



Economic and International Affairs Scrutiny Panel

Family Friendly Employment Rights

Witness: Jersey Retail Association

Wednesday, 3rd April 2019

Panel:

Deputy K.F. Morel of St. Lawrence (Chairman)

Deputy S.M. Wickenden of St. Helier

Witnesses:

Ms. L. Rault, Chief Executive Officer, Jersey Retail Association

Mr. G. Smith, Chief Executive Officer, Jersey Business

[9:34]

Deputy K.F. Morel of St. Lawrence (Chairman):

Thank you so much for joining us. Thank you, Lorie.

Chief Executive Officer, Jersey Retail Association:

My pleasure.

Deputy K.F. Morel:

Thank you, Graham. We are here to understand what the J.R.A. (Jersey Retail Association) thinks about the law and the implementation of it and the same with small businesses in general would be really helpful. But before we get started, if I could check whether you have had a little read of this. Just to make sure you understand how this takes place.

Chief Executive Officer, Jersey Retail Association:

Yes, I understand.

Deputy K.F. Morel:

Brilliant, thank you. We will just state our names for the record, if we go around the table.

Deputy S.W. Wickenden of St. Helier:

Deputy Scott Wickenden. I am a panel member and I am Deputy of St. Helier District 1.

Deputy K.F. Morel:

Deputy Kirsten Morel. I am chairman of the Economic Affairs Scrutiny Panel.

Chief Executive Officer, Jersey Retail Association:

I am Lorie Rault. I am the chief executive of Jersey Retail Association.

Chief Executive Officer, Jersey Business:

I am Graeme Smith, chief executive of Jersey Business.

Deputy K.F. Morel:

Fantastic. Thank you very much. Just to start off I thought we would ask if you could just briefly describe the Jersey Retail Association, its membership, and its role, and then also for Jersey Business.

Chief Executive Officer, Jersey Retail Association:

Of course. Currently, the Retail Association is still an association. We are being absorbed into Jersey Business. We have 63 separate businesses that are members at this time spanning everybody from Sandpiper, which is the largest retail employer, to one-man businesses. We have represented stores in 10 Parishes across the Island. One of our cornerstones is consultation of the industry, sharing that voice in lots of different ways. So we meet with members one to one. We request written consultation and we also do focus groups on any type of topic like this. We have a number of other pillars but, in the view of Scrutiny, that is what we do.

Deputy K.F. Morel:

Brilliant. So from your perspective, do you feel like you have a keen understanding of where the retail sector is?

Chief Executive Officer, Jersey Retail Association:

Yes. We would not comment until we had that. So as an example, we waited 6 weeks before we sent a formal response because once I had the read the draft legislation on 12th February, it is a long process to then ... first of all, we write to our members and request written responses. That normally does not get the best response because these papers can be lengthy and retailers are very

busy people. So then we write a brief summary of changes which then stimulates a large response and requests of lots of meetings and concerns to share. So I did 8 one-to-one meetings like that. I had 8 other written responses and then I also did a little focus group of heads of H.R. (human resources) in 4 of our biggest businesses to share our views. That is the best way really.

Deputy K.F. Morel:

Thank you for that, that is really clear. Graeme, on Jersey Business.

Chief Executive Officer, Jersey Business:

Jersey Business, we are an arm's length organisation. We are funded by Government but independent of Government with our own board. Our remit is to work across all sectors of the Jersey economy with the principal aim of improving productivity and growth. We do that in 3 areas really. We will support new innovative start-ups in terms of their journey. We also support established businesses who are looking to grow, who have challenges, and help them in terms of their productivity. We also work on a sector basis so we will provide event support, and J.R.A. is an example in terms of how we can support a sector body. We work well with government but also with businesses. So we can understand how government works but also we have got the confidence of the business sectors. So we can help both government and businesses in terms of policy development, in terms of issues that the sectors face, and we provide a neutral view.

Deputy K.F. Morel:

From your perspective, you work with businesses in all sizes from very large to very small?

Chief Executive Officer, Jersey Business:

Yes, it is predominantly what would be classed as S.M.E.s (small medium sized enterprises). The larger corporates ... we do work with them because they can assist us with some of their skillsets and some of the programmes but extensively the large corporates will have their own independent advisers. Jersey Business is a mixture of skilled business advisers but also people who can develop policy in terms of sector programmes and what have you.

Deputy K.F. Morel:

Brilliant. Thank you very much. Lorie, having read the draft law, as proposed by the Minister, what was the overall reaction of your members to the proposals?

Chief Executive Officer, Jersey Retail Association:

A number of different concerns came up and I think that they were different for larger businesses than they were for smaller businesses. The most unified response from all sized businesses was a frustration that the businesses would be bearing the full brunt of the costs. So the industry were

very receptive to the concepts behind the draft legislation. There were some lovely positive comments because retail really are people people. We work very closely with our staff and we are interacting with the public all the time. So an understanding of that was really evident. However, the fact being that if you are all of a sudden paying a month's full salary additionally for some of the people within the category, so as an example the parental model, so that is across adoption, surrogacy, fathers; that is a huge amount of workers so it has a significant monetary cost and there were some real genuine concerns about how can they do this. I think the bigger businesses it may be less of a worry because of their structure. They would currently be protected and be able to afford that but the smaller businesses, that was a very big worry. Again, another big collaborative thing that was fed back was a real logistical problem of how you would then cover those leave periods if they were taken in up to 4 chunks over 3 years. Obviously, last September the 26-week paternity meant that that can be taken over a one-year period but it has only been 6 months. We have not really seen any moving in that arena to know if that is going to impact businesses. But on the surface, when presented with the draft legislation, the first thing that all business sizes again said, mainly the bigger ones, was: "How are we going to cover this if we have somebody taking leave over 3 years in chunks?" Retail is not an industry that has an employment agency so it is different ... it does not work with seasonal licences very well. We do not really take those up a lot because we need staff that cover the full year. So as in agriculture, you could have an agency that are ready to fill short-term vacancies, same in construction. There is nothing like that for retail on the Island. You could access some customer service agency-based stuff but there is no model in those bigger stores to afford to be able to do that. I doubt that they would get permission from head offices. So it is a very real concern if you think potentially the number of parental leaves that could be taken. A lot of discussion around that. As to the changes from 26 to 52 weeks, if it was to be taken within the 52-week period it is a really positive response from the industry, as I have said, because it is very challenging to cover a short-term position. The thought was if somebody was to take a year off rather than 6 months it would be easier to find somebody to take on a year-long contract than it would for the 6 months.

Deputy S.M. Wickenden:

Or they could take the year off over 3 years in 4 chunks.

Chief Executive Officer, Jersey Retail Association:

It then becomes a problem.

Deputy S.M. Wickenden:

For a minimum of 2 weeks.

Chief Executive Officer, Jersey Retail Association:

Yes. I mean the notice is nice and long but it is not about the notice period. It is about the training that you have to provide. If you imagine somebody like a jewellery store, the knowledge that is needed to sell that product, the level of service that you have to attain, you realistically would not have somebody found and trained before they were due to leave again. We do not have an agency, like I have said, so you cannot even go to a fully-trained person and bring them in. Obviously, we have been looking at the ... there are some caveats there that you could use registered people to cover those periods of leave and that is very welcome news because we were not aware of that. It is not something that has been very highlight publicised. Even the top 4 H.R. managers of retail did not know about that. So we have shared that with them and we look forward to hopefully that being ... so that has been a great process because that will help but it will not solve the problem if we retain the model of up to 4 chunks across 3 years. A number of questions in that as well. So, retail has a very transient workforce, it is just the nature of what we do. So how would this work if ... quite normally people could leave after 3 years and go to a different type of retail so what then happens to the maternity and paternity leave in that period?

Deputy K.F. Morel:

If you move employers?

Chief Executive Officer, Jersey Retail Association:

If you move employers because that is a very real thing that could happen. I could not find anything in the draft legislation that covered that. There are lots of questions in the community and some real concerns. Another, sorry, it is just trying to cover the top points. So the cost, the chunks and also again very welcome that it would be recognised in Jersey that breastfeeding mums coming back have the right to facilities, but it is a great piece of supportive family legislation without the infrastructure ready within the community.

[9:45]

I, a retail manager myself for many years, and I have supported many breastfeeding mums coming back feeding at work. What is the most normal thing that is requested, the average thing, would be to use a breast pump because it is not very likely you are going to bring the baby to work if they are in childcare or with a family member. So that is a situation. We need some privacy and you need a hygienic area to do those things. Currently, we have 1,070 now registered retail businesses and I think, off the top of my head, 840 of those are one to five. So it is not very likely that those small businesses are going to have somewhere with the level of privacy and hygiene that you can store the breast milk in a fridge and express. So we would call for more investment in community so that we could have more facilities to get those mums to those facilities and utilise them.

Deputy K.F. Morel:

Am I right in thinking that the Town Hall might be the only kind of dedicated community ...

Chief Executive Officer, Jersey Retail Association:

It is to my knowledge, yes. That is a fantastic facility.

Deputy K.F. Morel:

But it is just one.

Chief Executive Officer, Jersey Retail Association:

It is just one. I also think if I posted that on Facebook today and told the mums about it they would have a queue because I do not think it is particularly well-known that the space is there. Daphne has gone to great lengths to make sure the facilities are adequate. She has fed back to us the logistical problems that you can have from having those breastfeeding rooms but they found it works really well. I would say somewhere like the library or these types of places should be looked at because they are community facilities. We really need to support that before September to be able to follow the letter of the law the best we can, if that goes ahead.

Deputy K.F. Morel:

It feels like it was missing from our retail review findings, that particular problem. I went back through our retail review to double check because I know we discussed it. I cannot remember the process by which we did not, yes.

Chief Executive Officer, Jersey Retail Association:

It is something that we have started adding into the strategic document that is being done. But again we have to keep reminding to add that because it seems like a little add-on but I think that is very essential if we are building facilities for the community as a whole.

Deputy S.M. Wickenden:

Not just town, we talk about Red Houses in St. Aubin.

Chief Executive Officer, Jersey Retail Association:

It is the other thing as well, yes. There are some big pockets.

Deputy K.F. Morel:

Yes, obviously Gorey.

Chief Executive Officer, Jersey Retail Association:

Waitrose have excellent facilities for their partners and they have a very welcoming view so maybe we could work out how to help retailers share these facilities but really, I think, we have to set that example and I would seek government to do that by improving local community facilities.

Deputy K.F. Morel:

Just before we go on to the next question; Graeme, was there anything from your perspective?

Chief Executive Officer, Jersey Business:

Yes, I do support what Lorie says, in particular the 3-year spread in terms of understanding what the benefits of that are compared to the actual concerns that it would have of the small businesses. In practice it probably would not be utilised to an extreme extent but small businesses will look at that scenario and my concern with that is if they are concerned about that, that will impact in terms of their recruitment policies and what have you. So it could have an unforeseen impact that is not desired. Should this be stepped in terms of the changes and that is perhaps looked at a later stage when it is understood.

Deputy K.F. Morel:

Can I ask what you think that unforeseen impact might be?

Chief Executive Officer, Jersey Business:

The impact potentially could be if, as we hear, small businesses are concerned about this that if that happened, and they are a team of 3, it would have very significant impact on their business. So when they look to recruit and the unforeseen impact could be they consider that as part, which is not the right thing to do. That is not the intention of what is changing. That would be a personal concern if that is how it is then taken by some businesses.

Deputy S.M. Wickenden:

So if somebody was to go for employment and they say: "Do you currently have any outstanding paternity leave waiting and if so, how much and when is the cut-off period?" that could be a question that gets asked within an interview and it might have an impact on whether they get employed or not.

Chief Executive Officer, Jersey Business:

I just think we have not experienced that 3-year period and it may be that if we had experienced the full changes and it is over one year and it has worked and you have got a view as to how likely a 3-year would be used, and if it was clear that it was going to be relatively rare I do not think it would have a negative impact. But if it is all on day one that comes through. I think some businesses will automatically look to the worst-case scenario as to how it could impact them. The other aspect I

would say is the general view we get from small businesses is there has been a whole series of legislative and policy changes which have a direct cost impact on them, and as ever when you look in isolation at one you can say it is the right direction, it is the right thing to do over the long term, but when they are coming through consistently small businesses will say: "It is another cost to our business" and it is the cumulative effect, which is quite challenging.

Deputy K.F. Morel:

There is a question we have got in here about that cumulative effect. As we are there we may as well go through that, which was to ask what those changes are that have added up to make this large cumulative effect, just to give a sense. We have got these parental leave laws and which other policy changes are you thinking of?

Chief Executive Officer, Jersey Business:

If you look at the hotel management sector, in terms of the waste charges, and there are other things. Do you want to come in from a retail perspective?

Chief Executive Officer, Jersey Retail Association:

Obviously, the implication of the general data protection regulations, which then affected a lot of stores because they had to then have a separate G.D.P.R. (General Data Protection Regulation) for closed-circuit television. We had to retrain the staff. They had to normally get an outside person in to help them be compliant because that is not something they had as part of their business model. We have had a change to retirement ages, so that had to change handbooks, et cetera, H.R. procedures. We had the changes last September so obviously that cost implication directly of the maternity law. Disability has not really affected that much monetary but again it is more the ... all these different changes of legislation, it is keeping up with that in the smaller business model, which means always outsourcing H.R. solutions, attending workshops. We have tried to facilitate as much of this through J.A.C.S. (Jersey Advisory Conciliation Service) and Citizens Advice to keep the cost down but it is the cumulative. In a short 3-year period of time it is very challenging for a smaller business.

Deputy K.F. Morel:

That makes sense. I was just going to ask before, the consultation process. It is just to ask in relation to these proposals whether the J.R.A. was involved in the consultation process. This is back in 2017.

Chief Executive Officer, Jersey Retail Association:

No, we were not. Back in 2017 the J.R.A. were just a small voluntary organisation so we did not become active with a paid employee until March 2018. So we were not part of the consultation

process. I did ask that question directly to all of the businesses that spoke to me either in the written consultation, our focus group, our one-to-ones and not one of those businesses had been part of the consultation.

Deputy K.F. Morel:

And that was a range of business sizes as well?

Chief Executive Officer, Jersey Retail Association:

All businesses sizes, including the large businesses that you would imagine would normally have been requested.

Chief Executive Officer, Jersey Business:

These were ones who did respond when you asked them.

Chief Executive Officer, Jersey Retail Association:

They responded to me and I directly asked them: "Were you part of the consultation in 2017?" and they all responded ...

Deputy S.M. Wickenden:

Some of them might have been part of the Chamber of Commerce or the I.o.D. (Institute of Directors) or something.

Chief Executive Officer, Jersey Retail Association:

Maybe.

Deputy S.M. Wickenden:

And they may not have gone back to you.

Chief Executive Officer, Jersey Retail Association:

Maybe, but they did not allude to any type of consultation. I would imagine they would have said if they had fed into the Chamber's consultation, but they may not have. I did not ask in that way. I just said the 2017 consultation.

Deputy S.M. Wickenden:

From your point of view, Graeme?

Chief Executive Officer, Jersey Business:

No, there was no consultation with Jersey Business. I think in some ways the structural changes that we had gone through and others have gone through make that a lot easier now going forward. I think as a generalisation, Jersey Business were probably not consulted historically as much as they potentially could have been, but as we have evolved and changed and demonstrated the value across the sectors, we are now approached; the likes of yourselves and what have you. It is not a criticism of the past, it is a reality. I think going forward it is quite different now that we are engaged and we are brought in.

Deputy S.M. Wickenden:

However, Jersey Business has been up and running since 2013, 2014 so ...

Chief Executive Officer, Jersey Business:

In hindsight, it should have been engaged as part of the consultation. But I suppose what I am saying is that is certainly happening now going forward.

Deputy K.F. Morel:

No, I appreciate that. But equally, nobody came to you to ask you to engage, is what we are saying, so it is a 2-way street.

Chief Executive Officer, Jersey Business:

It is a 2-way street, yes.

Deputy S.M. Wickenden:

Do you get engaged with the Employment Forum and talk about minimum wages because that is one of their primary roles in law, which is to do with minimum wage? Do they come and talk to you about in those instances?

Chief Executive Officer, Jersey Business:

Yes, I have certainly engaged with the Minister and with the civil servants in terms of the implications of that. The Minister asked me in terms of what the small business view is of how it is brought in, so yes.

Deputy S.M. Wickenden:

But not the Employment Forum?

Chief Executive Officer, Jersey Business:

No, not engaged ...

Deputy S.M. Wickenden:

Which is set up by Social Security.

Chief Executive Officer, Jersey Business:

We have not engaged with the Employment Forum, no.

Chief Executive Officer, Jersey Retail Association:

The J.R.A. did speak to them last year. Obviously, there was a significant rise last year but we were very new at that point but we were involved with that last year.

Deputy S.M. Wickenden:

Some of this has been done. Because the proposal has been put forward in these 2 parts in 2018, now 2019, which was in order to give employers more time to prepare for the fundamental change but do you think there has been sufficient time to employers? Now you have mentioned this kind of in the round, but if so, do you think that we should have seen the full year or maybe 2 years? Do you get an impression that we could have broken this down further or we could continue to break it down further? So maybe put only some of the proposals in and not all of them?

Chief Executive Officer, Jersey Retail Association:

It is a complex question. It is not a simple answer. I think it is always better with changes to have proven data to see what happens. As Graeme said, it would have been beneficial to have had a clear year's data to see what happens with the 3 years. However, we are so significantly behind the U.K. (United Kingdom) I see the need to make us an island that appeals to everybody. So we do need to, in some instances, fast track legislative changes to make us an appealing employer. So there is also that recognition. We had a very polar view on this. Our smaller members felt that we would need more data on that period of leave. Larger employers again felt we needed the data but we really needed the legislation more because currently we are the third joint biggest employer but when you look at somebody like at finance, the biggest employer, they would already give these 52 weeks normally because they would mirror the U.K. So in this very competitive job market I do not we can afford to wait. Is that a good summary?

Deputy K.F. Morel:

Perfect, yes.

Chief Executive Officer, Jersey Retail Association:

We have to be competitive and family first, and that is a big cornerstone of the Island Plan. So I think delaying it, is that really going to be of benefit? No, I do not think so.

Chief Executive Officer, Jersey Business:

The mindset of a small business holder is that there is fear and there is concern. The large employer is ahead of the game and I think you made a good point a couple of days ago, Lorie, in the sense that in the competitive employment environment the workforce will expect similar standards as the larger companies. So the smaller businesses need to be a little bit braver in the sense that they should not fear this. This will help them become more competitive with a bigger employer in terms of the terms and conditions. Employees now far more are looking at the terms and conditions of what is applied. I think it is a case of ... I just go back to the point that there has probably been too much legislative changes on small businesses in too short a period of time. Each one, in isolation, is the right thing in the right direction. Given time and explanation, I think, is understood, which is why perhaps with this I do lean towards the 3-year is ... I have not yet seen the upside benefits as to why it would create more diversity, more opportunity. It may well be the case that that is correct but I would like to see that. That is quite a big step.

Chief Executive Officer, Jersey Retail Association:

Another really important point to make though is the way that short-term cover is done. I would imagine this is similar in hospitality as well, but I know from 20 years managing retail businesses myself, if you have a short period of leave, 2 weeks to 3 months, for example, you will cover that with your existing workforce. Now, you normally have a lot of notice with maternity and this proposed paternity, which is great, but you are requesting that staff that do not normally work those hours rather than finding somebody new for a short period of time because it is almost impossible to do that. I was working in retail managing 3 years ago before the jobs market got even more squeezed, so the reality today is, the H.R. managers that I have spoken to have said they do not envisage ever being able to get a 3-month piece of cover. So who you are putting that on to then is your existing workforce. Now your existing workforce that are part time normally are part time because of all the other protective characteristics. They want flexible working because they are looking after a loved one, an elderly relative, they are a retiree, they are a parent themselves. So there is no thought about what this would do. I see they want to be flexible but I think we are going to be putting a lot of pressure on part-time workers that are family members, disabled, retirees, those caption group are part time for a reason.

[10:00]

They are always the employees that are asked to step up and do more hours. Also, you sometimes just stretch your existing staff, which can create a lot of stress in the workplace. I am very concerned about what that would do to existing teams and what that would do to the relationship of the returning person because you should go on maternity or paternity feeling very confident that you are not

causing any friction in your workplace. I think that if it is short term like this it is going to cause real problems.

Deputy S.M. Wickenden:

Would you say that the retail sector is seasonal in some way so without a 12 months' period you cannot assess where the summer and the breaks are?

Chief Executive Officer, Jersey Retail Association:

Seasonal you mean?

Deputy S.M. Wickenden:

Seasonal, as in they have different requirements in the different times of the year. So Christmas and then you have got the medium break after January, then you come into the summer period and then you do that, and then you are back into Christmas.

Chief Executive Officer, Jersey Retail Association:

Okay, I understand. Seasonal but very different than other types of seasonal models. So your core staff that you employ on permanent contracts are non-seasonal. That is across the year, so people we are talking about that have maternity and paternity rights will be permanent across-the-year staff. We do take large influxes of workers in summer and in peak for Christmas, which is very much the norm. They are always on fixed-term short contracts so they most probably would not have any benefit from the maternity or paternity. They tend to be at very set times of year when we can get that workforce. So they are returning university students generally. So if we happen to have a maternity/paternity leave at those 2 very specific periods of ... we are talking 6 weeks in the summer, 6 weeks in the winter, then that would fall in line in support. But seasonal licences are hardly ever taken up by the industry. Generally it is the wholesale sector that use those sorts of licences. Yes, this little exemption that we found to do with covering maternity that currently sits at 9 months, and we would encourage that to be moved to be accessible for paternity and other family models, because currently that cannot be used for paternity and we would also request that that would get considered to be brought to a year as well. That would really help with hiring.

Deputy K.F. Morel:

Do you think it would be realistic with that licence exemption, the registration exemption might ... do you think it would ever be realistic for smaller retailers to advertise positions outside of the Island in order to bring somebody in?

Chief Executive Officer, Jersey Retail Association:

I do not think it is very realistic, no, because ... agriculture can do this and so can hospitality because they have the whole package available. I can think of 2 retailers on the whole Island that would have accommodation built in as part of their contract. More and more, we cannot afford that space. It has been taken back to retail or warehousing so it is very rare. No, I think that what will happen is there definitely is a gap between when you can work and when you can enter the Island. There are plenty of people seeking those opportunities for work. It is very regular, I get told by the H.R. managers, for people to apply for positions when they are registered, they do not have their 5-years residency. So I think it would be quite easy because of that difference in when you can arrive and when you can work to find somebody. They have to turn away a number of people even though they are very clear that you need a licence because of the unfamiliarity of our work regulations.

Deputy S.M. Wickenden:

I was just thinking back to my younger days when I was a locksmith and thinking how hard it would be for a specialist area such as that if somebody took a whole load of leave to be able to bring somebody who is a trained professional in an area that is a retail sector, a service.

Chief Executive Officer, Jersey Retail Association:

It is a very complex sector as well so you may have a less complex service model but again we said jewellery but there are bikes, there is motor trade, there are tools, there is kitchen fitting, there are so many complex models there where, yes, if it was a year and it was a full year's leave, you could invest and you could recoup some of that investment. But we are talking 3 months. You can see why we use existing.

Chief Executive Officer, Jersey Business:

It is the same philosophy in the sense we have a very tight labour market so when you have ... and we will have for going forward. so when you have a very tight labour market small businesses can mean that I have to go back into that labour market when I am not expecting to from pure business needs worries them and concerns them. The message I get comes from other sectors, the stress point is very true and I got a letter from the hospitality sector in terms of that is part of ... in the business licensing and the work we did there in terms of it is not just about supporting the business, it is the owners and the people and the families within the business were being put under significant stress because they were having to cover other roles. So we were already at a point that we are quite stretched.

Chief Executive Officer, Jersey Retail Association:

Yes, very.

Chief Executive Officer, Jersey Business:

Then to overlay potential risk. I do not think the risk is as great. I think there are upsides to it, I think it is the right thing to do but that is people's mindsets and it is carrying that with you.

Deputy K.F. Morel:

I guess if you run a small business as well any risk, they do not have margins, they do not necessarily have lots of cash in the bank so any extra risk is ...

Chief Executive Officer, Jersey Business:

They have a lack of flexibility that one individual can really hurt if that person is away for a period of time. That is what they then think in their mindset as to whether they grow the business and what they do.

Deputy S.M. Wickenden:

The idea of taking unpaid leave is probably not in the reality of many people, in the current financial climate anyway, I think. So have you been able to assess in the period that we have had the changes since 2018 if there was much uptake or has anyone you have spoken to about uptake in the previous changes that we have done?

Chief Executive Officer, Jersey Retail Association:

We have had limited ... I spoke to 4 H.R. managers and they had had limited take up of the extended paternity leave. But everybody took the 2 weeks paid. So where we are talking about the cost implications, I think everyone will take it. Everyone wants to spend time with their family. As you said, the financial constraints do mean that you may not be able to afford to do that. The reality of the uptake on the paid 6 weeks would be very ... everyone will take that from the maternity model. That is the easy one. So if you did a bit of cost modelling that is a definite, is it not? The take up on the 52 weeks leave, I really do not know. Because if you know that in advance you can ... I mean, myself, I took 52 weeks maternity and I saved for it. That is very common. A lot of us mums are having babies older and my husband saved for a month off as well. That is 2 people within industry that did that. But we will have to wait and see.

Chief Executive Officer, Jersey Business:

There, both sides were able to plan and that is the crucial aspect. I think you make a really good point that in reality that unpaid leave - personal view - is not going to be taken up extensively. So I think the actual risks in this are quite low. The upsides are that you will have felt that was a caring employer so you probably mentioned it to 5 other people that is the sort of thing that that employer has done, so it is a positive. But that is not immediately seen.

Chief Executive Officer, Jersey Retail Association:

But again my employer gave me a year off without it being in the law at that point because they valued and they wanted to, but this will give that understanding of the value of that to all retail businesses.

Deputy K.F. Morel:

This is very hypothetical and feel free to decline to answer it. Had you gone to your employer and asked for the kind of 4 chunks of 13 weeks over 3 years, so asking for 52 weeks leave, but in these chunks do you think your employer back then may or may not have had it?

Chief Executive Officer, Jersey Retail Association:

If they had an option, I think it would be a clear no because it would not have worked for the business model. I had, as you can see, a very progressive employer because this was 4 years ago when the maternity law was very different back then. They even extended the 18 weeks U.K. model of pay to me as well, to retain me. That is what you do. You have to compete to keep the staff in.

Deputy K.F. Morel:

It is a competitive jobs market.

Chief Executive Officer, Jersey Retail Association:

It is going to be a really big challenge, is it not, because we are people people but you do have to run a business. You have to protect all your employees to make sure that your business model is sustainable. In my line of work, anyway, as a store manager, that flexibility would not have been ... also there are a number of different things there as well, you give your notice period of when you would want that leave. When would you want that leave? As a retailer, I would have quite fancied 3 Christmases off in a row. That would have killed my business model so I would not have requested that but I think the fact that you can request any period of time and the employer in this draft legislation could not say no, if you have given reasonable notice ...

Deputy K.F. Morel:

It is not a request, it is a notification under the law.

Chief Executive Officer, Jersey Retail Association:

It is a notification exactly. So it is not a dialogue and currently that is what we would have had. It may have been: "Okay, we will let you do this but you cannot take it over November/December" which is understandable because you just literally could not cover that level of expertise at that period of time.

Deputy K.F. Morel:

Was that a concern? I do not know if your members have spotted that ...

Chief Executive Officer, Jersey Retail Association:

Yes, they have.

Deputy K.F. Morel:

... it is a notification.

Chief Executive Officer, Jersey Retail Association:

Yes, it was a specific comment that they were very concerned about what would happen if ... I cannot imagine that it would but you have to ... you can write it down and it is law that you have to do that requirement and you have to imagine it. So they were very concerned that people would utilise it to take off Christmas, which is family ... it is a family time.

Deputy S.M. Wickenden:

Or summer.

Chief Executive Officer, Jersey Retail Association:

Or summer. But those 6 weeks of Christmas can be absolutely the lifeblood of a business to see you through the next 3 months of trade where it is significantly different.

Deputy K.F. Morel:

While we are on that, there is also the employee can change, so they could plan to take off Christmas and then 14 days before they start their Christmas leave they can notify the employer that they are changing that in some way. The employer, again, does not have that same notice period at all. Did your members have concerns about that?

Chief Executive Officer, Jersey Retail Association:

They did not specifically pick up on that one. It is a difficult one, is it not, because having supported people going on lots of different types of leave that normally happens with maternity because the baby comes at a different time or there are complications, so I would always hope that people would be compassionate to those types of changes. I think that is the only time that people change in that timeframe. You have to be realistic, if the baby comes a month early. But normally those requests at that short notice period do not normally happen unless baby arrives or tragically sometimes, serious things can happen.

Deputy K.F. Morel:

Could you see a problem for employers in them, kind of perhaps the cover that they have thought they had secured for the 3 months or whatever says within a couple of weeks: "Sorry, I cannot do that anymore" and so they have no way of changing or asking for that change.

Chief Executive Officer, Jersey Retail Association:

Are you asking of the temp or the person you have hired then all of a sudden cannot flex? That is really common. That is another reason why people do not generally take on short-term temps.

Deputy K.F. Morel:

It is just the law does not allow the employer to change. The law does not give the employer the right to say to the employee taking leave: "Look, could you move your leave to next month instead of this month?" or by a week or something. There is nothing in the law to enable that.

Chief Executive Officer, Jersey Retail Association:

That would be a challenging thing to put in though, would it not, because it kind of is there to support the family, the model, but temps quite normally are inflexible or they will request changes because they are coming from another position but the most common thing is that they cancel last minute because they are looking for more hours or a full-time job, so it is very common that you ... I had examples of long-term sick leave that we had organised because it was for an operation for a staff member, all organised, and then the person I hired, fully trained, cancelled a week into her training. So that is very common in Jersey because it is a really tight jobs market.

Chief Executive Officer, Jersey Business:

It is a very difficult thing to legislate for. To legislate effectively to say that everyone has that right and the employer has no defence, if you like, so the employer is not part of the discussion. It is quite a blunt tool to deliver that. What I have seen in other situations is that there is an expectation of fairness in there now. The challenge with that is you can get some employers who perhaps are completely unfair and how do you deal with that situation. But what happens in practice then is that that employer struggles to employ in the long run.

Deputy K.F. Morel:

They become known for that sort of thing.

Chief Executive Officer, Jersey Business:

So something has to go here in terms of the law is absolutely on the side of the individual and not the employer whereas if it is left grey the market tends to sort itself out generally. It does not need that because if you had that, that then again concerns ...

Chief Executive Officer, Jersey Retail Association:

Gives you no flexibility.

Chief Executive Officer, Jersey Business:

... or if you have one in 100 who is going to be a bad employer then 99 good employers are going to feel threatened by that, and I would imagine they have not picked that up.

Deputy K.F. Morel:

I was going to say it is not an obvious part of the law.

Chief Executive Officer, Jersey Business:

I imagine that has not been picked up.

Chief Executive Officer, Jersey Retail Association:

No, it is not.

Chief Executive Officer, Jersey Business:

If it is pointed out people will be concerned.

Deputy K.F. Morel:

It is by omission, if you know what I mean. It states the employee can give 14 days' notice. It just does not state that the employer has anything so it is not written that the employer does not have notice.

Chief Executive Officer, Jersey Business:

As an example, Jersey Business, we have pushed flexible working as a way of engaging your staff and being an employer. We have done it ourselves. It is not used anywhere near to the extent that it could be and the nervousness in doing it is everyone used it as they potentially could, the fallback I got is it is subject to business needs.

[10:15]

Because we demonstrated we managed that appropriately, it has been incredibly positive as far as engagement is concerned. We are trying to persuade other businesses do not be afraid of this, do not wait for the law to change necessarily. This is good business. Sometimes when the law comes in and it goes to an extreme it can have a slightly negative impact.

Chief Executive Officer, Jersey Retail Association:

It stops the conversation. They are so case by case these scenarios. I think it is so essential to have that dialogue as well of what that employee needs. It is the starting point rather than a wall.

Deputy S.M. Wickenden:

Of course in the U.K. it is shared parental leave so the burden in some ways is overshad. Do you think that maybe we should have gone down that model before we went down the dual parental leave, or qualifying relationship is what it is?

Chief Executive Officer, Jersey Retail Association:

I think if we want to achieve the goal as an Island, if the legislators desire to increase diversity in the workplace and support partners, then this is the right model of separate because it is very clear from speaking to H.R. teams in the U.K. that shared parental leave is very much a: "I am taking some of your maternity leave" and that does not feel right in this day and age.

Deputy S.M. Wickenden:

1,001 Days.

Chief Executive Officer, Jersey Retail Association:

Yes, exactly. I can see why it has absolutely bombed in the U.K. It has not been taken up hardly at all.

Deputy K.F. Morel:

I think it is at 2 per cent. I think that was from you, you said something like 2 per cent.

Chief Executive Officer, Jersey Retail Association:

Yes, really bad statistics. So again in this people people industry, retailers think that even though monetary wise we are very concerned that we have to bear the brunt of this 6 weeks' paid leave, and it will be logistically difficult in the sections of leave, it is the right choice. If we want to achieve more parental rights for dads and same-sex partners, et cetera. It has been quite warmly received, and it is putting a lot of pressure on these businesses but I think they understood.

Deputy K.F. Morel:

What do your members think about the fact that ... you mention it in your submission that the Government is not going to pay for any paid leave so the burden falls entirely on businesses? What was your members' reaction to that? Is that an important issue for them?

Deputy S.M. Wickenden:

In as many polite words as you can.

Chief Executive Officer, Jersey Retail Association:

Phrasing carefully.

Deputy K.F. Morel:

Bear in mind that it was a recommendation of the Employment Forum. The Employment Forum did say the Government should provide 6 weeks of paid leave.

Chief Executive Officer, Jersey Retail Association:

And also additional 6 weeks after that as well through Social Security, yes, full pay.

Deputy K.F. Morel:

Yes, exactly.

Chief Executive Officer, Jersey Retail Association:

Yes, they are not best impressed. They recognised in the U.K. that it is very damaging, especially to a small business model. They not only pay that full period of leave but they give an extra 3 per cent on top to help towards the significant costs of advertising and retraining the person. Yes, they are extremely cross. The question is where is the modelling to say that that could not be afforded in the Social Security. Again, we are a factual bunch and we look at what businesses can afford before we change what we are doing in our businesses. The industry said they are very disappointed. Where was the look at if that cost could be afforded before a decision was made? I could not find that to give to my members, which was the question.

Deputy S.M. Wickenden:

It is like the long-term care where they say everyone gets help and some people are prepared for everything, so it is almost like everyone pays because everyone gets old. Everyone has a mum.

Deputy K.F. Morel:

Yes, and a dad.

Chief Executive Officer, Jersey Retail Association:

And a dad, exactly.

Chief Executive Officer, Jersey Business:

The cost angle is interesting in the sense that you cannot look at direct comparisons between Jersey and the U.K. but if you did as was proposed at the end of it, you could say U.K. small businesses are probably contributing through social security the equivalent or slightly more or what have you.

In some ways that is a false argument in the sense that this is a new, additional cost to businesses who have not projected that cost in their business model in terms of how they have done it. There needs to be a recognition of that. I am not saying it should not be but there needs to be some level of recognition that this is a direct extra cost.

Chief Executive Officer, Jersey Retail Association:

It also seems strange to have ... we are moving towards real equality and we have a situation where we can claim 6 weeks of that maternity pay, which is quite the norm to take, the £216. We would remove that for the first 6 weeks and offset that for the mums but we cannot do that for parental surrogates, et cetera. That does not seem quite right either. In the ideals of the legislation of equality and diversity, to be able to claim for a lady and not claim for parental seems very strange. Again that was fed back.

Deputy K.F. Morel:

I have to scribble that down because it is an important point. It has been made somewhere and we discussed it, but I do keep forgetting that you can claim for the mother but you cannot claim for the other parent.

Chief Executive Officer, Jersey Retail Association:

No, you cannot. There is the change but there is no change to the social security ...

Deputy S.M. Wickenden:

It does not work for adoptive, surrogacy?

Chief Executive Officer, Jersey Retail Association:

No.

Deputy K.F. Morel:

No, in surrogacy the other partner is ... you cannot claim for them.

Chief Executive Officer, Jersey Retail Association:

There is a bias towards a female giving birth. Is this really right in the feel of what we are trying to strive for?

Deputy S.M. Wickenden:

Yes, what we are trying to achieve.

Chief Executive Officer, Jersey Retail Association:

What are we trying to say: you are more valuable? It is a strange message.

Deputy K.F. Morel:

I appreciate that. That issue with the Government not paying it, is it an issue of fairness as well? Is that of importance to your members, that you know of? The Government were able to say no to their own recommendations, if you know what I mean, whereas obviously businesses cannot. They just have to take it on the chin and deal with it. Is fairness an issue there for your members?

Chief Executive Officer, Jersey Business:

From what I have heard, they do not think it is fair, because they do look straight to the U.K. and they see that for small businesses 103 per cent is covered. They do not see the full picture there. At least there is a failure of communication in the sense that you are not comparing like with like but it is very difficult to communicate the differences between it. They look at it as an extra cost and they straightaway look at the U.K. and they think society is paying for this because society is benefiting from it. "That individual might not come back to me," so they will look at it, if they have 2 or 3 staff, the impact it has on them and their costs. There is a feeling, and I have heard that from a number, of unfairness.

Chief Executive Officer, Jersey Retail Association:

Yes, it is very negative.

Deputy K.F. Morel:

That is why I was wondering because I know our tax ... the Treasury Department, their mantra is for the taxes as low ...

Deputy S.M. Wickenden:

Low, broad, fair.

Deputy K.F. Morel:

Yes, fair is an important part of their tax aspect of what they do.

Chief Executive Officer, Jersey Retail Association:

And clear rules, something like that.

Deputy S.M. Wickenden:

Simple, low, broad and effective.

Deputy K.F. Morel:

In some areas of government fair is important, in other areas it is apparently less so.

Deputy S.M. Wickenden:

G.S.T. (Goods and Services Tax).

Chief Executive Officer, Jersey Business:

The ultimate success of a society, if we think it is the right thing to do, is that society pays for it, is what some of them would say. I would also say that you benefit from the value of the people you are employing, as an employer. It is proven you do get a more diverse workforce and you do improve your productivity.

Chief Executive Officer, Jersey Retail Association:

Which is beneficial to the whole island, from productivity improvement.

Chief Executive Officer, Jersey Business:

It is. It is the right thing but for a small business owner, it is very difficult for them to make that leap.

Chief Executive Officer, Jersey Retail Association:

As a concept of paying, that coming from social security contributions, I think it is everybody, even if you do not have children, who benefit from that.

Deputy K.F. Morel:

That is the idea of these sorts of things, exactly. No matter who you are, you can benefit from that, that is absolutely right. We have covered bits in different places, so I am trying to check that we have covered everything off, but I think we have.

Deputy S.M. Wickenden:

Is there anything that you want to include otherwise that we have not maybe talked about?

Chief Executive Officer, Jersey Business:

No, I would say I think this is absolutely the right direction. We are not going to get everything perfect. While I have indicated areas that I would do this slightly differently, I do not think we should slow the process because of some of the words. It is the right way to go. Whenever we do this, we will always get some noise from business owners, which is inevitable.

Deputy S.M. Wickenden:

We are going to write a report off the end of all of the hearings that we are doing. We are doing quite a few with a broad group, but Senator Vallois is obviously doing her policy board. She was

here on Friday and she is going to be taking on recommendations and trying to make sure that this is as fair and as appropriate as possible. That is what she told us on Friday. I have a lot of faith in the fact that it is not just going to be railroaded through as it is, there will be some changes.

Chief Executive Officer, Jersey Business:

I think it has been a really good consultative process in terms of what has happened. It has allowed Lorie, in terms of the time, to get the real feedback.

Deputy K.F. Morel:

Yes, rather than 2017, do it in 2 stages.

Chief Executive Officer, Jersey Business:

Yes, in terms of the process over the last ...

Chief Executive Officer, Jersey Retail Association:

That is the turning point, is it not? Consultation is everything because then you get the right legislation for everybody.

Chief Executive Officer, Jersey Business:

Also it helps Lorie and us to feed back the balanced story into the small business community to take away some of that fear.

Chief Executive Officer, Jersey Retail Association:

Yes, the education in the sector is just as important.

Chief Executive Officer, Jersey Business:

It is so important how it is delivered in reality.

Chief Executive Officer, Jersey Retail Association:

Yes.

Deputy K.F. Morel:

It is interesting because one group of businesses that have contacted us and corresponded with us come, many of them, from the construction sector. You have there possibly a small plumbing firm or something like this, where you have 2 or 3 highly skilled people. They are very concerned that if one of those 3 people heads off for 4 chunks of 13 weeks, that sort of thing, that they will not be able to find anyone in the meantime so it is going to stop them being able to take jobs on, it is going to stop them in many different areas. Do you think those concerns are realistic? Equally, is it a case

that you think any of these proposals could harm such small businesses to the point where they cannot continue their work?

Chief Executive Officer, Jersey Business:

Yes, it could in isolated cases. I think across the sector as a whole, no, it will not. I think in the medium term it will be a positive. The 3 chunks is something that I do feel may be a step too far at this stage until we have understood the potential upside, the need for the greater flexibility and what it gives us, because I am hearing a lot of noise the other side. That says to me that all the good of this ...

Deputy S.M. Wickenden:

There will be a cost.

Chief Executive Officer, Jersey Business:

Yes. As I say, I do not think there necessarily will be in practice because I do not think it will be taken to that extent. You said in terms of people not being able to afford to do that in terms of how to break it up, but if I am running a small business and I had to think of the risks I am running, you think of those risk scenarios and that then is in your head in terms of your planning as to what you are having to do. You have to have: "What happens if it happens, what do I do?" You are making contingencies. A good business leader will start to do those things. That is my concern and I think that is probably a negative when that is not what it is intended to do. I think it is intended to give flexibility for certain situations, which you probably could deal with anyway, without necessarily legislation saying you absolutely have a legal right.

Chief Executive Officer, Jersey Retail Association:

You still have a right to do that as part of flexible working.

Chief Executive Officer, Jersey Business:

You have a right to ask.

Chief Executive Officer, Jersey Retail Association:

Yes, it is not forcible, but I think that is being utilised and this might stifle that conversation and that flexible discussion, which is accessible to everybody, not just parental and maternity. It definitely would have an impact on existing employers if we are talking about short chunks of leave. I do not know if that offset really gives a conclusion of what was intended. Is that fair? The balance, again, I do not think is quite right. It would be good to wait and see how many paternity leaves are taken in that year and get some real data and then think of a good model to support that if we want that to be increased.

Deputy K.F. Morel:

One last thing. You mentioned intended consequences and unintended consequences. It has been mentioned that employers might start trying to employ older people as opposed to younger people because older people are less likely to have families. Do you think that is a realistic unintended consequence of this law? I appreciate that it is also against discrimination laws potentially, but it has been suggested from employers that that might be one thing that happens.

Chief Executive Officer, Jersey Retail Association:

I think if you are a smaller employer and you are faced with 2 good candidates, one which you know you could foresee the cost and one that you would not, then you are going to make a choice costs-based. In real-life circumstances it is rare that you would be doing it in that way but it can.

Chief Executive Officer, Jersey Business:

If it is in an employer's mind that there is a cost and a risk, it is there. We are kidding ourselves if we think it will not have some, but I would say the vast majority of employers think through that, but it will have an impact. If it does not, then you should not do it, would be my comment.

Chief Executive Officer, Jersey Retail Association:

No, definitely not.

Deputy K.F. Morel:

Thank you so much.

Deputy S.M. Wickenden:

It has been very helpful.

Deputy K.F. Morel:

Thank you very much indeed.

[10:28]