

Social Affairs Scrutiny Panel

GP Out of Hours Review

FRIDAY, 29th SEPTEMBER 2006

Panel:

Deputy F.J. Hill, B.E.M., of St. Martin (Chairman)
Deputy D.W. Mezbourian of St. Lawrence
Deputy A.E. Pryke of Trinity

Witnesses:

Mr. W. Brown (Executive Director of JCRA)
Mr. C. Webb (Legal Adviser to JCRA)

Present:

Mr. W. Millow (Scrutiny Officer)

(Please note: All witnesses and Panel Members were given the opportunity to comment upon the accuracy of the transcript. Whilst the transcript remains a verbatim account of proceedings, suggested points of clarification may have been included as footnotes to the main text.)

Deputy F.J. Hill, B.E.M., of St. Martin:

It is 9.30 a.m. and I will say good morning to you. I am Deputy Bob Hill, the Chairman of the Social Affairs Scrutiny Panel. To my right are 2 members who will introduce themselves. I know you know them anyway but for a matter of record, please.

Deputy D.W. Mezbourian of St. Lawrence:

Good morning, I am Deputy Deidre Mezbourian of St. Lawrence.

Deputy A.E. Pryke of Trinity:

Good morning, Anne Pryke, Deputy of Trinity.

Mr. W. Millow (Scrutiny Officer):

William Millow, Scrutiny Officer.

The Deputy of St. Martin:

Could you please identify yourselves as well?

Mr. W. Brown (Executive Director of JCRA):

Yes, I am Bill Brown, the Executive Director of the JCRA (Jersey Competition Regulatory Authority).

Mr. C. Webb (Legal Adviser to the JCRA):

I am Charles Webb, the Legal Adviser to the JCRA.

The Deputy of St. Martin:

Thank you very much. Again, thank you for coming. You will have already received your letter informing you of the protocols as far as our work, I presume.

Mr. W. Brown:

Yes, I have received that.

The Deputy of St. Martin:

All right, so we can kick off and if I could ask you always to keep your voices up because Jane over there is taking a recording. Could I refer you to paragraph 1 of your report that you have published, C015/06, that we have got a copy of? In paragraph 1 it indicated you received an application for exemption from the Competition Law on 1st March 2006. Can I ask, why did you undertake the review?

Mr. W. Brown:

Well, under Article 8 of the Competition Law any arrangement between one or more undertakings which appreciably hinders competition is prohibited unless it is exempted under Article 9 of the Competition Law. The usual process is that if parties have an arrangement, an actual arrangement or a prospective arrangement, and believe that there may be possible issues under the Competition Law then they will come to the JCRA with an application for exemption. In that application they will have to demonstrate that although there may be restrictions of competition in the arrangement, the arrangement satisfies the criteria for exemption which are listed in Article 9 of the Competition Law.

The Deputy of St. Martin:

With that was the JCRA aware of a plan to introduce a co-operative service before the application was received? If so, what consultation took place between the co-op and yourselves?

Mr. W. Brown:

Could I ask Charles to answer that question since he was more closely involved in that stage.

Mr. C. Webb:

Yes, I recall we were first made aware of it via a press report that appeared in the *Jersey Evening Post*, I believe probably in late 2005. That led to a meeting that we had with representatives of Health and Social Services. I also believe that was in late 2005 or early 2006. That was with Mike Pollard and Mark Littler of HSS (Health and Social Services). At that meeting we discussed the proposal, the

Competition Law and the potential need for an exemption. After the meeting I believe we sent them a letter basically summarising the meeting and summarising the law, then that led to the application that we received on 1st March.

The Deputy of Trinity:

If I am hearing what you said correctly, it was due to a *JEP (Jersey Evening Post)* report that you realised that the out of hours was going to take place?

Mr. C. Webb:

That is what I recall, yes.

The Deputy of St. Martin:

Can I just clarify, did you contact them or did they contact you?

Mr. C. Webb:

I believe initially we contacted them.

The Deputy of St. Martin:

Probably because they were not aware of the need to contact you?

Mr. C. Webb:

Probably, yes. As I recall it was after we had seen the press report that we contacted them.

Mr. W. Brown:

I think just to give you some background on the way the JCRA normally approaches things, if we read anything in the newspapers or hear of anything which we think may give rise to implications under the Competition Law we often have an informal discussion. That has happened in a number of cases with a number of different businesses. That is our normal process. Normally, people would bring things to us but we are perfectly used to bringing things to the attention of ...

The Deputy of St. Martin:

Probably because you are new and people are probably not aware of the need to contact you on it. So, what you do is a matter of good practice. If you pick something up, you have not heard of it, you will contact them.

Mr. W. Brown:

Yes.

The Deputy of Trinity:

Were they surprised by your contact?

Mr. W. Brown:

I was not party to the contact but ...

Mr. C. Webb:

I do not think so, in particular. I do not think they were unduly surprised.

Deputy D.W. Mezbourian:

Were they aware that the Competition Law would apply to the JDOC (Jersey Doctors on Call)?

Mr. C. Webb:

I do not recall from that initial meeting if they came in knowing, if they were aware. But we definitely covered it in the initial meeting.

The Deputy of St. Martin:

Deidre, have you got anything to add before we move on?

Deputy D.W. Mezbourian:

No, I think that covers what we hoped to hear. Thank you. I think I have another question, though. In paragraph 3 of your report it states that you were informed on 5th April that Health and Social Services had decided to introduce the JDOC, with effect from 3rd April, on a trial basis. Is it normal for you to be contacted after the introduction of a service?

Mr. W. Brown:

It does happen. Parties will perhaps often come to us before they complete the arrangement but it is perfectly open for parties to come to us after the arrangement has been entered into because they can still benefit from an exemption, even if the arrangement has already been entered into.

Deputy D.W. Mezbourian:

Had they not advised you that they had introduced the service, what would your procedure have been had you become aware somewhat after the event that it had been introduced?

Mr. W. Brown:

I think we would have to take a view as to whether we should proactively investigate the matter. That would be where our prioritisation would come in. Obviously we are a small organisation, we have limited resources and we have to prioritise those matters that we want to investigate according to our various prioritisation criteria, such as the perceived importance to the local economy, et cetera. So, quite how we would have acted in that hypothetical situation, I am not sure. It would depend on the

circumstances at the time.

Deputy D.W. Mezbourian:

Then it may be fair to say that had they not contacted you and you had a heavy workload at the time that you may not have carried out the review that you have carried out?

Mr. W. Brown:

The review that we have carried out was the result of JDOC following the process under the law for exemption, which involves an application. That is what triggered our investigation in this case.

Deputy D.W. Mezbourian:

The fact that they applied for exemption rather than the fact that they notified you that the service had started?

Mr. W. Brown:

Yes, exactly.

Deputy D.W. Mezbourian:

I understand, thank you.

The Deputy of St. Martin:

They had already made the application on 1st March so you had a month's notice that they were going to start, and it was then, during the course of that month - you advertised it on 14th March and then the thing was under way at the beginning of April - so it was then you decided to look into it. Is that normal practice or it depends on the type of application? You do not do an inquiry or review of every application that is made of you?

Mr. W. Brown:

Yes. Usually when parties apply for an exemption, and we have not had many since the law came into force, we so far have dealt with the application. We would try to do so because parties come to us for exemption because they want clarity as to the application of the law on their activity, and we will try our utmost to deal with the application.

The Deputy of St. Martin:

So, from what you said initially, you have looked at it because of the exemption rather than for normal practice. If there had not been an exemption you probably would not have needed to look into it?

Mr. W. Brown:

Possibly. We may or may not have inquired into it in the absence of an exemption application.

Deputy D.W. Mezbourian:

So, just going back to the initial application for exemption, following which you advertised in the *Jersey Gazette* for interested parties to submit comments, I understand from your report that you received 4 representations following the advert. Are 4 representations, or being contacted by 4 parties, normal for one of your reviews? Would that be an average response?

Mr. W. Brown:

Yes, well this is the first case of an application for exemption under the Competition Law **[Laughter]** so it is difficult to say whether this would be a normal response or not. I think it is difficult to answer that one. Some arrangements may create more interest and provoke more response than other matters.

Deputy D.W. Mezbourian:

I think that is a fair comment really. **[Laughter]**

The Deputy of Trinity:

Just going on from that, in paragraph 4 you say: "Investigation has involved co-operation of JDOC, its members, Health and Social Services, consumers and third parties." I just wondered who were the third parties?

Mr. W. Brown:

I am sorry, which paragraph were you reading from?

The Deputy of Trinity:

Paragraph 4.

Mr. C. Webb:

I can answer that if you like.

Mr. W. Brown:

Yes, again, I think Charles is probably the best --

Mr. C. Webb:

Yes, we talked to GPs (General Practitioners) who had at that time chosen to remain outside of the co-operative.

The Deputy of Trinity:

Were you able to talk to all the GPs that were hoping to keep outside of the co-operative?

Mr. C. Webb:

No, we did not talk to all of them.

The Deputy of Trinity:

Did you approach them or did they --

Mr. C. Webb:

We approached them.

Deputy D.W. Mezbourian:

Do you think you spoke to a fair representation of those GPs that were outside the co-op?

Mr. C. Webb:

I think so.

Deputy D.W. Mezbourian:

How would you define a fair proportion?

Mr. C. Webb:

Well, in response to the press reports about the co-operative there were subsequently 2 letters written in the *JEP* by GPs remaining outside the co-operative and we spoke with the GPs who had written those letters. I recall one of them was from a rather large practice that was remaining outside the co-op and the other one was from a relatively small practice remaining outside the co-op.

Deputy D.W. Mezbourian:

So in that case you regarded that as having been a good balance because it was a large practice and a small practice?

Mr. C. Webb:

Yes.

The Deputy of St. Martin:

If I could just clarify, were both with opposing views to it or were they supportive of it?

Mr. C. Webb:

Both basically reaffirmed what they said in the *JEP* which was, at the time, they were opposed not to the GP co-op in general but they were opposed to their particular practices joining the GP co-op at that time.

The Deputy of Trinity:

As I understand it, one of the bigger practices did a patient survey. Did those survey results form part of your evidence that you looked at?

Mr. C. Webb:

We asked about the patient survey and that practice was not able to provide us with any more detailed information than what was already printed in the *JEP*.

The Deputy of Trinity:

All right, so it did not form part of your ...?

Mr. C. Webb:

We considered what was in the *JEP* as part of our overall analysis but we did not get any additional information or evidence from that patient survey.

The Deputy of Trinity:

If we can just jump ahead to paragraph 30 - it is a big jump so we may come back again - you state that the Health and Social Services Service Level Agreement provides for the adoption of clinical governance and best practice standards which were not previously required in Jersey. So, with that in mind, how significant was the existence of clinical governance in the JCRA assessment of the improvement to the services? Did you see that as an important issue?

Mr. C. Webb:

I would say it was an important issue because under criteria 1, which is the first criteria of the exemption, it basically says there has to be efficiencies created by the proposal. I believe we quote in here a European precedent, which we can take notice of under Article 60 of the Competition Law, which basically says: "Efficiencies may be both quantitative in terms of lower prices but also qualitative in terms of better quality of service." While the ultimate success of the quality standards is really something to be seen, by the fact that through the HSSSLA (Health and Social Services Service Level Agreement) they were intending to implement qualitative standards was a factor we saw as providing an efficiency, albeit benefit, arising from the co-operative. Therefore, the existence of that benefit helped satisfy us that the first criterion was met here. It was not the only factor that we saw as being the first criteria but it was one of the factors.

Mr. W. Brown:

I think the primary factor was the fact that this was a new service which had not been previously made available, this surgery.

The Deputy of St. Martin:

I am just wondering if we can tie question 7 in with it and just ask - it really refers to paragraphs 27, 28 and 29, around that area - if you could identify some potential benefit to patients. You have said in a public statement: "Participating GPs have stated that JDOC is intended to produce the following efficiencies." How were you able to measure those?

Mr. C. Webb:

At this point in the analysis^[1]: "To improve patient access to after hours' service, to improve the quality of after hours' service, to maximise the use and resource of benefits, to improve the liaison coordination of GPs and to ensure that no increase costs to patients arise." Well, let us take the separate one, the increased costs, separately. As we said at the introduction to paragraph 29, and we state in footnote 14, this list comes essentially out of a document that the GPs gave us. I understand this document was, if you will, the business plan or the strategy plan of this co-operative. At this point in the analysis, as we say in paragraph 30, we recognise these factors have the potential to improve after hours' medical service in Jersey but granted that this exemption was only time limited to 31st March 2007. We see that in paragraph 31 that we will endeavour to monitor JDOC activity and patient reactions to it to verify whether these potential efficiencies are being realised. So, I think it is fair to say, at this point, that by the time we had reached this decision via communications with JDOC and HSS (as I said, footnote 14 references that these potential efficiencies came right out of JDOC's business plan) indications from JDOC and HSS were that patient satisfaction levels with the co-operative were very good. I think a fair summary of paragraphs 29, 30 and 31 is we recognise the potential of these efficiencies and we give them the benefit of the doubt that they can be achievable and we will continue to monitor the situation. I kept out the last bullet point at 29, the increased cost to patients arising from this service; later on, as I am sure you know, we go into a more detailed analysis of costs, which I am sure we will get to later.

Deputy D.W. Mezbourian:

How would you intend to monitor these potential improvements?

The Deputy of St. Martin:

Is it your job or will HSS do it for you?

Deputy D.W. Mezbourian:

Because you do state in paragraph 31 that you will endeavour to monitor the activity.

Mr. W. Brown:

Yes, that will be through a number of mechanisms. Obviously we will be monitoring the press carefully to see if there are any comments and experiences there. I think we are at the end, or very near the end, of the trial period so I think HSS itself will be reviewing the experience with the co-operative and I would suggest that we would contact them to have a discussion about that.

Mr. C. Webb:

I agree with all of that. There is also, if I can put forward, under paragraph 71, which lays out the conditions for the exemption, condition 4 which is basically a quarterly reporting obligation by JDOC where they have to submit to us copies of any patient complaints, compliments, surveys, et cetera, that they take, and in addition co-operate with the JCRA to implement any patient satisfaction surveys that we would wish to undertake. So, in addition to what Bill said, there is a specific provision to cover that.

The Deputy of Trinity:

Have you had your first quarter's response?

Mr. C. Webb:

No. Well, the decision was put out in August so I would expect the first quarter's response would be at the end of the fourth quarter 2006. We were provided with patient satisfaction data from JDOC during this assessment but then the first reporting due date under that paragraph I just mentioned will be the end of this year.

The Deputy of Trinity:

So it goes by your date rather than the date they started?

Mr. C. Webb:

Yes.

The Deputy of St. Martin:

When you ask the questions do you insist they have the evidence to back up the statements they are making? You said earlier one way of monitoring it was by having a look at the leaflets or the documentation from satisfied customers. Will that be your means of assessing what is being said as an accurate summary of the monitoring system? It is just knowing how it is going to be done.

Mr. C. Webb:

I think that is one component of it plus what Bill said earlier, using other sources of information that we can. Principally the review that HSS is planning to take. We hope that would form part of the analysis as well.

Deputy D.W. Mezbourian:

How do you assess what they tell you? When Health and Social Services or the GPs give you information they are obviously speaking for themselves and for the service. How do you assess objectively what they are telling you?

Mr. C. Webb:

Probably the most important part of the analysis from our perspective, under the Competition Law lens, was looking at whether this result in a net increase or decrease in cost to consumers? Competition Law is about protection of competition and ultimately is protection of consumers in terms of price and quality. So, for instance, JDOC told us that this is going to lead to a decrease in prices for Jersey consumers. The way we objectively tested that, as you see in the decision later, was we collected JDOC activity data and did a before and after analysis based on the fee structure that is listed before and listed after. Does the data support it? The conclusions of the report are there. For a quantitative factor like that it is easier to do an objective analysis because you have the data. Now, for qualitative benefits that is a little bit fuzzier because that is almost non objective per se. So I think the best you can do there is just monitor patient satisfaction to see if this service, in the eyes of patients, is working.

Deputy D.W. Mezbourian:

Would you consider placing another advert nearer the end of the first exemption period to ask for comments from the general public?

Mr. W. Brown:

I think if HSS and JDOC decide that the trial period has been successful and they wish to continue it beyond the period of the current exemption then they would have to come us and make a fresh application for exemption and provide the supporting data in the same way as they have provided supporting evidence to justify this exemption.

The Deputy of Trinity:

Did you have any difficulty getting all the data that you required?

Mr. W. Brown:

I do not believe so. I will just check.

Mr. C. Webb:

Response times were sometimes slow but, at the end of the day, we got all the data we needed. If I can just add to Bill's last answer, this current exemption ends on 31st March 2007. If they were to apply for another exemption under the Competition Law we would have to go out to public consultation on that.

Deputy D.W. Mezbourian:

So the whole process is followed again?

Mr. C. Webb:

Basically.

Deputy D.W. Mezbourian:

Is there a time constraint on the period of exemption that may be given?

Mr. W. Brown:

I think we have to take a view based on what is in the new application for exemption as to what is appropriate. Also whether the parties apply for an exemption for a specific period or whether they apply for an indefinite exemption, that remains to be seen.

The Deputy of St. Martin:

When you issue a licence are they normally for a 3-year period, a 5-year period or depending on the situation? In this particular case, where you have an exemption, is the criteria laid down as to how long an exemption can be or is it purely as you feel fit?

Mr. W. Brown:

It depends on the facts of the particular case. The rationale behind the March expiry date of this exemption was that this was a trial period which expired at the end of September. We believed it was appropriate to give JDOC a kind of transitional period in case it took some time to put an alternative arrangement in place in the event that they decided that they did not want to continue with this scheme. We will see what any fresh application for exemption contains in terms of the applied duration and take a view at that time based on the circumstances.

The Deputy of Trinity:

If, at the end of the review period, they felt that they needed to modify the service in whatever way, would they have to come back to you or would that be taken into account at the end of the next March?

Mr. W. Brown:

I think if there is any change in the arrangements which have been exempted, any material change, we would want to know about that during the period of the current exemption.

The Deputy of Trinity:

Such as?

Mr. W. Brown:

Well, an example is that at the moment we have received an application, as I think you know, for the admission of new members to the co-operative. The exemption decision at the moment was based on the fact that the GPs who were members of it accounted for something like 71 per cent of the total GPs in Jersey. We wanted to have a control mechanism whereby if that proportion was to increase we could check to see whether we were still happy that the exemption criteria was satisfied. Because of that condition in the exemption decision we have now received an application for the admission of new

members to the co-operative, which we are currently in the process of assessing.

The Deputy of St. Martin:

We will come back to that later. Would it be fair to say from the practice that has been operating in the last 6 months you are reasonably content with the way it has been operating and that really is the main reason why you gave it another 6 months to trial it?

Mr. W. Brown:

We have no reason to suspect that the basis on which the exemption was granted is not still valid.

The Deputy of Trinity:

Just touching on the subject about the consultation, what are your views on the consultation that Health and Social Services undertook with GPs, patients and public?

Mr. C. Webb:

I do not know if we have any express views, although I do recall that the period between the close of the consultation and the implementation of the programme was very, very short, if not basically all happening around the same day, which I think was a little curious. HSS supplied us copies of what I understand were all the responses they received to the consultation and their responses thereto. But other than those views I think they had no particular comments on it.

The Deputy of St. Martin:

Maybe we could look to paragraph 34 and talk about some of the financial arrangements. In particular if we could talk about the £40 cost for a 20-minute consultation. It is £40 irrespective of the length of the consultation? That is how it works?

Mr. C. Webb:

That is my understanding, yes.

The Deputy of St. Martin:

Would that be the normal practice everywhere else or you do not have any other examples to work on? Working on a normal assumption you would sit there for 20 minutes just to ensure you get your £40 worth? There is no stipulation. Or worse still if you only get 10 minutes worth you will not get £20 back?

Mr. C. Webb:

No, you do not. That is a flat fee, as I understand it.

The Deputy of St. Martin:

We thought that is how it would work.

Deputy D.W. Mezbourian:

Can I ask you about paragraph 35 and the fact that the JDOC's fees were increased pretty quickly after the introduction of the service? You will note that they were approximately 14 and 6 per cent respectively for evening visits and night time visits. Did you ask for an explanation as to why the fees were increased so quickly?

Mr. C. Webb:

Yes, we did. The response from JDOC was that the increase was based on RPI (Retail Price Index) for the period since the fees were initially calculated by HSS and JDOC to when they were implemented. That is what I understand.

The Deputy of St. Martin:

Are you aware that within the States network we try to work on 2½ per cent increases? We just had one look this week at licensing fees for a licence trade. That has gone up by 2½ per cent. There is a little bit of a States input here. Do you know if any consultation was made with the States? Because if you are trying to keep the inflation I was just wondering has cost of living gone up 14 per cent in the time from when they started out?

Mr. W. Brown:

I think the relevant consideration for us was to assess whether these fee levels were cost justified. We explained in the exemption decision that we were satisfied that they were cost justified but we have also put in a condition, as you see, to monitor any future changes in the fees.

Mr. C. Webb:

If I could just add in response to my last comment, I do not really recall this time, but the JDOC may have argued that the fee increase was based on an inflationary measure, that it may have been medical inflation and not RPI that they gave to us. I do not recall at this time but I think JDOC would know what it is based on.

The Deputy of Trinity:

Were you surprised about the potential to increase?

Mr. C. Webb:

The public consultation was on the lower fees but then, as you mentioned, the higher fees came in immediately after the programme was introduced. I think we were surprised at the lack of consultation on the higher fees but, as Bill said, at the end of the day, for our analysis, we needed to decide if the fees as implemented were cost justified, which we did.

Deputy D.W. Mezbourian:

Did you receive any comments from the public about the immediate increase in fees?

Mr. C. Webb:

No.

The Deputy of St. Martin:

Do you know how many patients are regularly treated by them? Say, for instance, any one of us in this room could call for a doctor at 2.00 a.m. and if we were told the fee was £100, or whatever it is going to be, I would not know that that had increased. It is difficult to monitor, is it not, to show how any member of the public would know that there has been a 14 per cent increase? It is almost as if: "That is the fee, take it or lump it."

Mr. C. Webb:

Yes.

The Deputy of St. Martin:

Is that really a fair way for the public to be treated? We are trying to keep inflation down and then we are looking at 14 per cent. It does seem quite a lot of money to --

Mr. W. Brown:

It is not our job to think what is fair and what is not fair. Our job is to look at the economics of this and whether the criteria for exemption are satisfied.

The Deputy of St. Martin:

Can I jump in there and ask question 14? You talk about being reasonably costs justified. How do you assess this reasonably? How can you justify anything?

Mr. C. Webb:

We had done an analysis based on data provided by JDOC and verified by third party sources where available. JDOC gave us a breakdown of the costs. It is in paragraph 40, first bullet point, and this is based on the £40 for the basic consultation. Based on cost of consumables, overheads, insurance and GP compensation that that £40 was cost justified and we never had a problem with the £40 fee anyway because it was substantially lower than pre-existing fees for after hours' services. Then if we go on and look at the last 2 bullet points, to get from £40 to £80 it appeared to us reasonably cost justified based on the additional expense for transportation and the extra time needed for a GP to set up. We were informed by JDOC that it was 20 minutes for a consultation where a home visit can take anywhere up close to an hour with transportation and setting up, et cetera. In any profession like a doctor or lawyer

your time is valued and the more time you charge the higher bill you get. Finally the £100 fee in bullet point 3, we took into account the transportation costs which are potentially the same as the £80 but we also took into account that there is customarily in many professions a premium for working, say, in the wee hours of the morning, 2.00 a.m. to 4.00 a.m. in the morning. The increase from £80 to £100, at least in our judgment, did not seem like an unreasonable amount to compensate for working at such a late hour.

The Deputy of Trinity:

Just going back to your first bullet point there, I think this is in regard to the surgery at the hospital based on consumables, overheads, insurance and GP compensation. What is GP compensation for the surgery?

Mr. C. Webb:

I do not recall a figure but obviously the GPs do not provide the service for free so it was built into the £40. It was not all just costs of: "Here is a syringe, there is a thermometer." There was some built in there for compensating the professional for his or her time providing the service.

The Deputy of Trinity:

So you are saying the GP compensation is for their time? That is what you mean by GP compensation?

Mr. C. Webb:

Yes.

The Deputy of St. Martin:

But the general public may say that they are using a public building to carry out that consultation, should that not be taken into consideration? Should Joe Public not get some of the benefit of the Joe Public provided facilities for that doctor to operate? I suppose the doctor's expenses would not be the same if he were operating from his own practice where he would have to meet his overheads. Was any consideration given to that?

Mr. C. Webb:

I think that is more aptly asked to JDOC but the response would be, in my mind, if you are looking for public benefit, if you do a surgery in a GP's own practice you are going to have greater overhead expenses and the price for the consultation may be or may not be greater than the £40 in your example. So a response that could be given to that question is that the actual fee of £40, which is significantly lower than pre-existing fees, is the benefit.

The Deputy of St. Martin:

Do you know what the pre-existing fee is at the moment? Most of us here, I think, are fortunately fairly

healthy people so we do not have occasion to visit the doctor very much, but possibly if I wanted a doctor I would rather go if I am in a fit position because I know if he comes out to me it is going to cost me quite a lot more. But would it be fair to say that under the present situation very few surgeries would be open after hours anyway so the Joe Public would only have the opportunity of having to be visited by the doctor rather than the doctor saying: "Come to my house and I will see you." Is that a fairer way of putting it?

Mr. C. Webb:

Yes.

Mr. W. Brown:

I think the figures are quite interesting as well when you look at the table which --

The Deputy of Trinity:

We were going to come on to that.

The Deputy of St. Martin:

If you would like to cover that now?

The Deputy of Trinity:

Yes. If we do look at the table on page 11, between the costs of the after hours' service and the equivalent costs to the system previously in place, what account in your figures did you take for patients who are not covered by the co-operative?

Mr. C. Webb:

I think a fair response is none, because the 678 that appears in "Number of patients" after JDOC, that is an actual number from JDOC activity data from, I believe, April and May of 2006. Of those 678 patients, 37.3 of them went to the GP surgery; the remainder were visited by house call, either late night or evening. So, the hypothesis here was JDOC has served those 678. What would have been the cost to those 678 patients if JDOC had not existed? Assume a constant rate of demand for after hours GP service, which we think is a sound assumption, if those 678 people had to get that service without JDOC how much would it cost in total? Now, it does not take into account there were JDOC patients, in addition to the 678 who were not seen by JDOC, who were still seen by a clinic that had stayed outside the practice, but this data did not account for that and I do not think it really needed to account for that, frankly, to make that comparison.

The Deputy of St. Martin:

Would it be fair to say there was no way of knowing how many people outside of JDOC were seen?

Mr. C. Webb:

No. I believe you could ask each individual practice that stayed outside how many out of hours patients have you seen in these 2 months but I am not sure what that would tell you in this before and after expenditure analysis. Assuming that there was, for example, Charles Webb GP Practice and I did not join JDOC, if my consultation price stayed the same before and after the introduction of JDOC there would have been no change to the cost of the patient after JDOC.

The Deputy of St. Martin:

Except the co-op are claiming that there is a £7,000 benefit to the public.

Mr. C. Webb:

Well, the £7,600 benefit that we cite in paragraph 39, that is the result of our analysis. It is basically just subtracting £45,350 by £53,000 and averaging it out. The 678 people, we know that in April and May 2006 they were seen by JDOC, either at the clinic or by a home visit. If JDOC did not exist and they had to go back basically to the old system, seeing their GP in a house call, how much would that have cost them? That is the point of the analysis here.

The Deputy of St. Martin:

Do you have any figures at all to know, before JDOC, what proportion of visits were made to the surgery between 6.00 p.m. and 11 p.m. and were made by doctors visiting the home?

Mr. C. Webb:

Well, there were very few, if any, surgeries open that late prior to JDOC's introduction. I believe Cleveland may have been open to 6.00 p.m. or 8.00 p.m. in the evening but they were not open until 11.00 p.m.

The Deputy of St. Martin:

So you have nothing to compare?

Mr. C. Webb:

Yes, nothing to compare because that service largely was not available.

The Deputy of Trinity:

In your figures here, did you take any account of the expenditure that Health and Social Services had put into the JDOC?

Mr. C. Webb:

No. Just how much was this costing patients. Out of pocket expense to be fair.

The Deputy of Trinity:

Why did you not put Health and Social Services funding into the table?

Mr. C. Webb:

I will take that, Bill. Essentially competition law in general is better addressed at what is the consumer's out of pocket expense and, as a result of the proposal, is the consumer's out of pocket expense going up or down? That is what really competition law is designed to focus on and designed to protect. When you get a question of: "Is the States spending taxpayers' funds wisely?" that is more of a policy call. That is less apt to a competition law analysis.

Mr. W. Brown:

I would just add that the only criteria that we can take into account in our exemption analysis of the criteria are listed in Article 9. One of which is do consumers get a fair share of the benefits from the improvement and efficiency? In assessing what fair share is we look primarily at what the cost to the consumer is.

The Deputy of Trinity:

In one of our answers from Mark Littler, when he came to the panel, the joint working party believe that a number of phone calls from patients to GPs would convert to home visits and a figure of 10 to 25 per cent is possible. What consideration was given to this advice when you undertook this expenditure analysis?

Mr. C. Webb:

I am not sure this will answer your question, Deputy Pryke, but in general we put the free phone advice to one side because I know JDOC in its documents talks about free phone advice and they list that as one of the benefits of the programme, but it was our understanding that a lot of GPs already offered free phone advice after hours for people that called in. So we really did not focus on the free phone advice all that much because we did not think it was a new benefit created from the programme. Just thinking about it out loud, it would be difficult to assess before and after what is the percentage of free phone advice turning into an actual GP visit. Is that any more or less than it was pre or after the introduction of JDOC? We did not assess that.

Deputy D.W. Mezbourian:

Can I come back to paragraph 39, please? Section 39. The first line of that section which refers to consumers in Jersey, euphemistically consumers in Jersey, saved over £7,600. How do you define "consumers in Jersey" in this instance?

Mr. C. Webb:

There is no set definition given in the law, or in this decision. For the purposes of paragraph 39

consumers in Jersey I think equals the 678 people who visited the JDOC between April and May 2006.

Deputy D.W. Mezbourian:

So what is being said there, then, is that the benefits are only to those covered by the JDOC service?

Mr. C. Webb:

The point of this paragraph is the financial benefit of the estimated £7,600 in saving, yes, was only realised, viewed holistically again, by the 678 people who were part of the data analysis.

The Deputy of St. Martin:

Are you okay?

Deputy D.W. Mezbourian:

I think that is that one.

The Deputy of St. Martin:

Okay, if I could just move on to 15. One of the benefits we were told by some of the doctors we saw was that they have a discretionary fee. If there is a Rolls Royce sitting outside then they consider their fee to be different from someone who had a car of a lesser vintage or value. One of the downsides could be argued that the discretionary fee goes out the window because there are fixed fees. Was any consideration taken of this when you looked at the area of fees? Or were you aware of discretionary fees by doctors?

Mr. W. Brown:

I am not sure if we were specifically aware of it, Charles can perhaps add to this, but certainly we were concerned that if there were going to be fees on top of the ones which are mentioned here that we would want some control over that. That is why there is a condition in the exemption that says that our consent will be needed if any additional fees are to be added to the ones here.

The Deputy of St. Martin:

I think we were looking at additional fees as if you were going to the doctor or he comes to you and he or she says: "Okay, I think you need prescriptions, that is part of the fee." However, if he or she does some blood tests I would consider that to be an additional fee. But the area I was talking about was a discretionary fee. A doctor said that although a general call out fee was £60 or £80 a night sometimes, depending on who I was seeing, I might say instead of charging £80 I would only charge them £40 because I felt that was as much as they could afford. Have you taken into consideration the cost to that aspect?

Mr. C. Webb:

We were informed of that during the investigation by, I think, both GPs in and out of the co-op, but the problem is that it was just so hard to measure how often does that happen. Just looking at this from a business standpoint, how often do businesses leave money on the table? We were aware of it but I think it was difficult and impossible to measure how much does that happen in practice.

The Deputy of St. Martin:

You are probably right, it is difficult. That was a point that was made and I can certainly remember because it was a doctor I happen to know that did raise that issue of discretionary fees, that this would do away with discretionary fees. However, I am told that - and correct me if I am wrong - at the end of the day the JDOC are not necessarily responsible for taking the fee off the patient, it is the individual practices which claim the fee. So if they wish to bear some of the brunt of the fee that is charged it is down to them.

Mr. C. Webb:

Yes, that is true.

The Deputy of St. Martin:

What control over fees does the JCRA have?

Mr. W. Brown:

The conditions of the exemption.

The Deputy of St. Martin:

That will be down to your conditions and they will remain until the end of the next 6 months period?

Mr. W. Brown:

Yes. That is right, and if JDOC come back with a fuller application for exemption to take them beyond 31st March 2007 we will decide at that time whether it is appropriate to continue to have conditions like this in the exemption, if we grant one.

The Deputy of St. Martin:

So, again, if they do need to raise their fees they have to be justified to show why you should give consideration to raising them?

Mr. W. Brown:

Yes.

The Deputy of Trinity:

Could they come back before the end of next March and ask you for that?

Mr. W. Brown:

Yes, that is accommodated in the decision. If they want to increase their fees during that period for whatever reason then they will have to come back to us and ask for our approval. The increases would have to be cost justified.

The Deputy of Trinity:

Would you go out to consultation if they did that?

Mr. W. Brown:

We would take a view at the time. Personally, at this stage, I think that is unlikely because we are probably best placed to assess whether the information is appropriate cost justification. You know, there may also be a confidentiality issue there.

The Deputy of St. Martin:

One other question, why is there a difference between paying the £80 between 6.00 p.m. and 11.00 p.m. and £100 between 11.00 p.m. and 8.00 a.m.? Is it just your bad luck if you happen to call a doctor out late it is going to cost you a bit more? Was any consideration given to the fact that you have a different fee structure for after hours?

Mr. C. Webb:

I think when we looked at the cost justification we took into consideration that for many professions there is a premium paid for, shall we say, working anti-social hours. Now, is getting a house call at midnight rather than 11.00 p.m. £20 more anti-social? It is difficult to say where the cut-off is but there has to be some cut-off somewhere and the fact that we thought there was a reasonable basis to charge more based on the anti-social hours that you have to provide the service.

Mr. W. Brown:

At the end of the day, just perhaps to simplify it, the question really in granting the exemption is are consumers better off with or without the co-operative, that is really what it boils down to.

Deputy D.W. Mezbourian:

It would appear, if we go back to paragraph 40, it is only 678 consumers who are better off based on the cost benefit analysis that you had carried out. So 678 consumers out of a population of 90,000 does not appear to be a large --

Mr. C. Webb:

Well, I think you have to look at that in perspective, though. The 678 are again the total number of people who needed a GP consultation after hours during April and May 2006. Now, of course, if you

extended this analysis out through August or September the 678 would be a lot bigger. You know, even though all of us in this room are reasonably healthy people, any of us may need at any time in the future an after hours GP visit and you could argue we have the potential to benefit from the lower fees, even though we have not benefited from it as yet. We have not needed the service yet.

Deputy D.W. Mezbourian:

So, it is the potential to benefit rather than those who have benefited during any given time?

Mr. C. Webb:

I think it represents both really. I think the actual benefits for the 678 show that there are potential benefits for the greater population of Jersey, if you will.

Deputy D.W. Mezbourian:

Could I refer to paragraph 66, if I may, in which you conclude that a significant amount of competition remains in the relevant market after the formation of JDOC, and you have previously quoted the figures of 71 per cent of GPs being in and 29 per cent being out. How do you define a significant amount of competition, is it based on a percentage?

Mr. W. Brown:

Not really. There is no hard and fast percentage, it really depends on the particular circumstances. What it really means is, is there enough residual competition in the market place such that if any patient, for whatever reason, did not like the after hours service that was provided through the co-operative they would have another alternative to choose from? Whether that level of competition is sufficient to act as a counter balance to the size of the co-operative.

Mr. C. Webb:

Yes, I think that is right.

Deputy D.W. Mezbourian:

So now that, we understand, other GPs or practices have expressed an interest in joining it is very likely that the 29 per cent would be somewhat reduced?

Mr. W. Brown:

Yes.

Deputy D.W. Mezbourian:

How do you make your decision as to whether there remains enough competition?

Mr. W. Brown:

As you know, we are in the course of assessing the application. We have not taken any decisions yet and we have gone out to consultation on what people think about the prospect of these additional doctors joining. We will have to look at the views that are received. We are also aware that there is an accident and emergency unit which may provide an alternative, at least to some extent, to JDOC, who will also have to look at the additional arguments which JDOC has made to justify the admission of these extra members. It is going to be a rounded analysis of whether the criteria for exemption are still satisfied with the admission of the new members.

Deputy D.W. Mezbourian:

So you would not make a decision beforehand as to what constitutes a significant amount of competition? You look at it holistically when you receive your submissions and you know how many extra GPs have applied?

Mr. W. Brown:

Yes. That is right.

The Deputy of Trinity:

How many GPs applied to join the co-operative?

Mr. W. Brown:

We are also assuming that those that are in the co-operative already are going to stay there. It is quite possible, who knows, that GPs may decide to leave. That is why we have to take a view based on the circumstances at the time.

Mr. C. Webb:

Just in answer to your question, in our public consultation we were informed - this is the consultation we put out on 18th September - that 23 additional GPs are proposing to join the co-operative.

The Deputy of Trinity:

So that leaves how many who are not?

Mr. C. Webb:

I do not have the figure in front of me but it means virtually all of Jersey's GPs will be members of the co-operative. I would guess it is over 90 per cent.

The Deputy of Trinity:

There are some GPs that do holistic care, do complimentary therapies, but they registered as GPs, that do not do out of hours or very little out of hours. Would that been taken into account of in the competition side of things?

Mr. C. Webb:

Again, this is without prejudice to the matter currently under review. Speaking hypothetically, whenever you are talking about a competitor in a market you need to assess whether the competitor provides services in the market or whether they do not. Take my profession, lawyers, for instance, there could be 1,000 in a given jurisdiction but 600 of them are basically retired and do not see clients any more. You need to have that kind of assessment.

The Deputy of Trinity:

That will be taken into account when you are looking into --

Mr. C. Webb:

Yes.

Deputy D.W. Mezbourian:

When would you conclude that a significant amount of competition did not remain in the market after the formation of JDOC?

Mr. W. Brown:

I think the test would be whether the market power, if you like, of the co-operative was so great that they had the power to increase prices without consumers having any alternative. At the moment there appears to be a number of constraints on that. One is the GPs who stay outside the co-operative; another is accident and emergency which is an alternative. We have got price controls in place, both in the decision and, as I understand it, there is some protection on price increases in the SLA with the HSS. So that is the key concern, to make sure that the co-operative cannot increase prices without any control.

Deputy D.W. Mezbourian:

What are your comments on the provision of the A and E (Accident and Emergency) service? Do you view that as a significant competitor?

Mr. C. Webb:

I think the only comment we can say right now is in paragraph 65 of the decision, where we note that the A and E is open to patients and that a significant portion of after hours visits to A and E are for non-emergency primary care. Given the current proposal in front of us now I think that is the only thing we can really say on that.

The Deputy of Trinity:

Would Health and Social Services agree with your findings that it is significant competition in its own right? I am just thinking if they would like A and E used as a GP surgery.

Mr. C. Webb:

I think you would have to ask HSS that question.

The Deputy of Trinity:

But would you take that into account, what their thoughts are, if they did not quite agree with you saying that it was part of the competition?

Mr. C. Webb:

Yes, we would take all views on A and E into account, the views of patients and the views of the people providing the service.

Deputy D.W. Mezbourian:

What would your options be should you decide that there was not enough competition in the market place?

Mr. W. Brown:

Hypothetically, the option would be, it seems to me, to either refuse the application for exemption or, if we felt there were other conditions which would provide a sufficient safeguard to increases in prices, to think about whether further conditions were appropriate. Those are the 2 obvious hypothetical safeguards I think we would look at.

Deputy D.W. Mezbourian:

For the record, if you were to not grant exemption what would the procedure be for Health and Social Services and JDOC?

Mr. W. Brown:

Again, this is purely hypothetically, but if an exemption is refused it means that there is a risk that the whole arrangement is void under Article 8 of the Competition Law. The implications of that would presumably be the disbandment of the scheme.

Mr. C. Webb:

If I can add just one thing right now, just for the record, the current consideration right now is we granted an exemption to JDOC as proposed to us as at 1st March 2006 and that exemption applies until 31st March 2007. The current proposal now is to change the agreement where you include the 4 new practices. If we were to say: "No, you cannot include the 4 new practices" and as a result of that decision JDOC did not include the 4 new practices, the exemption we granted for the original proposal would still be valid until it expires because the original proposal had not changed as they could not make it into the new agreement. If we said: "No" and they subsequently disregarded our decision and made

an agreement, then the consequence that Bill described would arise.

The Deputy of Trinity:

Regarding the new GPs that are looking to come into it, do you speak to them all that want to come in?

Mr. C. Webb:

We have spoken with them as part of our current consideration.

The Deputy of Trinity:

All of them?

Mr. C. Webb:

We have had communications with the practices.

The Deputy of Trinity:

Right.

The Deputy of St. Martin:

Could I ask are they coming in because of convenience or do you feel they are coming in because under pressure they cannot compete?

Mr. C. Webb:

At this point, I do not think we can answer that because it is still under consideration.

Mr. W. Brown:

It is certainly a question we will be addressing during this period.

Mr. C. Webb:

Yes.

The Deputy of Trinity:

Yes. Well, that was going to be my next point. That would be taken into consideration?

Mr. W. Brown:

Yes.

The Deputy of St. Martin:

Okay, I do not know if there is much else?

Deputy D.W. Mezbourian:

I have just got one more question. If you decided to not allow the 4 extra practices to come on board at this time as they have applied to do and Health and Social Services applied for exemption again, 31st March 2007, and asked at that time that the 4 practices be allowed to join, what considerations would make you change your decision were you to refuse them with this current application?

Mr. W. Brown:

I am not sure if this answers your question but I think if an application for exemption was made from 31st March with the addition of the new GPs, the same considerations would have to be addressed as we are addressing now in the context of this consultation. I am not sure if that answers your question?

Deputy D.W. Mezbourian:

I think it does. If refusal was given now, they possibly would try again to join and I wondered what consideration you would give?

Mr. W. Brown:

Yes, I think that can --

Deputy D.W. Mezbourian:

Whether you would give the same criteria?

Mr. W. Brown:

Yes. I mean, the question is, essentially, are the criteria for exemption satisfied? Whether we address that now in the current consultation or whether in the context of a new application for exemption, the same questions would arise.

Deputy D.W. Mezbourian:

That would be the same questions?

Mr. W. Brown:

Yes.

The Deputy of St. Martin:

Could I just clarify a situation? Who says they can come in and who says they cannot? JDOC? Because we have reached the cut-out point, is it you that says they can come or JCRA says they can come into the JDOC? Is it JDOC makes the decision?

Mr. W. Brown:

I would suspect it is probably both under the terms of the JDOC arrangements.

Deputy D.W. Mezbourian:

Yes, they have to have your permission, do they not? Yes.

Mr. W. Brown:

Their permission would be needed. But also, if you like, in the Competition Law sense, as the condition in the exemption states, JDOC itself would have to come to us for approval to decide whether to -- before they could decide to admit the new members.

The Deputy of St. Martin:

The question is if indeed JDOC said: "Look, these did not come in at the time; we do not want them in now", where would you be? What would the situation be?

Mr. C. Webb:

Is the hypothetical that if there is a GP that wants to join JDOC but JDOC says: "No"?

The Deputy of St. Martin:

Yes.

Mr. W. Brown:

Then I think the situation is the status quo and the exemption would still stand.

Mr. C. Webb:

Yes, yes.

The Deputy of St. Martin:

You would give consideration of that again at the end of March if, indeed, it was deemed to be unreasonable for these GPs not wanting to come in?

Mr. C. Webb:

I think that is a fair comment but it would not affect the validity of the exemption while it was in effect.

The Deputy of St. Martin:

That is right, yes. But of course, we have got to wait until the end of March to see what the outcome is. Yes.

The Deputy of Trinity:

Just one very quick question: as part of your review of looking at the other GPs coming into the practice, would you take account of the cost - if it has raised; I do not know if it will raise - of them joining now

compared to if they had joined initially?

Mr. C. Webb:

That may be a factor, although if I would say, again, speaking hypothetically, it would not be as important of a factor, frankly, as what is the likely impact on patients and prices to patients.

The Deputy of Trinity:

Right. So, it would be more patients rather than the pressure it might or might not be on?

Mr. C. Webb:

Yes.

The Deputy of Trinity:

Right. Okay.

The Deputy of St. Martin:

Deidre?

Deputy D.W. Mezbourian:

No, I have nothing more, thank you.

The Deputy of St. Martin:

Okay. Well, I think we have come to the end of what we want to ask you. Is there anything that we have not asked you that you wish or you would like us to ask you? Because I do not know what you were expecting when you came in here, but sometimes there are people who come here and sometimes say: "Well, I thought you were going to ask me that."

Mr. W. Brown:

It is just purely for curiosity, probably --

The Deputy of St. Martin:

Yes. Well, if we could conclude this by thanking you for your presence. I did not say at the outset that Deputy Pryke and Deputy Mezbourian had been our lead members and done donkey work but, again, our thanks to them for the work they have done. If there are any points that you would like to raise at some other time, please feel free because we have not yet finished but we hope to finish very soon. Again, thank you for your attendance.

Mr. W. Brown:

Thank you.

^[1] Mr Webb has suggested that clarity would be aided by replacing this phrase with “The Decision lists the following potential efficiencies:”.