

STATES OF JERSEY
Public Accounts Committee
Public Hearing

MONDAY, 27th SEPTEMBER 2010

Panel:

Senator B.E. Shenton (Chairman)
Connétable J.M. Refault of St. Peter (Vice-Chairman)
Senator J.L. Perchard
Senator A. Breckon
Mr. A. Fearn
Mr. C. Swinson

Witnesses:

Chief Clerk, Law Officers' Department

Also in attendance:

Ms. M. Pardoe (Scrutiny Officer)

[13:00]

Senator B.E. Shenton (Chairman):

I will just read out this normal disclaimer. The proceedings of the panel are covered by Parliamentary privilege and Article 34 of the States of Jersey Law 2005 and the States of Jersey (Panels, Privileges and Immunities), Scrutiny Panels P.A.C. (Public Accounts Committee) and P.P.C. (Privileges and Procedures Committee) (Jersey) Regulations 2006 and witnesses are protected from being sued or prosecuted for anything said during hearings unless they say something they know to be untrue. This protection is given to witnesses to ensure that they can speak freely and openly to the panel when giving evidence without fear of legal action although the immunity should obviously not be abused by making unsubstantiated statements about third parties who have no right of reply. The panel would like you to bear this in mind when answering questions. If I could just ask you to give your name and title and then what

we will do is we will work our way round and give our names and titles. It just helps the microphone pick up for the recording.

Chief Clerk, Law Officers' Department:

Yes, I am the Chief Clerk at the Law Officers' Department.

Mr. A. Fearn:

My name is Alex Fearn, independent member of the Public Accounts Committee.

Senator J.L. Perchard:

I am Senator Jim Perchard, political member of the Public Accounts Committee.

Senator A. Breckon:

Senator Alan Breckon, member of P.A.C.

Connétable J.M. Refault of St. Peter (Vice-Chairman):

Constable John Refault, Vice-Chairman of P.A.C.

Senator B.E. Shenton:

Senator Ben Shenton, Chairman P.A.C.

Ms. M. Pardoe:

Mel Pardoe, Scrutiny Officer.

Mr. C. Swinson:

Chris Swinson, Comptroller and Auditor General.

Senator B.E. Shenton:

All right. I want to start off with asking a fairly open question. There are 2 ex-Health Ministers on P.A.C. and in Health, you never quite know how many people are going to be ill and how many people are going to want £1 million treatments or this, that and the other but we still have to operate within a budget. The court and case costs, if you look back, have not really been operating within a budget although there have been moves to tighten things up. What has happened over the last 12 months to try and get court and case costs more in line and manageable?

Chief Clerk, Law Officers' Department:

Can I first start by explaining what court and case costs covers for us. You will be aware obviously that court and case costs covers a number of different departments and I can only comment on what we spend in the Law Officers' Department. In the department, we use court and case costs for external providers who deal with, for example, serious fraud investigations, serious criminal prosecutions and the reason for that is that we do not have sufficient staff to deal with those internally. While we have some control over high cost cases in the investigatory phase, once they come to court, we are almost totally reactive to defence applications, court directions and that sort of thing, although in Health I think there is a base level of conditions and patients that you can predict and we have a number of cases that we can predict and those we do keep within control. We, in fact, split our budgetary recording process, if you like, between low cost cases and high cost cases and it is the high cost cases that are the problem. You simply cannot predict how many high cost cases you are going to get

in any particular year. For example, statistically, we are due 2 murders this year. We are overdue murders. Now, if anybody can tell me when those murders are going to happen, I can make provision for them. We did not invite Curtis Warren to import or try to import large amounts of cannabis into the Island. It is not something that we can foresee and the same goes for many of the other investigations that are the most costly areas of court and case costs. The other thing is that when you start an investigation, you do not know where it is going to go and although you can control where it is going to a certain extent, until you turn over the stone, you do not know what is underneath. As an example of that, when we started looking into the late President Abacha's affairs in Nigeria, what started out as one investigation turned out to have a number of different strands, certainly in the region of 8, I think, and I am not entirely sure but I have a feeling that the recent Bhojwani case was one of those strands. So you can see that some of those investigations are still going on. So far as the review of court and case costs as part of the C.S.R. (Comprehensive Spending Review) process is concerned, it was our view, and we made this very clear to the review team, that we feel that there has been insufficient funding of court and case costs by the Treasury for years, literally years. In fact, I have been doing this job now for 11 years and in only one year of those 11 years did we have what I would say was sufficient funding, and that was a slack year. It is not just us that made that point to the consultants that were doing the review; it is other departments as well. We feel that there has never been a proper systematic process for setting the budget for court and case costs or a real analysis of the actual needs of the departments involved. As a consequence, expenditure in this area has always given the impression of overspending but that is because we never had enough to start with.

Senator J.L. Perchard:

Can I just stop you there. You mentioned consultants doing the review. I was not aware of that. Who are they, what is the review ... part of the C.S.R.?

Chief Clerk, Law Officers' Department:

It is part of the C.S.R. process and, in fact, the consultants ... that review is headed up by, I think his name is Philip Taylor.

Senator J.L. Perchard:

Are you happy to share the terms of reference and some details on that with us?

Chief Clerk, Law Officers' Department:

I cannot I am afraid, Senator.

Senator J.L. Perchard:

Maybe another time.

Chief Clerk, Law Officers' Department:

It is being done centrally under the C.S.R. process and it is one of the particular areas of scrutiny in that it is the same as in the area of ... I think some of the larger departments are having particular reviews of their expenditure. Health, in fact, I think, may be one of them, court and case costs and the review of terms and conditions. I believe it is part of that. There is a particular review group looking at that. The final report has not been produced but the feedback that we have received from the consultants who have been undertaking that review is that they agree with

our view that there has never been a proper systematic look at what the departments need and how it is done.

Senator J.L. Perchard:

Sorry to press you, Tim, on this.

Chief Clerk, Law Officers' Department:

Sure.

Senator J.L. Perchard:

But a set of consultants looking at the Law Officers' Department and, in particular, court and case costs?

Chief Clerk, Law Officers' Department:

No, no, not the Law Officers' Department; at court and case costs as a whole.

Senator J.L. Perchard:

As a whole.

Chief Clerk, Law Officers' Department:

And, in fact, I think there is a parallel-related investigation of the criminal justice process as well.

Senator J.L. Perchard:

Right; and these are consultants from outside the Island?

Chief Clerk, Law Officers' Department:

Yes.

Senator J.L. Perchard:

There is presumably a terms of reference?

Chief Clerk, Law Officers' Department:

Yes.

Senator J.L. Perchard:

You are unable to share that with us?

Chief Clerk, Law Officers' Department:

I do not have it with me, Senator, but ...

Senator J.L. Perchard:

Oh, right, yes, tomorrow, the next day, that is fine. Quite important. This is key for me that ...

Chief Clerk, Law Officers' Department:

Sure.

Senator J.L. Perchard:

I hear what you say, we all hear what you say. You cannot predict crimes and the pressures on your department in 2011-2012 very accurately because it is still unknown. We understand that completely but what we would need to be assured of is that your systems are properly inspected by third parties, that your procedures are efficient and you are delivering best value for money.

Chief Clerk, Law Officers' Department:

Sure.

Senator J.L. Perchard:

We can ask no more of you than that.

Chief Clerk, Law Officers' Department:

Absolutely.

Senator J.L. Perchard:

The public can ask no more of you and that is why I press you about this review that is taking place which is essential, I think, that a third eye looks over your shoulder.

Chief Clerk, Law Officers' Department:

Absolutely.

Senator J.L. Perchard:

You will welcome that. Everybody will welcome that and if you are efficient, that is great. That is why I need to know more about it.

Chief Clerk, Law Officers' Department:

I have no problem with the terms of reference. All I am saying is that this is something that was initiated by the Council of Ministers as part of the C.S.R. process as one of the particular reviews. There were, as well as the general how do you save 10 per cent within 3 years ... if I remember rightly, I think there were 5 areas of which Education, Health, Social Security possibly, plus court and case costs, plus terms and conditions. There was particular emphasis on those and external consultants were brought in. The people that they use for court and case costs are called Tribal, I believe.

Senator J.L. Perchard:

We do not want to spend any longer on this. Perhaps, Mel, you can see what information can be passed on to us after today's hearing.

Chief Clerk, Law Officers' Department:

Yes, that is fine.

Mr. A. Fearn:

Sorry, Mr. Allen, in addition to the C.S.R., has there been any other reviews over the last 12 months or was C.S.R. really the catalyst for a review of ...

Chief Clerk, Law Officers' Department:

There have been a large number of reviews. In fact, I think I am probably on about the fifth at the moment on court and case costs.

Mr. A. Fearn:

And any actions implemented as a result of those reviews?

Chief Clerk, Law Officers' Department:

Can I just go back to where I think the problem is? The C.S.R. review and the demise of the Criminal Offences Confiscation Fund, C.O.C.F., which was used by the Treasury to top up the additional expenditure for court and case costs ... The C.O.C.F., although it was empty at one point this year, has since had a fairly substantial confiscation put into it. Additional funds have now been allocated to court and case costs by the Treasury as what I believe to be a sort of stopgap before the C.S.R. review report is produced. In terms of the C.S.R., my understanding is that there will be 3-year rolling budgets introduced with department and central contingency funds brought in and that should smooth out the peaks and troughs. If we get the right amount of money to start with and we have a slack year, then any under-spend on that will go forward to the following year. What happens at the moment is that all the departments have no choice but to overspend apparently and the C.O.C.F. has been there and, in previous years before the C.O.C.F. was in existence, there was - I cannot remember what the term was in those days but there was a pot of money held back by the Treasury for the end of the year and the budgets were topped up from those. I think the demise of the C.O.C.F. has finally got through to the Treasury, I have to say, that there is a need for a proper look at the amount that we need rather than saying: "You can just have the same as last year. We know there is money in the C.O.C.F. so we will simply top it up at the end of the year" which is what has been happening. There has been another problem with court and case costs in that it has

been ring-fenced and so we have only been allowed to spend it on external consultants in the main. The ring-fencing, I think, is likely to be taken off as part of the review process and what that will enable us to do is to employ more people hopefully internally at lower cost than sending the work outside. There will always be a need to send some work out. If we are prosecuting a policeman, for example, a lot of our internal staff work very closely with the police and there is a need, I think, in the interests of justice, to have a “semi-detached” prosecutor, if you like. Now, even using an external Crown Advocate, someone who works in the private sector, because they will have had experience of working obviously with the police, the Attorney General will be able to allocate that case, that prosecution, to an external Crown Advocate who has not had a close connection with, for example, the Drug Squad or whatever. Similarly, I think there is a need for a semi-detached prosecution if we are prosecuting a politician, for example, because the Attorney General and the Solicitor General obviously have close connections with politicians as they are Members of the States. I think though there is a need to look at the costs of prosecutions in the round. There is a general acceptance, I think, that the C.O.C.F. should not be used in the future as a top up for court and case costs but it is a fact that the funds that were in the C.O.C.F. were there as a result of the work of the Law Officers’ Department and by mounting these investigations and successful prosecutions, without them there would not be a C.O.C.F. to do the topping up with.

[13:15]

Senator A. Breckon:

Can I just ask you something? You mentioned about 5 or 6 other people looking at you from outside. One of those, as I am sure you are aware, is the National Audit Office ...

Chief Clerk, Law Officers' Department:

Yes.

Senator A. Breckon:

... who looked in particular the Les Pas case and they produced some evidence - and I say evidence - of some questionable invoices. Could you tell this committee if the case management was improved and how it has improved and did you have, or have you appointed, a costs manager to look at invoices submitted?

Chief Clerk, Law Officers' Department:

We now require all our suppliers on high cost cases to set out the work that they are going to do for the next period, whatever period that may be, and that depends on the case. The director of the criminal division, because these are generally criminal cases, will meet with them regularly. As an accounting officer I meet with the director of criminal and my finance manager to look at expenditure each ... we have to produce predictions for the Treasury every 3 months so we do that on a regular 3-monthly basis to see where we are with cases, whether we are likely to have more or less expenditure over the next period and to the end of the year. Just as an example though of the unpredictability of these things. You will no doubt remember Mr. Michel. At the beginning of the year, we were asked by the Treasury to predict what our court and case costs expenditure would be for the year. At that time, Mr. Michel

was determined to have a retrial. The costs of the original trial were somewhere in the region of £1 million so that is what we put into our likely expenditure. As it turned out, he decided to plead guilty to certain charges so a retrial was not necessary and a fairly substantial costs order was made against him. So we went from being in a position in the space of a relatively few months from having what we had expected to be an expenditure of £1 million to being in credit, for want of a better phrase, of £800,000.

Senator A. Breckon:

Would it be usual now then to get some sort of estimate and discuss the case with whoever is handling it?

Chief Clerk, Law Officers' Department:

Absolutely, yes.

Senator A. Breckon:

Then would you say there was closer management perhaps than there was in the past?

Chief Clerk, Law Officers' Department:

Much closer management and I think you ... I would not want to ... no, I would. The National Audit Office report was, I have to say, one of the poorer reports that there have been on court and case costs in the last ... and I have had, as I say, 4 or 5 or 6 of them. In terms of a costs draftsman, if you like, we did employ on a trial basis a costs draftsman to scrutinise costs, not in the Les Pas case I have to say but in other criminal cases. What we discovered that he appeared to be doing was ringing up

defence in criminal cases, criminal legal aid cases, negotiating a reduction in their claim and taking a cut of the reduction. We did this for I think around a year, maybe a little bit more and we decided we could do that and we did.

Senator B.E. Shenton:

In the private sector if you were dealing with a counterparty that over-invoiced you, you would almost certainly strike them off your list?

Chief Clerk, Law Officers' Department:

Yes.

Senator B.E. Shenton:

Have you made it quite clear to the legal firms that if they do over-invoice you, they will be struck off?

Chief Clerk, Law Officers' Department:

No, but we have, in fact, unilaterally and within the last few weeks, reduced the negotiated and agreed rate with external Crown Advocates by 10 per cent from 1st October, I believe, and I have to say that the external Crown Advocates were already charging ... well, the rates that the Attorney General was offering to external Crown Advocates, it was not a negotiation, was considerably less, up to 50 per cent less, than their commercial charge-out rate. For a Crown Advocate, the current rate was £267 an hour for people that ... if you walked in off the street, Senator, for your business, they would be charging £600 an hour. So I think we were getting pretty good value and we have reduced that by 10 per cent.

Senator B.E. Shenton:

I suppose it is all definitely sort of value. I mean if you walked an advocate's office in York or Newcastle and you went ...

Chief Clerk, Law Officers' Department:

Indeed and I have to say that I think we all know that Jersey is an expensive place.

Senator B.E. Shenton:

Well, I mean, you use some legal help from London in the preparation of cases but they cannot obviously act as advocates when it comes to court. Why has the market not been opened up so that there would be more advocates in Jersey and therefore a greater supply which should bring down prices?

Chief Clerk, Law Officers' Department:

That is not a question for me, I think. That is a question for the Law Society to answer and for those that deal with the registration and examination of advocates.

Senator B.E. Shenton:

It may not be for you to answer but given that you spend a lot of taxpayers' money on the hiring of advocates, is it not a question you should be asking?

Chief Clerk, Law Officers' Department:

It is something that we have mentioned to the C.S.R. review team. For example, in the Magistrates Court, English solicitors and barristers who are employed by the Law

Officers' Department do have rights of audience in the Magistrates Court. So all but one of the legal advisers at Police Headquarters are U.K. (United Kingdom) qualified rather than Jersey qualified. It is something that perhaps needs to be looked at but it would be a matter for the Royal Court to decide whether they wished to extend those rights of audience for people employed by the Law Officers' Department into the Royal Court and the Court of Appeal.

Senator B.E. Shenton:

It may well be a question the P.A.C. will be asking. Turning to the Magistrates Court, it was a senior law person that mentioned to me that they could not understand why where there were convictions in the Magistrates Court, say a very wealthy gentleman crashes his Porsche into a granite wall, why there was no attempt to reclaim some of the costs back from the wealthy individual. It was only this is the case in the U.K.

Chief Clerk, Law Officers' Department:

I believe it is and I recall that your report last year recommended that the judiciary investigate that. It is a matter of policy for the courts and the judiciary where the prosecution as far as I am aware ... I mean certainly we have had internal discussions about that but as I say, that is a matter for the judiciary rather than the prosecution. I would say, though, there are ... obviously the gentleman with the Porsche if he owns the Porsche and crashes into the granite wall may well be able to pay some costs towards the prosecution. The gentleman with a Porsche who has stolen the Porsche and is on legal aid probably would not.

Senator B.E. Shenton:

No, but in the U.K. they do take into account the ability to pay.

Chief Clerk, Law Officers' Department:

I think there is also a question ... I do not think it is quite as simple as you may think. If a person is having difficulty paying the fine for whatever reason and we are say charging them an extra £40 for costs just as a sort of standard basis, if they do not pay that it is likely to cost us more to try to recover it than it is worth and if we do not try and recover it, then it brings the whole system into disrepute and it will very quickly get out that if you do not pay the costs, you do not need to.

Senator J.L. Perchard:

I think Tim that you could say that about any invoice to anybody.

Chief Clerk, Law Officers' Department:

Indeed.

Senator J.L. Perchard:

But there has to be and I am surprised that you would resist it an opportunity to recover costs. I am just thinking it is better stopping them ...

Chief Clerk, Law Officers' Department:

Senator, there is no way that we resist it. If you look at prosecutions of companies in the Royal Court, there are substantial costs claims and they are paid.

Senator J.L. Perchard:

Yes, but I am just thinking of an acrimonious divorce where the Royal Court sits for a week and it makes a judgment to assist in the finality of the settlement at no cost to the taxpayer. It could be dividing up zillions of millions of pounds of estates and the courts should charge for that type of service.

Chief Clerk, Law Officers' Department:

Indeed, absolutely.

Senator J.L. Perchard:

I think that would be perfectly reasonable.

Chief Clerk, Law Officers' Department:

I think that is a question that you need to ask the courts rather than the prosecution, I am afraid.

Senator J.L. Perchard:

Yes, okay. Yes, I understand.

Senator B.E. Shenton:

When you started off the interview, you basically started by saying that because of the nature of court and case costs, it is almost impossible to budget.

Chief Clerk, Law Officers' Department:

No, I would not say ... sorry, Senator.

Senator B.E. Shenton:

Okay.

Chief Clerk, Law Officers' Department:

I think I would not say that. I would not say that it is impossible to budget. I would say it is impossible to predict the serious cases that we might need to deal with in each year.

Senator B.E. Shenton:

Right.

Chief Clerk, Law Officers' Department:

I would also say that in terms of budgeting I think there has never been a proper robust system of looking at what any of the court and case costs or any of the departments that have access to court and case costs, there has never been a proper procedure by the Treasury to look at what we need. It depends what you mean by budgeting, I suppose. In terms of the low cost cases which as Janet Marshall's report, - original, one of the first and probably the best review of court and case costs - suggested that we divided cases between low cost and high cost and she, as a round figure, if you like, came up with a figure of £50,000. Below £50,000 was low cost and above was high cost and that we budgeted or that we recorded them separately and we still do that on a regular basis. Those low cost cases we have a rule of thumb number of cases that we think that we deal with each year and that probably does not change greatly. What does change are the Bhojwanis and the Warrens and the Michels.

Senator B.E. Shenton:

Yes.

Mr. A. Fearn:

If I may, we have heard progress made with regards to invoice control and reduction in some of the costs for Crown Advocates and we have also heard that some of the areas are not directly under your control. If I may go back to my original question about the various reviews that have taken place over the years, what areas under your control have been addressed with regards to costs? Now, one natural area would appear to me the supplying of services from legal firms so with regards to their tariffs et cetera as an example? Any reviews done on them?

Chief Clerk, Law Officers' Department:

In terms of criminal prosecutions on the Island, then there is a set rate as I mentioned for external Crown Advocates, qualified assistants and unqualified assistants. Those are set by the Attorney General. Those are the ones that we have recently reduced by 10 per cent. In terms of outside providers such as forensic accountants and barristers, we are in the process of negotiating with a number of barristers' chambers and, in fact, I believe the director of criminal is going to London to interview a number of barristers' chambers next week I think. For historical reasons, we have used 7 Bedford Row as a provider. That, as I say, was for historical reasons. I believe that the first barrister that came to the Island to assist with prosecutions was in the Bank Cantrade case which was before my time I have to say.

[13:30]

I think one of the reasons, and I think quite a powerful reason, for going with Bedford Row for a number of years and I know there have been criticisms of using Bedford Row, is that they have themselves made quite an investment in bringing their lawyers up to speed with Jersey laws. Now I like to say this: I am not a lawyer, nor an accountant for that matter, but I understand from the lawyers that although often the Jersey legislation looks superficially the same as the U.K. legislation, in subtle ways, it is different. It has been “Jerseyfied” and Bedford Row have now got a group of barristers from relatively short call to the Bar all the way through to QCs, senior QCs who sit as judges on occasions, who now have some experience and expertise in Jersey law, particularly proceeds of crime law, fraud investigations and that sort of thing. Now, I think if we then go to another set of Chambers I think there is a judgment to be made. Do we go to a completely new set of Chambers where they have to bring themselves up to speed on the differences between Jersey law? Do we take the risk that they go ahead and investigate something and find that when it comes to end of the investigation say yes you should prosecute this Mr. Attorney General and he then turns around and says: “Oh, yes, but in Jersey we do it this way.” A classic example and it is not particularly of these high cost cases is that the legal test for insanity is different in Jersey than it is in the U.K. and so if one is instructing a U.K. expert if we have a defendant who says: “I am nuts,” and the court has to decide whether that is correct or not, you cannot just go to a psychiatrist or expert in the U.K. and say: “Is this guy nuts legally?” because the actual definition of being nuts is different here than in the U.K. So we are looking at other barristers’ chambers. I have to say that the cost of a barrister from the U.K. is generally speaking cheaper

than having somebody do the work from one of the local firms, particularly given the amount of time that these things take and so we are looking to spread the net wider. We are looking to reduce the hourly rates that they charge. There is, I think, a tendency for them to look at Jersey and say: "That is a nice little earner." Look at the rates that their people charge to somebody walking in off the street and that is something that we have certainly got to get to grips with and which when we look at the barristers' chambers and look at the people that they have in them and their expertise that we will be making it very clear to them that we will not be paying them significantly more than their normal charge-out rates in the U.K. Obviously there are expenses. They need to come to the Island. They need to come to the Island at 24 hours' notice so you cannot always get them the cheapest flight but we are looking to - and make sure that they know we have it - have a list of approved providers not just in the criminal cases but also for civil actions and also we are about to go through a procurement process for children's cases that we cannot deal with.

The Connétable of St. Peter:

You were talking there about some costs, phone calls and so on. Whose responsibility is it in your department to ensure that costs of services provided are kept to a minimum?

Chief Clerk, Law Officers' Department:

Sorry?

The Connétable of St. Peter:

The costs in your department kept to a minimum of providers.

Chief Clerk, Law Officers' Department:

Well, as the accounting officer, it is my responsibility.

The Connétable of St. Peter:

Yes, you also mentioned in your closing comments a few moments ago that you are looking to drive down these costs. What work has been done to drive down the costs prior to the C.S.R. process?

Chief Clerk, Law Officers' Department:

Having the Crown Advocate rate as a set rate, I think, has enabled us to control some of the costs. In terms of driving down costs, I go back to - and I am afraid it is a, perhaps it is a human failing, I do not know - the fact that you know that you have not got enough money to start with probably does make you less ... it may mean that you take your eye off the ball.

The Connétable of St. Peter:

So less funds makes you take your eye of the ball?

Chief Clerk, Law Officers' Department:

No, not the fact that you have less funds, the fact that you know that there are funds available that will be made available to you at the end of the year.

The Connétable of St. Peter:

So you are unable to say?

Chief Clerk, Law Officers' Department:

No, no, through the C.O.C.F. and central contingencies in the past.

Senator B.E. Shenton:

It is supposed to have been an open cheque book.

The Connétable of St. Peter:

So it has been too comfortable?

Chief Clerk, Law Officers' Department:

Yes, absolutely in a sense it is too comfortable. As an example, I am going slightly off course here. When I saw the amount that Customs and Immigration were given in their budget for court and case costs, I laughed because it was just ludicrously small for the work that they do in preventing drugs coming on to the Island. It was just ridiculous and if I had been them, I would have said: "There is absolutely no point in trying to keep within that budget" because it was about 25 ... no, I will not put a figure on it but it was ludicrously small sum of money. Now, we are not in the same position but the fact that there has never been a proper budgetary process, the fact that there has always been a top up available, has perhaps meant that we have not taken as strong a feeling on costs and driving them down, as you say, Constable. What we have done is tried to negotiate a good rate with the providers.

The Connétable of St. Peter:

Can I just move forward to tomorrow's *J.E.P.* (*Jersey Evening Post*). If the headline says something like: "Ready supply of funding led to complacency in cost control within the Law Officers' Department" how would you react to that?

Chief Clerk, Law Officers' Department:

I would say that we were not complacent about it. I would say that we tried and that we have negotiated rates lower than were originally offered to us by the barristers' chambers. We have perhaps not been as proactive in going out and seeking other providers but there is a problem sometimes in finding other providers. We have not talked about forensic accountants, for example, and they are horrendously expensive. On-Island and even off-Island, I think, the number of accountancy firms that have what we would call adequate good forensic accountancy services is relatively limited and often you will find that, particularly on-Island, you may only have one provider that you can go to because the others are all conflicted in some way. Either they have been the accountants, they have been the auditors of the people that you are investigating or they represent the Viscounts already because it is a *désastre* so the number of providers is reduced down and they know that as well as we do. So we negotiate on rates but we perhaps have not been as proactive at ...

The Connétable of St. Peter:

Okay, well, thank you for your frankness on that. Just rolling forward slightly from that, over the last certainly year, 18 months, there has been quite a strong push to reduce costs with the sort of recessionary pressures that have been brought upon us. Has your department done anything to recognise that prior to the C.S.R. being imposed upon you?

Chief Clerk, Law Officers' Department:

The reduction in Crown Advocate rates was a reaction to the recession, yes.

The Connétable of St. Peter:

To a positive drive-down as well?

Chief Clerk, Law Officers' Department:

Yes, absolutely. I have to say that that was something that was mentioned to us by Philip Taylor, the external reviewer on the C.S.R. process, who is a former partner of one of the big accountancy firms and he said to us: "Accountancy firms are used to clients saying: 'Well, we are in a tough situation,'" and that is the way we told the Crown Advocates, that they are as aware as anybody else on-Island of the pressures on budgets. If they feel that they cannot do the work at a 10 per cent less rate which, as I say, is already a significant reduction on their commercial rates, then that is up to them. I have to say that most of them have replied and agreed to carry on.

Senator B.E. Shenton:

Can I just turn to legal aid. What is your opinion of the current legal aid system and how could it be improved?

Chief Clerk, Law Officers' Department:

I am not sure that it is appropriate for me as a member of the Prosecution Department really to comment on legal aid. Partly I think it is just not appropriate and, secondly, I

do not have a huge knowledge of legal aid. It is not something that we administer. It is not something that we come up against very often.

Senator B.E. Shenton:

But you pay out legal aid to ...

Chief Clerk, Law Officers' Department:

No, the Judicial Greffe pays out legal aid costs.

Senator B.E. Shenton:

So it is just Judicial Greffier, okay. Which line does it come off, court and case costs?

Chief Clerk, Law Officers' Department:

No, it comes off the legal aid costs, surprisingly.

The Connétable of St. Peter:

Just another one, just to come back to some of the ones I have got written down here.

What is being done to manage staff time and ensure it is managed optimally in a more commercial style to get best value for money as recommended in the last P.A.C. Report 1 of 2010?

Chief Clerk, Law Officers' Department:

I am not entirely sure what the phrase "in a more commercial style" means but all I can say is that in terms of advisory work and as I have already mentioned in criminal prosecutions, we are understaffed and under-resourced and until that changes, there

will still be delays in providing advice and it is particularly in the advice where delays occur.

The Connétable of St. Peter:

So you are just saying you are understaffed and under-resourced. How do you benchmark that if you do not know how to operate in a commercial manner? How can you prove to me that you are running as efficiently as possible and the only way to get better is to have more staff and more resources?

Chief Clerk, Law Officers' Department:

We have a time recording system. We do not send bills out to other departments because we do not feel that that is a good use of States resources. It is not real money. If every time Senator Perchard's department asked us for advice on Health matters, we were then to record the time and send him a bill at whatever rate and he then sends us the money back, it is not real money. It is just going round and round in circles and all you are doing is using up administrative resources. The other reason that we have and it has been suggested in the past that we should send bills out. Previous A.G.s (Attorney General) and I believe the current A.G. is of the same opinion. We would rather that departments asked us early for advice rather than leaving it until the last minute because they thought they were going to be charged for it and get themselves into an even worse mess.

Senator B.E. Shenton:

But should we not know how much Health is spending on legal matters?

Chief Clerk, Law Officers' Department:

Absolutely.

Senator B.E. Shenton:

We had a case in Health where Health was suing T.T.S. (Transport and Technical Services) and because we got there first, we had free legal advice and T.T.S. had to go to the private sector and pay for their legal advice. Now, the reality is we did not have free legal advice.

Chief Clerk, Law Officers' Department:

Indeed not and we have a time recording system to record the time that people do so that we can look at how much time people are taking on things. As it happens, I have a meeting tomorrow with a member of the procurement team because our current time recording system is coming to the end of its life. It is not being supported after the end of next year by the suppliers. They have moved on. They have been taken over by somebody else and we are taking the opportunity to look for a new time recording system and it is one of the intentions of once we have that system in place is to send out monthly reports to all departments to tell them exactly how much time we have spent on their work this month so that if somebody from the Health Department says: "I asked you for advice on this question 6 months ago, why have I not heard anything about it?" we will be able to say to them: "Yes, that may be the case but we in the meantime have been doing this work for you. It has taken this time and if now you are saying that what we have not replied to is a priority, then tell us and we will bring it to the top of the list but something else will go down the priority list because there

are only 24 hours in the day and we only have a certain number of people to do the work.”

[13:45]

Senator J.L. Perchard:

Can I ask on this subject, am I right in assuming that in this modern environment of litigation, you are being asked to advise the departments more often than perhaps you used to when you first started? Is that a fact? It certainly happens with Health particularly.

Chief Clerk, Law Officers' Department:

I think the volume of work has risen exponentially, I think. When I look at the amount of resources that we now need to deal with children's work, public law children's work, it is horrendous.

Senator J.L. Perchard:

And growing.

Chief Clerk, Law Officers' Department:

And growing, absolutely.

Senator J.L. Perchard:

Tell me about the way that you monitor ... or not monitor but the way you hold procurement services, the services we have to purchase, to ensure best value with

regards to children's work. You will probably have had something to do with answering a question that I posed a month ago in the States, a written question about family X and the cost of employing legal services to represent family X. For the record, Mr. Chairman, it was £700,000.

Chief Clerk, Law Officers' Department:

Yes, Senator, those were not our decisions as to how they were represented. We have ...

Senator J.L. Perchard:

But you have had to find the funding. It was your department that found the majority of that funding I would think.

Chief Clerk, Law Officers' Department:

No, that was Judicial Greffe because it came under legal aid costs.

Senator J.L. Perchard:

Who paid the ... your department would have ... the prosecution ...

Chief Clerk, Law Officers' Department:

No, I believe that in that case it was one of our members of staff who represented the Minister and so that was a salaried member of staff. In terms of the costs of the guardians and the parents and the children, that was paid by the Judicial Greffe.

Senator B.E. Shenton:

Who is the accounting officer for the Judicial Greffe?

Chief Clerk, Law Officers' Department:

The Judicial Greffier as far as I know, Mike Wilkins.

Senator J.L. Perchard:

That is the Chief Minister's Department I would think? Who asks for the budget at ...

I mean the business plan?

Senator A. Breckon:

They are not departments.

Chief Clerk, Law Officers' Department:

We are non-executive departments.

Senator J.L. Perchard:

So the Chief Minister requests the funding for the ...

Mr. C. Swinson:

It is below the line.

Senator J.L. Perchard:

Yes, quite probably, yes.

Mr. C. Swinson:

In the sense of being a non-ministerial department.

Chief Clerk, Law Officers' Department:

It is a non-ministerial department, yes.

Mr. C. Swinson:

That is what I meant by below the line.

Chief Clerk, Law Officers' Department:

In terms of children's cases we have had to send out some work to private sector advocates in order to represent the Minister and we have queried those bills. For example, one firm was bringing an advocate and an assistant to court on occasions and we have gone back to them and said we may not have agreed this in the past but we certainly are not agreeing it in the future.

Senator B.E. Shenton:

Do you think the court is the best person to set rates?

Chief Clerk, Law Officers' Department:

For?

Senator B.E. Shenton:

Well for ... you mentioned that the court sets the rates for advocacy services and so on, did you not?

Chief Clerk, Law Officers' Department:

The court sets the legal aid rate.

Senator B.E. Shenton:

The legal aid rate.

Chief Clerk, Law Officers' Department:

I believe it is ... well no I do not know how it is set. My guess is that it is done by inflation but I honestly do not know because that is not part of my responsibilities.

Senator B.E. Shenton:

Yes, anyone else got anything?

Senator A. Breckon:

Just a question just to come back to the use of hourly rates. I think there had been some move away from this to a quotation, if you like, and I think even in the city this had happened because of hourly rates you really in effect signing a cheque without an amount on it. Is there any way that you have done work to look at estimates for this as opposed to somebody ... I am just thinking of a builder. If I was going to get some builder to do some work, I would not just say: "Do it and send me some hours." I would just say: "Well, how much is it going to cost?"

Chief Clerk, Law Officers' Department:

Yes, indeed. Taking your building example, you can negotiate if you can with a builder a set fee for doing your roof but you may find that it is quite difficult to find a

builder who will give you a fee that he will never come back to and he will say: “Yes, I will do it for that,” if he then finds that the rafters are rotten.

Senator A. Breckon:

Yes, yes.

Chief Clerk, Law Officers’ Department:

We have looked at brief fees. I am afraid that I think the sorts of things that we are asking people to look at are not really susceptible to brief fees. It is a question of turning the stone over. We do have brief fees. Where we need to get counsel’s opinion on a particular point of law, that is done as a brief fee. We say: “Here are the papers. Here is the question. What is it going to cost?” They have a look and say: “Well, we think it will be 8 hours at £250 an hour,” and we say: “Well, no, we think it is probably only worth 6 hours so that is what we will pay you and if, for example, we come back with a supplementary afterwards, then we will look at it again.”

Senator A. Breckon:

Thank you.

Senator J.L. Perchard:

Yes, just one final question from me. You have mentioned a few areas that you have been actively looking at, procurement for services as you have outlined, and perhaps more in-house skills so that you can procure less. You have mentioned concerns over the growing work around children’s laws and children’s cases. Are there any other areas as accounting officer that you think that you believe that our committee here

would have a legitimate concern about with regards to your problems that you have to deal with on a day to day basis?

Chief Clerk, Law Officers' Department:

I think I would ... one of the questions that was put in the questions that were sent to me before I came, 2 points. One was other jurisdictions have budgetary responsibilities and does the cost of prosecuting ever form part of the decision to prosecute. I am sure there are countries that are too poor to or decide not to prosecute because it is going to cost them too much. I think the results of that are likely to be lawlessness, gang warfare and probably a drugs culture. I do think it is in the Island's interests to prosecute these sorts of cases not necessarily no matter what the cost is but I think the Island's reputation depends on us being able to show to international regulators as we have done that we will prosecute where we can. In terms of prosecutions, Attorneys General make their decisions to prosecute on 2 bases. There has to be the evidence available to present and then there is the public interest case and I can imagine cases where there is sufficient evidence but it would not be a good use of public funds to prosecute. For example, if Senator Shenton embezzles £20,000 from his firm and decides to go off to Fiji on the proceeds and set up house there, it may or may not be a good use of funds to investigate that case in the depth that is needed to produce the evidence and then to institute extradition proceedings from ... well let us not make it Fiji let us make it somewhere slightly less salubrious, Columbia. It may be that the Attorney General decides that at the moment, it is not worth prosecuting but if Senator Shenton returns to the Island, then I am pretty sure he would be.

Senator B.E. Shenton:

He might decide that then he is worth £20,000.

Chief Clerk, Law Officers' Department:

One of the other questions that was suggested was the difficulties that we have in recruiting and retaining staff and that is an ongoing problem. There is no doubt that qualified Jersey advocates in the private sector are paid considerably more than they are in the Law Officers' Department and it is at all levels, I am afraid to say. We have advertised twice now for someone to do children's work. One was simply we want an advocate, no reply. Second time we put it in, we said: "Well, there is the possibility that there might be running the section if that would be of interest to someone and that would then obviously give you a bit more money but there would be also other responsibility. Nothing, no applications at all.

Senator J.L. Perchard:

It certainly seems more lucrative to be on the other side of the fence at the moment, does it not?

Chief Clerk, Law Officers' Department:

Indeed it does.

Senator B.E. Shenton:

It would also imply perhaps that the barriers to becoming an advocate in Jersey should be opened up.

Chief Clerk, Law Officers' Department:

We do have a number of people that we sponsor through their advocacy training. Now that the Institute of Law is in existence, we now have to shell out real money for that. In the past, it has simply been giving people study leave and in general we just had to bite the bullet and say we will not replace them while they are on study leave. Now we have to pay some of their fees and we do it on a shared basis. They pay some, we pay most. We ask them to sign an agreement that they will stay with us for at least 2 years after they have qualified and if they leave before that, the agreement says that they will repay us all the costs that we have incurred. The problem is that very often they become an advocate and then they immediately expect a rise in pay which we may or may not be able to do and they expect to do a more senior job which again we may or may not have. There is no linkage between them becoming an advocate and becoming a more senior member of the department. Unless there is a vacancy, they do not rise up the scale.

Senator B.E. Shenton:

I think this is a problem with most private enterprises how to push someone through there financial exams, they have expectations ...

Chief Clerk, Law Officers' Department:

Absolutely, and in order to gain experience that they want and to improve their career, they may have to leave. I suspect that the private sector is no different from the public sector in that respect. It is just slightly galling when you have done that and because we have now have to we do now have to shell out real money, we have had to restrict the number of people that we can sponsor through the Institute and we now

have an interview process. In the past, it was well it is Buggin's turn but we do now have an interview process where they put forward a business case for becoming an advocate. What is their increased value to the department if they become an advocate than if they do not. There are some jobs where they do not need to be an advocate.

Senator B.E. Shenton:

Well, we are on 2.00 p.m. Has anyone ... well, thank you for coming in today. I hope you did not find it too bad.

Chief Clerk, Law Officers' Department:

No.

Senator B.E. Shenton:

Our report will be out in a month's time or so.

Chief Clerk, Law Officers' Department:

Okay.

Senator B.E. Shenton:

Thank you very much.

[13:59]