

4.3 Deputy M.R. Higgins of St. Helier of the Minister for Economic Development regarding lawyers fees in Jersey:

The question is slightly distorted on the paper. The question I asked was will the Minister request that the J.C.R.A. (Jersey Competition Regulatory Authority) investigate excessively high lawyer fees in Jersey, which appear to exhibit the characteristics of a cartel, and if not, why not? I might add, on the Order Paper it is written differently, which is not what I requested.

The Deputy Bailiff:

The substance of the question is the same, Minister.

Senator A.J.H. Maclean (The Minister for Economic Development):

Yes, I can answer the general thrust. There are currently 39 legal firms operating in Jersey. This number suggests that there is enough competition in the market to ensure consumer choice and competitive pricing. Notwithstanding that, the J.C.R.A. already has a duty under the competition law to act if it considers cartel arrangements are in place or any other anti-competitive arrangements. It is worth noting that the J.C.R.A. has already taken action against law firms. It forced them to abandon their uniform conveyance fee several years ago, but I have no evidence to suggest that cartel or anti-competitive pricing practices are being performed by Jersey law firms today. I therefore do not intend to ask the J.C.R.A. to investigate lawyers' fees at this time.

4.3.1 Deputy M.R. Higgins:

I am amazed at this, because among other things, I received an email from a gentleman who wrote to the J.C.R.A. complaining about the cartel or apparent cartel arrangements that are here in the Island, and believe it or not, the J.C.R.A. wanted him to do the investigation and provide them with the information. He gave sufficient information. Also, cost lawyer Jim Diamond has produced evidence which has been also written to, I think, the Deputy Bailiff when he was the Attorney General and other members of the Law Officers' Department complaining about fees in Jersey. He has not had a response to those. I think it is time that we addressed lawyers' fees in the Island and I would hope that the Minister will reconsider, bearing in mind that partners' top-end rates have gone up 58 per cent in 7 years, associate rates have gone up 59.6 per cent in 7 years, and even lawyers at the lower end have gone up 100 per cent in the last 7 years.

The Deputy Bailiff:

The question, Deputy Higgins?

Deputy M.R. Higgins:

Will he reconsider and put the matter to the J.C.R.A.? Does he think it is acceptable as well, these fees?

Senator A.J.H. Maclean:

If the Deputy is prepared to provide evidence, or indeed, any of the other individuals that he mentions are prepared to provide evidence to the J.C.R.A. and to copy them to my department, then I am sure they will then assess that evidence and decide whether it is appropriate to conduct an investigation. At this time, there is no evidence, as far as I am aware, that suggests that an investigation is indeed necessary. I would add that we have a world-renowned legal profession in the Island that sometimes deals

with the most complex and specialist areas, and indeed, I have noted that partners' fees range from up to £200 or £300 among the many firms that we have in the Island.

4.3.2 Deputy T.M. Pitman:

Perhaps I misunderstood the Minister, but was he saying that there is a wide choice of where you go to be fleeced, because that is how many of the members of the public approach me. But does the Minister, more importantly, not agree that without regulation of pricing, this could have a very detrimental effect on people receiving justice in this Island, because it will be a deterrent to seeking justice?

Senator A.J.H. Maclean:

No, I do not agree with the Deputy, and indeed, Members will be aware that aside from the many law firms that exist in the Island, they also provide and contribute towards the legal aid system which is also available, which is paid for largely by the legal profession within the Island. There are choices in Jersey. I accept that some law firms charge high prices. That is largely relevant to the specialist nature of the work that they undertake.

4.3.3 Deputy R.G. Le Hérissier of St. Saviour:

Can we, therefore, infer from the Minister's answer to the initial question he is very happy with the level of fees? Could he confirm that, yes or no?

Senator A.J.H. Maclean:

I would not describe my emotion as being "very happy" at all. I think anybody, Members included, would always want to see prices as competitive as possible. That is relevant not only for the local market, of course, it is relevant from an international perspective. Our financial services industry needs the expertise in the legal profession and it needs to ensure that that expertise is competitive compared with our competing jurisdictions. So it is something that always needs to be under review.

4.3.4 Senator T.J. Le Main:

Would the Minister agree that there are some injustices with the very high cost of lawyers' fees? In fact, I recently dealt with an elderly lady who was being over-charged - or robbed, I would say - for a sum under £100, but the advice that I had to offer the lady in the end, it was cheaper to pay it than go to a lawyer, who would have charged her £200 or £300 just for a letter. Would you agree that there are many injustices for ordinary people, who are being taken to the cleaners by unscrupulous people?

Senator A.J.H. Maclean:

I would agree with the Senator that indeed there are many injustices in Jersey in many sectors, as there are in other places in the world. With regard to a particular case or injustice regarding the legal profession in Jersey, the Law Society has a code of practice and there is a set procedure through which people can pursue complaints that they have, whether it be charging or other injustices that they feel need to be heard.

[10:15]

4.3.5 Deputy M. Tadier of St. Brelade:

Will the Minister comment on the use of lawyers in the U.K. (United Kingdom) - primarily by certain departments of 7 Bedford Row - because in fact initially it was

cheaper for us to use U.K. lawyers rather than employing Jersey lawyers, and how that might be relevant to this question?

Senator A.J.H. Maclean:

Yes. The Deputy raises a good point that there is no reason why any individual who so chooses cannot seek legal advice outside of the Island if they feel that that legal advice may be preferential in either price, or indeed quality, for that matter. There is an open market.

4.3.6 Deputy M. Tadier:

A supplementary on that: would the Minister comment on what is seen by some as the closed shop of Jersey advocates being able to practice in the court and whether that would be ameliorated if it could be opened up to perhaps English solicitors or other solicitors who were perhaps capable of representing the public in that way and may be offering competition in the market?

Senator A.J.H. Maclean:

This is a complex area and clearly there are indeed a limited number of areas where only Jersey advocates can operate. The Samedi Division I believe is one, if I am correct. I am sure the Attorney General will put me right. I see him ...

Mr. T.J. Le Cocq QC., H.M. Attorney General:

I know it is difficult, but as I have been invited, should I make an observation?

The Deputy Bailiff:

No, it is question time, Attorney, and you are not being questioned. Senator Le Main.

4.3.7 Senator T.J. Le Main:

Is the Minister aware that in other jurisdictions such as the U.K. if there is a provision for assessment of the reasonableness of the level of costs charged by a lawyer to their client through a process of taxation and would he consider investigating this?

Senator A.J.H. Maclean:

To my learned Ministerial colleague, I would be delighted to have a further debate on this matter. If he would like to raise the issue with me, I am happy to discuss it and see what options may exist.

4.3.8 Deputy J.A. Martin:

Would the Minister not just admit that the J.C.R.A. does not have the stomach to take on Jersey lawyers, or the budget, and that is the problem?

Senator A.J.H. Maclean:

No, I would not. The Deputy clearly does not like the J.C.R.A. for a number of reasons, but outside of that, I think there is a very good example with regard to conveyancing fees. The J.C.R.A. saw a problem with regard to conveyance fees some years ago, acted on the matter and now we have an open market and consumers have without doubt benefited from a reduction in the cost of conveyancing within Jersey.

The Deputy Bailiff:

A final supplementary, Deputy Higgins.

4.3.9 Deputy M.R. Higgins:

First of all, I would like to just correct the Minister in terms of some of the rates he was quoting for partners. Some of the senior partners are getting £575 an hour, lower end partners £300 an hour and associates or a newly-qualified lawyer up to £325 an hour. Does the Minister not think that in some cases the fees charged by lawyers are not just only excessive, but almost extortionate? I have one lady who has contacted me since I have raised this question. She was given an estimate of court costs of £5,000. The bill came in at £15,000. The lawyers are demanding £29,000 in fees from her, although she has been told if she pays in the next 30 days, they will accept £25,000. That means she is going to have to sell her home and basically her family will be on the street. The situation has got to the stage where there needs to be a proper investigation. Does the Minister not agree?

Senator A.J.H. Maclean:

First of all, the Deputy sought to correct me. I think I might not have been clear with my earlier comment. I think I said that with regard to partners' fees, I had seen a range of £200 or more. I was not suggesting partners' fees were £200 per hour. Just to be clear, that is what I said earlier on. I go back again to my early point. I would ask the Deputy if he has evidence, please raise it, send it to the J.C.R.A. and please copy me in. We will certainly look at the matter, and I will open discussions with the J.C.R.A. if it is proven through evidence that there is an issue that needs to be addressed. As I have said, there are numerous law firms in the Island, plenty of choice, and I would hope that would lead to fair and competitive prices, although I accept there are exceptions.

The Deputy Bailiff:

Thank you. Before moving on to the next question, I would just say for the benefit of all Members that the Greffier has passed me a note, the effect of which is that the question on the Order Paper is as approved and it is not open to Members simply to substitute the question in the Assembly that they would have liked to have had approved.

Deputy M.R. Higgins:

Can I ask why it was not approved in the form it was put originally? I cannot see what is wrong with it.

The Deputy Bailiff:

The question of the approval of the question is one for the Bailiff and I have no knowledge as to why this particular one was or was not approved, but it is there on the Order Paper as approved. Now, we come on to question 4 Deputy Jeune is to ask of the Minister for Housing.