

The Greffier of the States (in the Chair):

We come now to Oral Questions. There was one question deferred at the request of the Attorney General at the last meeting and I will take that question in addition to the 90 minutes allocated for the questions listed for today's meeting.

2.1 Deputy M. Tadier of St. Brelade of H.M. Attorney General regarding criteria for the pursuit of so-called 'historic' child abuse cases:

Will Her Majesty's Attorney General inform the Assembly of the criteria used to judge whether or not to pursue cases in relation to the so-called historic child abuse and, where the likelihood of conviction principle plays a part, roughly what percentage of certainty is usually required?

Mr. W.J. Bailhache Q.C., H.M. Attorney General:

I would like to thank the Deputy for his courtesy of agreeing a deferral of this question from 2 weeks ago when I was out of the Island. The decision to prosecute an individual is a serious step. Fair and effective prosecution is essential to the maintenance of law and order. Even in a small case, a prosecution has serious implications for all involved: the victim, the witness and a defendant. I have published on the Law Officers' website a code on the decision to prosecute. As will be seen from that code, there are 2 stages in a decision to prosecute, the evidential test and the public interest test. I have already said in relation to the historic child abuse investigation that it would be surprising if a decision were to be taken not to prosecute on public interest grounds, although that possibility is not ruled out. So far no decisions not to prosecute have been taken on public interest grounds. The evidential test is that the prosecutor must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each defendant on each charge. It means that the prosecutor must consider whether a court or jury properly directed in accordance with the law is more likely than not to convict the defendant of the charge alleged. The expression "more likely than not" means that the test is applied on the balance of probability. These rules apply to all prosecutions whether for historic child abuse or for other cases. The assessments are judgment calls made on a professional, objective basis. It should be emphasised that any decision taken to the effect that a particular allegation should not result in charges does not mean that the allegation is rejected as untrue, nor does it mean that it is considered in some way not to be a serious allegation. All it means is that the prosecutor has reached the view that an acquittal is more likely than a conviction.

2.1.1 Deputy M. Tadier:

Is the fact of whether a suspect is not currently present in the Island a consideration when deciding if a case should be pursued?

The Attorney General:

If a suspect is not currently in the Island that can give rise to questions as to whether it is feasible to get the suspect back to face trial, but the evidential test and the public interest test as to the decision to prosecute are applied before one thinks of the difficulties, if there are any, in getting somebody back from outside the Island.

2.1.2 Senator S. Syvret:

The Attorney General has explained how there is a degree of judgment call in deciding whether to prosecute. For example, say in a case where there was substantial

evidence from a number of victims about such things as being beaten, badly injured, being battered to the floor and held down while Dettol was poured down their throats and including the sexual abuse of some female children, would the Attorney General say that a case of that nature, which is evidenced by about 2 substantial lever-arch files of evidence, would merit prosecution?

The Attorney General:

I am certainly not going to discuss any particular cases before this Assembly, and the Senator is trying to encourage me to make a response on the basis of what he believes to be the facts in a particular case. All I would emphasise to the Assembly is that the prosecutors take the decisions sensitively, objectively and professionally; language which the Senator may no doubt wish to adopt at some point.

2.1.3 Deputy T.M. Pitman of St. Helier:

I am just interested in what the Attorney General has told us about the difficulties with other countries. Could the Attorney General just explain whether France is one of those countries where there would be problems in extraditing people to face investigations?

The Attorney General:

France and Jersey, through the United Kingdom, are members to the Council of Europe Convention on Extradition, and I would expect that the terms of the Convention should enable in any proper case extradition from France to be possible. Indeed, there have been numbers of occasions when there has been extradition from here to France and the other way round.

2.1.4 Deputy P.V.F. Le Claire of St. Helier:

In the instance where it has been decided by Her Majesty's Attorney General that a case should not proceed due to the evidential test not having been met, would that be revisited if new evidence surfaced?

The Attorney General:

The Deputy is another Member who is seeking to put the facts of a particular case to me in the guise of ...

Deputy P.V.F. Le Claire:

On a point of order, I certainly am not. I strongly refute that. That was just a general question. I am not trying to assert any particular case. I do respectfully suggest that Her Majesty's Attorney General has completely misread my supplementary. I was just asking for general ...

The Attorney General:

I am very pleased to have that reassurance. The position is that whenever a decision has been taken not to prosecute the probability is that there would need to be a very significant reason for reopening that decision. That may arise because there is new evidence that was not available and could not reasonably have been ascertained at the time of the original decision. Broadly speaking, when a decision not to prosecute has been taken, there is a very strong public interest in maintaining that decision. It is right that members of the public should be able to rely upon a decision which the Attorney General has taken.

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

Under what circumstances would the Attorney General refer a possible prosecution case for review from outside of his department?

The Attorney General:

I expect the Deputy is aware that in the historic child abuse investigation I have already made it plain that in all those cases the files are first going to be considered by private sector advocates who are, therefore, naturally by definition outside my department. It is only if those Crown Advocates consider that the evidential test is not met or that for some public interest reason the prosecution should not be brought that the case would be referred to my department. When it comes into my department in these particular cases, it is then reviewed by one of the senior lawyers in my department. It is also reviewed by me and there are some occasions when we have thought it appropriate to get outside advice as well.

2.1.6 Senator S. Syvret:

Would the Attorney General inform the Assembly as to on what grounds a decision not to seek extradition may be taken? Would he agree with me also that anyone who has made a formal, credible complaint to the police of criminal conduct has a right to be informed of the status of that complaint, whether it is being fully investigated, whether it has been decided that there is no merit in the complaint, or whether it has been parked, whether it is going to be taken forward for prosecution? Can the Attorney General state whether complainants have a right to that knowledge and would he also undertake personally to write to the victims of the 2 abusers in France and explain to them what is going on?

The Attorney General:

There are about 100 questions in there. The general rule is that the police do try to keep complainants informed about the conduct of the case, about the way in which the investigation is going - the progress of the investigation - and what the likelihood is of a prosecution and, once a prosecution decision has been taken, to advise the complainants of that decision. Where the decision is taken not to prosecute, the police are very careful to advise not only the putative accused but also all the complainants so that they do not receive this information via the media or on the radio or reading it in the *Jersey Evening Post*. That is a sensitive approach which is to be commended and it is one of the reasons why I am simply not going to discuss particular cases in this Assembly. I think the first part of the question was the extent to which objections can be made to extradition or something of that kind. Perhaps the Senator would repeat that part of his question.

Senator S. Syvret:

The grounds upon which the decision would be made whether to seek extradition. The Attorney General said in answer to an earlier question that it would, in fact, make things more difficult to make a decision to prosecute if it had to involve extradition.

The Attorney General:

The position there is that if the decision is taken to prosecute and the prospective accused are outside this jurisdiction, I will do everything in my power to ensure that they come back to face trial. If - and it sometimes is the case - getting such people back from the other jurisdiction is impossible, either because there is no extradition treaty or convention or for some reason the extradition arrangements turn out not to be able to work, then, of course, the Attorney, the Crown is stuck with that position. But

once a decision to prosecute is taken, if it is possible to bring such people back by making an application for extradition, I would.

2.1.7 Deputy D.J. De Sousa of St. Helier:

Can the Attorney General inform the House who, how many are involved in making a decision, and what criteria is used to decide that it is not in the public's best interest to prosecute?

The Attorney General:

I do not understand what decision is being talked about.

The Greffier of the States (in the Chair):

Are you able to clarify, Deputy?

Deputy D.J. De Sousa:

Any decision not to prosecute, sorry, in the public interest.

The Attorney General:

Numbers of decisions are taken by Centeniers at Parish Hall Enquiries. Particularly where the prospective accused is a person under age, it is thought there is a better way of dealing with the particular incident than by having a prosecution take place before the court. So, the first part of the answer is that Centeniers in effect apply a public interest test week-in, week-out in deciding whether or not to prosecute before the Parish Hall Enquiries. Otherwise, the lawyers in particular cases who are handling a prosecution may well take a view that the public interest requires that the prosecution should not proceed or should be withdrawn. In sensitive cases or cases which the lawyers believe to be sensitive, those decisions may be referred to the Law Officers for review. If they are referred up to the Law Officers for review, then that may be considered by the Law Officers personally or it may be considered by the Principal Legal Adviser who is the senior criminal lawyer in my department. I am afraid the question is really too wide to give a better answer than that.

2.1.8 Deputy M. Tadier:

The last question is a simple one: are there currently any extradition applications pending in relation to child abuse that has happened in the last 30 or 40 years?

The Attorney General:

No.

The Greffier of the States (in the Chair):

Very well. We come now to the Oral Questions tabled for the present meeting.