bailhache, it is important that there is a fair trial and the arguments are put back and forth. I think if we take this step of removing the right to a jury trial we are doing a great disservice to justice in this Island. Therefore, I shall be voting against this amendment.

2.1.3 Deputy S.M. Wickenden:

I am glad to follow the previous 2 speakers, because I could not be more on the opposite side. Maybe that is because I was born in the 1970s and not socialising in the 1970s. Where are we? Let us look at some facts that we do have information on. We have a 16 per cent increase in the number of sexual offences being reported in this Island in the last 12 months. That is because mostly women who are getting assaulted are more confident about coming forward and telling the police that they have been sexually assaulted. If we do not do better at our convictions for this we will go back to a place where women will not come forward and they will not raise this issue and they will put other people at risk. It has been mentioned by the previous 2 speakers that this is possibly a way to increase the level of success rate for convictions. Well, last year, in the 33 cases of rape that were brought up, there were zero convictions. So, if this is about getting a higher success rate, well, we cannot get lower. You do not get lower than zero success rate. We are failing the women and men of this Island that are raising sexual assault cases. We are failing them horrendously in this Island. Again, let us do some more work; let us do another study; let us wait another 10 years down the line. Well, let us wait another 800, double it from Magna Carta. A 16 per cent increase in confidence on raising these issues in the Island; a zero per cent conviction rate and across the board almost zero on these conviction rates. We are failing. We are doing it wrong. Something is wrong, because you would expect some percentage of this to go through; some percentage of it to be people assaulting people. There is going to be a percentage that maybe not, possibly. But they are the actual facts. Senator Bailhache says we need to look into facts. The facts are there. The facts are that what we are doing at the moment and what we have been doing is failing. Let us not go back to the days where women or men who are assaulted decide that it is not worth going and telling anyone about it, because what is the point of going through an entire court case just for it to be put out, because you were drunk, you accepted drinks all night and then: "Well, of course, I expected that after I bought drinks all night that we were going to have sexual intercourse at the end. She was asking for it. She was dressed in a miniskirt." You know, let us get away from these prejudices that come out that people use as excuses. Let us try something different. I think the Scrutiny Panel have come up with something different that we can try. Because what we are doing now is utterly wrong. Please support the Scrutiny Panel's

amendment. Let us try and do things better. Because we cannot go lower than the success rate we have.

2.1.4 Deputy R.J. Renouf of St. Ouen:

I was pleased that Senator Bailhache spoke early in this debate, because he spoke very wisely, I believe, and I would share his views on this entirely. I hope other Members would do the same. I do not wish to repeat those views, but I do wish to complain about the way this legislation has been brought forward. Regrettably, I have to say, I do not think our Scrutiny Panel have done the work here that they should have done. We are all short of time at this moment, but this is an example of rushed legislation. I was surprised to see the Scrutiny Panel amendment, because this is a very serious issue. They have not investigated it thoroughly before bring this amendment to the Assembly. They received a submission from J.A.A.R. They met with J.A.A.R. They questioned the Minister on the evidence they received from J.A.A.R. But, they took no other views, it appears from the amendment. They did not consult with lawyers. They did not consult with the judiciary. They did not go out to any sort of public consultation. Very differently from the way this was handled by that same Scrutiny Panel in the Sub-Panel on the Criminal Procedure Law, where public hearings were held with the judiciary and public hearings were held with lawyers. We received the views and that was welcomed also by the Minister. Here we have an unseemly haste to try and garner some views of the judiciary on Thursday of last week. The panel has brought forward an amendment, which at paragraph 9 of its amendment they say: "It is the opinion of the panel that based on the evidence it has received on this matter the decision as to whether these offences are tried by Jurats or jury is a debate that is needed by the States Assembly." A debate that is needed. Then they quote the Minister during the public hearing before the panel, when the Minister says: "As I say, if Scrutiny think that this is an issue that should be debated by the Assembly then I welcome that debate." Great, we will have a debate. But, can we have some material, please? It is the function of scrutiny and what a shame the Scrutiny Panel have not put some other evidence before us. We have one piece of valuable evidence, but it is only part of the argument. What about the judiciary's views? What about the public who will constitute the juries, who will be the accused in some instances, who are an essential part of our criminal justice system so that sexual offences are tried properly? Has the panel examined this properly or not? No, they have just dumped it in our laps. They say: "Yes, good idea." The Assembly: "Let us have a debate." How can we have a debate without the material? Senator Bailhache told us very recently that the Minister brought this before the Council of Ministers. This Sexual Offences Law consultation has been going on for ages. If we were making such a fundamental change this should have been discussed previously. But, Senator Bailhache tells us that it was recognised in the Council of Ministers that the Scrutiny Panel had not brought forward enough evidence. Therefore, we now learn that the Bailiff was consulted. On Thursday a meeting was hastily arranged. Members may recall that late on Friday we received a Comments Paper. We did not receive it through the States Greffier; we received it from the Minister's own email. I have it here. "In order to ensure that Members have a reasonable time to consider the comments I have attached the text to this email. It will be formatted by the Greffier and presented properly on Monday." Thank you, Minister. We receive it on Friday evening so that we have time to consider it. However, I learn from the Bailiff this morning, because through the Greffier he has written to us: "The Minister was kind enough to give me the opportunity on Monday of commenting on the report which she lodged later that day." This means that what was sent to us on Friday containing the Bailiff's views had not been firstly clarified and confirmed with the Bailiff. Do Members realise that the Comments Paper that was issued on Monday is different to the Comments Paper that was circulated to us on Friday. I have not had a chance to go through the whole of it, but I can see it is entirely different in the report of the meeting with the Bailiff. So, the Comments Paper that was circulated to us on Friday talks about the meeting and that the members of the judiciary did have reservations about the effect of the amendment; Friday. What comes on Monday, after the Bailiff has been consulted, is that the judiciary

have serious concerns. That has not been pointed out to us, the difference. Some of us will have read that at the weekend and thought we had received the comments, but they are different, what was issued as a final version. This is an appalling way of conducting a legislative process. The Bailiff himself is driven to talk about minimal consultation and driven to talk about misunderstandings that come from the speed with which all parties concerned have had to consider this particular piece of draft legislation.

[12:30]

This is entirely reprehensible and is unnecessary. It is a great shame that our Chief Justice has to, on the day of the debate, write to States Members because unintentionally the Minister has put forward views which do not reflect the views that the Chief Justice feels were communicated in that meeting. The judiciary should not have to get involved with political debate in that way. Yet it has been necessary because of this fiasco. This is absolutely appalling, in my view. It is highly dangerous to proceed with this sort of debate in haste, especially when we are proposing such a fundamental change in our criminal justice system in how we determine guilt and innocence. What has been the catalyst for this? It is the low conviction rate in Jersey. J.A.A.R. believe that that arises because of commonly held misconceptions. Their wish, of course, is to increase the conviction rate. We all want to make sure that the guilty are convicted and punished, but I could not put it better than the Bailiff: "One does not construct a system of criminal justice to ensure that there are more convictions. It is constructed to ensure a fair trial." Can a jury system not ensure a fair trial? Well, has the Scrutiny Panel considered that there are jury trials for these offences in the U.K.? Their conviction rate is different to Jersey. I have not had much chance to deal a great deal of research, but I have just spent a few minutes looking at the Crown Prosecution Service Crime Report 2015/2016 and on rape cases the conviction rate for cases brought to court is 58 per cent. So, the majority of juries convict in the U.K. There might be 40 per cent of cases where the defendant is acquitted. That is also examined in this report, because they look at what they call unsuccessful outcomes. So, of course, the C.P.S. (Crown Prosecution Service) is the prosecution service. If they cannot win a trial they would call it an unsuccessful outcome. The jury in question might say: "Well, we have found a person innocent." In that approximately 40 per cent of cases they can work out whether the acquittal is due to victim issues. I have not had time to find out exactly what that means. Also conflict of evidence. It is often the case that prosecution comes to court and what evidence is given ... it is a nightmare for a lawyer where you have somebody in the witness box saying something different to what they have said before. That happens. Then there are judge directed acquittals, where the judge might because the evidence is so poor might direct a jury to acquit. Then there are jury acquittals where the jury simply finds the accused innocent. Of the approximately 40 per cent of acquittals the proportion of that due to jury acquittals is 61 per cent, so perhaps about 25 per cent of all the trials in the U.K. result in an acquittal by the jury because the jury have found the accused innocent, it seems to me on my very quick reading of the Crown Prosecution Service Crime Report most recently. That could have been looked at by the Scrutiny Panel. It could have been looked at by the Minister. There is information out there. What it tells me is that we are being asked to believe that we can put right this problem by changing the mode of trial. Well, it is suggested. J.A.A.R. are certainly suggesting it and that is the whole reason, it seems to me, because there is no other good reason advanced as to why we should make this change. Juries do not acquit in the U.K. in about 75 per cent of cases. In the majority of cases, in the very least, juries do convict. What is the problem in Jersey? If there is a problem we need to look at that. I am sure we have some figures about 13 trials and there have only been 4 convicted. I do not know whether that is an aberration. Perhaps we need to look at a larger picture. There may well be other reasons aside from juries being unwilling. Maybe it is suggested that juries in Jersey carry around these myths and cannot shake them off in the same way that juries in the U.K. do when they are properly directed. I do not think that juries in Jersey are going to be any different from the U.K. I was very pleased to hear from Senator Bailhache of the nature of the direction given

to a jury. It must be appreciated that in a court setting you would have a Crown Advocate or the Attorney General himself who is trained to draw-out evidence and to explain that evidence to a jury. I think it is the view of just about everyone engaged in the criminal justice system that juries take their duties very seriously. You empanel 12 men and women drawn from our Island community as a cross-section and together they step up to the mark. They do very well and act responsibly within our criminal justice system. The juries listen carefully to evidence. They listen to the prosecution. They listen to a defence advocate, who has an overriding duty to the court and to the justice system. The defence advocate is not there to seek out prejudices, but to deal with the evidence. If a defence advocate started putting scenarios before a jury which were based on myths and not supported by evidence he or she would get short shrift from the Bailiff or whoever is presiding in that court. Then towards the end of a trial the judge gives a summing up. We have heard from Senator Bailhache the sort of directions that are given. I understand those directions are often put in writing also for a Jurat. They deal with those myths raised. They will direct the jury to put those sorts of myths out of their minds. We heard yesterday during our debate on the Criminal Procedure Law, we heard from the Attorney General and the Minister when they were attempting to persuade us to accept the concept of retrials that juries are perfectly well-suited to accept a direction from judges. Juries will be able to put out of their minds, it was suggested to us, any prior publicity that they had learned from social media or otherwise about the evidence they were about to hear. It was suggested to us that juries are in the position to direct their minds solely to the evidence and therefore having a retrial would be a safe procedure. That was the view of the Minister and the Attorney General yesterday. Faith in the jury system there, but when it comes to today's debate it is suggested, no, juries cannot put these myths out of their minds. They cannot receive a proper direction from a judge, because these myths will be all pervading. I just do not see at present the evidence before us for that. Instead the Scrutiny Panel has talked about a specialist tribunal. Why should there be a specialism? It is important that these myths are dispelled. That can be done within the context of a jury trial. The amendment talks about training, but does not talk about what training is to be given to Jurats and who gives it. It is sufficient to put these matters before our peers of 12 persons drawn from within the community. They are asked to make a finding on sexual relations and how people interact with each other. This is something that is common to our society that all people will be able to make a considered rational judgment about. This amendment has been brought forward. I am extremely sorry that the Minister felt herself able to accept the amendment, because the panel seemed less than convinced, but she has now accepted an amendment and that reverses the proposal that she consulted upon and the news release that was brought out talks about a full public consultation being carried out and comments having been taken into consideration. At the end of that public consultation everyone was fine about the provision of bringing these trials before juries. The question had not been raised. But the Minister has changed the proposal she consulted upon and then feels that she does not have enough to back it up, so in what should be a Comments Paper to the Scrutiny Panel amendment, the Minister has gone much further than issuing comments, she has said: "We got together just at the end of last week with the Law Officers' Department and we are going to produce some more evidence for you." So, we have a table of these myths added to a Comments Paper, which are not comments on the amendment. Then we have some consideration of what happens in other jurisdictions. I am sorry, I do not really understand the need to compare our systems with Germany, Denmark and Switzerland where I am not sure if they have jury trials. We want to find out what the problem is here and if that can only be corrected by abolishing jury trials. I do not think that is the case. While I am talking about the news release, I am concerned about new releases being put out before we have had the debate; news releases that refer to this issue we are now discussing and that tells us: "The legislation has had an overarching review to ensure that as a whole it meets the needs of victims and provides prosecutors with the tools to fulfil the expectations of modern Jersey society." What a lovely phrase. Putting this out before we as a legislature have had a chance to decide what should be the law of the land suggests that if I am standing up to say: "This is the wrong way of proceeding" then I am not fulfilling

the expectations of modern Jersey society. I am a stick-in-the-mud. I am not going with the Minister. Should these sort of things be put out there before our debates and maybe prejudice our debates or prejudge our debates? This also says that considerable consultation has taken place with numerous persons and considerable consultation has taken place with the Bailiff during the drafting of the new laws. Considerable consultation? We know the Bailiff was consulted Thursday and he was asked on Monday to check out the remarks attributed to him. Goodness me. Goodness me. I have a real fear that if we adopt this amendment we will be sleepwalked into a fundamental change, which has not been adequately consulted upon, but people felt that it is good to talk about it. Let us legislate properly, please, with proper research, proper scrutiny and let us receive what J.A.A.R. say. I am equally concerned to ensure that these myths are dispelled, that they are not carried forward into the criminal justice process, but let us find a way of doing that that involves all stakeholders and not be rushed into this ill-informed proposal. I would ask the Scrutiny Panel, even at this late stage, to withdraw their amendment and have the next Scrutiny Panel and the Minister properly consult upon this.

[12:45]

LUNCHEON ADJOURNMENT PROPOSED

The Greffier of the States (in the Chair):

It has passed 12.45 p.m. I do not know if anybody wishes to propose the adjournment. The adjournment is proposed. The Assembly stands adjourned until 2.15 p.m. this afternoon.

LUNCHEON ADJOURNMENT

[14:15]

The Greffier of the States (in the Chair):

We resume the debate on the second amendment to the Sexual Offences (Jersey) Law. The next person I had to speak was Deputy Labey.

2.1.5 Deputy R. Labey:

My question was for the Attorney General, but the Solicitor General is here, which is good news. I wondered if we could clear up statistically on whether successful conviction rates for rape at trial in Jersey are significantly lower than the equivalent in England and Wales. In case the Solicitor General was not listening earlier, Deputy Wickenden was saying there were 33 cases and no convictions or 33 and one conviction, I am not sure. Are we dangerously out of kilter?

The Greffier of the States (in the Chair):

Shall I move on to another contribution to give you time to look for that or are you ready to deal with that, Solicitor General?

2.1.6 Mr. M.H. Temple Q.C., H.M. Solicitor General:

I can deal with it now. The statistics that I have are limited to Jersey statistics. They are statistics since 2012. They are statistics concerning proceedings where rape has been charged since 2012 in Jersey. Essentially there have been 21 instances in which rape has been charged and one instance where attempted rape has been charged, which have resulted in a court appearance since 2012. Thirteen charges of rape and one charge of attempted rape resulted in a trial for that charge. Of those 13 charges of rape there have been 3 convictions and 10 acquittals for rape in jury trials and one conviction for attempted rape in an inferior number trial. There are proceedings which are on-going against 3 defendants. In 5 cases charges of rape were discontinued before trial, but in 3 of those cases the defendant was convicted and sentenced for other offences. As regards the statistics for the U.K. I am afraid in the time available I am not in a position to compare the Jersey statistics which I have

just given with the statistics which I think were given by Deputy Renouf shortly before the lunch adjournment. I can try and make inquiries over the course of the afternoon, but I am afraid that is the limit of what I can do.

The Greffier of the States (in the Chair):

Is this a question to the Solicitor General, Deputy Labey?

Deputy R. Labey:

Is it fair to ask the Solicitor General if 13 cases and 3 convictions would be something that would be a cause of concern with our system?

The Greffier of the States (in the Chair):

You can ask him. It is up to him how he can answer. Solicitor General?

The Solicitor General:

Obviously, we would want to have a much higher conviction rate. Whether it is a cause for concern I would not go as far as that. Clearly it is not as successful as we would have wanted. Whether it means that the system is either ... when the Deputy says whether it is a cause for concern, does it mean that the system as currently stands there is a fundamental problem with it, then I do not think I can go that far. For the avoidance of doubt, both jury trials and Jurat trials are fair means of trial. The amendment is not seeking to attack jury trials.

The Greffier of the States (in the Chair):

Is this for the Solicitor General, Deputy Tadier?

Deputy M. Tadier:

Yes, Sir. What is the percentage, if I can use that term, when deciding whether or not to pursue a prosecution, in terms of the evidential and public interest test? I think we were told in the past by a previous Attorney General to do with historic child abuse or to do with child abuse generally that one looks for a 50 per cent chance of conviction as a rough guide as to whether or not a conviction is likely. Is that roughly the same bar that is applied in rape cases? If it is not, could the Solicitor General give us some advice on that?

The Solicitor General:

I am not able to give a comment on that 50 per cent figure. Clearly the public interest test will virtually always be satisfied in a rape or attempted rape case. Usually it is a case of applying the evidential test and we apply that test as we would in relation to any other sort of case. Clearly we are aware of the complexities and difficulties of bringing prosecution for rape, but nevertheless we have to apply the evidential test as we would in any other case.

The Greffier of the States (in the Chair):

Deputy Tadier, is this a follow up question?

Deputy M. Tadier:

Yes. I am just doing the numbers. So, 3 successful convictions out of 13 cases roughly equates to a 23 per cent conviction rate for those charged. Is it reasonable to assume that normally the prosecution would not pursue a case if they thought there was only a 23 per cent chance of a case winning? Therefore, if that is the case, does it mean that there is a big disparity between what one would expect in terms of successful prosecutions compared with what are the actual results?

The Solicitor General:

I am not sure I followed the second part of that question. But in relation to the first part, is there only a 23 per cent chance of succeeding, I think that is the wrong way of looking at the question. We would treat each case on a case by case basis. We would look at the evidence that is available in each case. We have to decide each case on its own merits. To look at cases based on previous statistics and applying that filter, that would be the wrong approach to applying the evidential test.

The Greffier of the States (in the Chair):

I have 4 Members who wish to ask questions of the Solicitor General. Deputy Andrew Lewis is next.

Deputy A.D. Lewis of St. Helier:

I would be interested to understand what the Solicitor General believes success to look like. One could say that that is success if you have had a fair trial. Just because somebody has not been convicted may not suggest justice has not been done, in some respects. I fully appreciate that these are extremely challenging cases to take, because of the lack of witnesses in most cases, for example, what I would be interested to know and perhaps it is not something the Solicitor General could answer now, but he did allude earlier that he could look at this, is what is the percentage of conviction rates in the U.K.? It has just been calculated there, 23 per cent at this moment in time with recent cases, what would the expectation be in the U.K.? I guess what Members are concerned about is: has the evidential test been met to bring the case in the first place? One would have thought if it had then there would be a slightly higher conviction rate. I just wondered how comparable it was with other jurisdictions in terms of conviction rate. At the moment it is looking like 23 per cent. Is that lower than perhaps you would expect?

The Solicitor General:

I repeat, in the time available I have not been able to compare those statistics with other jurisdictions such as the U.K. It may be that colleagues from my department might be able to do some research into that during the afternoon. That is in relation to the first part of that question. I am sorry, I did not fully follow the other question.

Deputy A.D. Lewis of St. Helier:

It was really what does the Solicitor General believe success looks like? Is it about justice or is it about convictions?

The Solicitor General:

Clearly, overall, success has to be a fair trial, whichever way the result is. As the Attorney General is the party who is responsible for bringing criminal prosecution in this jurisdiction then clearly he has to act overall in the interest of justice, but he is also the party responsible for bringing prosecutions. He wants to make sure where the time and resources are devoted to prosecuting serious crimes such as rape then the best case is put forward. Obviously he has an interest in making sure that as many of the prosecutions that he brings are successful in that they result in a successful prosecution, in terms of a conviction. I entirely accept the Deputy's point that overall it is about a fair trial.

Deputy M.R. Higgins:

Just to clarify what the Solicitor General said at the beginning, I think he said, he can correct me if I am wrong, that this amendment was not attacking or against jury trials, but is putting forward the idea that it should be the Bailiff or Deputy Bailiff and 2 Jurats. Surely it is against jury trials. The argument has been that it would be better to have that type of trial rather than a trial by jury. Could he just elaborate on that, please?

The Solicitor General:

Yes. I repeat that, yes, we are not attacking jury trials. The Attorney General also has to have regard to evidence and objective evidence which is available concerning rape myths. For example, there is evidence from Dr. Nina Burrowes concerning rape myths. I am happy to read some extracts from a research paper which was published in March 2013. For example, this concerns a systematic review of research evidence into the impact of rape myths on juror decision-making. For the first time this review was able to categorically conclude that juror attitudes towards rape do have an impact on their decision-making. This review has currently been submitted for publication in an academic journal. The main findings of the review are summarised in this document. I am happy to circulate the document to Members. For example, one of the researcher's findings are: "In a study involving 210 members of the public who participated in 18 mock trials [this is a previous bit of research] Taylor and Joudo (2005) found that despite watching the same testimony juror opinions about credibility varied greatly and was mostly influenced by demographics, beliefs, expectations and attitudes about how a 'real' victim of rape would behave." Then reading on: "Previous reviews of the literature on juror decision making in rape cases have found that victim blame is influenced by victim clothing and victim character. In a meta-analysis reviewing data from 28 studies Whatley (1996) found that victims who wore revealing clothing or were judged to be less respectable were significantly more likely to be held responsible for instances of rape. In an earlier review Pollard (1992) found that men and individuals with traditional sex-role attitudes were more likely to hold negative attitudes towards victims of rape." She says: "The researcher therefore suggests that in the case of rape trials there is likely to be a pre-trial prejudice that can have a significant influence on verdicts." That is an example of recent research which is available which the Attorney General has to take account of. I repeat this is not an attack on jury trials, it is simply having to take account of objective evidence concerning rape myths which is available.

Deputy M.R. Higgins:

Could I go further? I was surprised by the Solicitor General's answer because I know there is other evidence, including from the Ministry of Justice, which I quoted earlier, where they found the jury trials in the case of rape were not coming up with adverse-type reactions and they were convicting rapists. What I find particularly surprising is the way that the Solicitor General has just raised this gives the impression that the Attorney General and the Solicitor General are advocating the switch to Jurats and the Bailiff. Is that not the case?

[14:30]

The Solicitor General:

I am not familiar, obviously, with the research that the Deputy has just referred to. I am simply drawing Members' attention to research which is available. It is reputable, published research concerning rape myths. Ultimately it is a decision for this Assembly as to what is the correct mode of trial for rape. Both methods of trial are appropriate ways and fair ways of dealing with rape offences. We simply do draw this to Members' attention, concerning objective evidence of rape myths.

The Greffier of the States (in the Chair):

Sorry, Deputy, I have a number of other Members who want to asks questions. We are in the middle of debate as well.

Deputy M.R. Higgins:

I would just like to say, surely it is for political Members to give that evidence not the Solicitor General.

The Greffier of the States (in the Chair):

That is not a question for the Solicitor General. Senator Ozouf?

Senator P.F.C. Ozouf:

I would be grateful if the Solicitor General would take his hat off, as he is able to do quite well as a prosecutor, and just advise the Assembly as to the training that is given currently by judges, commissioners of the Royal Court, and also Jurats for so called complex cases? I will come back to those in my remarks, but I just want to understand whether or not there is any specific training given to Jurats and commissioners in the areas which they are being asked then to try in order to give them this knowledge of the prejudices or otherwise that sometimes could be attributed to counter the evidence that he has made?

The Solicitor General:

I have certainly had training on prosecuting rape cases. I cannot speak specifically for judges and Jurats as to what specifically they have been trained on. But if I have had training on dealing with rape prosecutions, I am sure the training can equally be available for judges and Jurats. Jurats do have a certain number of training days that are available and allocated to them each year. I cannot give specifics on the training that the Jurats have had.

Senator P.F.C. Ozouf:

Does the Solicitor General know whether or not our judges and commissioners are given specialist training for such cases?

The Greffier of the States (in the Chair):

I think you have just answered that one by saying he ...

Senator P.F.C. Ozouf:

Jurats versus judges.

The Greffier of the States (in the Chair):

I think he said he was not one himself and therefore could not say exactly what training they had had. Deputy Le Fondré?

Deputy J.A.N. Le Fondré of St. Lawrence:

I have 2 questions. One is hopefully easy, in that the statistics the Solicitor General were talking about in relation to charges and base guilty verdicts related to statistics for the existing law, in other words, the old law in Jersey. I presume any comparison to the old law in Jersey with the U.K. would not be comparing apples with apples. There are U.K. laws very similar to what we are debating now. There is a second question, which is my interpretation, I hope, of what we are debating in terms of Article 41 is that 41 at the moment keeps the discretion in the hands of the Royal Court as to whether it is jury or Jurat, whereas the amendment effectively takes a significant part of that discretion away because it is only in very defined circumstances where that discretion is able to be exercised. Is that broadly speaking the gist of this Article?

The Solicitor General:

As for the first question, the answer is, yes. As for the second question, I am afraid I need more time.

The Greffier of the States (in the Chair):

Was there a question from Deputy Tadier? Then maybe we will get back to the debate.

Deputy M. Tadier:

If I can just contextualise, the reason I was asking the Solicitor General about the evidential test is firstly to determine what we would expect reasonably compared to the ... so what the prosecutor would expect to be the overall statistics. Therefore, if we are applying a 50 per cent test, for example, one would, in the grand scheme of things, if the justice system were working effectively and producing just outcomes, to have the same percentage of convictions. On 15 July 2009 the Attorney General gave a statement to the Assembly. He said, I will quote and I will circulate the link to people: "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." That is what he said. He then went on and put it in another way: "If an acquittal is more likely than somebody being convicted then we would not pursue a case." I am just asking if that is the rule which would be generally applied when proceeding in all cases anyway, as a general rule of thumb.

The Solicitor General:

Yes, that does sound like the general rule of thumb. I am not sure in terms of what the Deputy seeks to extrapolate from it. I am not sure what he is seeking to do with that.

The Greffier of the States (in the Chair):

Is this a final bite of the cherry?

Deputy M. Tadier:

No, that is fine. I am happy with that answer. I can refer to the rest in my speech.

The Greffier of the States (in the Chair):

Deputy Le Fondré is next to speak in the debate.

2.1.7 Deputy J.A.N. Le Fondré:

I will return the documentation to the Solicitor General in a second. I was indicating, obviously, before lunch and at that point I was watching with interest ... and I do want to commend the Deputy of St. Ouen when he gets fired-up. That was one of the most surgical speeches I have seen him produce in a long time. I do commend him on how he took it to pieces. What I was concerned about what this discrepancy with what we were provided with on Friday and what was lodged on Monday. I am also concerned a little bit with the way the conversation has gone over the last half an hour or so. It feels like we are going back to doing things on the hoof a little bit. There is stuff coming in from left and right and we are in that position where we are making decisions on the hoof, a bit of emotion attached to it and under pressure. We just go right back to that point we have known and has been expressed a number of times in the last few weeks. This is a massive agenda. Have we all properly considered it? Do we all properly know the outcomes and the consequences? I was disappointed slightly with Deputy Wickenden from the point of view that he seemed to be saying: "We have to be getting more convictions, because these people are obviously guilty." That was kind of the tone. Okay, there may be 2 schools of thought. That one, which is want to get more convictions or you stick to the basic principle, however uncomfortable, you are innocent until proven guilty. Which bit of the fundamentals do you go to? I will go to the latter, because one has to have confidence in the system. That is as a defendant as well as a victim. There are 2 sides to this equation all the time. There is the innocent party and there is somebody who is going to be guilty. We must not forget that there is always a chance that the person is innocent. One of the things I am curious about is that certainly these comments about, yes, we only achieved ... Deputy Wickenden was saying zero convictions. We have obviously had slightly more than that. But that is under the old law. Surely, really being simple about this, surely the whole point of this new law is to make it better. I am not convinced that by making comparisons with what is the old law and convictions that are required under the old law is relevant to what we are debating now. That is probably all I need to say. We must not be assuming that all defendants are guilty. We must allow for the innocence bit. I am

waiting for confirmation, hopefully, of what I asked the Solicitor General for earlier. One does not construct a system of criminal justice to ensure there are more convictions. It is constructed to ensure there is a fair trial. That surely has got to be the fundamentals. If it is the case that the purpose of the amendment is to secure more convictions, that would be an improper purpose. Indeed, it is inconsistent with the view of the Minister, with which I agree, that both modes of trial are fair and just ways of determining guilt or innocence. I will stop there on that particular aspect, because I want to hear what the Solicitor General says in relation to my question. On that basis, I will not be supporting this amendment. I do not know where the debate is going to go. Certainly, before lunch I was in agreement with the Deputy of St. Ouen that I thought the panel should withdraw the amendment, but obviously that is a matter for the Assembly.

2.1.8 Deputy J.A. Martin:

Before I start on where I am going to stand on this amendment, I just want to make a few comments on where we are today. We are in this terrible position, as has been stated by everybody, where we are pressurised to pass really, really fundamental laws and now amendments and absolutely ... just before lunch - and I am glad I was not called before lunch because steam was coming out of my ears - we have one chair of a Scrutiny Panel having a go at another chair of a Scrutiny Panel saying they have not done their work, not against the Minister as much and the Council who have lodged and lodged and lodged. We have something on our agenda, 8 pieces of legislation coming from Health that they want to bring forward 2 weeks. That is an aside to this, but we are pressurised. Then, just when this amendment ... the Deputy of St. John even stood up and said: "I have to change all my speech" because the Minister on a whim has changed her mind. Suddenly, she is supportive. Oh, let us wipe out, let us just say now we are going to have Jurats. What really is this Jurat against jury thing that really ... there is one fundamental. It is years and years, hundreds of years old. You are entitled to be judged by your peers. Are Jurats my peers? Well, that is a judgment call. That is an absolutely different judgment call. But the Deputy herself, the Deputy of St. John, does not really want Jurats. She wants another in-between hybrid, which could work but nobody has had enough time to discuss this. As Deputy Le Fondré has said, we are sitting here today passing a law that has not even been to Privy Council that does bring in consent. What is consent? Are these old trials prosecuted on ... what is consent? "Oh, well, yes, I thought so." Well, no, this defines in the law what consent is. So when the Deputy of St. Ouen said earlier: "I have some figures comparing with the U.K. The U.K. is doing quite well. What is the difference?" the difference is the U.K. already has this law or a similar version. So, I stand here and I absolutely defend the right of the Deputy of St. John. Their panel has been scrutinising every piece of legislation that has come through. If they do not have a lot of time and they might have thought: "This sounds like a good idea" but they have not done enough research on it, they have to go with what they call your gut instinct. Now, we are having the debate. To me, they are wrong but we are still having the debate. As I say, I am still quite annoyed that the Minister has just changed her mind on a whim where she has had a lot more resources. She has had legal advice all the way through. She wants to bring this law in, and I am like Deputy Wickenden. I am on the Jersey Police Authority, one of 2 States Members. They have never come to me and said: "Change this, who presides over criminal trials, and we will get more convictions." They have always said: "We need to educate right from the minute something is reported to how we collect evidence, how we talk to victims, how we then interview the accused, everything like that." We are not saying we are not there, but we have never had this law. So, today I feel for the Deputy of St. John. I feel that we really need to look at this, but we need time to say ... we have had the figures from the Solicitor General, 13 cases since 2012 now with 3 prosecutions, not 13 last year, we had no prosecutions. We need to see if when we introduce this law, maybe in a year, maybe 2, we look back and say: "Nothing has improved." We have introduced this law. We have defined what consent is under the law. Nothing is a given.

[14:45]

Even if you are married, even if you are in a long-term relationship, nothing is a given. That is what we have defined in law. But we want to go ahead and just wipe out the jury system. My worry is we do this today for rape and severe sexual offences, what is going to come back tomorrow? Oh, we are not getting enough ... yes, there was a grave and criminal assault and that was not convicted by a jury, shall we do that to Jurats? What about murder? What about attempted murder? What about this? Are we going to just wipe out everything that is an easy conviction or looks like an easy conviction? Because, as I say, to me, 12 people of my peers are a cross-section of the community, not the Inferior Number. Well, obviously I do not need to be convinced. I might want to try and convince the panel to think again. I would be really interested. The Minister stood up and just said: "After now much reflection I am going to accept the amendment" so I would be interested to hear where she is coming from. To me there is not enough evidence to change a system that has been working for years and years and years. It needs more thought and it is not today to change. Do we get rid of sexual offences not being tried by a jury on the day that we are sitting introducing the law? It just beggars belief. I cannot believe it, but we are where we are. I have said my bit. Please, I really think it is not helpful when we have one part of scrutiny just having a go at another because they have not done, in their eyes, some work. Well, as I say, we look forward to the comments on all the things from Health.

2.1.9 Deputy J.M. Maçon:

I think that was a fine speech from the last speaker explaining her attitude towards this. I think what the panel has proposed has come from the submission that we received from J.A.A.R. It is that question and that is the point that Deputy Martin has raised is that the system has been working for years and years, but that begs the question: has it been working? Working for whom and in what way? It is that question about fair and free trials. That is the purpose of the justice system. But also for people to have confidence in the justice system, justice has to be seen to be done. Now, if you are a rape victim on this Island how does that feel in Jersey today? We know, first of all, that rape cases are complex. It is not an easy thing to bring for the victim in the first place. It is not an easy thing to relive and go through again. It is certainly not easy to then tell a room of strangers, going through those intimate details, and then being cross-examined on some quite intimate aspects as well. It is certainly not easy if you are a victim to go through that process. Not only that, but we know that there is a high threshold for even bringing the prosecution in the first place. There are a huge amount of bars that a victim has to jump through even before they get to a certain place. How much confidence do they have? How much do they feel that justice is being done today? Then you add in the complications, which the S.G. (Solicitor General) talked about eloquently, about the myths around rape, about the prejudices that individuals might bring into a jury trial. Now, of course, we do not necessarily know because we should not know what happens when a jury goes and considers their verdict. But I do not necessarily buy the line that simply because a judge has told someone: "You cannot consider this, you cannot consider that, you must dismiss it from your mind" that necessarily happens. Of course, there is evidence out there to show with the mock trials that that does not happen either. As I say, these are not easy matters. These are very complex, very serious matters that need to be considered. Again, when the Deputy of St. Ouen was tearing us apart, of course, one aspect that he did miss was talking about Guernsey. From the comments from the Minister, of course, Guernsey does not have trial by jury. It has a different set-up, which is trial by their form of Jurats. What is the point I am trying to make here? The point I am trying to make here is that there is not a universal right or wrong approach. There is a case for the politicians deciding what is the best method going forward, and the S.G. said that. What is the best method for a trial for rape? Now, the Scrutiny Panel has come forward and said: "Here is an alternative way in which it could be done." Because we know that when there are other complex cases, such as fraud cases, *et cetera*, there are grounds for saying: "Maybe these matters are perhaps a little too complex and a little difficult to put in front of laypeople straight away. That is not necessarily the best way of doing

this.” So, if we can develop this debate, if Members are absolutely convinced that trial by jury is serving us well and there is absolutely no problem there, then that is their opinion and that is fine. If they are saying trial by Jurat is not quite right either, then that is fine. But again, what we have not heard is would another method perhaps be a better way to proceed. Maybe, like Deputy Martin has said, that is something which we would want the Minister to consider in future, but we could not do all of that if we did not really have the debate and the time constraints that we as the Scrutiny Panel had in order to bring this very important and serious matter to Members’ attention. Again, looking at the conviction rate, yes, okay, it is the old law and we are looking at a new law, but again you are talking about, what, 3 convictions in 2012, let alone the 13 cases, with one attempted as well so 14, brought forward. Do we think that that is it in Jersey, that that is not the tip of the iceberg, that there is not more going on here? We have to be doing things. I put this question to Members: if we know that rape is an issue within our society, what for the past 3½ years has the rest of this Assembly been doing in order to tackle this? Because it is quite easy to turn around and criticise the Scrutiny Panel for bringing something forward to say: “We want to appreciate that for our society this is an issue.” Not enough Members have got up today and said: “This is an issue.” So we are trying to bring forward something which we think could improve the system because part of the benefit of Jurats, which J.A.A.R. explained to us when they bring over the specialists to train the Jurats to quash the myths about rape, it definitely provides a specialism that those individuals will have, which is a greater asset into our justice system from the panel’s perspective. So, the issue about justice, which has been asked about, whether this is about a fair trial or not, we have heard from the S.G. that there is nothing to say that a Jurat trial is not a fair trial. We need to ask ourselves for those people who need to have confidence in our justice system, for those people who we need to give confidence to as a States Assembly, is the system that currently works the best one that we have? Is the amendment brought forward by the Scrutiny Panel something that could improve that situation? I believe we are here today to decide that and obviously I will be supporting my Scrutiny Panel and our lead Member in that. Again, I absolutely accept that we must think about defendants, but we must also think about victims.

2.1.10 Deputy M. Tadier:

I will address the point that Deputy Maçon raised about do we think there is a problem here. I think that is what it all hinges on, essentially. The reason I asked my question to the Solicitor General, and I was grateful for his assistance at short notice because I was just thinking about this, something clicked in my mind. I remember the Attorney General making a statement back what turned out to be in 2009, and he himself said it is quite an unusual statement because there was a lot of speculation going on at the time and suggestions from the public, who were saying there are not that many prosecutions that are being brought in relation to child abuse. Of course, the Attorney General clarified that there are difficulties, especially with historic cases that happened such a long time ago, for the evidence to be of good quality to be of use in a court of law. I have just circulated the extract from the Attorney General’s speech from 15th July 2009. What he said I will just reiterate. He said: “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.” Then he said: “I see an awful lot of negatives there.” He says: “Perhaps I can put it the other way round. 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.” What that means is that in deciding whether or not to pursue a conviction essentially the Attorney General has to be ...

The Greffier of the States (in the Chair):

I am sorry to interrupt you, Deputy. There is a mini conference going on in the corner and I am struggling to follow your remarks. If you are going to have a conversation, perhaps outside...

Deputy M. Tadier:

I was having trouble following my own thoughts there as well because of that. The evidential test is whether there is a 50:50 chance of success. There is clearly a problem. There has to be something wrong one way or the other, and remember, this is a 50 per cent chance of success. So what I want to talk about is that the test which the court applies, whether that is through a jury or through the judges who are making the decision instead of the jury, is that the test that they have to apply is a much higher bar than one on the balance of probability. The test that the court needs to apply is beyond all reasonable doubt, and that is what the court will be working with. So the 50:50 chance of a conviction obviously relates to that high bar of beyond all reasonable doubt. So, what it means in reality is that it is very likely that defendants who are guilty may well walk free because there is a high bar which says beyond all reasonable doubt. There is a concern, I think, perhaps it is more likely - and this is what we need to look into - with jurors rather than with the officials, the trained professional officials of the court, whose livelihood and whose academic training and legal training is obviously to do with the law. It is quite likely that you are going to get laypeople from the public who espouse a quite understandable political and legal outlook which says that it is better to let a guilty man walk free than to convict an innocent man. That is an adage that you hear. Of course, we have to remember that there are 2 kinds of miscarriage of justice. Notably, there are the miscarriages of justice which allows somebody who has committed an offence to walk free for whatever reason, and the one that puts an innocent person in prison or that sanctions the innocent person for something that they have not done. I am just wondering why it is that in pretty much all cases it is up to the defendant who gets the right. The defendant gets the right to choose whether they want to be tried by a jury or be tried by the Inferior Number or by Jurat. It is strange that they always choose by jury. They always opt to be tried by a jury. It seems to me that the alleged victim does not get that choice. It seems to me, and we can ask ourselves the question, if we were on trial for any offence but let us say it is rape, would we prefer to be tried by jury or by Jurat? Let us put it another way. If you were guilty of rape and knew that you had committed a rape but were pleading not guilty, would you prefer to be tried by jury or by Jurat? What would your legal advice advise you to do? Would they advise you to be tried by jury or by Jurat? Well, we know we have all the evidence, but in pretty much all cases they are told to choose to be tried by jury. Why would you choose that if it did not give you an advantage? There might be reasons for that, but I cannot think of any other reason why they would always be opting in most cases to be tried by jury if it did not give the defence an advantage.

[15:00]

So, that is a problem. When we hear that there have been 3 convictions out of 13, which is a 23 per cent conviction rate, but we understand that there is a 50:50 evidential test that is applied by the prosecution, there is a massive disparity between that 23 per cent and the 50 per cent of convictions that we should be expecting. It means that something is not working. It either means that the evidential test is being applied incorrectly, and I do not think anyone is going to stand up and say that there is the evidence to suggest that the evidential test is not being applied correctly or that the Attorney General and his department are not calculating the chances of success correctly, but, of course, something is not going right because we know that of all these cases that have come through since 2012 there has only been a 23 per cent rate. What it seems to suggest is that if it were left to people like the Attorney General, who are legally trained in the court and who could apply a different test, not the test which says better to let a guilty man walk free than to convict an innocent man ... there might be people in any jury who have other prejudices. It may be suggested, for example, that you only need to have 3 people on the jury who are sceptical, who are, let us say, misogynistic or do not like women, that could let somebody be acquitted, but it could also be 3 people who just do not trust the state at all and they say: "I am going to err to the side of caution because I do not trust Government, I do not trust the system and I think it is better that somebody gets let off, especially if there is a niggling doubt in my mind because I cannot be convinced beyond all reasonable doubt that this person is guilty." So, I think there are very compelling arguments to suggest that the Jurats and

the court professionals are in a better position to judge on these very sensitive issues of facts than perhaps laypeople. It is not reasonable, I do not think, necessarily to ask laypeople to make these decisions. I did very much come here this week expecting to speak against this. I thought this is a long-held tradition. Everyone has an absolute right to be able to be tried by their peers, but I do not think it is quite that straightforward. We are here to try and see if there is a problem as politicians and where there are problems ... and there clearly is a problem. There is a big disparity in the number of convictions here and also, of course, we must never forget about the rapes that happen that never even get complained about or never come to prosecution just because the evidence is not there. It does not mean that they did not happen. Of course, it is probably incumbent on me to mention this now because I know she is not a constituent of mine, but she is also concerned about the effect of an innocent person being accused of a crime, particularly a sexual offences crime, when it is very much in the public domain, only for that not to result in a conviction. That can, of course, destroy their reputation, especially when the idea is that people say there is no smoke without fire. An evidential test has been brought. So we need to make sure that the 2 things are working together, that the evidential test is working correctly and that convictions when we put people through this very serious process of the court system in whatever capacity, they may be a witness, they might be a defendant or they might be the victim, that they are treated absolutely correctly. Fairness needs to apply across those 3. So, what is the conclusion? You could conclude, and it has been suggested, that Scrutiny do not have enough evidence to make this very significant change today. It is true, and this applies to a lot of things that we talk about, that correlation does not imply causation. What I mean by that is that it is easy to identify a problem and you can say there is a problem in the sense that the conviction rates are too low; therefore, it must be because of juries. By and large, juries are the only method that people elect to have rape cases heard; therefore, the problem must be with juries. I am not sure that that is necessarily the case, but as an Assembly it is incumbent on us to err to the side of caution on that issue. It seems to me logically it is more likely that the Jurat system is more likely to come to a fair and impartial and unbiased way of weighing-up those decisions. This does need to be looked at because, of course, if juries are not a good way to try rape cases, then it does need to be looked at in other cases to do with serious convictions, in murder cases, for example. It may well be that that old adage that has been passed down through the generations that you have a right to be tried by your peers is no longer correct. It may also work differently in small communities, of course. I am minded to support the proposals of the Scrutiny Panel. In the meantime, we need to seriously have a consultation, I think, with the public generally about trial by jury in the 21st century and whether that works correctly. I would ask the Minister and Members to support the Scrutiny Panel in this. No one is suggesting that trial by Jurat does not work, but many people are suggesting and the evidence seems to be there that trial by jury, especially in these kinds of cases, does not work. I think it is right that we do make this decision today and support the Scrutiny Panel in their findings.

2.1.11 The Deputy of St. Peter:

Firstly, I think it is important that I make it very clear that I do not feel that I have made this decision to support the panel on a whim. It is correct that we, myself and those who I have worked with, considered the implications of jury trial versus Jurat trial when deliberating over the Criminal Procedures Act and all that followed. We did err on the side of caution, but upon further reflection - and that has been largely due to the considerable and valuable contributions, I think, of the panel and the information that they have put before us, and not with unseemly haste, I would like to add - it has been that I have reconsidered the facts and I have changed my mind. I do not think that is a crime, but I do not take kindly to that being called a whim. Yesterday, we had a considerable and very impressive debate, I thought, about the justice process. I was rather pleased with the Assembly and its deliberations. I think that is exactly what we are here to do, as I mentioned yesterday. I think it is absolutely correct that we are here to deliberate what we think as an Assembly is appropriate in modern society, and that is part of the privilege and the honour that we have in taking the

responsibility that we have for the people who put us here. Moving back to yesterday's debate very briefly, if I may, I do find it rather curious that some Members who yesterday argued a jury could not put certain information out of their mind to follow a judge's directions, therefore, it was impossible to have a retrial when a trial had already occurred; today they suddenly decide that a jury is capable of following the directions of a judge and putting any prejudice that they might have held, however long held those prejudices and feelings, deeply held feelings, might be, they can put those aside for this particular instance. I think that is a rather important curious point that I would like Members to think upon. Let us get back to the facts. Other countries do operate similar systems and so we have based our thoughts and it is clear in the comments that we have provided that in other countries such as Austria, Germany, Guernsey and Denmark, rapes are not heard by juries. They are heard in a similar process to that which a Jurat can provide. Indeed, in our own jurisdiction, right here, financial crimes, some of them, due to their complexity are currently heard by Jurats because it is thought that that is more appropriate due to the complexity of the information that they process and the facts that they are there to deliberate upon. So I reiterate that we are not saying one form of trial is fairer to anybody than another, but that there are sometimes causes and reasons to offer a different mode of trial, and I am grateful to the Assembly for their consideration. Let us take this from a victim's perspective. A really major part of my tenure as Minister for Home Affairs has been in highlighting and raising awareness of the prevalence of sexual assault, domestic abuse and such crimes. We have tried to have a victim perspective in all of this. One fact that I think it is important for the Assembly to reflect upon is that a number of people may be a victim of crime, but they never come forward. Their case never even goes to the prosecution for deliberation on the facts and whether it should go to trial because that charge is never made. Many people are deterred from pressing charges against somebody who has assaulted them because they simply cannot face the idea of going before a trial, particularly in the circumstances where we do administer justice as we do currently. So I think it is absolutely appropriate that we reconsider that and ask ourselves whether it is appropriate in the 21st century that we support this form of trial for these most intimate of crimes. This is further compounded, I think, by the findings of the Sexual Assault Referral Centre, which we opened for the first time last year. It is very pleasing that this service is available now. It offers independent support to people who have been victims of sexual assault. Since it opened in May last year, the number of people reporting to it has increased significantly. Now, it is very important and significant that those people who go to the Sexual Assault Referral Centre can do so with independence. It does not mean that charges will be pressed and that they will enter into a criminal process. However, evidence that is gathered at that time, because, of course, time is rather important if you have been the victim of a rape, that evidence is gathered and frozen and kept just in case the victim might change their mind and decide to press charges, which is an important factor for them to have available to them, in my view. There have been powerful comments put before Members today, but I feel very confident and strongly that we have gone through a logical process to reach this point today. I think also the processes of the Assembly are very important. It is quite unusual for a legislature to consider a major piece of legislation in both the First, Second and Third Reading in one sitting, and I do have sympathy with the Assembly that they have a lot to consider. They looked considerably and in-depth at the Criminal Procedure Law and today we are asking a lot, but it has taken a considerable amount of time, effort, research and work to come to this day. We have not just cobbled this law together. It is not coming at the last minute because we are trying to bamboozle Members. It is coming at the last minute because of the considerable effort that it has taken to reach this point. I am sorry that Members feel that they are somewhat under pressure. I absolutely sympathise, I really do, but perhaps it is something for the future Assembly to consider whether it is appropriate to deliberate major law in this way. Because I think the valuable contributions of the Scrutiny Panel and the contributions of the sub-panel who looked at criminal procedure have been really valuable. It is right that we consider their deliberations and any suggestions that might come. No wonder Scrutiny Members often feel frustrated that they are not listened to **[Approbation]** and

their suggestions are not acted upon because we come up to this great buffer of time that places us into this situation. I think that we are today doing the very best with the tools that we have at our fingertips. I ask the Assembly to kindly give very careful consideration to what has been put before them. I know it is a big change and perhaps more time might be required. However, we are a deliberating Assembly. We have that power and that knowledge of our electors to consider. I look forward to hearing the rest of the debate.

2.1.12 Connétable M.P.S. Le Troquer of St. Martin:

I am only going to speak briefly. I only put a few notes together over lunch. I was not prepared in my normal way. The arguments have been well rehearsed this morning and again this afternoon. I am quite sure the Solicitor General is quite pleased to be here this afternoon and pleased the A.G. (Attorney General) has gone off and he had to follow on. It is a strange situation. I just go back on my experience as such. It is a long time since I have left the police force, but there was the common law offences and customary law offences such as murder and rape and they were dealt with.

[15:15]

The serious ones that could not be dealt with at Magistrate's Court went to the Royal Court and they could be, if the accused wished it, judged by a jury. They gave their evidence and they listened and the jury decided. If it was a statute offence, that was dealt with - could only be dealt with - by the Inferior Number at the Royal Court. It was not by a jury. If you had a situation where - and I am sure the S.G. will correct me if I am wrong - you could have possession of class A drugs or importation of class A drugs under the drugs law and you were dealt with by the Inferior Number. If you were in a conspiracy, which was a common law offence, you could elect to be judged by a jury. So it was quite an interesting situation. In some of the common law offences, such as murder, you could elect to be judged if you wished by the Inferior Number. If you did not want to face the members of the public, your peers, in a court and for them to judge you, you could elect to go to the... and some of the most serious ones, I cannot recall them now, but they could elect for Jurats to judge them. So, it was quite interesting. What we have with this new piece of legislation today is we have some items that were common law offences have now become statute offences, and you have statute offences incorporated, some of them very elderly, but put into a brand new law. So you have a combination and I am not sure if that was how the Minister was thinking at the time, having 2 lots, common law offences and statute law offences, and how we are going to have them judged and how they will be heard before a court. So, it is quite interesting. Obviously, at the time the jury consisted of 24 members and that was only changed during my police career to 12 members. It was very difficult to get 24 members, but we had 24 members in the court next door. Then we went through the stage where there were a lot of false claims of rape and new legislation had to be introduced into the Police Force Law of making a false complaint because there was no such offence. I can remember there was a whole load of women, sadly for the real victims, who made up stories of rape, all found to be incorrect and there was no offence to charge them with so the Police Force Law was changed to cover that. I am in no way suggesting the A.G. and the S.G. at the moment ... because they have the highest standards and I would hate to suggest that maybe they are bringing cases to court in answer to the public because the public think there was no prosecution, they decided there was insufficient evidence, it did not pass the evidential test. Now, I do not think that is the case, but you can imagine victims as well complaining that they do not have a chance to go to court to give their evidence against a person that they claimed raped them because the Crown Officers have decided. How many times do we have during question time from some Members why were cases not prosecuted? So, we have the highest level of decisions. The poor results could be a result of poor investigations and I am aiming criticism then at the States of Jersey Police Force. I am sure that is not the case either. As I said, I think the Minister is in a very difficult position. I did not know she was going to speak before me this afternoon. I did not know when the button went on. She is trying

to support Scrutiny with the views that they have given. She is trying to support the victims. Maybe she was thinking - I do not think she was - about the previous legislation where you had statute and common law offences and, as I explained earlier, who they could be tried by. Why I wanted to speak, really, I really wanted to - and there have been other Members - disassociate myself with the comments made this morning by Deputy Wickenden. He is a good friend and a good colleague and works very, very hard, but I really cannot accept that we would support this so that we get better conviction rates, for the purpose of getting better convictions, a better chance of a conviction. That cannot be the right way of going forward. Do Jurats have special powers? I do not think they do. They are probably likely to be even more cautious than a jury itself. Deputy Martin, I think she must have seen my note. If the argument is that we will get better conviction rates by having Jurats, well, let us do that for everything. If a person is charged with a common law offence of theft, which we do not have the Theft Act in Jersey yet, and all these other offences, let us have Jurat courts all the time and we will get better rates of conviction. That is all I really wanted to say and I will be opposing the amendment.

2.1.13 Senator P.F.C. Ozouf:

This is, of course, one of the most sensitive and important issues which has sexual offences and the absence of a sufficient amount of charges being brought. Investigations and successful prosecutions in sexual offences both for children and women are, of course, known to every Member of this Assembly who has been in this Assembly in this last period of office. The rights of victims are, to me, absolutely paramount. An environment in which people will come forward with confidence to tell their story and say what has happened to them is a real issue. We should not let down a single victim. At the same time, a single innocent person convicted of an offence leading to a long prison sentence is a miscarriage of justice. At the end of the day, we are weighing-up - and I will come on to dealing with that - at rather uncomfortable speed how it is best to ensure that we get a carriage of justice, but I fear that we are having a miscarriage of justice in relation to the speed in which we are considering such a fundamental change. We know that there are insufficient numbers of people that are coming forward to report sexual offences and other issues. We know this and the Minister is to be commended in her work, as she explained in supporting this amendment, in her term of office to improve the situation for people and the confidence of people coming forward. We should pay tribute also to the police and others who have done so much, including the organisation which has made representations to the chair of the Scrutiny Panel. In theory, I have no objection to trials involving Jurats or specially trained panels as exists in other places. For me, the key is the level of knowledge and training by those making decisions. There have been, it is known, some concerning comments in sentencing by judges - not in this jurisdiction that I am aware of - in trials of rape, which appear to justify the concerns that the Solicitor General and other Members have made about these issues such as rape myths as identified by the papers and submissions considered by the Scrutiny Panel. I have to say that I am following the Connétable of St. Martin when he speaks with his knowledge as a policeman. I am not sure that we know that being a Jurat automatically confers a better understanding of the issues as for a member of a jury. I really am not sure and I think it is fair to say - I am going to get into trouble but I will get out of trouble in one second - the generation of Jurats that we have seen in the past would tend to perhaps be of a complexion that would have more traditional views of the behaviour of women, *et cetera*. Certainly, nowadays we are seeing a bench of Jurats which I have to say is gender equal, which I think is a significant improvement. I see the mix of our Jurats that we see today as inspiring for me enormous confidence in our justice system. The Jurat benches have, indeed, changed significantly and they are an impressive group of Islanders and we should salute their service to the Island and to justice. I asked the Solicitor General about the training of judges and the Royal Court Commissioners because I am concerned that if we are to make... and I think that there are real issues about the training, if I may take this opportunity of saying, since in the last few months I have done quite a lot of statistical work on Family Courts, an interesting

subject for me. It is not something I would normally have had to look at but I have looked at it. There are some very important issues about the operation of the Family Courts and Members will have been aware of the meeting that we held in Piquet House with the Minister for T.T.S. (Transport and Technical Services) and the Bailiff. He showed us and taught those Members who heard that there is a real issue about a whole revolution that has to happen in our courts to make them ... somebody is pointing at the clock again. Yes, is it 6.25? Have I been talking that long? [Laughter] Does it always happen when it is me?

The Greffier of the States (in the Chair):

I am tempted but carry on.

Senator P.F.C. Ozouf:

You are tempted, yes. I will not talk for much longer. I do have some prepared notes and I will not be very much longer. This is a massive issue. I am told that the judiciary - and again if I am wrong then I stand to be corrected - but I understand that there are real issues about training, up to date training, of our judiciary and Jurats in terms of working in Family Courts. There is the situation of the environment in which Family Courts and proceedings involving the most sensitive of personal issues, which, of course, a rape case is, need to be dealt with. The intimidating environment of the building just next door to us, as fine architecturally as it is, is that the right place to hold a hearing for such a sensitive matter? I am afraid the bequeathing of the challenge to the next Assembly is going to be to have to make, I suspect, significant investment into an appropriate Family Court environment both in terms of its physical environment but also into the specialist training of commissioners. I mean no disrespect whatsoever to our judiciary, to the Bailiff, the Deputy Bailiff and commissioners that come, but the reality is that there is a need in certain circumstances for specialist training for specialist cases. One thing that we are saying is that effectively we do not really trust jurors to make the right decision and we think the Jurats are going to do a better job. Well, that may be the case. It may well be the case and it may well be that out of this, after more mature consideration, we will move to ... and I am not going to support the amendment and I am going to explain why. It may well be that we can do enormous good by a considered approach to changing fundamentally the way that rape trials are heard in Jersey by the setting up of effectively specialist trained Jurats and commissioners in an environment. Everybody must want a higher level of successful convictions but for the right reasons and with absolutely no doubt of a miscarriage of justice. That is also the issue, and I know that Deputy Wickenden did not mean it but it could be interpreted that this is effectively to get ... it is not a numbers game, if I may say, and a number of Members have raised the issue of numbers, of how many successful prosecutions there have been. I was put in my place properly by the new Children's Commissioner, the impressive new Children's Commissioner, when I asked her at the policy forum last week on the issue of fostering. She said there were 100 people in foster care. I said: "How does that compare with the U.K.?" and she said to me: "What does it matter about the U.K.? One child that is not in appropriate foster care is a case too many." One miscarriage of justice is too many. One victim who does not come forward and should have come forward and been given the support is too many. There is a way that you pass legislation and the Presiding Officer of this Assembly, who I have not always seen eye to eye with as Members will know, has said that there is a way that scrutiny of legislation should happen. While I fully understand and expect and believe that the Minister and the panel has done an excellent job in relation to both the previous issue of the criminal procedures legislation and this one, and they should be commended for their work, I have to say that this is an amendment which we are considering which was lodged on 6th March. This is just over 2 weeks ago. Two weeks to make a fundamental change in primary legislation to require rape trials to have the compulsion of only a Jurat trial. Two weeks.

[15:30]

I am afraid that that is not a way to pass legislation. That is not a way to pass legislation and for that reason, for that reason alone, even though I have huge sympathy and I commend the Scrutiny Panel for bringing this, I am afraid we as a legislature cannot and must not pass legislation on primary legislation with 2 weeks' notice. I have a barrage of information that I am being given. I am like a jury deciding on changing the law of Jersey. Two weeks to think about this? No consultation or very limited consultation with the courts, very limited consultation with the Law Society on the issue of Jurats? I am sorry, if the proposer of this amendment can say that there has been appropriate consultation with the Jurats, with the courts, with the judiciary, with the Law Society ... and I have to say there is one other thing which I find a juxtaposition on this whole issue. This is almost saying that we are going to put this into the Jurats' hands. We are almost giving up on the fact that jurors and society as a whole need to be better educated, as the Minister has done such an excellent job of doing, of awareness themselves. I want to live in a society and in an Island where there is an awareness, of the random selection of a greater number of people of awareness of these issues. I want these issues not to just be aware and to be made aware of and the rising standards of what conduct should be about just to be given to Jurats. I want to live in an Island where there is an awareness of these issues for the whole population. That is the way that we will effectively improve the avoidance of people who engage in such dreadful crimes but also the awareness of other people around them. I think that basically simply saying: "Put this to Jurats" is almost going to say: "We are giving up on the hope that juries can make proper decisions." I want juries to also make proper decisions, but at the same time I do realise and I suspect that - I will not be here - this is a pretty good idea but it cannot be legislated with 2 weeks' notice. As a Back-Bencher, I want to know and have evidence that this issue has been properly consulted. The courts were not made aware of this, as I understand it, until a very short time ago. I think the Minister has responded properly, but I am afraid to say that it is the principle of rushed legislation: 2 weeks that this has been put into the public domain. It is not the way to make primary legislation. I am going to either abstain or reject it and express the sincere hope that there can be some proper consultation, not to make decisions on the hoof with evidence flying at me from the Solicitor General being asked questions about rape myths by other people. I have read the Scrutiny Panel's report, but I am sorry, it has to be better than that when you are doing legislation. No Parliament in the world would pass effectively a First, Second and Third Reading in one day like this. No way would you do it and you would not change the primary law to do it. On that basis, I hope that other Members will say not no but not today, until there has been proper discussion. Has it been discussed? Have people met with the Jurats and discussed the implications of it, the resource implications of it, the fact that they are probably going to be sitting an extra 2 weeks a year? There has not been any discussion as far as I am concerned in detail. There has not been any discussion. It is clear. I am hardly the person likely to be speaking up for the Presiding Officer in some respects, but his letter is pretty important. I think it would be a miscarriage of our duties as a legislature effectively to make legislation like this. Two weeks; I say to Members it is just not good enough for primary legislation. My sympathies and my siding on the side of the rights of victims are paramount, but I do not think we are doing all of those, no doubt, countless people who have not had the courage to come forward with their case justice by making decisions like this with such haste. With huge regret, I will be either abstaining or voting against this amendment on those principles.

2.1.14 Deputy S.Y. Mézec of St. Helier:

Can I just start by saying that I have a huge amount of sympathy with some of the points that have been made by Members on both sides of this debate about the process of getting to this point? I think the Minister made some of those points herself. This is unsatisfactory that we go through primary legislation in this way. What I hope is that the next Assembly will do more than just moan about it and will get to grips with it because it is something that Islanders deserve, that we have a much better process for forming legislation. Before I got into politics I was training to be a lawyer. I worked at

a local law firm with some absolutely fantastic lawyers and we were involved in some really exciting cases. Bragging slightly, but I did get a first class in my legal ethics module in my law degree, and the reason I make that point is because I absolutely understand and support the principles of justice. I agree with the comments that have been made that this should not be about securing more convictions. It should be about having a fair trial, and I am of the view that given what we know about society I suspect that with the best mode of fair trial that there would be more convictions in the end but it would be consequential. That would not be the aim. The aim would be a fair trial and that would be what would naturally flow from it. A few weeks ago, before we knew this was going to be a real issue, I instinctively found myself on the side of supporting trial by jury in this instance and would not have voted for this amendment. I have changed my mind. I will be voting to support this amendment and there are 2 crucial things that have changed my mind on it. The first is now having knowledge that I did not previously possess about how legal systems in other parts of the world work, including other parts of Europe, including other parts of the Channel Islands, where as we have been told previously Guernsey does not have trial by jury. We know that in other countries in Europe similar arrangements exist. Forget what our personal views may be, on the basis of European human rights law those trials are fair. It is not an absolute must that you must have trial by jury to have fair trials, and that is what the European human rights law says. So, let us not say that this is about undermining fair trials because the law makes it clear that that is not the case. We will still have fair trials if this amendment is passed. If there was any sort of jurisprudence that suggested the opposite, I would not be voting for it and I would be urging other Members not to vote for it, but it does not exist. So, let us do away with that argument. We will still have fair trials as a result of passing this amendment. The second thing that has changed my mind was my experience with the Scrutiny Panel hearing the submission from representatives from J.A.A.R. That really made me think and really helped me get clearer in my own head some of the issues surrounding the myths and the prejudice that exists, not uniquely in Jersey but more wider than that in western society, where our society in recent years has come a long way on prejudice against people from the L.G.B.T. (lesbian, gay, bisexual, transgender) community. We have come a long way in terms of prejudice that used to exist about where people were born or their race. Obviously, some of that does still exist. One area that is quite difficult to talk about because it affects 50 per cent of the population is the prejudice which does still exist against women. That is a prejudice which sometimes forms itself in very obvious ways that we can see very clearly, but some of it is much deeper than that and is more difficult to recognise and to see how it manifests itself in people, sometimes how it manifests itself in women as well and their attitudes on certain issues. It is partly about the issue of prejudice that exists against women in our society and it is also about the really old-fashioned views and attitudes that still exist about sex as well. There are people out there who even though they have progressive views on many other issues like L.G.B.T. rights or about racism and what have you, there are still many of those people who still hold prejudice against women or have out of date attitudes on sex as well. I will use this as an example because I am sure that everybody in this Assembly will have witnessed people making comments here, but there are double standards in people's attitudes towards men and women on this subject where, if a man has sex with lots of women he is considered a player, a bit of a legend; if a woman has sex with lots of people she is often considered, I do not know if the word is Parliamentary, we know the word I am talking about ...

The Greffier of the States (in the Chair):

I think we can imagine, Deputy.

Deputy S.Y. Mézec of St. Helier:

Yes, there is a derogatory term; that is the word that would often be used. That is a complete double standard and it is one that is still very prevalent in our society and something that work has to be done to get around that. In a criminal trial where there was a criminal incident that perhaps involved

racism, we would want to know that there were not members of the jury who were inspired by racist views themselves. If there were a criminal incident involving a homophobic attack we would want to know that people on the jury were not homophobic. If that were made clear that there was evidence that jurors were people who held those sorts of prejudice then you could very clearly understand why they should be kept away from that trial. It is not quite obvious when it comes to prejudice and those who believe the myths about rape because they can be harder to identify and harder to see. But they do certainly exist there and I think about this in the context of the scandals in Hollywood that we have heard much more about recently, Harvey Weinstein and everything that goes along with that. All you have to do is go on some online forum on a news article and see pages and pages of misogynistic comments made about the actresses who have bravely spoken out about this. This is common and it is something that really poisons our society and much more has to be done to get rid of it. I found hearing from other people who do have progressive views on this area that a lot of people have had to go on a journey to overcome some of this prejudice. There are people out there who may have previously believed the myths, if a woman was dressed a particular way or she had been drinking alcohol, then somehow she was asking for it. That is a prejudice that a lot of people hold but people are, I hope, moving away from it and going on that journey. But here is the problem, all it takes in a case like this is 3 members of a jury to be overcome by that prejudice and we do not get a conviction, all it takes is 3. We had this debate yesterday on trial by jury, it just takes 3 and there is no conviction. When it is so difficult to identify whether that prejudice exists in those jurors, when it is so difficult to work out exactly why somebody might be making a particular decision in their own mind about what they have analysed about the victim, whether alcohol was part of the case, whether the way they were dressed was part of it, or something, and arriving at that conclusion, which is totally inappropriate, on balance it is right that when it is an area like this that it should go to the Jurats who are better placed to be able to take the necessary training, to be able to spot where these myths might be alluded to in a case, and to overcome it. That is not to say that we should not be doing more in broader society to educate people and make it clear what is acceptable and what is not, but it is about looking at the here and now, because that is what matters, we can talk about passing this law today and then passing amendments months/years/decades in the future, this is about the here and now, which is that there is still prejudice in our society on this and this, I believe, is something that would make trials for sexual offences fairer. If the natural consequence of that is that we get justice being applied and more convictions then that would be a good thing. As somebody who really believes in the principles of justice and thinks that the system itself is a noble thing and we want a society where we all feel that there is a justice system we can count on to be on our side when we are in need and to convict the guilty, I do not see how this is out of line with that.

[15:45]

I accept that some Members may find it complicated on a point of principle, but I hope that I have made the 2 crucial points there, which are that objectively this will still be a fair trial because the European jurisprudence tells us that, we know that, this will not be challengeable on human rights grounds in another court. We really need to get to grips with how the prejudice that exists can manifest itself in ways that we simply are not able to identify and that this would create a fairer system for these cases and on that basis I will be voting to support it.

2.1.15 Deputy S.G. Luce of St. Martin:

I had a very short speech prepared for today and it was going to go a bit like this, please do not confuse the shortness of my speech with the amount of time and thought I have given to the subject. That was about it and then I was going to sit down and vote accordingly. Something is not right when we only get 23 per cent convictions, something is wrong. The difficulty I have had is taking the emotion out of this and I want to take the emotion out of this because I see this debate, this excellent debate, as a debate about right and wrong. It is important to take the emotion out and talk

about right and wrong because I have heard occasionally today, listening to this debate, the same emotions that we are critical of in jurors. So I want to take the emotion out and talk about right and wrong. Members will know I like using analogies. I have really struggled to find one, which is similar, and I did not want to demean the debate by talking about the right and wrong of offside and how difficult, the right and wrong of line calls in a tennis match when we have individuals making decisions, individuals, and how we may now be moving to computer and technology to answer questions. But the analogy of course that I have come back to is one that is much closer to home and I am looking around and I have one or 2 members of the Planning Committee in the Chamber. I had always said to my officers when I became Minister: "If you are not happy with a policy, if in your heart you know it is wrong, please come and tell me because I have the ability to go to the Assembly and change the policy." We have an Island Plan that is the bible according to Planning and it tells us the rights and wrongs of planning, it goes through this Assembly, Members agree it, well not all Members agree it, but anyway it is agreed and it moves forward. Then we give the more difficult judgments to the Planning Committee. The policy may say: "We do not want you to build in the green zone." But every once in a while the committee overturn the decision. I know that if the committee overturn and overturn and overturn and overturn consistently time after time after time that eventually the weight of those decisions would have to come back and we would have to say: "It is not the committee that is wrong; it is the policy that is wrong." We are elected Members of this Legislature. We are elected by the public of this Island to pass laws, among other things, the laws of the land. Those laws are then put into the court setting and the members of the public, those very same people who elect us to this Legislature, come and use those laws. I say to the Assembly today, if they think different from us, who is right and who is wrong? Whose justice is it? I do not have much more to say. I had full intentions of coming here today and supporting the Deputy of St. John. I have to say to Members though, and here is the but, after listening to the Deputy of St. Ouen I started to get second thoughts. After listening to Senator Ozouf I have had more second thoughts. But I have thought more back to what I was saying in this Assembly yesterday, which is do not rush. I am with Senator Ozouf on this, my concluding lines here, I cannot support the amendment at this time today. I think it is right, there is a problem here and I do not think it is the policy that is wrong, it is the way it is interpreted. The amendment is right but I want a bit more time to consider it before I come back and push that button again. I hope I am here to push that button in favour of the Deputy of St. John but I just need more reassurance, I need to be reassured on the questions that the Deputy of St. Ouen has raised today. But I very much hope we see this back in the Assembly in the not too distant future after it has had proper time for consideration.

The Greffier of the States (in the Chair):

Does any other Member wish to speak on the amendment? Deputy Brée.

2.1.16 Deputy S.M. Brée:

I have listened with great interest to this debate because I did not come in with a preconceived position. Many speakers, however, have been focusing on success rates. That I think is an incorrect position to come from because we are talking about success rates of the old law, not the new law. It raised this question in my head that what are we talking about here? What is the purpose of an effective criminal justice system? Is it to get high conviction rates or is it to ensure that justice is done? It is the latter; it is to ensure that justice is done. Now, this amendment has been brought really in a very short amount of time based predominantly on one submission from J.A.A.R., but I do not think the Scrutiny Panel should be criticised for doing this because it has raised a very important question and to say you should have done more work, you should have brought more evidence, yes, that may be true, but it still has created and fostered a very important point here: what do we believe is the best way to deliver justice? Now, we have heard suggestions from various speakers that the inalienable right to be tried by a jury of my peers, as codified within the Magna

Carta, is out of date, historic, and not fit for today's world. I disagree. It is a very, very important part of delivering justice. Now, the question in front of us is, is there a better way to deliver justice to victims of sexual crime? Perhaps the real better way to start that process going is the new law and I would like to say that, instead of doing away with the right of a defendant to elect to be tried by a jury of his peers now ... because we are so concerned with success rates, but those success rates are historic, based on an old law, that, let us be honest, probably was not fit for purpose in today's world. So I would like to suggest that, instead of doing away with that right to trial by jury, we review the situation once this new law is in place, once the courts have had the opportunity, over a period of time, to see whether or not what the new law delivers allows it to be a better functioning delivery of justice. If not, then I would suggest we go back and we look again, is it better to have trial by a specialist team of Jurats. But I do not think now is the time to be making that decision and while I do commend the Scrutiny Panel for bringing this amendment I cannot agree with it because I want to see what the new law delivers. I want to see whether the new law is going to solve the problems that we know exist in our current criminal justice system. Once I have seen that, then we possibly will be having this debate again, or we will not, but let us allow time for the new law to bed itself in because there are some very, very important things in this new law. But at the moment I cannot take that extra step to say, no, I am quite happy to do away with the right of an individual, a defendant, to say: "No, I wish to be tried by a jury of my peers." Therefore, at this moment in time, I cannot support this move put by this amendment.

2.1.17 Senator I.J. Gorst:

Probably the most disappointing thing about this debate for me today has been the criticism of Scrutiny and of the Minister. Both were absolutely unfair, as the previous speaker has just mentioned. Scrutiny have taken evidence, they have considered that evidence, I will not be rude to other panels in what I was going to say in my further sentence, but they have taken evidence and they have considered that evidence and they have presented it to us to make a decision on. The Minister, as she said, has not just changed her mind and accepted that evidence, she had previously considered whether she should make a very similar change and therefore it was not a big step for her to support the Scrutiny Panel's amendment. Therefore it is unfair for Members to criticise the Minister and Scrutiny and to complain about the process. We often complain about the process to avoid making the decision. But, just to be clear, the general process that we have in place, which we all stand and say we could do better on, all of the sides of the Assembly, is that our current process for legislative scrutiny is woefully inadequate. It does not give Scrutiny the appropriate resource or the appropriate time and there is no working with Ministers and the scrutiny function in legislative scrutiny like you will get in other Parliaments around the world. That has to be a priority for an incoming Government to put proper timelines in Standing Orders so that automatically, not that there is an automatic decision about whether to scrutinise it or not, it goes to some sort of joint scrutiny approach for legislation. Everything else of course can have a different approach, but it is important for legislation. Therefore the difficulty that Members are grappling with today is not whether Scrutiny have done their work and not whether the Minister has just reached a quick decision, but it is we, those Members here who are neither on the Scrutiny Panel nor the Minister, asking ourselves whether this is the right decision to take. Some of that difficulty in making the decision of course is because we do not have that legislative process that other places do. Other Members have been fixated on what is the role of the justice system, what is the role of the courts, and have spoken a lot about fairness, not necessarily conviction rates.

[16:00]

We have looked at the numbers here; we have compared them to elsewhere, and there could be all sorts of reasons for that. We know that the prosecution service has to do tests before bringing forward prosecutions. We know that we have had probably a larger number of cases being brought for

prosecution. We know that they have not resulted in convictions. But when you have a large number of prosecutions that do not result in conviction there then become larger questions about access to justice and the functioning more widely of the justice system where people feel that they are not being heard, they are not being dealt with fairly and appropriately by the system. The Senator in front of me tells me she feels like that; I will not explore why. It is a serious point because behind a statistic are individual people in these cases who have suffered a sexual offence against them, perhaps the most difficult. Therefore not reaching a conviction for whatever reason can leave a person's life in tatters and can leave them feeling that the justice system has not served them well and without hope whatsoever; that they were not believed; that they were not listened to. It is for that reason that the research about rape myths ... I do not share Deputy Higgins's view that the Solicitor General should not have given those statistics, of course he should, because they are an important part of this debate. How does a legislature in the law, if necessary, overcome those myths, or is it just a job for the court service and the prosecution service to do when it is considering those crimes and those offences. It is not often that I come to this Assembly unsure of the answer to those questions and therefore I see very clearly why Members are struggling with whether this change is going to help to answer some of those questions or not. Because they do need to be answered; those myths do need to be overturned, because what Deputy Mézec said about long-held and ingrained views of the world, of the differing sexes, he was right. Therefore, when one is being judged by one's peers, they have to be part of the consideration. But that again has to be balanced by the ability to be judged by one's peers rather than experts and technocrats. But I take hope from the fact Members today are having this debate, setting aside the criticism of the process, Members have and are trying to understand the implications of either supporting the amendment or not, trying to understand what it feels like to be a victim and of course what it feels like to be a defendant, because we must not forget the defendants either. It is important in a justice system that the innocent go free, but it is just as important that the guilty are convicted, because when the guilty are not convicted the entire community loses faith in that system. When the guilty can go to court and not be convicted, it undermines all of us, and it is where is that balance and which system is going to deliver conviction of the guilty and release of the innocent?

2.1.18 Deputy A.E. Pryke of Trinity:

I will be brief. It has been a good debate and as one of the minority of women here in this Assembly, I felt really I just have a few words. What everyone wants is a fair trial and just listening to what people are saying and thinking I cannot begin to imagine what women must go through when they sit in that court, when they have to relive the horrors that they have had, be it fairly recently or years ago, and trying to put - but you cannot - yourself in that position, how it must feel. That is, as you would expect, very difficult. As a lot of Members have said, this is not about a success rate, this is so important that justice is done and it has been said by a couple of people, especially the Chief Minister beforehand, not only for that woman who has great courage to do what she has done, but also for the defendant. Where do we go with this debate? In all my 12½ years this can be one of the most difficult debates, is it by jury or is it with the Jurats? I have swung both sides during the long day and I still really have not reached a decision so I will wait for the summing-up. It is a good debate to have and I thank Scrutiny for bringing it because it is down to the fundamentals of justice where justice can be heard correctly for those women... for those women who do, as I have just said, have great courage to do what they have to do: courage that they will be listened to; courage that they will be understood; courage that, whether it is a Jurat or by jury, however it is heard the right decision will be made, they will make a fair decision. So I do thank the Scrutiny Panel but it is a difficult one and for me I just do not know, but I will wait for the Scrutiny's summing-up.

2.1.19 Deputy M.J. Norton of St. Brelade:

A great pleasure to follow the Deputy. I, like her and possibly many of the other Members, have moved from one position to another and probably back a couple of times during the course of today and possibly over the last 2 weeks. We want fairness, we want justice, more than we want anything else. There will be protests from those with a much finer legal brain than mine - and that is pretty much everyone - that we have not had enough time and we have not spoken to all the right people and we have not looked at it from every angle. I have seen bad decisions made that have taken 3 years and I have seen good decisions made that have taken a week. We know that, were we to accept this amendment, it will make life more difficult for the system, it will put extra pressure on the Jurats, but is that difficulty and is that pressure worth a fairer trial? Is it worth considering how difficult it is for a victim, how difficult it is for somebody who is accused of something when they are innocent? Do we not do things because they are too difficult? Do we avoid making the decision because it is a difficult decision and we would rather move it down the line a little? If it were you, and it is very difficult I am sure for all of us to put ourselves in that position, if it was your son, if it was your daughter, would you want them to have the fairest trial they could have? Would you want them to have people there who would be able to look at them and know, and you look at them or your victim look at them or you as the accused when you are innocent look at them and say: "I am going to trust you to make the right decision because you have the training, you have the know-how, you have the background, you have the wherewithal to make that decision." If you were going to take someone who was a victim to a counsellor, would you pick 10 random people off the street and let them sit down and explain it to them, or would you take them to someone who was experienced, qualified and trained? This is a difficult decision. As I have said, I have moved from supporting to not supporting to supporting and I am still, like the last speaker, fairly unsure, so no pressure in the summing-up. We have to make difficult decisions but they are not half as difficult as the decision for somebody that has to go and stand before a court and say: "Something awful happened to me and I am going to have to tell you all about it." If they are going to do that I would like to think they were standing in front of the best qualified, the best trained, the fairest people that they possibly could. So there can be no, or if there is very small, margins of doubt that it was as fair as it could be. When I have listened to all of the protests back and forth and all of the very good arguments on both sides - and there have been good arguments on both sides - I am still struck by the words from J.A.A.R., they have more experience in this than any of us so why would we not listen to them? Because it is too quick? Because we have not had enough time? Because the process of our machinery of government has not worked because of scrutiny? Because we have had to bring something late and we have had to stay late at night? Oh poor us. Take it on the chin and make a decision but make sure it is a fair one based on what we know right now.

2.1.20 The Solicitor General:

I was asked earlier this afternoon about statistics for conviction rates from the U.K. The Deputy of St. Ouen has kindly shared with me an extract from a report from the C.P.S. for 2015 to 2016, which he cited in his speech shortly before the lunch adjournment, which gave a conviction rate, according to the C.P.S. figures, of 57.9 per cent in 2015 to 2016.

[16:15]

I was asked if I could take that further and I have taken that a little further in that I have the report for 2016 to 2017, so the more up-to-date report, and that records a very similar figure of 57.6 per cent as a conviction rate. But perhaps more importantly, looking at the report for 2016 to 2017, it does show that the C.P.S. conviction rate, that figure of 57.6 per cent, that also includes cases that were initially flagged as being rape cases but where convictions were obtained for offences other than rape subsequently. So it might be said that it somewhat inflates the conviction rate as far as rapes are concerned because some of those convictions will be for other offences and not rape cases. I go back to the statistics that I gave for Jersey this afternoon and I would remind Members that while there

were only 3 convictions for rapes and 10 acquittals, in addition there were 3 cases where a defendant was convicted and sentenced for other offences. Obviously the Jersey statistics are based on a much smaller sample but that might bring the 2 conviction rates slightly closer together.

The Greffier of the States (in the Chair):

Does any other Member wish to speak on the amendments? If not, I call on the Deputy of St. John.

2.1.21 The Deputy of St. John:

Well, rough and tumble of politics and what a tangled web we weave. I am very grateful. I have to admit, I was slightly angered at lunch time by some of the comments, but I let that pass, so thank you, Deputy of St. Ouen. But I understand, it is the passion, it is what he believes and that is good. That is the point in this Chamber, we are debating Chamber, and the point in bringing this amendment was because it is too easy to throw off for another day and it is too easy to throw off for another day and it is too easy to say we will deal with it later. We need to have this debate now on whether it is necessary and that is really important and it is really useful to listen to everyone's points of view. But I am going to be slightly controversial here and I am going to ask Members to put away their devices, stop messing around with their phones and their iPads and reading papers and just clear your mind for one moment and imagine you live in a society that believes every single male person is a sexual predator, that the way they look at you, the way they go near you, will mean that they have sexually assaulted you or are going to rape you. Imagine living in a society where there is a view of all men in that way. Then you had a random selection of that society to sit in a criminal case and they all believed that the defendant was a sexual predator because of the prejudices that they hold within that society. I say this, and I say just think about that, think about it in terms of if society thought about men in that way. I do not. I see men completely as equals to myself as a female, but I put that question out there and the reason why I do, because I was listening very hard to every single comment and speech that was made during this debate and it was very clear to me that, within the speeches, you could hear a bias already. I do not mean that harshly because what we were talking about, and Deputy Mézec explained it very well, there is ingrained prejudices and we might not realise it ourselves that we have an ingrained prejudice. This is the point, it is not just about victims, and I chose not to use the word "victims" in my opening speech, I spoke about complainants. I spoke about complainants because they are victims if it is proved in that court case that the defendant was guilty. So they are complainants. I have been criticised, our panel has been criticised for not doing enough work. I would say we should not have passed the Criminal Procedures Law yesterday because we did not do sufficient research, we did not do the sufficient work, we had a submission from the Chief Justice that suggested that we should not do retrials, and the Commissioners, so on that basis we should not have brought the amendment. Same argument here. We had a submission from Jersey Action Against Rape who have experience with these cases, very clear experience, much more experience than any of us I think, and Deputy Norton made that point. We believed, as a panel, from having that submission, from asking questions of the Minister and the Attorney General in a public hearing, which is all available on public transcripts, it was appropriate for us as Parliamentarians, as States Members, to have this debate now with the new legislation. I recognise it is difficult for Members to make this decision and I sympathise with them. One thing that really drives me up the wall, really drives me up the wall, Senator Ozouf, really? Two weeks, really? I am sorry, but you only lodged your amendment on the Public Ombudsman on 19th March so I am not going to vote for that because I have not had enough time to research it. I mean it is just a ridiculous argument, it really is, absolutely ridiculous argument. He had every opportunity to come and speak to the panel, had every opportunity to speak to us whenever he wanted to about this amendment, he chose not to.

Senator P.F.C. Ozouf:

Information, Sir.

The Greffier of the States (in the Chair):

Let us see if the Deputy wishes to give way.

Senator P.F.C. Ozouf:

Does the Deputy wish to give way? I would just point out that it is not primary legislation.

The Deputy of St. John:

I will just point out that this is a debating chamber and we should have sufficient information to make decisions, should we not? There is primary legislation that has come to us, the Criminal Procedures Law as well, that it has been argued that has not been scrutinised properly. We have the draft Mental Health Capacity Law Regulations, we have a ridiculous amount of work to get through. But that does not negate the fact that this is an important matter, this is a serious matter, and I am absolutely... people who have spoken against this, I completely understand why you feel that way, why Members feel that way. I am not forcing anyone to do anything that they do not want to do. What I am trying to get out here is us to have this discussion about prejudices, for us to consider what else is wrong. Is there something wrong with our system? What else can we do to assist in it? Yes, maybe our police need to be educated better, maybe our Attorney General and all those areas in terms of bringing charges forward, that needs to be dealt with properly, maybe. I have written so many things down here. Please, I do not want people to think that this is just about us wanting a trial by Jurat because of complainants in order to get more conviction rate, because it is not, it is really, really not. That is not the reason why. I stated that right at the beginning in the speech I made on opening the amendment. I thank the Solicitor General also for referring to the work done by Dr. Nina Burrowes, which categorically concluded about the prejudice that is held in terms of juries. There are biases that exist and having a trial by Jurat does not mean it is an unfair trial. They are carried out already on complex fraud cases. One of the questions that the Deputy of St. Ouen did throw out during his speech was, why should it have to be a specialism? Why should it? Deputy Mézec summed that up properly in terms of the ingrained prejudices, the not understanding the issues of the rape and the sexual assault, the fact that, and I will come back to this, is that everyone kept on referring back to the conviction rates that are currently happening in Jersey, but that is not under this new law that we are agreeing, and I will go back to the fact that this law is more technical, it defines what consent is, it defines the defence models within this. So I am not saying: "Let us just get rid of juries, I do not trust the jury system", because I do. I do trust the jury system. What I am saying here is that there are other jurisdictions in the world that have grappled with this same argument about is there a problem with taking these cases to court, with getting through that case, bearing in mind the intimidation, the concerns of the complainant, and it could be quite intimidating for the defendant, especially if they are not guilty. Imagine what they are having to go through. We had to put these questions out there. I remember with the Deputy of St. Ouen on the Criminal Procedure Law and we asked this very question about when somebody is charged, is it right that when they are charged they are seen as accused in the media? I mean is that right? That is a big serious question that we have to grapple with as well. So this is not about men/women, this is not about right/wrong, this is about us doing what we need to do in terms of recognising the importance of the difficulties around sexual offences and the process of having to go through court. Not just the justice system itself, the people involved here, and they are the very people we represent in this Island. So on that basis I would ask people to consider that, I recognise that nobody is going to be convinced by that argument, but we have had a very, very interesting debate and it is something to be considered, whether this is agreed by Members or not, and it is something that needs to be kept a close eye on, if this legislation is finally approved, how it is carried out through the courts. I ask for the appeal.

The Greffier of the States (in the Chair):

The appel has been called for on the second amendment. I ask Members to return to their seats. I ask the Greffier to open the voting.

POUR: 14		CONTRE: 29		ABSTAIN: 0
Senator P.F. Routier		Senator P.F.C. Ozouf		
Connétable of St. Helier		Senator I.J. Gorst		
Deputy of Grouville		Senator L.J. Farnham		
Deputy of Trinity		Senator P.M. Bailhache		
Deputy K.C. Lewis (S)		Senator A.K.F. Green		
Deputy M. Tadier (B)		Connétable of St. Clement		
Deputy of St. John		Connétable of St. Peter		
Deputy J.M. Maçon (S)		Connétable of St. Lawrence		
Deputy of St. Peter		Connétable of St. Mary		
Deputy S.Y. Mézec (H)		Connétable of St. Ouen		
Deputy R. Labey (H)		Connétable of St. Brelade		
Deputy S.M. Wickenden (H)		Connétable of St. Martin		
Deputy M.J. Norton (B)		Connétable of St. Saviour		
Deputy P.D. McLinton (S)		Connétable of Grouville		
		Connétable of St. John		
		Connétable of Trinity		
		Deputy J.A. Martin (H)		
		Deputy G.P. Southern (H)		
		Deputy J.A. Hilton (H)		
		Deputy J.A.N. Le Fondré (L)		
		Deputy E.J. Noel (L)		
		Deputy M.R. Higgins (H)		
		Deputy S.J. Pinel (C)		
		Deputy of St. Martin		
		Deputy of St. Ouen		
		Deputy S.M. Bree (C)		
		Deputy T.A. McDonald (S)		
		Deputy of St. Mary		
		Deputy G.J. Truscott (B)		

3. Draft Sexual Offences (Jersey) Law 201- (P.18/2018) - resumption

The Greffier of the States (in the Chair):

We now return to Article 41, the debate on Article 41. Does anybody wish to speak on Article 41? If not, Minister, you have the option if you wish, or we could just move on?

3.1 The Deputy of St. Peter:

I just ask for appel.

The Greffier of the States (in the Chair):

The appel on Article 41. The appel has been called for on Article 41. I ask Members to return to their seats. I ask the Greffier to open the voting.

POUR: 35		CONTRE: 0		ABSTAIN: 0
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator A.K.F. Green				

Connétable of St. Helier				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Peter				
Deputy S.Y. Mézec (H)				
Deputy of St. Ouen				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

3.2 The Deputy of St. Peter:

I will move now on to the final Articles 42 to 48. Article 42 ensures that the prosecution can choose an appropriate charge in a case where an act constitutes more than one offence. Article 43 contains provisions about evidence of sexual history in prosecutions for sexual offences.

[16:30]

In the case of the Attorney General v. Correia in 2015 the Royal Court has laid down strict guidelines that restrict the circumstances in which a victim of a sexual offence can be asked questions about his or her sexual history. This Article makes it clear that evidence of sexual history with a person other than the defendant cannot be admitted except with the leave of the court. The draft law also provides that Regulations may be made to determine the circumstances in which the court may give leave. Article 44 abolishes a number of customary offences, including rape, sodomy, gross indecency, incest and bestiality. They are all fully replaced by appropriate offences in this law. Other offences are preserved, such as indecent assault, outraging public decency, conduct likely to result in a breach of the peace, and indecent exposure. Article 45 repeals a number of laws, which have been replaced by this law. Article 46 amends other enactments and Article 47 provides for transitional and related provisions. Article 48 allows Regulations and Orders to include transitional, consequential, incidental, supplementary or savings, provisions. This concludes the Articles. I move Articles 42 to 48.

The Greffier of the States (in the Chair):

I assume that includes the Schedule as well, Minister?

The Deputy of St. Peter:

Yes.

The Greffier of the States (in the Chair):

Are the Articles 42 to 48 and the Schedule seconded? **[Seconded]** Does any other Member wish to speak on those Articles? All those in favour of those Articles kindly show? The appel has been called for on Articles 42 to 48 and the Schedule. I ask Members to return to their seats. I ask the Greffier to open the voting.

POUR: 37

CONTRE: 0

ABSTAIN: 0

Senator P.F. Routier
Senator P.F.C. Ozouf
Senator I.J. Gorst
Senator L.J. Farnham
Senator P.M. Bailhache
Senator A.K.F. Green
Senator S.C. Ferguson
Connétable of St. Helier
Connétable of St. Peter
Connétable of St. Lawrence
Connétable of St. Mary
Connétable of St. Ouen
Connétable of St. Brelade
Connétable of St. Martin
Connétable of St. Saviour
Connétable of Grouville
Connétable of St. John
Deputy G.P. Southern (H)
Deputy of Grouville
Deputy J.A. Hilton (H)
Deputy J.A.N. Le Fondré (L)
Deputy K.C. Lewis (S)
Deputy M. Tadier (B)
Deputy E.J. Noel (L)
Deputy J.M. Maçon (S)
Deputy S.J. Pinel (C)
Deputy of St. Peter
Deputy S.Y. Mézec (H)
Deputy A.D. Lewis (H)
Deputy of St. Ouen
Deputy S.M. Wickenden (H)
Deputy S.M. Bree (C)
Deputy M.J. Norton (B)
Deputy T.A. McDonald (S)
Deputy of St. Mary
Deputy G.J. Truscott (B)
Deputy P.D. McLinton (S)

The Greffier of the States (in the Chair):

That brings us to the Third Reading, Minister.

3.3 The Deputy of St. Peter:

Before I formally ask that the Assembly adopt the draft Articles in Third Reading, I would like to thank Members again for their support and contributions during this lengthy debate. It is an important subject and I am grateful to Members for their attention at this time when I know we are trying to be expedient about our business. I also wish to thank the Law Draftsmen's Department for the time and effort they have put into this comprehensive piece of legislation and I extend my appreciation to the relevant individuals in the Law Officers' Department, in particular to the Attorney General and his excellent team and to the Solicitor General for joining us this afternoon. I move the Third Reading.

The Greffier of the States (in the Chair):

Is the Third Reading seconded? [**Seconded**]

Connétable J. Gallichan of St. Mary:

May I just ask, did we do Article 49? I thought we did up to 48 and the Schedule.

The Greffier of the States (in the Chair):

I thought the Minister had gone to the end; that was my understanding. I may have said 48 when I meant 49 but I assumed the Minister had gone right the way to the end.

The Deputy of St. Peter:

That was what my notes had told me but I clearly was not paying sufficient attention.

The Greffier of the States (in the Chair):

Did you have a burning desire to debate on 49?

The Connétable of St. Mary:

No, I just wanted to make sure we were doing it properly.

The Greffier of the States (in the Chair):

We certainly meant to include Article 49 and the minutes of the Assembly sometimes reflect what should have happened rather than what absolutely happens, and that will be one of those occasions.

Senator L.J. Farnham:

If we do not do 49 we cannot bring the law in by Appointed Day Act, so we had better do.

The Greffier of the States (in the Chair):

Article 49 was included in the package, when we look back I will make sure that is what happened. Senator Ozouf.

3.3.1 Senator P.F.C. Ozouf:

Very briefly, may I just say that this debate on the most sensitive issues has been a marked difference from the last time the Assembly had a debate on sexual offences and the fact that this Assembly has had a modern and understanding and sympathetic approach to sexual offences involving some very, very sensitive issues is a mark that this Assembly has moved on and we have moved on as an Island. Some Members have been here long enough to know about the last sexual offences debate that we had and some of the most inappropriate comments that I have ever heard from any Parliamentarian and we have had a complete absence of that and that is the mark of an Assembly that is going out with their heads held high and a Minister, if I may say, and a Scrutiny Panel. I would say to the Scrutiny Chair do not be disheartened, this issue that she has raised should come back and it will come back and we would have improved and I commend the Third Reading and thank the Minister for all the work she has done in raising the awareness of victims in her term of office. [**Approbation**]

3.3.2 The Deputy of St. John:

I would just like to reassure Members I am not disheartened and I am grateful for the comments from Senator Ozouf. I am grateful to the Minister and the Law Officers for assisting Scrutiny in doing what they could within the time limits they had. It is appropriate, from listening to the comments we have had today, that ensuring that in future - there are some comments that have been made by various Members throughout the whole of the legislation today - where consideration can be given as time moves on and whether there is a possibility for consultation or maybe some of the things that have been mentioned by Members today to get the wider view of society and about how we move forward with proper fair justice for all, not just complainants, and ensuring that the new legislation develops and delivers what we are all hoping that it will.

3.3.3 The Deputy of St. Martin:

I just wanted to add to Senator Ozouf's comments. I found myself sitting in this debate today trying to decide whether I was glad or not, but I am pleased I was here because we have had the most excellent debate with some excellent speeches on both sides. There will always be winners and losers but we are going to come out of this better. I am just pleased I was here to be involved in the debate.

The Greffier of the States (in the Chair):

Does any other Member wish to speak on the Third Reading? The Constable of St. Saviour.

3.3.4 The Connétable of St. Saviour:

Could I just say, when this does come back, could we not forget that what we have seemed to have been discussing today has revolved around ladies, around women. It also happens to men and this has not mentioned and I do think it would be very nice if it was brought up and put into consideration because it does happen and we seem to have forgotten about that gender I am afraid.

The Greffier of the States (in the Chair):

Does any other Member wish to speak on Third Reading? In which case I call on the Minister.

3.3.5 The Deputy of St. Peter:

I thank Members for their generous comments. It is really just suffice to say that some elements of the law that we have just updated dated back to 1895. It is a historic moment therefore and we are fortunate and honoured to do this. If I may, it just perhaps is testament to the myths that still pervade out culture and our community that the Constable of St. Saviour had to make that comment, because of course what is really so historic about elements of this law is the non-gender-specific nature of it. This is a major step forward for our community and for our judicial process I hope. I also thank Scrutiny for their significant contributions and the excellent way with which they have dealt with their work and I know they have had a very great workload. I commend this law to the Assembly in the Third Reading.

The Greffier of the States (in the Chair):

The appel has been called for on the Third Reading of the draft law. I ask all Members to return to their seats. I ask the Greffier to open the voting.

POUR: 43		CONTRE: 0		ABSTAIN: 0
Senator P.F. Routier				
Senator P.F.C. Ozouf				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Senator A.K.F. Green				

Senator S.C. Ferguson				
Connétable of St. Helier				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Connétable of St. Ouen				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of Grouville				
Connétable of St. John				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy K.C. Lewis (S)				
Deputy M. Tadier (B)				
Deputy E.J. Noel (L)				
Deputy of St. John				
Deputy M.R. Higgins (H)				
Deputy J.M. Maçon (S)				
Deputy S.J. Pinel (C)				
Deputy of St. Martin				
Deputy of St. Peter				
Deputy S.Y. Mézec (H)				
Deputy A.D. Lewis (H)				
Deputy of St. Ouen				
Deputy R. Labey (H)				
Deputy S.M. Wickenden (H)				
Deputy S.M. Bree (C)				
Deputy M.J. Norton (B)				
Deputy T.A. McDonald (S)				
Deputy of St. Mary				
Deputy G.J. Truscott (B)				
Deputy P.D. McLinton (S)				

4. Committee of Inquiry: actions taken by the R.N.L.I. and the Jersey Government which led to the removal of the All Weather Lifeboat - proposition to defer debate until 23rd March (P.36/2018)

The Greffier of the States (in the Chair):

We now come to P.36, which is ...

4.1 Senator S.C. Ferguson:

I wonder if we could, in view of the lateness of the hour, I wonder if we could defer the Lifeboat until the first item of business on Friday. I do not think anybody wants to over-rush it and, as the Minister for External Relations has an important meeting on behalf of the Island in London, I feel perhaps the Assembly will understand and make allowances for that.

The Greffier of the States (in the Chair):

Is the proposition to defer this item until Friday seconded? **[Seconded]**

Deputy R. Labey:

Could I just seek clarification? That arrangement presumably is okay with Senator Bailhache, because yesterday we heard that he might not be back until Friday afternoon, is the reason I ask.

The Greffier of the States (in the Chair):

The Deputy of St. Martin was next to speak.

4.2 The Deputy of St. Martin:

The Senator asks if it is okay with Members, well I have to tell her that it is not okay with this Member, who has spent a considerable amount of time and anguish since last night, when it was called, that we change the timing of the debate and bring it forward considerably. I am not going to say any more. I will embarrass myself.

The Greffier of the States (in the Chair):

Does any other Member wish to speak on this proposal? Deputy Le Fondré.

4.3 Deputy J.A.N. Le Fondré:

All I will say, I think we were made aware yesterday that Senator Bailhache was out of the Island from, I believe, about 6.45 p.m. tonight. The Assembly agreed not to take it as the first item of business and that may well have been the right decision, given the length of the debate that has taken place on the Sexual Offences (Jersey) Law. If we do proceed on the basis as it stands - and I am sure we have all made preparation for it - the difficulty will be that one of the proposers of an amendment to that will not be present when that takes place. That is life, I suppose, but it would seem that we have a very long order of business anyway and I am happy to say that if it does switch to Friday, that is going to get my support. It is a reasonable accommodation of Members, given the very long agenda that we have got, and it is an important item. It is up to Members whether they want to give Senator Bailhache's amendment the airtime that it deserves.

4.4 Deputy G.P. Southern of St. Helier:

It was only yesterday we had been told that this would not necessarily take very long and therefore it was safe to park it somewhere here. It beggars belief.

4.5 Connétable L. Norman of St. Clement:

It is just to say I hope Members will realise that the proposition made by Senator Ferguson is not for her benefit, it is for the benefit of the proposer of the amendment, Senator Sir Philip Bailhache, who has to leave the Island - in the best interests of the Island - later on this evening. He will not be back until first thing Friday morning. We are still going to be here, so I think we do him the courtesy, not Senator Ferguson, do Senator Bailhache the courtesy of deferring this so he can be here to make his amendment, to talk to his amendment, sum up his amendment and vote on the proposition, whether to amend it or not.

4.6 Deputy E.J. Noel of St. Lawrence:

I agree with the previous speaker, but I have come to a different conclusion. I think we should get on with it. We have 2 hours before the Senator needs to leave to catch his flight. We can do this matter in 2 hours.

The Greffier of the States (in the Chair):

Does any other Member wish to speak? Senator Ozouf.

4.7 Senator P.F.C. Ozouf:

I moved a proposition to have a clock. I regret not doing it. There are no clocks, but we have got 2 hours in order to deal with something and sometimes work expands to the time you give to dealing with it. Two hours should be quite enough if Members keep their remarks short. Surely we are all well-versed in the arguments and we can get on with this. Let us get on with it. We have also got a massive list of other agendas, so 2 hours seems to be quite enough time to deal with this.

4.8 Senator I.J. Gorst:

Inevitably, when we said we were going to sit for these number of days, some Members of the Assembly are going to be coming and going on really important States business. Tomorrow Senator Bailhache will be on important States business. Sadly, I will be out of the Island on the Friday - in this instance, our votes might counter each other - but we cannot both be here at the same time and that is just how the situation is going to be. In this instance, Senator Bailhache has an amendment which he would like to present and I do not think it is unreasonable to move it to Friday.

4.9 Deputy M.R. Higgins:

I am one Member who was looking forward to this debate, because I want to learn what has gone on. Most of the public are in the dark about all that has happened in the past. I am hoping to be enlightened during this debate and to rush it through in 2 hours I think is doing a disservice to the argument. [Approval]

4.10 Deputy M. Tadier:

We all try to act in good faith and make accommodation for people when we can. We were told by the mover of the substantive proposition that this need not take long at all. People have been asking, we have all been getting messages saying: "Have you debated the lifeboat yet?" and we say: "No, not yet. It is coming this afternoon." People I have been talking to have been saying: "That is a shame. We wanted to get it done soon." We were just told yesterday, we had a big debate right at the end saying it would be just after the Sexual Offences (Jersey) Law. That is what people have come prepared for.

[16:45]

Senator Bailhache only needs to be here to present his amendment and to sum up on his amendment and then it seems to me that after that, it does not need to be a big debate. Members in the past have said that we should have time-limited debates. This is a good way to try that out. There is a safeguard, of course. I think that if we are disciplined - and I will be - then there is of course the guillotine, which I do not like, but after an hour, if it seems like it is still pushing ahead, there is the guillotine motion which can be invoked, so Senator Bailhache can get away and the people who know that this important issue needs to be debated can have some closure today.

4.11 The Connétable of St. Martin:

Just briefly, I think the Chief Minister appointed a Minister to look at the lifeboat situation and I think that Minister will be off the Island on Friday. He has already spoken a few moments ago and I think it is very important that he would be there.

The Greffier of the States (in the Chair):

Maybe if you could clarify ...

The Deputy of St. Martin:

Am I allowed a second speech, Sir?

The Greffier of the States (in the Chair):

You can make a point of clarification, because I think that would ...

The Deputy of St. Martin:

If I could make a point of clarification to the Assembly, yes, I am due to be in Dublin for a Ministers for the Environment meeting on Friday. I have not said anything about it. My allegiance is to the Assembly and I will go if I am available; if I am not, I will not. It is as simple as that. I do recollect Senator Ferguson saying last night that it should not take long, those were her words.

The Greffier of the States (in the Chair):

I wonder if it is time to move to a decision on this matter. The appel has been called for on whether to ... sorry? I was just about to do that, Deputy Labey. The appel has been called for on whether to move the debate on P.36 to the first item on Friday morning and I ask the Greffier to open the voting.

POUR: 14		CONTRE: 29		ABSTAIN: 0
Senator I.J. Gorst		Senator P.F. Routier		
Senator P.M. Bailhache		Senator P.F.C. Ozouf		
Senator S.C. Ferguson		Senator L.J. Farnham		
Connétable of St. Clement		Senator A.K.F. Green		
Connétable of St. Ouen		Connétable of St. Helier		
Connétable of St. Saviour		Connétable of St. Peter		
Deputy J.A. Hilton (H)		Connétable of St. Lawrence		
Deputy J.A.N. Le Fondré (L)		Connétable of St. Mary		
Deputy K.C. Lewis (S)		Connétable of St. Brelade		
Deputy M.R. Higgins (H)		Connétable of St. Martin		
Deputy J.M. Maçon (S)		Connétable of Grouville		
Deputy R. Labey (H)		Connétable of St. John		
Deputy S.M. Bree (C)		Connétable of Trinity		
Deputy T.A. McDonald (S)		Deputy J.A. Martin (H)		
		Deputy G.P. Southern (H)		
		Deputy of Grouville		
		Deputy M. Tadier (B)		
		Deputy E.J. Noel (L)		
		Deputy of St. John		
		Deputy S.J. Pinel (C)		
		Deputy of St. Martin		
		Deputy of St. Peter		
		Deputy S.Y. Mézec (H)		
		Deputy A.D. Lewis (H)		
		Deputy of St. Ouen		
		Deputy S.M. Wickenden (H)		
		Deputy M.J. Norton (B)		
		Deputy of St. Mary		
		Deputy G.J. Truscott (B)		

The Greffier of the States (in the Chair):

So the debate proceeds now. Senator, I was going to ask about the amendments just before the proposition is read, because your amendments and Senator Bailhache's amendments contradict. Is the idea that your proposition is read, we take Senator Bailhache's amendments and then if that is rejected, your amendment would be taken? What is the ...

4.12 Senator S.C. Ferguson:

I will accept Senator Bailhache's amendment and withdraw mine.

5. Committee of Inquiry: actions taken by the R.N.L.I. and the Jersey Government which led to the removal of the All Weather Lifeboat (as amended by P.36/2018 Amd (2))

The Greffier of the States (in the Chair):

Is the Assembly content for the proposition to be read as amended by Senator Bailhache's amendment? In which case, I ask the Greffier to read the proposition as amended.

The Deputy Greffier of the States:

The States are asked to decide whether they are of the opinion: (a) to agree that a Committee of Inquiry should be established in accordance with Standing Order 146 to inquire into the circumstances surrounding the breakdown of the relationship between the former crew of the St. Helier Lifeboat Station and the R.N.L.I. (Royal National Lifeboat Institution) and leading to the formation of the J.L.A. (Jersey Lifeboat Association); and (b) to request the Chief Minister to take the necessary steps to select a suitable chairman and members to undertake the inquiry and to bring forward to the States for approval the necessary proposition relating to their appointment and the approval of detailed terms of reference for the inquiry.

5.1 Senator S.C. Ferguson:

Thank you, I think. Right, I think the first order of business is, as Members will know, I got my knuckles rapped over not making absolutely certain that everybody knew that I was up to my neck in lifeboat matters and I apologise for this oversight to the Assembly. On the other hand, I take the criticism very seriously, but when I undertake matters on behalf of constituents, and as a Senator all Islanders can be considered my constituents, I do get involved with a fair degree of enthusiasm. I also may have misled unintentionally the Assembly in question time when I referred to the Channilands disaster regarding the tug, and in actual fact, the tug was late on the scene and it was the St. Malo, which belongs to Channiland. But back to the subject under consideration, Members will have read the email circulated to us all by the Deputy of St. Martin. He asks *inter alia* what a Committee of Inquiry will do and makes 3 useful queries: "What happened, who is responsible and what can we learn?" I would add another question: what must be done and what is the way forward? In other words, how must we apply what we have learned? The Deputy for St. Martin was not in the States when we supported the proposition brought by the former Deputy, Bob Hill, asking for a Committee of Inquiry into the death of a nurse at the hospital. We then had an extremely useful report by Verita, which proposed significant improvements at Health. It was short, sharp and useful. It is that type of inquiry which we are looking for. The Deputy notes that there is a lot of accusation and counter-accusation. For instance, why did the crew not agree to meet with Murray, but also why did Murray not agree or refuse to meet with the J.L.A. council? This all underlines the reason why we need an independent report chaired by someone well away from our febrile atmosphere. Naturally, we now have 2 almost diametrically-opposed reports. In fact, if you read both of them, you do feel as if you are in 2 separate universes. Naturally I would support the report prepared by the J.L.A., particularly as it is evidenced, and that evidence is available. In fact, it is included in the report. On the other hand, the Murray report refers to things like a toxic culture and bullying. I spoke with someone who is no longer on the J.L.A. group and he was quite emphatic he never observed anything resembling bullying. Another member of the crew stated: "I found it difficult to understand how he was able to reach some of the conclusions that he has. I noticed that there were references I made about the crew" - he was interviewed by Captain Murray - "and the R.N.L.I. that had been omitted from the report, but given its tone, they could have thrown doubt on the conclusions he has reached. There is no mention of the R.N.L.I. Area Manager conducting the investigation as judge, jury and executioner. There is no mention that the same manager stated to the crew at the same meeting that the Coxswain was a risk to the crew and the public, and yet he refused to provide any evidence of that to a crew who have been at sea with the Coxswain in sometimes horrendous

conditions, putting our trust in him to get us and the casualties home safe, which was a major factor in the crew resigning. There is no mention that once the crew were reinstated, attempts to build bridges with Jersey Coastguard were made and were being arranged. There is no mention in the report that until the R.N.L.I. Director of Community Lifesaving, Leesa Harwood, came to Jersey and met with the crew, no thought by the crew had been given to independence and had certainly not been discussed as a crew. It was Leesa Harwood who first suggested independence as an option to the crew and who gave the impression that the R.N.L.I. would be forthcoming in assisting the move, if it were to happen. One of the questions asked by Captain Murray was had I ever been a party to or seen any instances of bullying by other members of the crew. I found this an odd question, as I was expecting to be discussing predominantly the R.N.L.I. crew relationship. My answer to the question was in fact no. The conduct of senior staff from the R.N.L.I. was far from satisfactory, conducting important H.R. (human resources) meetings with crew by Skype, meetings on poor wi-fi, which led to loss of communications, holding one-to-one H.R. meetings, where crew were told that recordings could not be made, yet having dedicated R.N.L.I. staff in the meeting taking notes. The meetings between the crew and the Director of Lifesaving would often see her using terms such as: 'Let us all behave like adults' and leaving the crew feeling that they were being treated like naughty schoolchildren rather than a valued crew. I hope you will consider the information I have offered and ask that when reading Captain Murray's report, you give fair consideration and lend support to a wholly independent inquiry." I think this has been sent to all Members. If it has not, I will make sure it is. But this is written by a member of the crew who was interviewed and this is his reaction to the report. It corroborates the evidence presented by Keith Perchard in his report. However, Captain Murray's report emphasises the fact that a Committee of Inquiry is unnecessary. This is difficult to justify, given the disclaimer at the beginning of the report. The disclaimer states: "All information in this report is provided as is, with no guarantee of completeness, accuracy, timeliness or of the results obtained from the use of this information without warranty of any kind, express or implied, including but not limited to the warrantors of performance and fitness for a particular purpose." I am sorry, what is the use of the report? This is in contrast to the J.L.A. report, which is stated to be a preliminary report only and makes comments to the extent that it relies on documentary evidence in order to assist the J.L.A. in their reports to obtain a professional impartial inquiry. This is a preliminary report purely to put the facts together from the J.L.A.'s point of view - from the crew's point of view, more importantly - as a proposition to ask for a Verita-type inquiry, a short, sharp independent inquiry, which we have not had yet. We have the R.N.L.I. report into a spurious complaint, a false complaint even, which is so heavily redacted that it makes no sense. It is more redacted than a document from MI5. We have an Area Manager stating that the Coxswain is unfit and a danger to the public, a calumny which was never retracted, and we have an Area Manager again who apparently conducted an investigation, acting as judge, jury and executioner. The Area Manager has also complained about the quality of the emails being sent to him and used those as a further event in order to suspend or sack the Coxswain again.

[17:00]

But he has never produced the emails as evidence. In actual fact, I have seen the ones he has referred to and they are quite unexceptional. One is a list of defects when the boat was sent for repair and service, which defects were not dealt with, and the other one is a protest about the redacted report. As far as the list of defects are concerned, when the Director of Engineering and the other trustees, including Vice-Admiral Tim Laurence, came, the Director of Engineering apologised for the state of the boat in front of the trustees. But we have a report, the redacted report, and it has never been made available, nor has there been the information supplied from a subject access request. There has allegedly been an investigation by Ports into the false accusation and their part in it, but that has never been released either. It has also been unfortunate that the Chief Minister has not been given better information about the disagreement. I do wonder if he would have been party to the stealthy removal

of the George Sullivan if he had been aware of the corporatist approach being adopted by the R.N.L.I. In fact, why was the boat removed? There appears to be a problem for the R.N.L.I. in that the salaried members of staff seem to have problems in how to manage volunteers. Given the fact that 95 per cent of their staff are volunteers, normal corporate management techniques are inappropriate. The only thing which does make sense is that the R.N.L.I. has changed its character and it needs to develop its expertise in dealing with volunteers. Those of us who are involved with charity work are fully aware of the pitfalls. The R.N.L.I. have yet to catch up. Even the Murray report is critical of the poor management by the R.N.L.I. This is one point on which we can concur. In fact, given the record of the R.N.L.I., with problems apparently arising in I have been told it is about 9 stations - I do not know the figure for certain, but certainly they are having similar problems with a number of other stations - perhaps they need to address their business model. The Murray report makes veiled comments about deteriorating relationships, forcing out of officers, the allegation that the station was not following R.N.L.I. policies and procedures, there is a toxic culture, there is a lack of challenge to the decisions of the Coxswain because they were frightened of being bullied, but there is not any evidence. I refer Members again to the disclaimer. With a disclaimer like that, why have we got the report? There are criticisms of governance of the station, but no evidence that the lack of oversight had any effect on the efficiency of the station. In fact, this is the problem: there is no evidence to support the criticisms and in fact the assertions in the report are such that there was criticism of the operation. Again, where is the evidence? They have changed the policies to change the launch protocols, but it is not clear there have been any briefings highlighting this. I think even the States of Jersey can teach them something about that. The Murray report also mentions in paragraph 419 that an informal complaint was made by the then Jersey Harbourmaster to the Chief Executive of the R.N.L.I. regarding an alleged self-launch of the St. Helier I.L.B. (inshore lifeboat). The R.N.L.I. C.E.O. (Chief Executive Officer) instructed that an investigation into the allegation be carried out, but if it was informal, why did the Harbourmaster not realise that the complaint was without substance? Why did he make the complaint? Why did he make it to the C.E.O. instead of the area line manager? Apparently the States of Jersey were successful in mediating the process between all parties. What defines successful? It does not look it at the moment. The informal complaint gets mentioned again and states that - this is again from the Murray report - "The informal complaint by the then Jersey Harbourmaster over an R.N.L.I. self-launch should not have been investigated and led to conspiracy theories about the matter." If the complaint should not have been investigated, then what explanation is there that the complaint was made? Finally, an independent inquiry should answer these questions and force disclosure of things like a report which is almost complete black redaction. Why would people who are allegedly producing a toxic culture be demanding a full and open inquiry? Why would 22 out of 26 of the crew remain in support, over a year after the trigger events, in taking the most difficult course, the setting up of a Jersey lifeboat? Why has Captain Murray's report not explained why the crew were misled into believing that the independent status of the existing lifeboat station would be supported by the R.N.L.I. over a transitional period? The fact is they were misled. Then I gather that last week I was told that we were without cover for at least one day. Where was our cover? I will forget the money. We in fact collect, I understand, a healthy surplus for the R.N.L.I. so that the cost of the lifesaving over here is the cost of running the boats plus the cost of the surplus, so we are paying twice, once for the running of the lifeboats and then once for the surplus that goes off to the main funds. The main questions which still exist and which should be dealt with by a Committee of Inquiry are that the crew have a wholly reasonable expectation of support for an independent operation. Why were they given that indication that they should think of going independent? They had not thought of it until the Director of Lifesaving mentioned it. Where is the evidence for Captain Murray's various assertions? Why is there such secrecy over the various reports that have been requested? They have not even given them to the Chief Minister to look at, which would have been useful, because we could have got on with the sorting out. The J.L.A. has identified these questions, which must be answered if the public are to

be satisfied about the future of our search and rescue service and can make an informed and balanced decision about the way forward. I should perhaps also emphasise that this is about the relations between the R.N.L.I., Ports and the old St. Helier Lifeboat Association. It is not about the relationship with St. Catherine, which is a different thing altogether. The J.L.A. is more than willing to help draft the terms of reference of an inquiry, similar to the Verita inquiry, with the other parties. You have only to listen to the media reports to realise that there are a great number of false or inaccurate reports and unexplained matters circulating around the system. I think everybody who has been involved in this brouhaha on both sides would like to see a straightforward and accurate explanation of the events leading up to the split. This is why the J.L.A. has supported an independent review and I ask Members to support it.

The Deputy Bailiff:

Is the proposition seconded? [**Seconded**]

The Connétable of St. Lawrence:

May I just ask for some clarification, please, from the Senator? She has referred to 2 reports in her speech. I am clear on who the Murray report was prepared by, but I do not know from reading the report by Mr. Perchard what his qualifications were to undertake the report for the J.L.A. I would just like to have that advised to us, please.

The Deputy Bailiff:

It is a point of clarification, yes.

Senator S.C. Ferguson:

Yes, he is a retired policeman of some years standing. In fact, I think our other retired policeman worked with him back in whenever and he has a Master's degree in forensic analysis, I think. Really his main thing has been the preparation of this report. He has not really done a lot with us until ... we will see where we go going forward, but certainly he is a retired policeman, used to writing reports, used to careful analysis of the facts and I think it is a jolly good report. I think perhaps I should say that I do have a bit of experience of writing reports, so I think I am able to judge them.

The Deputy Bailiff:

You were asked for a point of clarification and you have given that point of clarification.

The Connétable of St. Lawrence:

I thank the Senator.

The Deputy of St. Peter:

I did have a further point of clarification on that, if I could.

The Deputy Bailiff:

Very well. It is a point of clarification for the Senator.

The Deputy of St. Peter:

I do apologise if you did not see my light, but I was just wondering, I thank the Senator for her explanation of Mr. Perchard's background, but how did that selection process come about, please?

The Deputy Bailiff:

Are you able to assist with that, Senator, in terms of clarifying your reference to the report?

Senator S.C. Ferguson:

I am not totally certain. It was not part of the things I was dealing with at the time.

The Deputy Bailiff:

If you cannot answer, you cannot answer.

Senator S.C. Ferguson:

I cannot answer.

Deputy A.D. Lewis:

Can I just follow up on that, another point of clarification? I just wondered what the terms of reference were for that report and does the Senator have any idea as to what the procurement process was at all or is she saying she does not?

The Deputy Bailiff:

Sorry, if you stand and turn your light on.

Senator S.C. Ferguson:

Turn my light on, yes, absolutely. The terms of reference were really as it says somewhere in the report: "This report has been compiled for the J.L.A. to provide ..." I think you will find it, Deputy, under paragraph 1.1, which explains why the report was written. In fact, it is really a preliminary report, as it says on the very front page, into the events leading to the formation of the J.L.A. I think you missed that page. Sorry, Sir.

The Deputy Bailiff:

No, not at all.

Deputy A.D. Lewis:

I think normally, if I may, in the table of contents it would normally say what the terms of reference are and how it has been procured. It does not appear to be there on page 1, which is where I would expect it to be. Is the Senator saying that there therefore was not a proper terms of reference in producing this report?

Senator S.C. Ferguson:

It was a factual report of the events leading up to the formation of the J.L.A. Therefore it was a question of extracting the information factually.

[17:15]

The Deputy Bailiff:

I think any other points can be made during the course of speeches for the Senator to answer when she responds at the end of the debate. Senator Routier.

5.1.1 Senator P.F. Routier:

There can be nothing but praise for all the lifeboat crew who have served us in the past, [Approbation] those who do now and those will come in the future. Over many generations, Jersey has been blessed with people who have been prepared to risk their lives for the benefit of seafarers. There have been many crews, there have been many coxswains, there have been many shore-based volunteers and many fundraisers who have served our community at the R.N.L.I. stations at St. Helier and St. Catherine. I am sure we all recognise their tremendous commitment to saving lives. I was wanting just to have some clarity about this debate, because I believe the Senator has accepted the amendment of Senator Bailhache, so are we debating it as amended?

The Deputy Bailiff:

Yes. The Senator has withdrawn her own amendment. The proposition as amended, it has been taken as read, as amended by the amendment of Senator Bailhache. You are debating it as amended.

Senator P.F. Routier:

Thank you very much. Reading the amendment of Senator Bailhache is fairly straightforward, talking about the request for an investigation, but I have an issue with regard to the third paragraph of the report, if Members would like to look at that. It speaks about, quite rightly, the prospect of having 2 all-weather lifeboats operating in Jersey's coastal waters as absurd. I think we could probably all agree with that; there is a need for only one. But then I have a real problem with the next sentence, which is: "Either the aspirations of the newly-formed J.L.A. should not be supported or the R.N.L.I. should be requested to assign its local assets and responsibilities to the new association." I have a real problem with that, because I believe the R.N.L.I., as they have served us in the past, have served us exceptionally well. I really struggle with that. I want to really start by saying that when I was asked to attend a public meeting on 9th April last year by a friend to receive a request to investigate and to achieve the reinstatement of the Coxswain, I did so on the basis that I knew some of the crew and their supporters. I was very willing to try to help and to get local crew back on to the St. Helier R.N.L.I. Lifeboat Station. On that day, I spent a considerable amount of time speaking to many people gathered outside the R.N.L.I. station and it became evident early, even during those discussions, that there are differing views of the very sad state of the relationships between all the parties. There were people who were fully behind the Coxswain and wanted him back and there were some who commented that they were more interested in having a local crew on the lifeboat with or without the existing Coxswain. The priority was getting the R.N.L.I. lifeboat back with a local crew. On that day, I sensed that there were divided loyalties, but it was not until later that I became aware how toxic the whole situation was. I committed to investigate the matter and to work to get the Coxswain and the crew reinstated. I can recall doing a T.V. (television) interview on that Sunday morning, on 9th April, and saying: "They all need to get into a room and bang their heads together." The immediate days following, together with Deputy Lewis and officers, I spent a considerable amount of time speaking to various people. As requested, I was asked to impress on the R.N.L.I. how vitally important it was to have a local crew who know local conditions crewing the lifeboat. This I personally did, making phone calls to the R.N.L.I. executive. I left them in no doubt that our community wanted a local crew back on the boat. During the following weeks, together with the Chief Minister, Deputy Lewis and officers, meetings were held with the dismissed Coxswain, crew representatives, the Coastguard, the Harbourmaster, Ports of Jersey, the Emergency Planning Officer and the R.N.L.I. It became even more obvious that for quite some time that there had been a building of a strained relationship between all parties. When I say "all parties" I do not just mean the external parties local to the St. Helier crew, I also mean within the St. Helier crew itself. I will not repeat what has been said in the various reports, other than to say comments about a bullying culture and not being prepared to speak out because of reprisals does not surprise me. Moving on, after a considerable amount of meetings and negotiation, it was a mark of good faith and significance that there was a recognition by all parties - and I mean all parties, including the Coxswain - that they could have done things better and should have acted differently over a lengthy period of time. This was a significant step in reconciling the situation and in getting the local crew back on the R.N.L.I. St. Helier boats. With that acceptance and on that basis, everyone agreed - and that included the Coxswain and his supporters - that they would draw a line under the past and start afresh. On that basis, the R.N.L.I. decided that it was appropriate to agree to reinstate the Coxswain. Now, this decision was very welcome and all parties were prepared to recognise their failings and draw a line under the past. From my point of view, I believed that we had achieved a reasonable and sensible outcome. The Coxswain was reinstated and the crew were back on board the St. Helier lifeboats. As it has turned out, we now know that this was not good enough for the Coxswain, which is, I have to

say, very unfortunate and extremely disappointing. That is why I feel completely let down by the whole thing. It may be that I was a bit naïve and I believed what I was told, to think that a line had been drawn under over the past, but that is what I and all the parties did in good faith. That is the only way I work and I expect those that I deal with to respect that position. I do not take kindly to misinformed and inappropriate comments on social media which attempt to bully. In fact, the harassment of keyboard warriors is the worst approach anyone can take with me. I am sorry, but I am unable to support this amendment because having already previously achieved, with others, the reinstatement of the Coxswain, I cannot have confidence that there will be a satisfactory outcome to an inquiry, whatever the result. It is one of those situations where I think people need to agree to disagree, shake hands and be reasonable and move on. When I say that I am unable to support a further inquiry, it should not be taken that it is an intention to keep anything quiet. We already know that the situation has built up over a number of years and that all parties have recognised their failings and their faults. I see no value in wasting more time and resources having an inquiry. If Members do want more time and effort and resources looking at this issue, all that would be found out is what we already know. The previous Coxswain and crew, the Coastguard, the Harbourmaster, the Ports of Jersey, the R.N.L.I. were all at loggerheads and did not respect each other's positions. It was accepted by all parties that they could have done things differently. I do not want to support the continuation of this sorry saga, a saga of personalities not seeing eye to eye, all of this when we have a well-established and supported R.N.L.I. service. We have the St. Catherine inshore boat, we have the lifeguards around our Island and we now have the new crew in the St. Helier boats. Importantly, we also now have a good relationship between the R.N.L.I. crews, the Coastguard, the Fire Service, the Harbourmaster, all things that did not exist in the past. This is obviously now very, very welcome. As you can imagine, I cannot see that there is any additional value that can be achieved by having this further inquiry being asked for today. I will leave it to Members to consider what to do.

5.1.2 Deputy S.M. Wickenden:

I was wondering if I could ask a question of the Solicitor General, please, which might help?

The Deputy Bailiff:

Yes, if it is a relevant question.

Deputy S.M. Wickenden:

I was wondering, due to the fact this is asking us to set up a Committee of Inquiry where we would have to appoint a Q.C. (Queen's Counsel), would the Solicitor General please explain what powers the Q.C. would have to enforce or subpoena information from any organisation outside of our jurisdiction?

The Deputy Bailiff:

Mr. Solicitor, are you able to assist?

5.1.3 The Solicitor General:

I think that would be a question that is dealt with under Standing Orders. In looking at Standing Orders, I do not believe there would be any express powers to summon witnesses or compel the production of documents and specifically, in particular, if there are any documents or witnesses that were overseas. I do not think there would be power to do that.

The Deputy Bailiff:

Thank you very much. Does that assist, Deputy?

Deputy A.D. Lewis:

Could I have clarification on that? Is there a subtle difference between a Committee of Inquiry and a public inquiry or are they both the same?

The Solicitor General:

I think they are both the same. The Standing Orders I think provide a presumption for a Committee of Inquiry to sit in public, unless there is a particular good reason not to do so. The presumption is that whether it be a public inquiry or a Committee of Inquiry, the presumption would be that they would both be public, as in open to members of the public, unless the Committee of Inquiry could establish that there was a good reason not to hold any part or all of its proceedings in public.

The Deputy Bailiff:

Does any Member wish to speak on the proposition?

5.1.4 The Connétable of St. Mary:

Can I just ask a point of order? I think it is; I am just double-checking. It is the financial and manpower implications for the proposition, they are not quantified in any way and I believe Standing Orders requires that.

The Deputy Bailiff:

The position is that I thought, Connétable, there is obviously a requirement under Standing Orders for a statement to be made. There has been a statement made. It is up to Members whether they believe that statement is sufficiently adequate for their purposes.

The Connétable of St. Mary:

Standing Order 21(2) says that there needs to be an estimate and details of how they have been calculated.

The Deputy Bailiff:

This is 21(2), yes.

[17:30]

The position is, Connétable, that is right. The position also is that appears to be a Standing Order, I am advised, that is honoured more in the breach than the observance from almost all sectors who put propositions before the Assembly. It has been allowed and so it is open now for debate. I think it is a matter for the Assembly, whether the Assembly is content to proceed on the basis of the statement that was made, but it is now before the Assembly. Does any Member wish to speak? Connétable of St. Mary.

The Connétable of St. Mary:

Could I ask the proposer for her estimate of the financial implications for this proposition?

The Deputy Bailiff:

Is that your speech, Connétable, because obviously the ... does any other Member wish to ... Connétable of St. Martin.

5.1.5 The Connétable of St. Martin:

As parish Constable, I was very fortunate to receive an invitation to meet His Royal Highness, the Duke of Kent, in May 2016, when he visited the Island as patron of the R.N.L.I. During that tour, His Royal Highness visited the excellent R.N.L.I. facilities at St. Catherine and around the Island. My invitation came about because of the station in St. Martin; terrific facilities and equipment at the station. It also gave me a chance once again to see that equipment and to meet the crew and the

helpers that work that, those who support the crew and some very hardworking fundraisers. To those not in the know, not having myself a dinghy or a boat or a yacht or a cruiser - I will soon, I hope - and probably 10s of thousands of people on the Island, I had no idea of the background disputes that appear to have been simmering at that stage - it was 2 years ago - behind the scenes at the town station. I had no idea whatsoever. My knowledge of the R.N.L.I. is the orange boats going out rescuing people. As a child who lived in Rouge Bouillon, that was the time of the maroons, we could hear the lifeboat maroon go and we would hear the second and we would know the lifeboat was on its way out, before mobile phones, of course. The news in April of last year of the breakdown, the removal of the Coxswain and subsequent standing down of the crew came as a total surprise to me and I am sure it did for probably the majority of the Islanders. This looked like it was going to escalate, and indeed questions followed in this Assembly a few days later on 18th April and were answered by the Assistant Chief Minister, Senator Routier. I started a file that day because I thought it might go on. That is my file so far on the press releases and the reports and the subsequent things we have got now. There have been many ups and downs since that time, many comments, there have been many statements made, reports, we have heard of some of the reports already, which I have got in there as well, most interesting reports. We have spoken about the report of the former States police officer, which I found very thorough, in saying that. He has presented facts, so it is quite an interesting report, informative document. The arguments are well-rehearsed. This is a stalemate. I know more now on the issue certainly than I did last April. I think most Islanders now know much more than they did then, but are we any further advanced? I fear we are not really. What we are now, I think what we could say now, we have what we could only call well-entrenched views. Sadly, we, as the Assembly, find ourselves in such situations probably on a regular basis, even in my short time in this Assembly, when the public are split on their views and large campaigns are launched: the Jersey Financial Centre, the Plémont site, the hospital site. But there has not been a great lot of contact with States Members on this. Most of the contact that I have had has come from crew members or ex-crew members or pending crew members or from the other stations. We accept there may have been a big petition and many thousands of signatures signed, but what are we going to achieve from another report from a Committee of Inquiry? We now have an independent lifeboat association who are in the process at the moment of acquiring their own lifeboat. At the same time, we have the R.N.L.I. training new volunteers for the lifeboat that appears to be remaining on the Island, together with all the other facilities they are providing at St. Catherine, the lifeguards, beach guards and at the station at Beaumont. I think this whole debate today - I know it has been amended and accepted - is the setting up of a Committee of Inquiry. I have got Standing Orders and I know the Solicitor General just spoke about the setting up of a Committee of Inquiry and who should set it up. It does not have to be a Q.C., but it can be appointed and the costs from the Minister for Treasury. It is about a Committee of Inquiry, nothing more, nothing less. We have a number of reports already from both sides. What is the Committee of Inquiry going to achieve? Will it change the situation? I do not think it will. Will it cost? Yes, it will. What will it cost? We have no idea. What will it achieve? Little but more mudslinging. What on earth must the R.N.L.I. patron be thinking of us in Jersey? If I knew that a Committee of Inquiry would put this matter to bed once and for all, then I would support the amended proposition. I fear it will not and the inquiry will just be money wasted. Whatever the outcome, the J.L.A. wish to go forward alone with what they hope will be States of Jersey support, and albeit I accept that Senator Ferguson has withdrawn her first proposition, P.7, she did state when she withdrew it "for the time being". Standing Order 146, I think it is, is that a public inquiry would be of public importance. Yes, maybe it is for interested parties, but if we said to all those interested parties and the public in general: "It is going to cost as well" would they be so interested? I do not think they would. It is for that reason I cannot support the amended proposition. I maintain my support for the R.N.L.I. and thank them for all they have done and their work on their lifeboats over the past 130 years, including the former crew members.

The Deputy Bailiff:

Solicitor General, did you wish to intervene at this point? I saw your light.

The Solicitor General:

Yes, I just wanted to add something to the answer that I gave to Deputy Wickenden, which was that there is power under regulations for a Committee of Inquiry to summon witnesses and documents. That is certainly the case as regards witnesses and documents within the jurisdiction, within the bailiwick. Enforcing that out of the jurisdiction is entirely another matter, as I think I said in my original answer. I just wished to clarify.

The Deputy Bailiff:

Yes. I have a number of Members who wish to speak.

5.1.6 Deputy G.J. Truscott of St. Brelade:

I was just seeking clarification, if I might, from the Solicitor General.

The Deputy Bailiff:

Yes, indeed.

Deputy G.J. Truscott:

Just regarding data protection, because a number of reports have been written by the R.N.L.I. and I see that they assert that it is prevented to release those because of data protection law. Has or would the Committee of Inquiry have the ability to: (1) go after that information; and (2) then publish it?

The Solicitor General:

Could I just reflect on that?

The Deputy Bailiff:

Yes. The Solicitor General obviously will reflect on that. I am conscious that I have come into the Assembly rather late and therefore I am fresh. It may, however, be the case that Members are not fresh. It was around about this time yesterday that we considered a break. Now, I only pause before asking Members whether they agree to that is that I am conscious that the matter is time-sensitive from Senator Bailhache's perspective. I wondered, Senator, if it was possible to take a break now, if that would not cause you any difficulty.

Senator P.M. Bailhache:

I am entirely in Members' hands. I have to leave the Assembly at 6.45 p.m. and there were one or 2 Members that I wish to hear before I spoke, but they probably equally wish to hear me before they speak, so sitting around waiting for each other to move first. But I know that the Chair customarily calls Members in the order in which they have given notice of intention to speak, but perhaps I ought to put my light on now and give an intention to speak.

The Deputy Bailiff:

I am entirely content with that statement. The only reason I mention it is because I am aware it would be foolish to have a break if you were robbed of your ability for speeches.

Senator P.M. Bailhache:

6.45 p.m. is my deadline to go and catch a plane, Sir.

Deputy A.D. Lewis:

Regarding breaks, Members are free to leave the Chamber if they absolutely need to and do throughout proceedings. I know the half-hour break was discussed at the last sitting, but I think in

this instance perhaps we could just continue. If Members feel they desperately need to take a 5-minute break then they are able to do so, as long as we remain quorate.

The Deputy Bailiff:

Deputy, that is of course a matter for Members in general, but my understanding was that when it was agreed that the Assembly would sit until 9.00 p.m. every evening, people wanted at least one significant break because they had arrangements that needed to be made and those people wanted to be absent without necessarily missing the rest of the debate, so I am not sure ...

Deputy A.D. Lewis:

Can I suggest we make that 7.00 p.m. then?

The Deputy Bailiff:

I will not put it to the vote, it does not need to be any serious argument. We will make it we will break at 7.00 p.m. Very well. Yes, Deputy Le Fondré.

5.1.7 Deputy J.A.N. Le Fondré:

I want to start by just endorsing some comments that have been made publicly recently - hopefully it is not a controversial one at all - which is just to endorse the hard work of all the volunteers at the moment who are doing the fundraising during this entire period. **[Approbation]** The reason I start there was because there were some media releases I think last night. Personally, this has been quite a difficult subject, as, for example, the Deputy of St. Martin will be aware, because I have family members who have served with the R.N.L.I. with the Deputy of St. Martin, I have family members who continue to serve with the R.N.L.I. and I have family members who have served with the all-weather in St. Helier. I also have a variety of friends - as I am sure we all do - and they are very clear that a lot of them fall down fairly evenly between both sides of the argument. I think that is probably one of the problems on this subject, that depending who you talk to, you can lean one way of the argument and then you speak to somebody from the other side of the argument, you lean back the other way. This debate here is not about really, in my view, what any one Member in this Assembly thinks the case is. For example, Deputy X might think the R.N.L.I. is right; Connétable Y might think the J.L.A. - I think that is the right name - is correct and should be supported. It is unlikely that anyone here has been through all the emails, all the documents and interviewed all the relevant personnel and got to the point. I think any one of us has an element of a picture and that will not be the full picture. That is, to an extent - and I am sure the Deputy of St. Martin will correct me in the error of my ways later - what I think he has publicly said to the *J.E.P. (Jersey Evening Post)* is wrong. I think this will be a running sore if it is not addressed. That is my big concern, that certainly when I speak to people, there are huge passions on this side. People may say: "Oh, that is just the ones who are involved" but we had a petition of 6,000 signatures, I think it is, and certainly when I go up to the rural side of the parishes, shall we say, I do get asked about this from time to time and there are very strong views held and I know there are very strong views held on the other side. What I am concerned about is if this is not addressed - and I am saying addressed by having a Committee of Inquiry - I think it will damage the reputation of the States, basically because we will be seen as wanting to bury something because it is inconvenient, and I think potentially, if it not resolved, the damage is either the reputation of the R.N.L.I., the J.L.A. and all the individuals involved. Someone somewhere has messed up and there is a lot of blame game going around. I think in terms of particular individuals involved, I think clarity and closure needs to be brought to this. That is where I have finally got to. I think I will elaborate a little bit, because I have spoken to various people from both sides and I have tried to go back to documentation and opinion where possible. In my view, I think it should not be for any one of us to try to do that to resolve the position. One needs something that is agreed on by both sides as being seen as independent and the position at present is that the reports that have been produced, the 2 are not seen by either side as independent, that is kind of the critical

thing. That is why I think it will be a running sore. Particularly if it is seen as being buried, then it will just fester, particularly around election time as well. That is being too flippant on what is quite a serious point. This is not about whether one supports or does not support the R.N.L.I. or the J.L.A., it is about clarity in a very difficult situation.

[17:45]

Now, what I do want to do - and I want to try to be slightly careful - is deal with some of the information either we have had reported to us and also some information I have seen, in other words, where somebody has said something they have been able to back it up insofar as it is a sheet of paper with something written on, and why it just reinforces my view that there really does need to be an independent review. I will just start off briefly - I should say, I am acutely aware of time as well, so I will be as quick as I can - but the report that came out from Economic Development, through I presume the Chief Minister, which is, I believe, what we are referring to as the Murray report, which is the States of Guernsey Harbourmaster, which obviously the people - I will call it - on the J.L.A. side are not keen on, because they think his relationship with the R.N.L.I. was too close. But it was always drilled home to me that there is quite a large caveat on page 1 of that report: "There is no guarantee of completeness, accuracy, timeliness or of the results obtained from the use of this information ...". There is no warranty: "Nothing herein shall to any extent substitute for the independent investigations and the sound technical and business judgment of the reader." There is quite a large caveat that has gone in there. It talks about - Senator Ferguson has kind of referred to this - "An informal complaint was made by the then Jersey Harbourmaster." Issue one in terms of what is out there is why did the then Jersey Harbourmaster, who is no longer the present Harbourmaster. It says: "This is their report with the benefit of hindsight, given the informal nature of the complaint. The formal investigation undertaken by the R.N.L.I. should have quickly determined there to be no case to answer and terminated at that point." As we know, that did not happen. It does talk about - it is an observation that has been made and I think it is relevant - later on a recording was made of a particular interview between the relevant Coxswain and the Area Manager, which reportedly confirms the conduct of the Area Manager to be entirely appropriate. "The recording was not available when compiling this report." It has not been backed up. There is not an evidence bit in there. It talks about: "This decision" which is about the crew leaving, I think: "The decision is reported not to be unanimous." It is reported. How do you back this up? It talks about on page 8: "A toxic culture ensued, where members of the R.N.L.I. of St. Helier lifeboat would not challenge decisions made by the Coxswain for fear of reprisals." That is a pretty hefty statement to make and where is it backed up? Where is your evidence? It repeats: "The informal complaint made by the then Jersey Harbourmaster should not have been investigated and led to conspiracy theories around the matter." That is part of the whole issue, but it goes further, because it is not just an internal issue within one organisation. This covers, depending who you want to talk to, the Chief Minister's Department, R.N.L.I., J.L.A., Ports, at least 2 of which are States organisations, if you see what I am trying to say, and so it is wider than that. I would tend to agree in terms of style, I think it was the Connétable of St. Martin said the ... I think we will call it the Perchard report, shall we? In there he says ... Sir, if a name of an individual is in a report which has been added to this, are we allowed to mention that name?

The Deputy Bailiff:

You can mention names if it is essential to the understanding.

Deputy J.A.N. Le Fondré:

I will just say Mr. M. then. "Mr. M. is said to have said words to the effect that A.H. was a risk to life and public safety and unfit to be a Cox" and it says: "The news was received with shock and dismay by all present." Again, how is that backed up? But it reads more thoroughly, this report, I

will say that. It then talks about: "Bearing in mind we have talked about this toxic culture within the crew ...". There is the statement that says: "We, as a crew, have never had reason to doubt A.H." They go on about basically they have had to trust him with their lives. We do not need to worry about that, because that is justifying the report. "It is alleged that members of the Coastguard later placed malicious comments on a Facebook page." The Coastguard is obviously ultimately a States organisation, one we would expect a certain level of professionalism taking place there. It continues: "They will say" this is the Lifeboat Operations Manager and the Cox: "there were difficulties presented by a particular former crew member, against whom complaints were made by various other crew members about his behaviour and unprofessional conduct. These allegations, it is claimed, were never resolved by the R.N.L.I., but after a period of absence from the St. Helier station, the crew member was reassigned to the R.N.L.I. St. Catherine Lifeboat Station by the R.N.L.I." Then it talks about - this is directly from the report, which is public - "On November 2016, the then St. Helier Harbourmaster" and we have heard this comment: "made a complaint directly the C.E.O. of the R.N.L.I. Both men had served together in the Royal Navy at a senior level as submariners." What we have now got is that someone who trusts someone probably fairly implicitly in a major position of authority in R.N.L.I. has received a complaint from the designated authority down here in Jersey about an individual volunteer, presumably. We have already heard that that complaint should never basically have gone further. But interestingly enough, and just again for the record, it was something about launching without authority and it does state in here: "At the time, A.H. was in his own boat." So in other words, was nowhere near the lifeboat and had obtained authorisation from the Lifeboat Operations Manager, which was launched on the authority of Mr. G. and the Deputy Launch Authority, who I will describe as M.J. But again, bearing in mind originally what was being said some time ago was that this was - I do not know - doing a favour for a friend, there was all sorts of rumour and anecdote was being attached to what had happened. What was interesting then if one goes further down, when there is an internal investigation done and A.H. asked for the terms of reference and it is referred to in this report, the comment I believe from the R.N.L.I. - I assume, I do not know - says: "For the terms of reference, I would avoid sending him [being A.H.] this document." Why was the person being investigated not given the terms of reference of the investigation of which he was the subject? Again, this is from the report: "The Coastguard member, referred to as Coastguard 1, who was the person who had previously served the R.N.L.I. in the St. Helier Lifeboat Station, had been reassigned to St. Catherine." This is, I think, where it spills out from an internal H.R. issue within the R.N.L.I. to issues concerning States organisations. I am reading from the report, I am doing extracts: "Mr. H. is advised that the investigation into the complaints against him had found no case to answer." It continues: "Mr. H. will say that having been subjected to a mischievous complaint" and we will touch on that later: "and following the other issues that over some considerable time he and his Lifeboat Operations Manager had attempted to address, these new issues appeared to be further evidence to him that he was under sustained attack." This is the problem, in that it gets down to a tit for tat, is it in relation between 2 people or has it spiralled out to something bigger? It says: "There was no evidence to suggest that A.H. had breached the R.N.L.I. code of conduct for operational volunteers, as he was largely not part of the alleged incident." It said: "The report found that the majority of the alleged self-launch incident" which was part of this informal complaint that started off from within the Coastguard up to the R.N.L.I.: "did not occur as described by ..." and then it is a redacted name. Funnily enough, in 2017, A.H. made a complaint to the Ports of Jersey about a suspicion that their staff had an allegation against him which they knew to be unfounded. The reason I am doing this, going into the detail, the problem is that we are getting messages from 2 sides of a story and we are not getting a full picture. "It appeared to the crew that when the 2 inquiries conducted against Mr. H. have been effectively dismissed" so that is the 2 complaints that have been made against him: "the underlying concerns of the Coastguard that manifested themselves in the initial complaint and the subsequent actions of Mr. M., which led to Mr. H.'s dismissal, were not being redressed" in this instance, by the institution. It involves and he

is named: “The former Lieutenant Governor of Jersey has been involved in looking into this matter.” I think we will just keep going. Then obviously the other matter which perhaps the Chief Minister may want to identify is on 11.1, that is page 15, this is also one of the running sores matters, is that: “On Wednesday, 15th November 2017, the crew were invited at a meeting at Cyril Le Marquand House at 10.00 a.m. It had ordinarily been expected to take place, as had all other previous meetings, at the St. Helier Lifeboat Station. The time, date and location were not negotiable.” Obviously that is the date and time the lifeboat was removed from St. Helier. I go down that way because that is what is in the public domain, that is what has been said, and how am I meant to make any decision about the facts, as to what has happened? What I just want to say, that is why I do refer to the Port side as well, because I think that does become an issue, at which point we need clarity. It will be a running sore within the Jersey community if there is not such clarity given. I would like to finish on an email I was given. It is heavily redacted. As I said, I did speak to both sides of the parties and I did sit down with the Cox relatively recently, but in one email I was given - I do not know the source - it looks to me a relatively professionally-written email, it is not an email from the Cox, as far as I am aware, it is an email either from somebody writing into either Ports or the R.N.L.I. or receiving from, I am guessing. What it says is: “The reason I bring this to your attention” this is the person writing the email: “is that the output of the report suggests, very wrongly, that the issue between Cox A.H. and [and it is redacted, we will say X] is a matter which is tit for tat” we have heard this: “and implies a one to one dispute.” One of the conclusions suggests that A.H. is a bully, and this is extremely judgemental, coming from a non-judgmental organisation and it gives absolutely no basis for its assertion about hearsay. This is the bit that did strike home: “On the one hand [redacted, I assume X] has been behind 2 specific totally specific incorrect complaints against A.H. The first was when he admitted” so that is whoever is redacted: “that he arranged for [I presume Y, another person] to complain to the Divisional Inspector that A.H. had caused the deaths of a father and son by delaying the I.L.B. for 30 minutes. This was disproved, as it was nonsense, but the Divisional Inspector established that it was a deliberate attempt to remove A.H.” The second, almost identical, is this one. Again, I do not know the context of what has been written, I do not know where that email came from, but it is in black and white. To me, if remotely that is anybody to do with Coastguard, who has ...

The Deputy Bailiff:

Connétable, if you leave we become inquorate.

Deputy J.A.N. Le Fondré:

If there is anybody who has been involved, whether it has been Coastguard or Ports or within the States organisation that made those type of allegations when they are meant to be operating in a professional capacity, that needs to be identified. Either that individual's name needs to be cleared, and that what I have just read out is incorrect and false or it is accurate, and in which case there needs to be some clarification as to what the position is. I make no judgment as to what is right and what is wrong. What I am saying is that the information - and that is backed up in writing - gives me cause to support the fact that we need clarity, that the organisations that have been involved in here need closure. That is my main point. That is why I just read some of that out. I do want to touch on 2 other bits and then I will finish. Number one: we know for a fact there has been bullying on social media. I can say I bumped into a family friend with St. Catherine's R.N.L.I. who was very upset about the abuse they had received. I can also say that on the other side, on the all-weather side, I have been shown some horrific Facebook comments and emails that they have received. There is abuse happening everywhere in the social media. From anywhere, that is not acceptable, and I presume hopefully we can all agree on that. The second point is that I will refer to it, and it is the way it was put to me, and I will use this analogy - Deputy of St. Martin will know this, you will know it far better than me, anybody else who has been on a boat will do - but if you have not, it is worth

just understanding. People may not know in one of my other lives, as it were, I am an R.Y.A. (Royal Yachting Association) dinghy instructor, so we go out sailing and what have you.

[18:00]

Occasionally you end up in some rather interesting situations. The one that springs to mind is gusting 40 miles an hour, which is a force 8, in a 10-foot swell, which if you are down below is roughly somewhere up there. If you think of the volume of water coming down at you, you are down here and that is there and you are sailing in that. That comes about every 20 seconds, say. The thing is when you are in those sort of conditions, things - and I do not try to be in those sort of conditions very often, I hasten to add - can go wrong very, very quickly. What you then get if you are in any of the lifeboats, which I have never done, I hasten to add, members of my family have done, make it worse, put rocks nearby, make it dark. When I say "dark", I do not mean dark like St. Helier, I am talking dark, pitch black in St. Ouen's Bay when you do not know what is coming down at you and you are somewhere potentially offshore. Then also in terms of other things that the crews have to deal with is bodies, and members of the police may know this as well, that if a body has been in water for any period of time, it is not particularly pleasant to retrieve. Without going into the details, I have always been told that you do not lift the head up, or rather, sorry, you do support the head when you take it out and body bags do not always hold everything in. The reason I say all that is the way it was put to me by a family member is that sometimes they are dealing with quite difficult situations and you are dealing with a very close-knit team. If I go back to my analogy of a 10-foot swell or worse and you are dealing with those certain circumstances, you need people to do things now, you do not need them to do them in 10 seconds' time. You may not ask politely, you may not ask: "Please will you undo this rope or tie this rope up?" it will be: "Move the [blank] thing now." That is not a bullying environment, that is a: "Get it done." The way it was put to me is that generally the team on the lifeboat are very close-knit, they are supportive of each other, to the extent that groups of them will go on holidays together. That is part of the way of dealing ... that is why I mentioned the bodies. They will see some quite nasty situations. It could be that if you are not part of the team and you are on the outside of it, maybe that is a different relationship and maybe that is where it gets difficult. But they have to trust each other, because in the circumstances I have described, their lives are at risk. Certainly the person I was speaking to from the St. Helier side was very clear: in those circumstances, they will only go out with 2 people, one of which is the Cox I have referred to. I am going to wrap-up. I wanted to just put it into that context of the teams they are dealing with, the stresses they are under and the fact they have to trust each other. They are not going to suffer fools gladly and they are not going to suffer certain things. I am sure the Deputy of St. Martin will deal with the scenarios and the issues within R.N.L.I. from his perspective, but I go back to the point, I think I have backed up, from what I have seen in writing, the issues that are bubbling around that need to be addressed, which is why we need closure. It is not relevant as to what is the future of the J.L.A. or the R.N.L.I. or anything along those lines or even who sits on the Committee of Inquiry, it is whether, as first point, we have one. Do we want closure? For me, it would give closure. Do we have enough information otherwise to make any form of decision on anything we will ask in the future? I would say no. I think you need to get the facts, otherwise it will be a running sore. I know there will be friends who will be listening to me now who will be disappointed with what I have said; there will be other friends who agree with what I have said. I am not making a judgment on the outcome of the situation, I am just saying we have got a very difficult situation and I think clarity needs to be given. I have definitely said enough. I will support Senator Bailhache.

The Deputy Bailiff:

Solicitor General, did you wish to add something? You put your light on earlier.

The Solicitor General:

Just responding to Deputy Truscott's question, I do not consider that an objection based on data protection would be a good objection to a summons that was issued requiring the production of documents.

5.1.8 Senator P.M. Bailhache:

Emotions can run high on issues of this kind, but I hope that during the course of the debate we will be able to avoid recriminations. I enjoyed the speech of Senator Routier and sympathised with many of the things that he said. But I must say, I regretted his reference to a bullying culture, and I think he was referring to the paragraph 415 of the Guernsey Harbourmaster's report, where he said: "A toxic culture ensued, where members of the R.N.L.I. Jersey Lifeboat Station would not challenge decisions made by the Coxswain in fear of reprisals." I think that Deputy Le Fondré was making much the same point. One has to ask oneself where these conclusions came from. They came from one side of the argument, but they were not informed by the other side of the argument. In any situation of this kind, fairness requires that one should hear both sides of the story. It is a fact that there has been a breakdown of trust between the R.N.L.I. and those who were formerly part of the St. Helier lifeboat crew and their families and supporters. Our community has, I think, been divided between those who stand behind the R.N.L.I. and those who stand behind the former lifeboat crew and what is now the J.L.A. We are heading into a dead end, where it is quite possible that we will have 2 all-weather lifeboats and a number of inshore craft all operating in Jersey's coastal waters. I think - and that was the reason for the lodging of my amendment - that that would be an absurdity. I am afraid that I do not agree with the view expressed by the Chairman of the Jersey Harbour Authority in a letter to the Chief Minister, which has been circulated, I understand, that we can add to the diversity of the search and rescue asset base by having another lifeboat. My information is - and it does not come from the J.L.A. - that there are not enough emergency occasions to justify the existence of 2 all-weather lifeboats. From a practical viewpoint, if there were 2, which boat would be called out on any given occasion? Would they be called out in turn; would they be called out on a particular day of the week? The concept is, to my mind, ridiculous and we must do what we can to avoid getting into that situation. Can the Island afford to support 2 all-weather lifeboats? We now have 2 sets of goodhearted people trying to raise money for 2 separate institutions, both of them dedicated to the same vital purpose of saving lives at sea. We have a difficult situation where covenants have been made in favour of the R.N.L.I. which are being cancelled and bequests which are being reconsidered and 2 different institutions vying for the same financial support. This is, from the viewpoint of Jersey, a nonsense and we need to get a grip of the situation and declare that this is not going to be the outcome of the situation and that we are going to have one or other of the aspirants to run the St. Helier Lifeboat Station supported. It will be a very difficult and painful political decision, but in my view, we cannot avoid it. In order to make that decision, it seems to me that we need to know the facts. We need to know what went wrong, who said what and who did what. We need to know where the mistakes were made and whether they are likely to be repeated. We need to ensure that there is fair dealing and a structure in the search and rescue community that can cope with severe disagreements between stubborn people. Some of my ministerial colleagues, and perhaps a number of Members too, to judge from the foot stamping, consider that is not an appropriate standpoint. They take the view that the facts are not important or, alternatively, that they believe that they know the facts and that whatever might have gone wrong in the past, the R.N.L.I. should be supported because of its long history of service to the Island and its substance. They point out that we have already had 2 reports, one from the Guernsey Harbourmaster and one from a retired police officer, and there is no need for another one. But the point of the reports that we have had is that they are diametrically opposed in their conclusions and they do not help us to form a view of the facts. The preliminary report compiled by the former police officer was compiled on the basis of reports and documents provided by the former Coxswain. It is not an independent report, as I am sure he would agree. The report by Captain Murray, the Guernsey Harbourmaster, is prefaced by the

disclaimer to which Senator Ferguson referred in her speech. The Harbourmaster says: "Please do not rely upon this report. I am doing the best that I can. This is what I have found out, but do not rely upon it." We have had, in other words, a case for the plaintiff and a case for the defendant, but we have had no independent judgment. Some Members assess the dispute as being entirely a dispute on the basis of a clash of personalities. I am not sure that is correct. It may be, but I think there may be something more serious afoot. But we will only know what is the truth of the matter when we have a full inquiry into the facts. I appreciate that I am not going to persuade R.N.L.I. supporters, of whom there are a number in the Chamber, but while I understand the viewpoint that the R.N.L.I. is a great national institution, I do not accept that because of that background there is nothing to discuss or consider. I do not accept that viewpoint essentially for 3 reasons. First, even great national institutions can and do lose their way as we have seen illustrated in recent weeks with Oxfam, Save the Children, and a number of other national charities. Whether it is because they get too big and too powerful, or because they become arrogant and lose their moral compass, large and renowned institutions do get it badly wrong on occasions.

[18:15]

Secondly, I do not accept the viewpoint that there is nothing to investigate because we know enough to conclude that in at least one respect the R.N.L.I. did get it badly wrong. No mental image captured more graphically or more potently, the disastrous failure of communication and the crass error of judgment than the sight of Jersey's lifeboat, the George Sullivan, steaming out of St. Helier harbour and away from the Island which supported her and in fact which had bought her. While the lifeboat crew were in discussions with representatives of the R.N.L.I. a crew from Poole surreptitiously crept on board and took the boat away to England. The outrage caused by that foolish action on its own justifies, in my view, an inquiry. Perhaps it was not the idea of the R.N.L.I., perhaps it was sanctioned by some authority in Jersey; but whatever the situation we need to know the facts because it should never be allowed to happen again. I know that there was some cover in the sense that we have a number of inshore lifeboats, and there was the all-weather lifeboat in Guernsey and other craft which might have come from the French coast. But contrary to the view expressed by the Guernsey Harbourmaster, I do not think it is impossible to imagine circumstances in which lives could have been placed at risk during the time when the George Sullivan was away in Poole. It was a risk, and to take that risk was a serious mistake and I think it is important to know how that mistake came to be made. My third reason for not wanting to sweep this away as if there is nothing more to be discussed is that the former lifeboat crew are men who have been prepared to risk their lives in order to save others. Many of them have shown extraordinary courage, and some over a long period of years. They are local people, our people, and I do not think that they should just be cast aside in circumstances where there is no clarity as to what happened, simply because the R.N.L.I. has served us well for a number of years. The inquiry may expose things which could perhaps better be left hidden, but I am afraid that in order to resolve this very sad dispute the truth must now come out. Senator Ferguson, I think, was right to propose a Committee of Inquiry, I was discussing a few moments ago with the Chief Minister the nature of such an inquiry, and I accept that a formal Committee of Inquiry may not be absolutely essential, but an inquiry under a chair who might be a distinguished judicial figure in whom all persons can have trust seems to me to be absolutely essential. There is at least one retired member of the Jersey Court of Appeal, to whom I have spoken, whom I hope would be willing to undertake such a task. I do not think there is any need for a huge Committee of Inquiry, I think one appropriate judicial figure would be sufficient. It is a straightforward inquiry to establish facts, and I remind Members that we did have a report from a QC, Jessica Simor, and reference was made to the report yesterday in the context of political responsibility for the Innovation Fund. I think that most people who read that report will agree that it was a report which brought clarity to the situation, even if not everybody would agree on the political consequences of that situation. The Constable of St. Martin referred to the undesirability of

having mudslinging and I entirely agree with him. But I point out that we are the masters of the situation here, it is not essential that the Committee of Inquiry or any inquiry to be appointed should sit for the whole of the time in public. What is important is that the facts should come out at the end of the day. But there is absolutely no need to have glorious theatre in which accusations can be bandied across the room, one against the other. I think that would be highly undesirable. It seems to me that a comparable report to the *Simor Report* would lay the conclusions for a political conclusion to what is a very difficult and sad situation. Senator Routier took me up on one other matter in my report where he suggested that the matter was not as I had laid it out, and I said in my report that either the aspirations of the newly formed Jersey Lifeboat Association should not be supported, or the R.N.L.I. should be requested to assign its local assets and responsibilities to the new association. I accept that Senator Routier is right; it is a little bit more nuanced than that. There are a number of possible options which could be pursued once we know what the facts are. Maybe the Jersey Lifeboat Association would have no part in this plan and simply endorse the position of the R.N.L.I. But there are other options, there are partnerships which one could envisage. An independent lifeboat association operating the St. Helier lifeboat station in partnership or co-operation with others engaged in the S.A.R. (Search and Rescue) community in Jersey. That would require firm handling and firm leadership and rules of engagement, but it is not impossible. It may not be the appropriate solution but we will not know until we know what the facts were. I conclude by saying to Members: what is the alternative to an inquiry? We can of course bury our heads in the sand, we are capable of doing that and do it from time to time. But I do not think that this problem is going to go away. I do not think that if we bury our heads in the sand and say: "No, we will support the R.N.L.I. and that is the end of the matter" that will form a solution to the problem. It might do, but it might not. In my judgment it is more likely that it will not lead to a solution. The Jersey Lifeboat Association will carry on, will seek to raise money, may acquire an all-weather lifeboat, may apply for permission from the coastguard to operate that lifeboat. Then all the problems which I identified at the beginning of my speech will be problems which will have to be addressed. Maybe the coastguard authority will solve the problem by refusing a licence? But unless there are very good grounds for that I do not think that will make the problem go away either. I do not think that it is sensible to adopt that approach. Sometimes nettles have to be grasped. The Deputy of St. Martin, who has been wanting me to speak before he spoke I am sure, has acted I think entirely honourably throughout. **[Approbation]** But his approach of encouraging - and it may not be his approach alone, it may be the approach of others - of seeking to encourage and support the Jersey Lifeboat Association in its aspirations seems to me to have been premised on an insecure foundation. The insecure foundation is the fact, in my view, that it is just not sensible to have 2 all-weather lifeboats operating in the coastal waters of our Island. If necessary we have to make a choice, and if we are going to make a choice we should make a choice upon a firm foundation of fact. That is why I support the proposition of Senator Ferguson.

5.1.9 Senator P.F.C. Ozouf:

I will not be supporting this proposition. Senator Bailhache said that nettles should be grasped, and he is right. The nettle needs to be grasped that in my view ... and I have no affiliation with the R.N.L.I. but I, as I will go on in my remarks to say, have sought to establish what the R.N.L.I. has done for Jersey and I have to say to Members that I cannot envisage a situation where the serious issue - and just as the other debates that we have been hearing in this Assembly today about other life and death issues - this is an issue about life and death and the safety at sea. It is about that. It is not about personal egos, it is not about individuals, and it should not be about the personnel issues which happen and breakdowns in communications from time to time. Senator Bailhache, I agree with him in his remarks that he said it would be unconscionable in his amended ... which we are having a debate on, as proposed, that it is unconscionable that there would be 2 lifeboat organisations in Jersey. I would submit that it is unconscionable that with the record of service of the R.N.L.I. in

Jersey we should be continuing to support the institution that has served Jersey and the many men and women - I suspect they are mostly men - who have served and risked their life at sea to save people in a time of crisis. Safety at sea is not a political football. It is not something which is appropriate that we have seen - and I lament - the absolutely outrageous vilification of people, perhaps on both sides of this debate, that I have witnessed in relation to this matter that has been on the internet. I am ashamed to be associated, to be a Member of the Jersey Assembly, to be a Jerseyman, and to have seen some of the most hurtful, outrageous personal comments on websites concerning this issue in recent months. They have no place in democratic institutions, in decision making at all. They are absolutely outrageous and we even today in this debate in the last hour or so have received emails that cast aspersions on personalities such as the Harbourmaster in Guernsey, and I frankly am outraged that I am receiving such personal information in relation to players in this particular issue.

[18:30]

This is not a political football match which you can just use the social media outlets of Facebook and others in order to win a debate about the safety at sea. It is absolutely outrageous. What I find astonishing - and I am really quite surprised at Senator Bailhache - when he says in such casual terms in his remarks to this Assembly and also in his amendment that there can be ... and in his amendment he says casually that the assets that have been left to the R.N.L.I. can be redeployed to the independent Lifeboat Association. I am sorry to say to Senator Bailhache, people have not made bequests to an independent Lifeboat Association. They have contributed to the R.N.L.I., the national institution that has been serving and saving lives for decades. As a former judge I am absolutely astonished that he would even make the suggestion that somehow we can overturn wills and testaments of people that have given money to the R.N.L.I. and transfer them to the independent Lifeboat Association. It may be for the same mission but it is not the same organisation. I have had a good look at the way that the R.N.L.I. and also other independent lifeboat associations work. Does any Member of this Assembly really believe that the interests of seafarers, that the interests of people at sea who get into trouble are going to be best served by an independent lifeboat, without the backup ... and maybe the R.N.L.I. did not have the right backup for a number of years at St. Helier in relation to their operations. Maybe they were frozen out from the national organisation. But what I do know is the St. Catherine's R.N.L.I. station did maintain, as far as I am told, good relations with the R.N.L.I. national organisation. There was no issue there. What there was, was an absolutely breakdown in the relationship between the R.N.L.I. at St. Catherine's and the R.N.L.I. in St. Helier. If I may say so, one thing that I believe in very strongly is that a Committee of Inquiry, there has been a personnel, ego, management breakdown, probably on both sides, and the R.N.L.I. has put their hands up and I thought that also the people involved in the R.N.L.I. national network put their hand up and admitted there had been issues and management oversight, issues in relation to the St. Helier R.N.L.I. station. But also there was a recognition that there was things that should be done better within the local R.N.L.I. crew in St. Helier. If this proposition would be a proposition to say: "We are going to sort this out, we are going to carry on working, we are going to carry on mediating in order to find a solution to this problem" I would be supportive of it. But it gives the impression ... Members may be quite comfortable with sending out the message: "We are not sure about the R.N.L.I. being in Jersey today" because that is what we are going to be doing, we are going to be holding a Committee of Inquiry into a personnel matter. Senator Bailhache might want to know all the details about this breakdown between the Coxswain and other members of the crew but I do not. I do not think that personnel issue should be laundered and put out in public, I do not think that is going to do anybody any good, in fact, it is going to make matters even worse. There have been people's personal situations which have been hurt, and that is not nearly as bad as people losing their life at sea if we do not have a lifeboat. If I may say to Senator Bailhache also - and maybe it will be the Deputy of St. Martin that can correct me - much has been said, in fact I was shocked when I heard that the boat that was given to Jersey by a generous benefactor that bears that name George Sullivan, was sailing

out of the port gates of St. Helier. That was not the R.N.L.I. leaving Jersey, abandoning; that was the boat going in for a service that was necessary without a crew. There was no crew, and there were real issues about whether or not ... for the safety of that boat there were all sorts of things that were going on. Now, some people might want to know all about the gory details of the personnel issues; frankly I am not interested in knowing and seeing the playing out of a further set of personal issues between people that should know better, that should be putting the safety at sea at first rather than their egos. I do not want to see a public inquiry of a personnel matter being played out. Senator Bailhache has argued against committee of inquiries before. He cites the *Jessica Simor Report*; well I have to say, being one of the central players in the *Jessica Simor Report* I had to push like crazy to get that thing a solution. A quick solution? That took 4 months and when the report did come, well, I thought I understood it but not many other people did and there was an almighty political row that followed about it. Some Members might not like that, but there was, because when the facts were spelled out people still did not understand what the issues were. I got sacked. Fair enough, that is what happens in politics; you take the rough and tumble. But I say it to cite the solution of a QC and coming and writing a 100 page plus report on the machinations of different executives and the personnel issues and the different political personalities; well, it did not work with the *Jessica Simor Report*, I have to say to Members. We had an in committee debate about the *Jessica Simor Report*. I still do not know what has happened about it. Another Committee of Inquiry: (a) it is not the issue for a Committee of Inquiry, a personnel issue; and (b) even if it was, would I think it would solve anything? I think it would make things far, far worse. Far, far worse. If there was an inquiry and a mediation that had the objective of solving and healing the rift between brave individuals that have worked formerly at the R.N.L.I. station in St. Helier and are now part of this independent Lifeboat Association, and trying to find a way forward for the R.N.L.I. in St. Helier I would be in agreement. But it is not. It is not at all. This is to uncover effectively something which maybe there should be private investigations, but are we saying the R.N.L.I. ... Senator Bailhache said some extraordinary things about the R.N.L.I., about their activities. I was privileged to attend a dinner at Trinity House 3 weeks ago, which is the home of British maritime. There were lots of people, I did not know a lot of people that were there but clearly there were some big hitters in the world of British maritime. I was shocked at the amount of people who knew of the fact that the R.N.L.I. was getting a hard time in Jersey. The Constable of St. Saviour may remonstrate but I think it sends an absolutely appalling message to organisations that have been committed to Jersey for a long time to actually turn our back on them. We should not be turning our back on them, this is a long term relationships. As I have said to Senator Bailhache on more than one occasion, we are in a long term relationship with the U.K. and every time you have a tiff with a friend - and I know he agrees with me on this, I hope - you do not just walk away. We are all in relationships and have arguments, but what you do is you come back and you sort it out. You do not turn away. We all have arguments, people have arguments, but you solve them. You do not start having a visceral debate about whether or not ... because this debate really is whether or not we will have an independent lifeboat, and we have had other debates which have been withdrawn ... the underlying principle of it is that this is where this is heading: are we going for the R.N.L.I. or an independent lifeboat? That is the whole underlying theme of where this is going. It might not be the actual terms of the Committee of Inquiry but that is where this is heading and I do not want to go there. I want to send a clear message out of support for the R.N.L.I. and to say that we are going to fix this. It is unconscionable for me to have a situation where this maritime Island would basically break links with the R.N.L.I., with its national resources, with its unbelievable research and development, with its technological developments, which are going to be unbelievable in terms of improving life at sea. I went to Trinity House and saw some of the huge investments which are going into improving safety at sea, *et cetera*, of which the R.N.L.I. is part of. Is an independent lifeboat going to be capable of doing anything near that kind of investment, backup facilities, *et cetera* in future? I am sorry to the people involved in the Independent Lifeboat Association, they are deluded. Their story has changed quite a lot in relation to resources. There

was going to be hundreds of thousands of resources found. Well, I know lots of tins have been shaken and good people are putting money into boxes, but I am not sure where it is going to get to. I am sorry, I cannot support the arguments. I have not heard anything so far in the submissions of Senator Bailhache or Senator Ferguson as to why ... I can see Senator Ferguson has got some nice printouts of some of this really nasty stuff that has been on the internet; if we make decisions on that basis then poor show. For me this is a clear signal. We want to support the R.N.L.I. and we want to work with them to basically improve the life and the safety at sea, and use a veritable institution that has done an enormous amount for the safety at sea across the British Isles, that is regarded worldwide as a leading safety at sea. By the way, the R.N.L.I., look what they have done with our lifeguards. We heard all this, we were going to lose the Australian lifeguards, and look now at what the R.N.L.I. has done in relation to our lifeguards. What message are we sending to the R.N.L.I. today by basically going along with this Committee of Inquiry into the actions? I think we have given them enough pain. I think they have learnt their lesson. So I regret I see no purpose whatsoever on the basis that a personnel matter should not be a Committee of Inquiry issue in public, as has been proposed. It will not be short, it will be difficult and it will not even answer any questions, in fact it is likely to cause even more difficulties. Let us use the time that we otherwise would have spent on this Committee of Inquiry to heal the wounds and to get the R.N.L.I. back and the people around the table. If some people are not prepared to do that then they are not prepared to put the most important issue first, which is safety at sea and the safety of people that go out in boats in Jersey and sometimes get into trouble. That is the most important issue and I want all the effort and resources that would be spent on this put on the former, and that is saving lives at sea and making sure our Jersey waters... we are a maritime Island, and making that as safe as possible. It is unconscionable that that is with any other partner apart from the R.N.L.I. But I will say that lessons have to be learnt within the coastguard, within the Harbours Department, within everybody that has been involved, and egos need to be put out and we need to put safety first. I will be rejecting this and I hope Members will send a very clear message that that is what they want their resources and time to be spent on. I have taken the Assembly's time too much, I apologise for speaking too long, but the most important thing is where do we spend our limited time and resources: improving life and safety at sea or dealing with egos? I think it is the former rather than the latter.

5.1.10 Deputy A.D. Lewis:

Some might say that was vintage Ozouf. I welcome some of his comments but I just want to bring the tone down a little bit if I may. This issue, it should not be politicised. Safety at sea is the priority. I have a great deal of faith in the R.N.L.I. and the coastguard in their professionalism and commitment to meeting the Island's requirements. I am a boater myself so perhaps I am a little biased, but I am also perhaps well-informed of the importance of getting this right. Public inquiries, as we all know, can be expensive beasts. The only winners are often usually lawyers, so I am very much against such a sledgehammer to crack this nut.

[18:45]

The issue seems to me to be very much a matter of personality clashes which has no place when dealing with the serious issue of safety at sea. I had a long meeting with the Harbourmaster last week and I am quite satisfied with his explanation of events and the need for co-operation and reconciliation. The setting up of a public inquiry, or indeed an independent lifeboat, will not achieve either of these objectives in my opinion. But I would like to pick up on some of the things that have been said because I think it is important to do so. Senator Ferguson cited the fact that there had been 9 - she was not quite sure of the figure but she mentioned the number 9 - stations around the country that are at the moment in dispute in some way with the R.N.L.I. I would like to bring Members' attention that there are 238 life stations around the British Isles. I would not be at all surprised if there were 9 that were having slight issues with the centre. That is what happens in organisations

everywhere. It is not particularly unusual and I do not think it is a particularly useful piece of evidence. The Harbourmaster has statutory obligations to comply with, not just to us here but also international obligations. I take what he has said to me, and I attended a meeting together with the Constable of Grouville, and we came away both of us feeling very well informed of what his international obligations are. That is very much about safety at sea and ensuring that there is sufficient search and rescue cover across the whole of the sea area that he is responsible for. He takes that very seriously so I am not one that would wish to criticise or question the information and advice that he relayed to us. I would say that the Harbourmaster of Guernsey would be of a similar stature so I take his report very seriously. When I am looking at these 2 reports there are some stark contrasts, and Senator Bailhache did allude to the fact that they are contrasting. I accept that. However, I - and as you all do - we read a lot of reports and I was party to compiling a lot of reports during this period of my time in the Assembly. The report that Mr. Perchard has compiled is clearly less professional perhaps in its layout than others. For example, we are all familiar with a report that has a summary, that has some key findings, that has a terms of reference most importantly, and has some key recommendations. This report from Mr. Perchard has none of those. I think it is well intended and has lots of information in it but it is not the report that we are used to receiving because it has not been prepared by a person that has followed some strict terms of reference. Whereas, the professional report that we have received from the Harbourmaster of Guernsey is somewhat different. It is brief, it is concise, it is the sort of report that I quite enjoy reading as a States Member because it gets to the point and it is brief. There is a clear terms of reference and he has followed them and I find it very useful. Do we need any more reports? In this instance I have to agree with Senator Ozouf. This is a personnel matter essentially, not the sort of thing we would normally expect to have a public inquiry into. If laws and regulations have potentially been broken or not adhered to then that is a different matter and that sometimes requires a very public Committee of Inquiry, and we have lots of examples of those. This to me does not fall into that category. Inquiries of any kind have a price tag, and they often run away as well if you do not have strict terms of reference. I very much take issue - and I think the Constable of St. Mary took issue as well - I would expect to see some financial implications there very clearly, because we know this Assembly has a history of setting up committees of inquiry, some of which have cost us an awful lot of money. There is no reference at all to the cost. It simply says: "This would entail the cost of an independent review panel and secretarial support." Nothing else. There should be a figure there and there is not. The R.N.L.I. supply and provide a service in Jersey which we have enjoyed for many years, over a century I believe, and others have mentioned it. We have a fantastic beach service. We have a service at St. Catherine's and we have a service in St. Helier. I think that must be fairly unique in such a small place to have all of that. But I will go further than that because I learnt something new and I am a boater and I did not know this, but talking to the Harbourmaster I became aware of just how much other cover there is that we benefit from. There are 4 all-weather lifeboats on the Normandy peninsula. There is one in Guernsey. We have access 24/7 to a helicopter in Cherbourg. It does not cost us anything. It is a remarkable setup we have, we have Channel Islands Air Search based in Guernsey, we have the Atlantic 85 in the harbour in St. Helier and we have another one at St. Catherine's. We have the 2 inshore lifeboats from the fire service, we have the Duke of Normandy, the sea fishery's protection vessel; I could go on. When it was established there was a real issue with the all-weather lifeboat being removed for that temporary period I take fully the advice and the explanation I received from the Harbourmaster that they seriously considered and were perfectly satisfied that there were plenty of assets in the Island to cover that eventuality, which was nothing new. It happened before during maintenance periods. But when I found out just how many assets we had access to I thought: "How lucky are we?" I do not think there are many regions in the British Isles that have quite that same access. So to add another lifeboat to that, that is a bit of a luxury because I am not going to go there because others have said perhaps what needs to be said. What needs to happen is mediation, not confrontation, and unfortunately public inquiries can get

confrontational. There is an opportunity for mediation here. That attempt has been made both by the R.N.L.I., by the Deputy of St. Martin, Senator Routier tried as well, the coastguard have taken a pivotal part here as well; mediation has been attempted. I do not think it is over. You do not just stop mediating because somebody suggests a public inquiry. That journey needs to be continued. There are people being brought outside all the time, they are excellent people in our search and rescue organisations around the bailiwick. They continue to do a fantastic job. We should not get drawn into a matter which involves personalities, personnel matters which should remain confidential - and we must understand the difference between confidentiality and secrecy here. There are people that are listening today that may feel and they are being told that there are lots of secrets there that they must know. This is confidential information about individuals that give up their time, in sometimes a voluntary capacity, sometimes a paid capacity. Do they want all of those records exposed to a public inquiry when there is no criminality here, no laws have been broken? I do not think so. This is not a matter for a public inquiry. There is a matter for further mediation and I hope that that can happen and that we can get back on track, and the history of the R.N.L.I. in the Channel Islands is maintained in a credible, sensible way and we move forward together, rather than having a public inquiry that will create more factions, more splits. It is not about bringing people together, it will be about further breaking apart, in my belief. It is expensive, there is no end to it, it will not give us closure. There is a lot of work been done already in reconciliation, there is more to do. That is what the concentration should be on and I do not believe a Committee of Inquiry would have any benefit here whatsoever. So I would urge Members to vote against this so we can move on and help all parties, if we can, as Deputy of St. Martin already has, to reconcile and move forward.

5.1.11 Deputy A.E. Pryke of Trinity:

Just for the avoidance of doubt, my son is a member of the lifeboat crew at St. Catherine's and he has been for the last 13 years and I can say that I am very proud of him, as of all the crew. **[Approbation]** I thank them all for what they do, what they have done and what future crew will do. Living at Rozel as I do, I am sure we are all aware of the effects of the sea. We have all learnt from an early age to respect that sea, changing so quickly. It is a joy to spend time in the sea or on the sea, but we all know that the sea can change, and very sadly at Rozel we have lost 2 or 3 fishermen who have died at sea. I can tell you, not only does it affect all the community but especially the close community of Rozel. The lifeboats, in all instances, work to try and find that person to the best of their abilities, and sometimes it does end tragically. All the crew have all got families, have all got jobs most of them, but give up their time to search for those in trouble on the sea. We are very fortunate here to have 3 search and rescue craft given by the R.N.L.I. As we know, as has already been said, the all-weather at St. Catherine's and the fire service, all of which provide valuable service for you, for me, for Islanders, tourists, seafarers. It really saddens me that we are in this situation. We should not be in this situation. We are all grown up, we can all work together, and we should be working together to improve services for Islanders when they go on the sea, not bickering with each other. We have had the 2 reports, the *Guernsey Harbourmaster Report* and the *Perchard Report*, and there is evidence that there are some areas of improvements on all sides. I think they are fair reports saying that there is blame. But, as has been said, it is H.R. issues. We should be working with them to sort it out, to try and bring some reconciliation, mediation. At the end of the day we all want the same thing, we all want a good service to provide for all of us so we know that we are safe on the sea. It really, really does sadden me that we are looking at spending some money on a Committee of Inquiry. Senator Ferguson did mention the *Verita Report* right at the very beginning, short and sharp, I think she said, and did not cost too much money. Well, I have still got the bruises from the *Verita Report* and I had a look. The *Verita Report* was painful, it cost over £600,000. It took about 9 months. Yes, it did have some good recommendations and most of them were put in place and have worked its way through, but it also - thinking of H.R. issues - divided the hospital straight down the middle. Some of the staff supported it, some of the staff did not. So even if you

got a report that comes out and says: “Yes, this, this, this and that” it does not solve the issue of how to get people working together. We can see the evidence of people working together within the Island today, how it should be. St Catherine’s is working well with St. Helier crew, getting up to date training with the new all-weather crew. They are training with the fire service, whatever happened before, and I think that this is very, very sad. To me it speaks volumes that it is H.R. personnel issues. It just saddens me so much that we cannot look back, famous phrase, we are where we are, but we need to move forward. But we all need to move forward together. Our aim is exactly the same: to provide the best service that we can possibly provide for Islanders. We need up to date boats, training, governance, and all the equipment.

[19:00]

You just have to see the television programmes over the last 2 or 3 weeks of different stations and what they do around the U.K. and in London on the Thames. It just really brings it all home what our crew have to contend with. So I urge Members, please, if we want to spend some money let us spend some money really trying to get all the sides together, mediate, reconciliation, so we can move forward. If some people unfortunately part ways, well, unfortunately, as I say, that is part of life. But we need to move forward. The R.N.L.I. have been here for 120 years. Are we really going to say goodbye to them: “You are not worth much” because of H.R. issues? If that is the case it is a pretty poor state, and I certainly will not be supporting this amendment.

Deputy K.C. Lewis:

Sir, it is a minute to something. Were we not due to break for a short ...

The Deputy Bailiff:

Yes, by my watch, which I am trusting at the moment, it is 7.01 p.m. We agreed that we would adjourn for half an hour at 7.00 p.m. so we stand adjourned for half an hour and we will come back at 7.30 p.m.

ADJOURNMENT

[19:32]

The Deputy Bailiff:

Does any other Member wish to speak on the proposition?

5.1.12 Deputy E.J. Noel:

I would just like to take Members back to what is referred to as a report that is attached to P.36, to the addendum for the J.L.A. It is quite clear that in 1.1 of that report, and I quote: “It is based upon the verbal and documentary information provided by Mr. A.H.” No one else gave any evidence to this report, a report that has not got any terms of reference. So I find that quite odd. But I have read it and I have taken on board its contents. As you probably can tell, I do not believe that we should be holding a public inquiry into effectively what is in fact an internal HR issue between the R.N.L.I. and the majority of its former St. Helier crew. It is obvious, having read both this report and the report from the Guernsey Harbourmaster, which have both been put into the public domain, that this is an internal dispute that has been fuelled by egos, and that there are faults on all sides. There appears to have been built up over a reasonable period of time an unsavoury culture of bullying and there has definitely been an irreversible breakdown of relationships. One would have expected those concerned to have acted in an adult-like manner as agreed between the various parties, to draw a line and to move on, to work together for the common good for all our search and rescue matters. I sincerely hope that there is still an opportunity to do just that. However, there are parts of Senator Bailhache’s report - not the amendment which is now the proposition that we are debating but in his report - that I disagree with and I too like Senator Routier refer to Senator Bailhache’s third

paragraph. I do not agree with his either/or statement. I do not agree that there should be any request to the R.N.L.I. to assign its local assets to anyone, let alone a newly formed association. Many Islanders have made donations and bequests to the R.N.L.I. and to no one else. Those considerable assets are ring-fenced by the R.N.L.I. for use in Jersey by the R.N.L.I. I would have liked to have assurances from either Senator Bailhache or Senator Ferguson, perhaps when she sums up, that there will be no attempts made, legal or otherwise, to seek to transfer those ring-fenced funds held by the R.N.L.I. to either the J.L.A. or another independent lifeboat entity in Jersey. I will leave it there. Senator Bailhache also referred to in his third paragraph: "A fair and sensible judgment can be made as to what is in the long term interests of Jersey and her seafarers." It is obvious to me that the long term interests are best served by the R.N.L.I. and they have done so for over 100 years, rather than to entrust it to what in reality is one crew at a point of time. Senator Ferguson in her now withdrawn P.7/2018 proposition talks about having an all-weather lifeboat station which is "supported by the local population and providing the lifeboat service for the Island, by the Island, and financed by the Island". That is exactly what we have got from the R.N.L.I. The R.N.L.I. is a local service with local supporters, financed locally with local volunteers and a local crew. It is somewhat ironic that the outcome to date of the events of the last year in the search and rescue community are those combined services which are now working much more collaboratively together, more now than they have ever been, with improved cover. What I find daft, if I may say that, was under the old almost tribal set up you had an inshore lifeboat crew from St Catherine's working day to day in St. Helier who would not be called to man the St. Helier inshore lifeboat if it was launched. But the St. Helier crew working outside of St. Helier would be called back. I find that daft, and what a waste of time and resources, and especially time because time is critical when it comes to saving lives at sea. But we do not have that daft scenario now because we have a joined-up service where crew members, be they from the St. Catherine's boat, be they from the St. Helier boat, or be they from the boats of the fire service, work together to provide a quicker, more coherent service. It is now my understanding that all those closest to the station would be able to respond to a shout, including - as I have mentioned - the trained fire crews. So let us celebrate that we now have in fact a better service than we did this time last year, and that can only be good. If the newly formed Jersey Lifeboat Association want to provide additional and complementary search and rescue services then they must be encouraged to do so, but they must be additional services to the current services that the Harbourmaster and the coastguard have at their disposal. I would have great sympathy with them if they were going to bring something extra to the party, perhaps an inshore lifeboat based at Grève de Lecq, perhaps an all-weather lifeboat based along the north coast, say somewhere like Bouley Bay. But they are not bringing anything extra, anything complementary, to the excellent assets that the coastguards already have at their disposal. I, along with many Islanders, truly hope that the Jersey Lifeboat Association has a change of direction, and by all means raise funds, buy and run safe lifeboats, but that they add to and not try to replace the R.N.L.I. services that we do truly value and have done for in excess of a century. We do not need an inquiry; we need to put these petty squabbles to one side and for everyone to move on. I would just like to quote something from the Emergency Planning Officer: "To choose a fledgling local independent life boat to replace the current R.N.L.I. cover lifeboat provision is fraught with many risks and could ultimately cost lives." That is the closing statement of the Emergency Planning Officer in a letter that I believe he sent to Government. Let common sense prevail. By all means let us support the Jersey independent lifeboat, for them to provide additional services that complement and add to the services that we currently have, but we do not need an Committee of Inquiry to do that.

The Deputy Bailiff:

Before moving on I would just like to make the observation that we have a guest in the public gallery. The guest in the public gallery is the young lady who came along on one of the school visits some weeks ago and I am told would very much like to be a Member of this Assembly in due time. She

has persuaded her mother to bring herself along this evening, which I think shows a dedication and aspiration for public office and should be recognised. **[Approbation]**

5.1.13 The Connétable of St. Brelade:

As many people may well know I have got political responsibility for the lifeguard service in Jersey and have had for the last 3 years. There have been some fantastic changes with that and I think some incredible benefits to the Island through that. When I signed the contract for that it included a visit to Poole, and I think that visit gave me a greater understanding of the depth of the charity, the levels of training to go through, the facilities they have got available, the maintenance they can offer; and it certainly gave me a great insight into the R.N.L.I. The local lifeguard service I think has really grown over the last few years. The relationship with the public on beaches and within schools in terms of surf safety has been absolutely excellent and we need to nurture that. In regards to the former crew of the George Sullivan, many of those I know quite well and the Coxswains themselves. I have got huge respect for the former Coxswains and the work that they have done. But clearly over time there has been a communication breakdown in a relationship that I think has finally got to a point where it was broken. No individual organisation is perfect, I think we know that. Whichever report you read it is clear that something happened, there has been an atmosphere that existed for some time and it has caused the problems that have existed over those years. But as much as I support the R.N.L.I., I am a supporter of both groups. The R.N.L.I. I think over 180 years... there is a lot of talk about how long they have been here but they have certainly been here for a great deal of time - they have got vast experience, they have got enormous resources, I think we know that. Much of that is raised locally and that is great and that needs to continue. The J.L.A. I think have got a hugely experienced crew, they have got a hugely experienced Coxswain who knows local waters like nobody else, is dedicated and is loyal. That is great. So what are we going to gain from an inquiry? Looking at the R.N.L.I., they are currently operating from St. Helier with the all-weather lifeboat, they are training new crew, they are going to have a fully trained and manned all-weather lifeboat by the summer. They have spent thousands of pounds on new training and support, they have got 2 inshore craft and one all-weather lifeboat, plus all the benefits that we get from their safeguarding of local waters on the beaches as well. The J.L.A., where are they at the moment? Well they are legally and constitutionally formed and I am really pleased for them. They have got to a point where they can go out and identify a new all-weather lifeboat. I think that is fantastic. It will be a benefit to the Island, it will add an extra service.

[19:45]

I do not agree with Senator Bailhache when he said that 2 lifeboats are absurd. I think, as Deputy Noel said, they could be positioned elsewhere in the Island where they could be of much more benefit, but there is an opportunity I think for the J.L.A. to offer an awful lot to search and rescue services in the Island. This should not be and cannot be a 'them and us' situation, I have not treated it as one and frankly I do not want to have to choose between one or the other. I think there are opportunities for both to complement each other. I have said I fully support the R.N.L.I. and I do, it has got a wealth of experience, its investment in Jersey both on the water, on the beaches and with new facility at Beaumont has been quite incredible. I think it provides a benefit to young people in terms of the education it provides. So I do not think we should even start to think about breaking or damaging links with the R.N.L.I. We need to strengthen those links, not break them. For those of you in the Assembly and many Islanders that supported the independent lifeboat, I support that. You might say: "Well, why?" Because I think it can complement. It would in essence be providing I think good extra quality search and rescue around the Island's coast, but it should not be about any individual group, it has got to be about the service, not about the individual. The former crew - as I have already said - are good, dedicated people who want to provide a service. I accept that. The former Coxswain is an experienced helmsman. I have said all the way when people have asked me, if I was out there

in a force 10 storm who would I want at the helm? Him. Nobody else. Him; because he has got all the experience under the sun and we do not really want to lose that. I think we also need to take into account that that second all-weather lifeboat, whether you think it is necessary or desirable, the fact is the J.L.A. are in a position now where they are going to go ahead with it. They have clearly got a committee and supporters that are dedicated to that. We do not need an inquiry for the J.L.A. to go ahead and do what they want to do to achieve their aim; they can go ahead and do that. Many of us have received emails asking us to support both sides of this argument. One I received on Monday stated that: “Our community has become divided on this matter” and she may well be correct. But all I think an inquiry is going to do is widen those divisions, not narrow them. Frankly, I think it is time for everybody just to move on and do what they need to do. I understand there are those that will not want to bury the hatchet, but frankly what is happening at the moment people are waving the hatched around hoping to chop somebody’s head off, and that is not beneficial. Like I say, we got to a point where I think the J.L.A. are in a position that they can move on and provide what they want to provide and we have steadied the situation with the R.N.L.I. I was not going to mention either of the reports but there does need to be a positive way forward for both the R.N.L.I. and the J.L.A. As to the *Guernsey Harbourmaster’s Report* said in its conclusions at the end. Having a clear M.O.U. (Memorandum of Understanding) for all search and rescue partners, which would include the J.L.A., is vital. I think having a local search and rescue committee with defined terms of reference, which it said in the report as well, which would include all organisations would seem sensible to me. There has been a really bad lack of communication from all parties in the Island and I think having that type of search and rescue committee, call it what you will, has got to be a way forward so that everybody understands and if there are changes to be made everybody knows what is going on and nothing is done behind closed doors. It needs to be upfront, it needs to be transparent, and J.L.A. need to be part of that as we move forward. There is no doubt the R.N.L.I. need to learn lessons from that, people have already said they have learnt from them. Let us make no bones about it, I think the R.N.L.I.’s reputation in Jersey has been harmed, but let us face it, they are here to stay and I think we need to get behind them and we need to support them. In regard to the J.L.A. I would say exactly the same, but they need to move on. All an inquiry is going to do, in my view, is just drag this on to a point where things are just going to get worse and worse and worse. It is not going to solve the situation. For me now is the time to solve it by agreeing today not to have this inquiry and let us just let the 2 groups move on, try to work co-operatively and get our emergency services working in the way that I think they know that they can. But the J.L.A. have got something to offer; we should not shut the door on them, we should not try to squeeze them out. They are clearly dedicated people, but I cannot see a point where we are ever going to get the former crew back on a search and rescue boat for the R.N.L.I., I think we have got to accept that and let them get on with what they think they can offer the Island.

5.1.14 Connétable C.H. Taylor of St. John:

The truth: that is what the public want. But unfortunately inquiries do not always get the truth. As we have divided sides, and there are 3 of them, the Ports of Jersey, the R.N.L.I. and the former lifeboat crew, they will each have their own versions and regardless of how independent any report will be one of the 3 sides or all of the 3 sides will find areas to disagree with. That is the nature of these reports. I am delighted to follow the Constable of St. Brelade. It is time to draw a line in the sand and to move forward. Move forward together. Negotiate a way in which everyone can be accommodated, and move forward. I had thought that one idea might be to put a large brass plaque on the end of the lifeboat station: “Lost on land” and put the names of the crew. This would recognise their enormous contribution to the Island, but I am sure many of the crew would not want that. But it would also be a reminder to Ports of Jersey and to the R.N.L.I. the very great importance of working together. That is what must happen. I would dearly love to support the proposition because I, like most members of the public, want the truth. But it is going to take 6 to 9 months and I think the

headline in a local newspaper quoting the Minister for the Environment is absolutely correct; this will just prolong the agony. The sooner that line is drawn in the sand and people can move forward, the sooner wounds can be healed. With a very heavy heart I will be opposing this proposition.

5.1.15 Deputy R. Labey:

What an uncomfortable debate this is. I did not think it would be going this way at all. I am not an expert on this issue by any means; I am surprised at how many experts there are in the Assembly today on this issue. But I attended the meeting of the former George Sullivan crew at the Town Hall and I also attended the meeting that they held for States Members downstairs in this building. I have not seen the stuff on line; I saw a very reasonable group of people looking to us for help. I feel we should respond to that. I think of the hours, the hundreds of hours, the thousands of hours in some cases, the decades that these men have spent at sea in terrible, terrible conditions saving lives, doing their duty, in an honorary capacity. If they are listening to this debate they have to take lectures from Senator Ozouf on saving lives at sea; I am very uncomfortable with that. I think it is an affront. People say it is an H.R. issue; that may be true, but when you are the little guys with a big management and you feel you have been wronged by that management it is a very frustrating position to be in, especially when the management closes ranks and then you go to the politicians and they close ranks and the ports close ranks and the coastguard close ranks and what have you. They must feel so unbelievably frustrated that they cannot tell their story and get their message across. They took part in the R.N.L.I. investigation and they are not allowed to see the results of it. Where is the justice and fairness in that? These guys must be so incredibly frustrated and they simply, for all the work they have done in horrible conditions that I cannot imagine, they do not deserve this. What they do deserve, if they require it, they do deserve an inquiry so that they can tell their story and it can be published, and in good conscience I cannot deny them that. I do not care if I am paddling my own canoe on this, that is how I feel and I simply cannot. I feel they are owed that. We are all conflicted here because I am afraid as far as they are concerned the States have become part of the problem, along with our agencies. The George Sullivan crew were in Cyril La Marquand House when the George Sullivan was going back to Poole. What were they doing at Cyril La Marquand House? We are implicated in this. It feels to me really bad that the Council of Ministers, apart from Senator Bailhache, are all going: "No, we do not want to go there, we do not want the inquiry. We can move on, let us all be grown up and move on." That is easy for us to say but if you are the wronged party in this and you feel really aggrieved and you feel nobody is listening to you and you turn to your politician for help and they are turning their back on you and you cannot move on until you have some kind of satisfaction, until the truth is out. Senator Bailhache was at the meetings that I went to, at least the one he was in this building and I remember him rocking up to it and I remember sitting there. I remember seeing their faces, the crew's faces and they were delighted to see him. He sat and he listened. He listened to everything. It was supposed to be a short meeting; it took over an hour. The crew, as those were there, were not unreasonable. They were not mud-slinging or whatever the phrase is. They were just calmly keeping their passions in order but telling their story and it was very, very compelling. Senator Bailhache, who is our learned judge among us elected Members, has come back to this Assembly and said: "This is the right course of action." He is unsupported, it seems, by the rest of his colleagues on the Council of Ministers but he is doing the right thing as he believes. I believe him and I think it is the right thing. As he says, fairness requires that one hears both sides of the story. We need to know the facts before we can move on. Great institutions get it wrong and I believe the R.N.L.I. have really messed up here. I do believe this is the cause of the problem that the management of the R.N.L.I. has messed up big time and this crew is suffering for it and they do not deserve it. We could quite easily give them this small, short, sharp Committee of Inquiry. It does not have to be a big public song and dance, as Senator Bailhache has said. It will not cost £600,000 like the *Verita Report* into a hospital in disaster, of course it will not. It is an opportunity for them to have their case heard and all the other sides too. That is mediation, in a way.

That is a mediation and we should let that happen. It will not cost a fortune; it is not going to cost us anything. Think of all the work for nothing these guys have done for us over the decades in awful conditions and we are denying them that. I am not, I am voting for this proposition.

The Deputy Bailiff:

Does any other Member wish to speak on the proposition? Deputy Brée.

5.1.16 Deputy S.M. Brée:

I have been mucking around in boats in Jersey since I was about 6 months old, a long time ago, unfortunately. Over that time I have been really, really lucky.

[20:00]

I have never, ever had to call upon the services of the R.N.L.I. but I knew that they were there and that, in itself, was a great comfort. Unfortunately, we are now faced with a situation where doing nothing is not a viable solution. This situation will not go away. There are large numbers of Islanders who have visibly shown their support for Jersey Lifeboat Association, for whatsoever reason and it is not ours to question what their reason for that support is. I think the rest of the public, like myself, want clarity, want the truth, want to know what really happened. But, above all, they also want a solution. They are looking to us to provide that solution. How can you provide a solution if you do not what the truth is, you do not really know what happened? We have got 2 different reports that neither side is willing to accept is the actual version of events. I do support a Committee of Inquiry but I think we have got to realise that such a Committee of Inquiry will not provide closure, it will only provide clarity. It is up to us to make sure that the Committee of Inquiry and its terms of reference and the agreement of all those parties willing to take part in it, except that there will be recommendations, findings and recommendations that come out of it and they have to then accept that we have to reach agreement on the way forward. The process, as I see it, is establish the truth, agree the recommendations and agree the way forward. That is a role that Government can take and that is what the public are looking to us for. Because I do not know whether any other Members, or indeed yourself, Sir, get asked by family members, friends, what on earth is going on? I am reading different conflicting stories and, unfortunately, I have to say I do not know. I do not know which is the real 100 per cent correct version of what actually happened; that is what we have to achieve. As to the cost of such an inquiry, I cannot see that it is going to be huge but, again, we need clarity on that. But at the end of the day we have a situation where there is friction in the search and rescue services on the Island. It is a difficult situation. The R.N.L.I. are doing a brilliant job and I will support them always. But we also need to find a solution to this problem because it will not get any better if we do not work together and find that solution. It is our duty to find that solution because our duty in all of this is simple, it is to ensure that Islanders' lives are not put at risk at sea. Perhaps the biggest risk in all of this is that the R.N.L.I. decide to pull out of Jersey; we have to ensure that never happens. The R.N.L.I. is an incredibly valuable and integral part of this Island's culture and history; they have been on the Island over 100 years. I have always lived on the south-east corner of the Island. Quite a few of the fishermen out at La Rocque owe their lives to the lifeboat. But if we do nothing and just go this will blow over, let us not worry about it, we still have a risk there is going to be a problem. My message, if you like, is let us find the solution and the best solution for the public. If that means a Committee of Inquiry to establish what actually happened, so that all parties can then move on to working together to find the best solution, then so be it. But it is our time to take a role, to take a lead to solve this very sad situation that has arisen. The ex-crew, as has been said before, were willing to put their lives at risk at a moment's notice to save other people. They were volunteers, this was not their job; they were volunteers. Let us show them a bit of respect and let us show the R.N.L.I. a bit of respect as well by holding a Committee of Inquiry that is independent, that cannot be claimed that that person is biased because they had a connection with ... let us make

it truly independent but we need to ensure that all parties agree that they will accept the recommendations and they will work together on the solution. Our role is to mediate that, therefore, I will be supporting this.

5.1.17 Deputy M.R. Higgins:

I shall be very brief. Many people have asked me what went on with the lifeboat and the dispute; I have not got a clue. I have heard different stories from different people and I am still no wiser. I would like to know what went on, just like the members of the public would. I do not have an axe to grind one way or the other, whether it be for the independent Jersey lifeboat crew or whether it be for the R.N.L.I., the Royal National Lifeboat Institution. I just want to get the facts. What I will say is, unfortunately, the longer this goes on the more people get not only frustrated, they get so wound-up and it causes problems. In this House, one thing I have done in the whole time I have been here I have fought injustice, I hate injustice. I hate seeing when people have been badly treated what it does to them and how they get so screwed-up inside and I can perfectly understand why they do. The only way we are going to try and get any resolution to this, if it is possible, is to have an independent inquiry. The point is, I have no axe to grind, as I say, one way or the other. Let us get the facts, let us publish the facts and then let us hope that we can either work together as 2 crews or as one crew or whatever the case may be but we need to get the facts first. I shall be supporting both Senator Ferguson and Senator Bailhache.

5.1.18 The Deputy of St. Mary:

I shall be brief. I am in the same canoe as Deputy Labey. I think, apart from anything else and apart from unnecessary problems between the 2 organisations, we owe it to those crewmen of decades to get at the facts. To clarify the situation I would like to think it would help to bring closure but at least to clarify, we owe it to them and by doing otherwise we simply abandon them. Again, as has been said, we are not talking about an everlasting inquiry, it should be a fairly brief one, not of much cost and it will, hopefully, clarify the situation. I do not see that as being in conflict or perpetuating the situation. I hear what Deputy Noel says and the Connétable of St. Brelade, it is not an either/or situation. Both can live here, we want them both to live here but I do not think we can stop this wrangling until there is clarity. The only way to do that, I submit, is to have the Committee of Inquiry, not a long one but a quick inquiry to establish the facts.

The Deputy Bailiff:

Does any other Member wish to speak on the proposition? The Connétable of St. Saviour.

5.1.19 The Connétable of St. Saviour:

Everybody is saying how wonderful the R.N.L.I. is but what they are forgetting is it was the crew that we have just kind of abandoned and they were the ones who were the R.N.L.I. over these many years and they were the ones who were wonderful. I think we owe it to them to have an inquiry. Nobody should be afraid of having an inquiry. They were negotiating, they were talking and I think that the real spanner in the works was when the meeting they were having was moved to Cyril Le Marquand House and then we became involved. The lifeboat was surreptitiously taken out of the harbour and I think that was a bit nasty, a bit like kids in school. But the R.N.L.I. is good but it is like a restaurant, it is only as good as the chef you have in the kitchen and if you do not have a very good chef in the kitchen you can have all the wonderful fixtures and fittings but your restaurant is going to go down the tubes. The R.N.L.I. here was sponsored and given a lot of money by the Islanders. The Islanders support the R.N.L.I. and they supported the crew; they supported Andy and his fellows and we cannot abandon them. I really think they deserve this inquiry.

The Deputy Bailiff:

Does any other Member wish to speak on the proposition? I call on Senator Ferguson to respond. Could people please signal in due time while I call upon other speakers? The Deputy of St. Martin.

5.1.20 The Deputy of St. Martin:

Sir, I am sorry for not pushing my button sooner. For the record, I have 2 sons who are members of the Jersey lifeboat crew; one of them is a member of the Fire and Rescue Service as well. I was a lifeboatman first in 1988 and I have retained my association with the institution over those years. The subject of this debate is a potential public inquiry into the lifeboat matters already outlined by the Senator. The following extract is taken from an Institute for Government report on public inquiries and it says this: "There is an expectation that inquiries will answer at least 3 questions: what happened, who is responsible and what can we learn from this?" I hope Members will have kept those points in mind during this debate. Last year I was asked by the Chief Minister to lead the responses on the issues of lifeboats, however, I have been involved in the St. Helier lifeboat issue since 2015 when I was asked directly by the then lifeboat group to intervene in an issue with the recruitment of a new mechanic. After various meetings and discussions I helped to negotiate a successful outcome. I was very firm but fair with the R.N.L.I. around their plans for this position. After initial discussions we worked together to reach a mutually agreeable outcome. The crew of the day were happy for me to be asked to help, I was glad to be asked and we were all completely satisfied with the outcome. I have always challenged those parties, any party involved in search and rescue, with one goal in mind, to ensure lifesaving at sea is the best it can be. Please, let us not confuse conflict with support. I support anyone who is prepared to work together with others to save lives. My experience of lifeboating over the last 30 years, my current position as a States Member, allows me to understand issues quickly, to ask questions from an informed position and to contribute where necessary from a position of authority. A number of months ago I stood up publicly in this Assembly and requested any evidence that might warrant the holding of a Committee of Inquiry; I have received nothing. Had I received something it would be me bringing this proposition here today, instead Senator Ferguson is bringing it without any evidence that an inquiry is necessary. What happened? We know what happened. We have the report from Captain Murray and the J.L.A. have published a Keith Perchard report, the statement from the former Coxswain. All of the reports agree it is clear that issues between the former St. Helier crew and the institution and other stakeholders, again in a very simple way, is a falling out within the St. Helier crew. This escalated over many years and no one intervened to sort the situation out.

[20:15]

This was a mistake. In 2017 all parties acknowledged this and admitted they should have done better. They agreed, we all agreed, that we would work co-operatively and move forward, putting the past behind us. Who was responsible? We know who was responsible; all parties were responsible. All parties could and should have intervened earlier to resolve the personal differences and disputes. These issues are already in the public domain. There was a falling out within the St. Helier lifeboat crew over a personal relationship; fact. This was not handled well by local R.N.L.I. management; fact. The relationship between the St. Helier crew and the Jersey Coastguard was affected; fact. The former Harbourmaster triggered a complaint against the Coxswain about an operational matter; fact. The Coxswain's conduct led him to being stood down; fact. Government intervened to broker the reinstatement of the Coxswain; fact. All parties agreed to move forward together and put the events of the past behind them; fact. There will always be additional detail to discover with any issue. The only question is, do we know enough to learn the lessons that need to be learned and prevent a reoccurrence? The answer is overwhelmingly yes. All parties accepted their share of the blame. To the third part, what can we learn from this? The independent report commissioned by the Jersey maritime administration makes a number of recommendations for all parties: "Jersey Coastguard are working on agreeing memorandum of understanding with all search and rescue partners. This is

essential, as coastguards are legally responsible for co-ordinating search and rescue activity. All search and rescue partners are now meeting regularly to discuss operational issues and improvements to cross-working practices. This, in respect of the search and rescue community, is working together better than ever before and terms of reference for this group will be published.” The irresponsible use of social media must stop. I can tell Members here that policies around social media use within the search and rescue community are being developed. Members with Facebook access will not need me to tell them how essential this is or how much has been written on this topic. The R.N.L.I.’s local management needs to be stronger and more effective. It is and will be even better in the future. The R.N.L.I. have recognised this and since November last year have moved to one operating model for Jersey with strong local experienced management. In summary, we know the lessons that need to be learnt and the necessary action is being taken. A Committee of Inquiry will be tasked with answering the questions I started with at the beginning of my speech. What happened? We already know. Who is responsible? We already know. What can we learn from this? We already know. All a Committee of Inquiry will do is take at least 12 months to tell us what we already know and keep the story in the headlines to the detriment of us all. Members will struggle to find a Committee of Inquiry in Jersey that has taken less than 12 months to conclude. Can we really afford to keep this story looking backwards and not forwards? To keep looking backwards will not help save lives and is, therefore, not in the public interest. This was an internal matter for the R.N.L.I. that is in the past. All parties have moved to improve services. This is not a matter for a Committee of Inquiry. To have a Committee of Inquiry suggests that all is not well within our S.A.R. community and this is wrong. The professionals all tell us our search and rescue community is functioning better than ever. If we are going to spend taxpayers’ money on anything it should always be on how we can improve; it should not be spent on re-examining internal disputes. My overwhelming emotion on all these issues is one of sadness. This issue, saving lives at sea, should not ever be political; it should not be anywhere near this Assembly. Search and rescue is a professional activity and we have the very best services here in Jersey but it is not just the professionals, it is volunteers as well. Between them, the Jersey Fire and Rescue Service, Coastguard, the States and Honorary Police, the Ambulance Service, the R.N.L.I., Channel Islands Air Search and many others, they provide a service currently that is today second to none. We should not be prepared to go backwards from that point. I only want to move forward and if it is possible to have an even better service for the people of Jersey. These issues are not political. They should never be political. I say to Members, do not play politics with search and rescue. Do not play politics with saving lives. Let us stop tearing ourselves apart, let us stop looking backwards, let us vote against this proposition and move forward and get on with what is important. **[Approbation]**

The Deputy Bailiff:

Does any other Member wish to speak on the proposition? I call upon Senator Ferguson to respond.

5.1.21 Senator S.C. Ferguson:

Oh dear, I am sorry, have I upset you, Senator? **[Laughter]** Right, thank you everybody who has taken part. Thank you for those who agree with me. Not quite such a thank you for those who do not agree with me and I have got one or 2 little points. Senator Routier promised a full report to the public, whenever it was, standing on the harbour wall; we are still waiting for that. I am sorry he feels like that about the whole set up but that, unfortunately, is how it is. I was very grateful to Senator Bailhache for commenting on what he thought the form of an inquiry should take, in that a Q.C. and possibly one of the Deputy or Assistant Greffiers; I am sure they would enjoy it. I do not know how much Q.C.s cost but given the fact that the Simor inquiry cost £150,000 - if he is a keen sailor we would probably get a reduced rate - but basically it should not be that expensive and it certainly is not going to be £600,000 or £700,000. I thank Deputy Le Fondré for his contribution and obviously I thank Senator Bailhache, who is not here, for his contribution. Senator Ozouf condemns

the vilification. Yes, I absolutely agree; I have been subject to some of it. He queries the question of redeploying assets. What you are talking about is leasing assets to the J.L.A. But you cannot do things like that, it is making a judgment before we have had an inquiry. For his information, there are 70 independent lifeboat stations in the U.K. The R.N.L.I. are removing Ceredigion; I do not know that that is the proper pronunciation but it is in mid-Wales. They are removing the lifeboat, leaving a large gap on the west coast of Wales. We have also got problems in St. Abbs, Caister and New Brighton and we are also in touch with all the independent, pretty well all the independent, lifeboat stations. They have been contacting us saying how they are coping with this sort of thing. Yes, I am sure the Senator was having a splendid conversation with the Princess Royal's husband but we have contacts within the lifeboat industry too. With respect, the Senator did tell me that he was talking to...

Senator P.F.C. Ozouf:

Sir, that is not against Standing Orders.

The Deputy Bailiff:

I am sorry, could we not have a discussion between Members? If you would like to continue with your speech, Senator Ferguson.

Senator P.F.C. Ozouf:

Point of order, Sir, you are not allowed to mention, I understand, members of the Royal Family in remarks.

The Deputy Bailiff:

That is entirely correct, one should not call in any reference to members of the Royal Family.

Senator P.F.C. Ozouf:

I made no reference to that.

The Deputy Bailiff:

Very well.

Senator P.F.C. Ozouf:

I will ask the Senator to withdraw any suggestion it is against Standing Orders and I ask her to withdraw.

Senator S.C. Ferguson:

Yes, I will, Sir, no problem.

The Deputy Bailiff:

Very well, thank you very much. Please, carry on.

Senator S.C. Ferguson:

Yes. But the problem is that we have not got all the proper information. There are something around about 9 stations, as I say, I do not know the full story or the total number but they are in dispute. Of course, the Guernsey Harbourmaster has said: "Do not accept any warranty on this report", effectively, and the *Perchard Report* is a preliminary report. It is not just personnel, it is the whole business model. One or 2 people have said to me: "Yes, we know what has gone wrong, we can solve it." My experience is that unless you get somebody external to put it down in black and white, these things just carry on dragging on; they never get solved. I think Deputy Noel must be a mind-

reader because he has made comments about the plans of the J.L.A., with great respect to the Deputy, he has got it wrong. We are not planning exactly what he is talking about ...

Deputy E.J. Noel:

Sir, point of clarification, if I may, from the speaker.

The Deputy Bailiff:

Only if the Senator gives way can you seek a point of clarification or offer a point of clarification, Deputy.

Deputy E.J. Noel:

Will the Senator give way?

Senator S.C. Ferguson:

Yes, Sir.

The Deputy Bailiff:

Did you wish to give way?

Senator S.C. Ferguson:

Yes, I will give way.

The Deputy Bailiff:

Yes, what is your point?

Deputy E.J. Noel:

I said many things in my speech, could she clarify which element she is referring to?

The Deputy Bailiff:

No, no, that is not really a point of clarification.

Deputy E.J. Noel:

Because I particularly asked for assurances about the R.N.L.I. funds remaining with the R.N.L.I.

Senator S.C. Ferguson:

That is no problem, I can tell him that the funds that are with the R.N.L.I. will remain with the R.N.L.I. The £7.6 million, which is in a reserve fund, can be something like £200,000 or £250,000 a year that comes from our fundraising over the last few years. I would thank the Connétable of St. Brelade who spoke highly of the lifeguards. They are not party to the review. There are problems, as far as the lifeguards and the harbour goes but that is another story. Neither of them take responsibility for safety on beaches and people will remember the accident in St. Brelade's Bay with a jet ski. Apparently, there is not anybody who seems to be policing that but perhaps somebody can see to it.

The Deputy Bailiff:

Senator, can I ask how this is a speech in support of the holding of a Committee of Inquiry?

[20:30]

Senator S.C. Ferguson:

I was just explaining to the Connétable, Sir, that we are not including the lifeguards.

The Deputy Bailiff:

Senator, I do not wish to cut across you but it obviously is not necessary to answer every point if the point is not relevant to whether or not there should be a Committee of Inquiry but, of course, what you say is entirely a matter for you.

Senator S.C. Ferguson:

Thank you, Sir. Yes, sorry, I am trying not to ... I thank the Connétable of St. John and I particularly thank Deputy Labey; he has hit the nail on the head. We do not know the full facts. The same with Deputy Brée, doing nothing is not an answer and I think you are absolutely right. I did in fact concur with some parts of the *Murray Report* but we need the truth, we need the full story. The same, I thank Deputy Higgins and the Connétable of St. Saviour. I was then asked, what do you expect to get from a Committee of Inquiry and what will it solve? If I knew that I would not need a Committee of Inquiry. We have tried to sort things out from the J.L.A. point of view. As was said earlier, one of our former Lieutenant Governors and the Chairman of the J.L.A. Council have tried to meet with the R.N.L.I. but at the moment they refuse to meet them for the purpose of mediation. They are still trying to meet them but at the moment that has been put off. Really we need the truth, we need to support our local people and I ask for Members' support to give justice to 22 brave men in the community. I ask for the appel.

The Deputy Bailiff:

The appel is called for.

Deputy M.J. Norton:

Can I just seek a point of clarification, Sir, if I may?

The Deputy Bailiff:

A point of clarification from the Senator, yes.

Deputy M.J. Norton:

From the Senator, if I may, Sir. I read with interest the Commissioner for Standards' investigation into the complaint, which the Senator apologised for in the Assembly a little bit earlier on. In that it does state from the Senator's response that her involvement with the association had effectively ended in March 2018 and she had no ongoing interest of a financial or any other nature with the J.L.A., Jersey Lifeboat Association. Yet the Senator has clearly just said to the Deputy: "We have no further plans, in fact our plans are ..." Could she just clarify what she meant by we? Is she still involved or not?

The Deputy Bailiff:

That is point of clarification, Senator, if you would like to answer that.

Senator S.C. Ferguson:

Not in any official capacity, other than representing a constituent. No, I have no official capacity. It was incorrectly said that I was on the Council and that is totally untrue. I may even go round with a thing on the back of the car saying: "Support our local lifeboat" but that does not mean to say that I have an official capacity. I have no official capacity. I am sorry the Deputy does not believe me but that is quite true.

The Deputy Bailiff:

You have given clarification of the point that you made when you referred to we and you are saying you have no official capacity.

The Connétable of St. Mary:

Sir, may I ask you for some clarification, just what I said earlier about costings? The proposition calls for the Chief Minister to bring back the detailed terms of reference, *et cetera*, can I assume, Sir, that that will be the time when a budget is set for this item?

The Deputy Bailiff:

Certainly, yes, that, I think, is what would be expected; if the terms of reference came back they would have to come back tied to a process and to a budget, I suspect. If it is not, then that is a matter that will be challenged obviously on the floor of the Assembly, Connétable; I am sure it would be. Very well. The appel is called for and I invite Members to return to their seats. If Members have had the opportunity to return to their seats, I ask the Greffier to open the voting.

POUR: 15	CONTRE: 26	ABSTAIN: 1
Senator S.C. Ferguson	Senator P.F. Routier	Senator I.J. Gorst
Connétable of St. Mary	Senator P.F.C. Ozouf	
Connétable of St. Saviour	Senator L.J. Farnham	
Deputy J.A. Martin (H)	Senator A.K.F. Green	
Deputy of Grouville	Connétable of St. Helier	
Deputy J.A. Hilton (H)	Connétable of St. Clement	
Deputy J.A.N. Le Fondré (L)	Connétable of St. Peter	
Deputy K.C. Lewis (S)	Connétable of St. Lawrence	
Deputy of St. John	Connétable of St. Brelade	
Deputy M.R. Higgins (H)	Connétable of St. Martin	
Deputy J.M. Maçon (S)	Connétable of Grouville	
Deputy R. Labej (H)	Connétable of St. John	
Deputy S.M. Bree (C)	Connétable of Trinity	
Deputy T.A. McDonald (S)	Deputy G.P. Southern (H)	
Deputy of St. Mary	Deputy of Trinity	
	Deputy M. Tadier (B)	
	Deputy E.J. Noel (L)	
	Deputy S.J. Pinel (C)	
	Deputy of St. Martin	
	Deputy of St. Peter	
	Deputy S.Y. Mézec (H)	
	Deputy A.D. Lewis (H)	
	Deputy S.M. Wickenden (H)	
	Deputy M.J. Norton (B)	
	Deputy G.J. Truscott (B)	
	Deputy P.D. McLinton (S)	

The Deputy Bailiff:

It is now 8.40 p.m., do Members wish to start another ...

Senator I.J. Gorst:

No. I was just going to try and cover a small one but if Members are saying no then ...

Deputy M. Tadier:

Can I propose the adjournment, Sir?

The Deputy Bailiff:

The adjournment is proposed. Members agree we are adjourned. Very well. The States adjourn until 9.30 a.m. tomorrow morning.

ADJOURNMENT

[20:36]