

**WRITTEN QUESTION TO THE CHIEF MINISTER
BY DEPUTY M.R. HIGGINS OF ST. HELIER
ANSWER TO BE TABLED ON TUESDAY 9th SEPTEMBER 2014**

Question

Will the Chief Minister, in view of his political responsibility for justice matters, state -

- (a) whether he considers there is a place for court proceedings to be held in private in a democratic society such as Jersey and if so, in what circumstances he considers they are acceptable and/or justified including, in particular, whether he considers they are acceptable for cases under the data protection law?
- (b) whether he considers that the full cost to the taxpayer of all cases heard in private should be accounted for openly, transparently and itemized so it is not hidden from the public by being merged or accounted for within other budget headings to ensure that those responsible for the public expenditure can be held accountable for the expenditure;
- (c) whether he is concerned that the holding of cases in private impacts on Jersey's reputation in the world?

Answer

- (a) The importance attached by the Courts of Jersey to ensuring that, so far as possible, proceedings in court take place in public is well established.

The general principles were summarised by Page Commissioner in G-v- A 2000 JLR 56¹ at pages 59-60 as follows:

“(a) The general principle, beyond doubt, is that all proceedings should take place in public in open court.

(b) The constitutional, legal and practical importance of this principle is such that it should not be displaced except for compelling reasons.

(c) Whether to order proceedings in camera is something that must be determined in accordance with principle, and not on the basis of what the judge happens to consider convenient or reasonable. Potential embarrassment on the part of those who have to give evidence is not a sufficient reason, of itself, to justify a hearing in camera.

(d) The question (of principle) that has to be asked can be expressed in various ways but was put succinctly by the Lord Chancellor, Viscount Haldane, in Scott (or Morgan) v. Scott ... as follows ([1913] A.C. at 439): ‘I think that to justify an order for hearing in camera it must be shown that the paramount object of securing that justice is done would really be rendered doubtful of attainment if the order were not made.’

There are several classes of case in which it is well established that in camera hearings are often necessary. But they are no more than illustrations of this wider principle.

¹ <http://www.jerseylaw.je/Judgments/JerseyLawReports/Display.aspx?Cases/JLR2000/JLR000056.htm>

(e) *The test is a strict one and I quote again from Viscount Haldane ([1913] A.C. at 438):*

'But the burden lies on those seeking to displace . . . [the general rule as to openness] in the particular case to make out that the ordinary rule must as of necessity be superseded by this paramount consideration. The question is by no means one which, consistently with the spirit of our jurisprudence, can be dealt with by the judge as resting in his mere discretion as to what is expedient. The latter must treat it as one of principle, and as turning, not on convenience, but on necessity.'

The general principles set out above apply to all cases, including data protection cases.

Even where the Court feels obliged to sit in private because it is necessary to secure the proper administration of justice, the Court will usually publish an anonymised judgment so that the public can be aware of what has occurred.

The general principles applied in Jersey, as described above, mirror those applied by Courts in the United Kingdom and elsewhere and I accept, for the reasons the Royal Court has given, some cases must be held in private.

(b) There is no difference in the cost of the Court administration as to whether a court sits in private or in public. All public expenditure must be accounted for in accordance with the rules that apply to the body that incurred that expenditure, and in particular the Public Finances (Jersey) Law 2005. The purpose of those rules is to ensure that those responsible for the public expenditure can be held accountable for the expenditure.

(c) I am quite satisfied that there is no adverse impact on the reputation of the Island in relation to holding cases in private, since the principles applied by the Courts in Jersey are the same as those applied by Courts in the United Kingdom and elsewhere.