

# ATTORNEY GENERAL'S REVIEW



2009



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## SECTION 1

### INTRODUCTION BY H.M. ATTORNEY GENERAL



Timothy Le Cocq Q.C.  
HM Attorney General

I have great pleasure in introducing the Attorney General's Review of 2009. It is a particular pleasure to do so as it is my first such Review and it affords me the opportunity of paying tribute to my predecessor, William Bailhache QC, who retired as Attorney General in October 2009 to take up the Office of Deputy Bailiff.

Mr. Bailhache was Attorney General of Jersey for nearly ten years. One can only assume that at the time he became Attorney General someone had murmured the ancient Chinese curse "may you live in interesting times" because Mr. Bailhache's time in office has undoubtedly contained more than its fair share of interest. Not only was he Legal Adviser to the States at the time of the move from the Committee system of government to Ministerial government with all of the challenges and difficulties that that inevitably produced, but he was also Attorney General during the most intense part of what has been among the most difficult times in Jersey's recent history, the historic child abuse enquiry. That the Island and the prosecution process was able to deliver justice in such difficult circumstances is due in no small part to the leadership of my predecessor in office. Although cases arising out of the historic child abuse enquiry are still proceeding before the Courts, we are, at least insofar as the investigatory and prosecution aspect of this matter are concerned, in the last stages and in my opinion we were fortunate to have Mr. Bailhache as Attorney General during those difficult times.

It goes without saying that Mr. Bailhache's retirement from office in October left a significant dent in experience within the Law Officers' Department not least by reason of the fact that, in the last two months of the year, we were without a Solicitor General.

However, this was not the only challenge that the Department faced during 2009. As a result again of my predecessor's initiative we restructured the Department during the course of 2009 so that the principal areas of legal work was divided under two Directorates, Civil and Criminal. This has removed a significant amount of administration from the hands of the Law Officers and will, in time, I am sure, make the Department more efficient in the work it undertakes.

I am delighted that Mr. Richard Whitehead, Principal Legal Adviser, was prepared to take on the duties of the Director of the Civil Division. As anyone who has read the Reviews of my predecessor over the last few years will be aware, Mr. Whitehead has very considerable experience indeed in the advisory work undertaken by this Department and his experience and ability ideally suits him to the rôle of Director Civil.

I am equally pleased that Mr. John Edmonds, Principal Legal Adviser, was prepared to take on the duties of Director Criminal. Mr. Edmonds came to Jersey in June 2008 after a distinguished career at the upper levels of the Crown Prosecution Service in England and Wales. His organisational ability, skill and judgment that he brings to bear on criminal matters, has been an enormous benefit to the operation of the Department.

The re-organisation, and indeed the change of Attorney General and vacancy, temporarily, in the Office of Solicitor General, have undoubtedly caused some disruption to the work of the Department and it will be some time before the benefits flow from that re-organisation in full measure. I am confident, however, that we now have a structure in place which enables, the Law Officers' Department, if properly resourced, to discharge the many duties that fall to it.

Even the briefest perusal of this Review will identify the very wide range of work that the Department does. The workload does not seem to lessen and the demands on both the Civil and Criminal Divisions increase.

2009 saw the highest number of new criminal cases in the Royal Court since 2000 and the second highest in the Magistrate's Court over the same period. In the Royal Court most of the criminal cases related to illegal drugs illustrating the attractiveness of the Island to people engaged in that activity and the resolve of the law enforcement and prosecution authorities to combat it.

We have also seen an increase in ministerial advisory work and 2009 saw more new matters than at any time in the preceding five years since the start of ministerial government. I anticipate that this trend will continue.

One cannot look at the headline figures alone, however, because it is also the case that not only is more advice given but the degree of complexity and sophistication of matters has also increased. This is perhaps particularly so in connection with children's work where over the last few years there has been not only a general trend of increased references to the Department but those matters tend to be long lasting and in many cases of considerable complexity. Such is the pressure on the resources of the Law Officers' Department that it has been necessary to outsource some of this work to the private sector in 2009.

However, it is unfair perhaps to single out particular areas as there is no doubt that the demands upon the Law Officers' Department are both broadly based and intense. As my predecessor has done on a number of occasions, I will take this opportunity to pay a very sincere tribute to all members of the Department, lawyers, Conveyancers and support staff alike who have had another very busy year indeed. I am pleased to have this opportunity to thank them for the support that they have given to me personally during my first months as Attorney General and more generally for all that they have done in the work of this Department.

In Section 3 of this Review, The Objectives of the Law Officers' Department, we state amongst other things that we aspire to provide objective legal advice of a high quality within reasonable timescales. Whilst I am confident that we provide objective

advice that is of a high quality, I am conscious that we are not able to do so at all times within a timescale that we would consider to be adequate. This is, to my mind, simply a matter of the nature of the workload that this Department faces when measured against the resources that we have to deal with it. It is fair to say that the increasing complexity and volume of the work have not been balanced with a commensurate increase in our resources. At the time of writing this I am acutely conscious of the financial strictures that apply in the States of Jersey generally and indeed in the wider world, but it is essential that, to discharge our duties to the standard that we and the people of Jersey would expect, our resources are adequate. I hope to be able to review the position and gain a clear understanding of the resource needs of the Department and the most cost effective way of giving the best possible legal service.

As we look back at 2009 we also look forward to 2010. There are undoubtedly many challenges ahead and it will be interesting to see what the Review Panel under the chairmanship of Lord Carswell, scheduled to report on the rôles of the Crown Officers in 2010, will make of the rôle of the Attorney General and Solicitor General.

I could not end this introduction without a warm welcome to the new Solicitor General, Howard Sharp QC, who took office in March 2010. Howard has already contributed significantly to the work of the Law Officers and I look forward to that continuing.

Timothy Le Cocq Q.C.  
H. M. Attorney General





## SECTION 2

### ABOUT THE LAW OFFICERS' DEPARTMENT

#### WHO WE ARE

The Department employed a total of 50 full time equivalent staff at December 31<sup>st</sup> 2009. Following a re-organisation in July 2009, the Department is organised to deliver services as follows:

- The **Attorney General** is in overall charge of the Department.
- The **Solicitor General** deputises for the Attorney General as necessary.
- The **Criminal Division** is responsible for the prosecution of all serious crime in the Island. There is particular emphasis on the investigation and prosecution of financial crime, including money laundering. It is also responsible for co-operation with overseas authorities in the investigation and prosecution of crime in other jurisdictions. Members of the **Office of the Legal Adviser to the Police** are part of the Criminal Division and work closely with both States and Honorary officers and Jersey's Customs and Immigration Service, providing advice and assistance in the early stages of investigations and prosecuting cases in the Magistrate's Court.
- The **Civil Division**, covers three broad areas of work. **The Advice Group** deals with matters concerning the constitutional relationship between the Island and the UK, as well as the Island's international obligations, human rights advice, applicability of EC law and Jersey legislation. This latter subject includes advice to Ministers and their Departments on proposals for new legislation (including advice on human rights compatibility), preparation of legal reports for the Privy Council,

giving drafting instructions for some major new legislation including the preparation of Orders in Council extending Acts of Parliament to the Island, and advice as to whether such extensions are necessary or desirable. The Group also has responsibility for drafting Rules of Court and providing advice and support to the Legislation Advisory Panel. The **Litigation Group** acts for Ministers in judicial review cases and other civil claims where a Minister is the defendant and for the Minister for Health and Social Services in public law matters relating to children, working closely with the Children's Service in matters of care orders, adoptions etc. The **Property Group**, which is part of the Civil Division and includes the Conveyancing section, deals with all sales and purchases of property by States departments, and many other property related enquiries and with planning appeals and advice on planning law matters.

- **Finance and Administrative Support** is provided to each Division by a small number of staff who deal with the ancillary matters essential to the smooth running of an organisation such as finance, information management, IT, human resources matters etc.

## WHAT WE DO

The overall aim of the Department is to provide efficient and effective legal advice to the Crown and the States, including Ministers, Departments and where possible Scrutiny Panels, and to provide and oversee a high quality criminal prosecution service and to assist the Attorney General in the performance of his other duties.

## OUR VISION /VALUES

The Department supports and subscribes to the Core Values of the States as set out in the Five Year Vision for the Public Sector and agreed by the States:

- Treat our customers and each other as individuals, with respect, dignity and courtesy;

- Provide a publicly accountable service that is responsive, listens and learns and acts in the best interest of Jersey;
- Act with integrity, professionalism and respect confidentiality;
- Provide choice and added value, making a difference and taking pride in all that we do;
- Respond in an appropriate, honest and trustworthy manner; be reliable, consistent and fair;
- Demonstrate the power of teams, working creatively and innovatively;
- Feel valued and appreciated, as do our customers.



## SECTION 3

### OBJECTIVES OF THE LAW OFFICERS' DEPARTMENT

1. To provide objective strategic advice to the States of Jersey directly or through the Council of Ministers having regard to constitutional and legal developments.
2. To provide objective legal advice of a high quality within reasonable timescales to the Crown, the States of Jersey, the Scrutiny Committees and all others it serves.
3. To provide and oversee a high quality prosecution service working in the interests of justice and contributing to a reduction in the level of crime in the Island.
4. To ensure that the interests of the Crown and the States of Jersey are protected by acting on their behalf in civil proceedings brought by or against the Crown or the States.
5. To ensure that the functions and duties of the Attorney General arising from custom or statute are performed to a high standard and in a timely manner.
6. To offer effective assistance within reasonable timescales to overseas judicial and law enforcement agencies in criminal matters.
7. To provide an efficient conveyancing service in relation to property matters affecting the Crown and the States of Jersey.



## **SECTION 4**

### **STATISTICAL REVIEW OF THE WORK OF THE DEPARTMENT IN 2009**

This section sets out the work carried out by the Department during 2009 and is organised along the lines of the different groups into which the Department itself is organised.

The Department is divided into three divisions. These are:

- Criminal Division;
- Civil Division;
- Finance and Administration

The work of each group during 2009 will be described in turn.

## Criminal Division

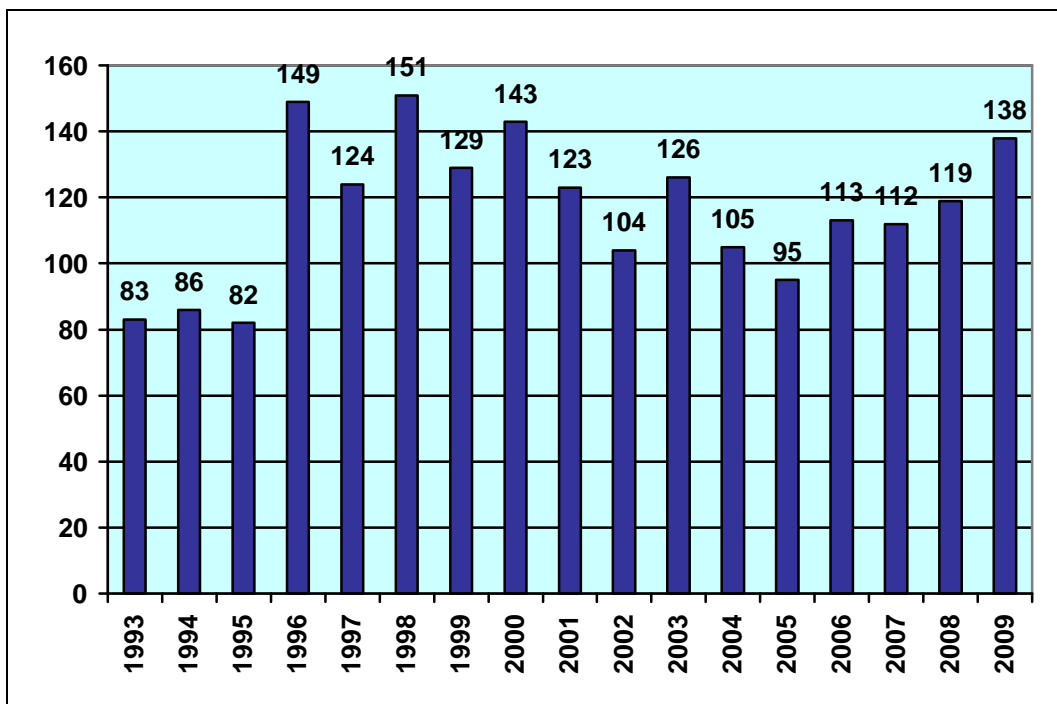


John Edmonds  
Director - Criminal

In 2009, the Serious Crime Section and the Office of the Legal Adviser to the Police merged to form the Criminal Division. The Criminal Division consisted of a Principal Legal Adviser who is the Director of the Criminal Division, two Senior Legal Advisers, two Legal Advisers, a Senior Assistant Legal Adviser, two Assistant Legal Advisers, a Police Constable (on secondment from the States of Jersey Police) and two full time Secretaries at Morier House at the end of 2009. Staff based at Police Headquarters in the Office of the Legal Adviser to the Police were a Senior Legal Adviser, three Legal Advisers, an Assistant Legal Adviser and two full time secretaries. The Division is responsible for the prosecution of all of the more serious crime in Jersey with particular emphasis on financial crime, money laundering and serious drugs offences. A significant part of the work of the Division involves co-operation with overseas jurisdictions in their investigation of serious crime with links to Jersey or where evidence is required from Jersey.

### Criminal Matters

During 2009 a total of 138 new criminal prosecutions were committed from the Magistrate's Court to the Royal Court or indicted directly into the Royal Court, nineteen more than in 2008 suggesting a continued rising trend compared to the previous couple of years and approaching rates last seen ten years ago.





### Royal Court – New Criminal Cases 1993 to 2009

Not all of the new prosecutions referred to above were completed during 2009 while some from the previous year were dealt with during the year. In 2009 the principal offence for the cases dealt with in the Royal Court was as follows: (The 2005 to 2008 figures are given as a comparison)

	2005	2006	2007	2008	2009
Drugs offences	39	39	36	40	44
Violence against the person	18	34	21	26	39
Murder/manslaughter	0	0	1	2	0
Breaking & Entry/Illegal Entry	11	5	9	8	6
Larceny and receiving stolen property	8	5	6	4	7
Sexual offences	5	11	10	9	10
Fraud and other offences of dishonesty	2	6	3	5	9
Motoring offences	3	2	7	1	3
Public order offences/resisting arrest	0	3	5	0	6
Arson/maliciously setting fire	1	0	1	0	0
Income Tax infractions	0	0	1	0	0
Health & Safety infractions	4	1	5	2	7
Housing infractions	0	0	6	6	0
Planning infractions	0	2	0	0	0
Social Security infractions <sup>1</sup>	0	0	0	0	0
Possession of explosives/firearms	0	2	1	0	0
Proceeds of crime	1	0	0	0	0
Other miscellaneous criminal offences <sup>2</sup>	0	2	0	1	4
Other miscellaneous infractions <sup>3</sup>	3	1	0	2	1
<b>TOTAL</b>	<b>95</b>	<b>113</b>	<b>112</b>	<b>106</b>	<b>136</b>

The proportion of cases relating to drug offences decreased from 38% in 2008 to 32% in 2009.

The 136 new cases were dealt with in the following manner:-

<sup>1</sup> The Department also referred a number of infractions to the Legal Adviser to the Police for prosecution in the Magistrate's Court

<sup>2</sup> Includes such offences as perverting the course of justice, child cruelty, demanding money with menaces etc

<sup>3</sup> Includes, for example, infractions under the Licensing, Food Hygiene, Sea Fisheries, Data Protection, Residential Homes, Water Pollution and Fire Safety Laws.

Sentenced by Inferior Number following guilty plea	83
Sentenced by Superior Number following guilty plea	22
Not guilty plea – remanded for trial	28
Other (E.g. failed to appear - arrest ordered, case abandoned, etc)	3

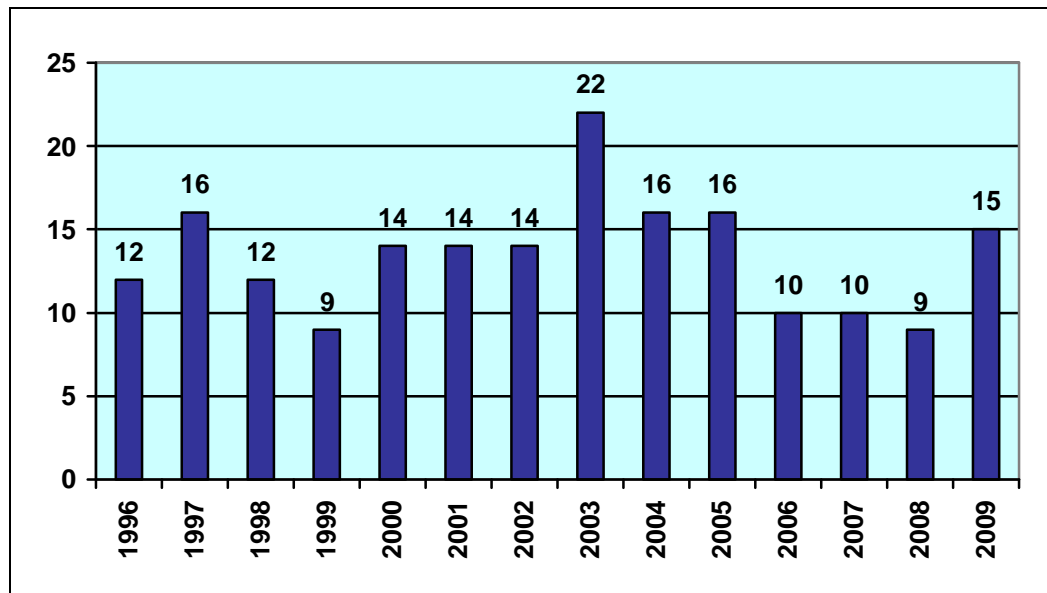
During 2009, 24 trials were due to take place in the Royal Court, of which some were ordered during 2008 and others during 2009. Some ordered in 2009 will take place in the 2010. The tables below show the outcome of those cases sent for trial:

Tried by Criminal Assizes	12
Tried before Inferior Number	3
Change of plea to guilty before trial date	7
Other (e.g. Prosecution abandoned before trial, defendant failed to appear etc)	2
<b>TOTAL</b>	<b>24</b>

During the year there were a total of 8 Criminal Assize trials and 1 trial before the Inferior Number.

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Criminal Assizes	5	12	8	7	8	10	12	15	8	8	5	6	8	12
Inferior No. Trials	7	4	4	2	6	4	2	7	8	8	5	4	1	3
Total Trials	12	16	12	9	14	14	14	22	16	16	10	10	9	15

These figures are shown graphically below:



**Royal Court Trials Held 1996 – 2008**

In the 15 trials, there were a total of 20 accused (2008 – 11). Of these, 13 were found guilty (2008 – 6) and 7 acquitted (2008 – 5).

The Department monitors the progress of criminal cases. The table below shows the results for the period 2005 to 2009 for those processes over which the Morier House administration has control. The performance indicators are set out in more detail in the Department's Business Plans.

<b>Performance Indicator</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
Receipt by Chief Clerk of case file from Legal Adviser to the Police within 14 days of committal	PI Achieved 66.2% Longest 64 days	PI Achieved 63.5% Longest 76 days	PI Achieved 61.5% Longest 83 days	PI Achieved 40.9% Longest 92 days	PI Achieved 52.6% Longest 37 days
Allocation of case to Crown Advocate within 7 days of receipt of papers	PI Achieved 94.6% Longest 26 days	PI Achieved 95.7% Longest 11 days	PI Achieved 100.0% Longest 6 days	PI Achieved 94.5% Longest 23 days	PI Achieved 99.0% Longest 5 day
Indictment within 35 days of receipt of papers	PI Achieved 91.8% Longest 52 days	PI Achieved 96.8% Longest 44 days	PI Achieved 100.0% Longest 35 days	PI Achieved 92.0% Longest 44 days	PI Achieved 96.2% Longest 30 days

The Department will continue to monitor and report the progress of cases through the Royal Court and seek to improve processes where bottlenecks occur. As can be seen from the table above, the latter two performance indicators were achieved in over 95% of cases.

**Fines and costs** awarded to the Crown by the Royal Court during the year amounted to £144,500. Previous years' figures are shown below:

	2005	2006	2007	2008	2009
Total fines and costs awarded	£192,500	£55,500	£82,000	£41,750	<b>£144,500</b>

(N.B. Default terms of imprisonment are often ordered by the Court which may result in a lower level of fines being collected than appears here. No adjustment has been made for any reduction in fines ordered by the Court of Appeal. Levels of fines can vary greatly from year to year as a result of one or two large fines on companies for serious cases.)

It should be noted that this figure is extremely variable and depends on the number of companies and individuals prosecuted during the year for offences which tend to attract fines rather than custodial or other types of sentence.

## Court of Appeal – Criminal Appeals

In 2009, there were five appellants in criminal matters from Royal Court to the Court of Appeal or to the Superior Number exercising appellate jurisdiction, who applied for leave to appeal against their conviction and/or sentence (2008 – 9).<sup>4</sup> The results of these appeals were as follows:

	Leave to appeal refused	0
Appeals against conviction	Appeal allowed – conviction quashed and/or re-trial ordered	0
	Appeal dismissed or abandoned	0
Appeals against sentence	Appeal allowed – sentence reduced	0
	Appeal dismissed	5

## Magistrate's Court Appeals

<sup>4</sup> There were a number of appeals on procedural matters in on-going cases in addition to those shown here.

There was one appellants from the Magistrate's Court in 2009. The result of those appeals is as follows:

		2005	2006	2007	2008	2009
Appeals against conviction	Appeal allowed – conviction quashed	2	1	0	0	0
	Appeal dismissed	2	1	1	2	0
Appeals against sentence	Appeal dismissed	0	1	2	1	0
	Appeal allowed – sentence reduced or amended	2	0	0	0	0
	Appeal allowed – remitted to Magistrate	0	0	0	0	1

In addition to the one appeal above, there were two further appeals by the Attorney General. One was where the Magistrate failed to impose a mandatory sentence of disqualification from driving for a second driving offence committed within a ten year period. The Court allowed the Attorney General's appeal and substituted a three year period of disqualification. The other was concerning a procedural matter and the appeal by the Attorney General was dismissed.

## Bail Applications

There were two applications for bail made in the Royal Court in 2007 (excluding applications made on indictment). (2007 – 1 application). The outcomes of those applications are as follows:

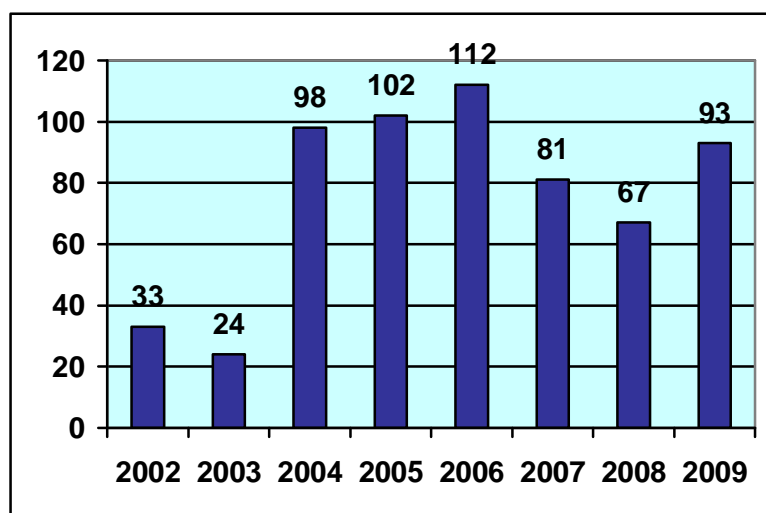
	2005	2006	2007	2008	2009
Review of Magistrate's decision – bail refused	0	0	0	0	1
Review of Magistrate's decision – bail granted	1	2	0	0	0
Remitted to the Magistrate	0	1	0	0	0
Original applications – bail refused	2	3	1	0	4
Original applications – bail granted	1	1	0	2	3

## Review of Royal Court Probation Orders

There were 13 reviews of probation and community service orders by the Royal Court during 2009 (2008 total – 15). One review resulted in imprisonment for the offender, six offenders had their Orders extended or amended and five had the Order discharged. In one case, the offender failed to appear and his arrest was ordered. (These figures do not include any cases where an offender breached an order by re-offending.)

## Naturalisations and Applications under the British Nationality Act

The Department deals with some of the administrative work which these applications require and which are dealt with in the Samedi Court. The number, and hence the work involved, has risen over the last few years and in 2009 there were 93 naturalisations and applications, an increase over the previous two years. The figures for the last few years are shown graphically below.



**Naturalisations 2002 - 2009**

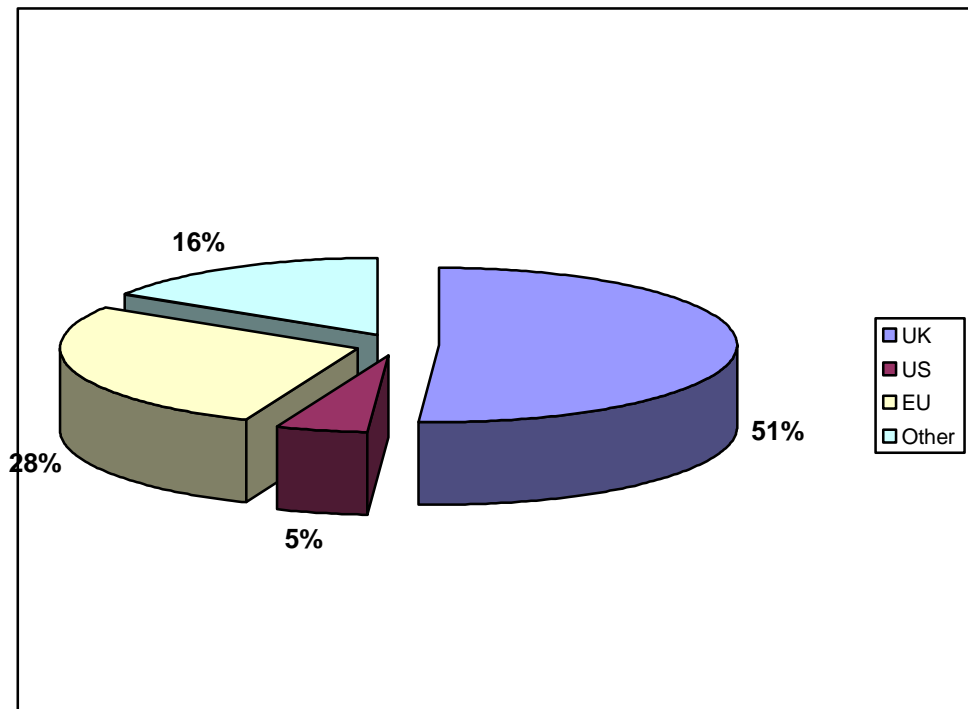
## International Meetings

In 2009, members of the Criminal Division visited Switzerland, France and the Czech Republic in connection with their work. The Division hosted visits from UK agencies including the Serious Fraud Office, the United States, Hong Kong and Indonesia.

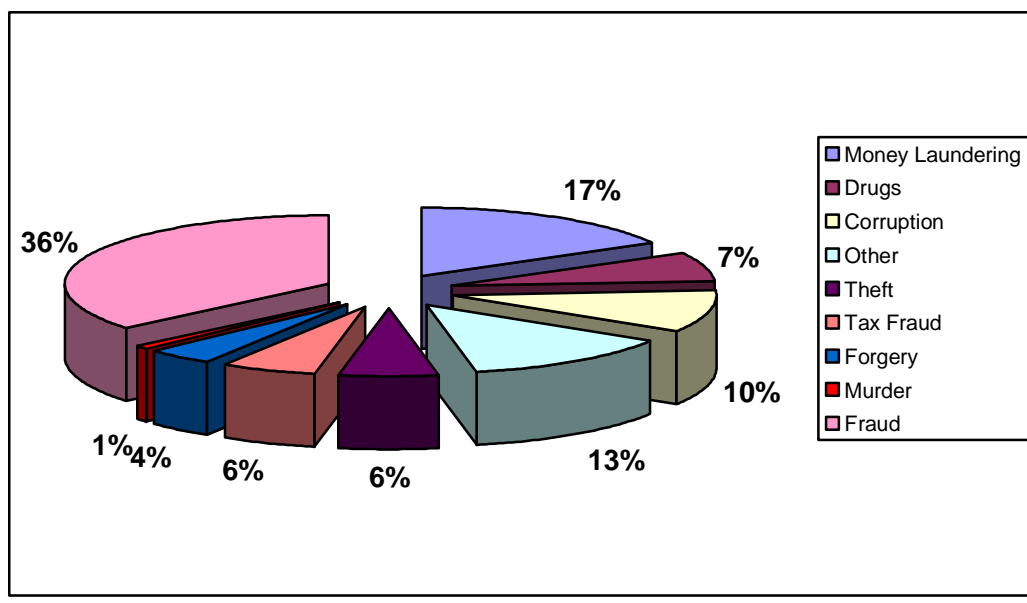
## Interaction with Foreign Jurisdictions

The Criminal Division deals with Mutual Legal Assistance on behalf of the Attorney General. Details of how to apply for assistance now appear on our website at [www.gov.je/LawOfficers](http://www.gov.je/LawOfficers). The work involved in this area includes gathering written and oral evidence for use in overseas criminal or civil asset recovery investigations and proceedings, as well as freezing and confiscating the proceeds of crime and drug trafficking.

Confidentiality precludes us from reporting the details of individual Requests for assistance received from foreign jurisdictions during 2009 but it is possible to confirm that Requests were received from the following countries and, of these Requests, only two were refused:



The following chart shows a breakdown by alleged offence of the 107 Requests for Assistance to which we responded in 2009:



### Requests for Mutual Legal Assistance during 2009

#### How Assistance was Provided

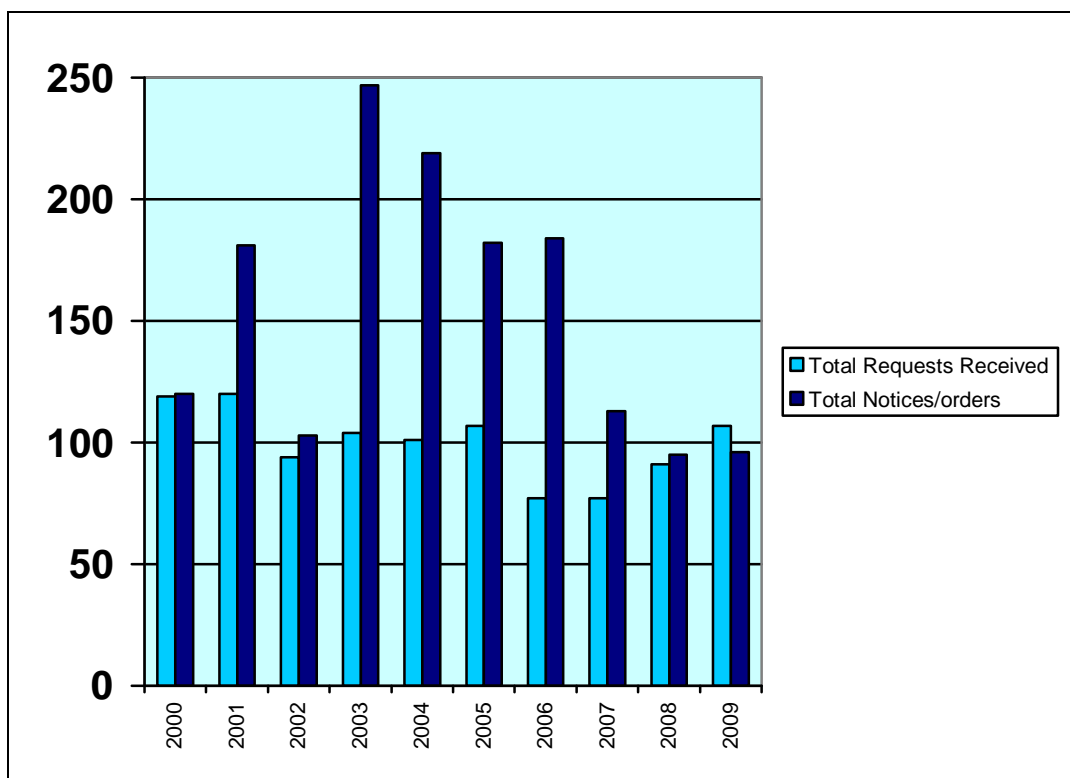
The Laws most frequently used to render assistance are the Investigation of Fraud (Jersey) Law 1991 (“the Fraud Law”) and the Criminal Justice (International Co-operation) (Jersey) Law 2001 (“the 2001 Law”). The total number of new Requests received from overseas jurisdictions (and the Notices/Order served as a result) for the period 2000 to 2009 is set out on the following table:

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
<b>Total Requests Received</b>	119	120	94	104	101	107	77	77	91	107
<b>Total notices / orders*</b>	120	181	103	247	219	182	184	113	95	96

\*These figures include notices and orders in respect of on-going investigations begun in previous years.

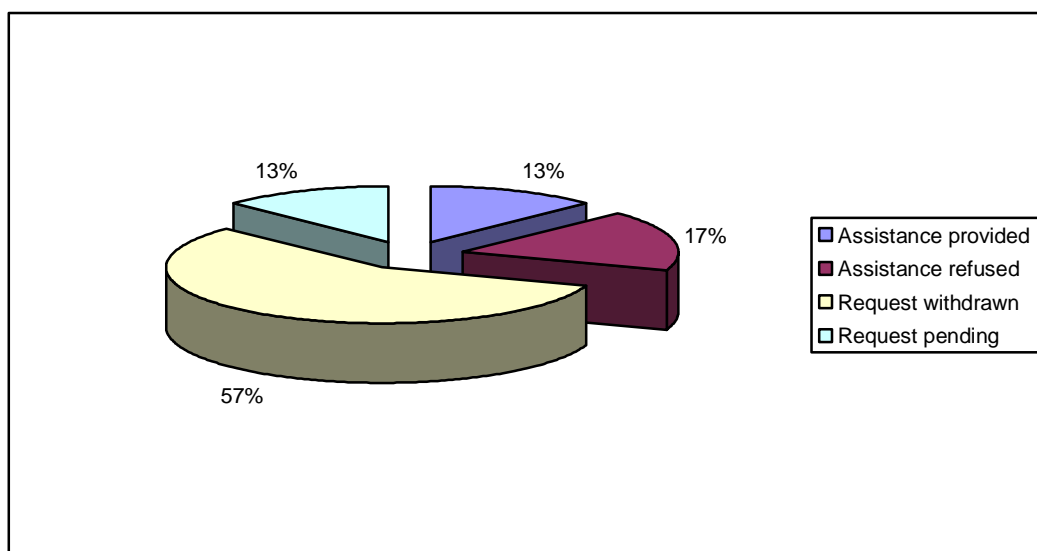
This information is shown graphically below.





### Requests for Assistance and Notices/Orders Issued

Of the 107 requests received, 63 were actually dealt with during 2009 (i.e. assistance was provided) because the others were pending or dealt with in another way (other than under the 1991 Law, 2001 Law, Civil Asset Recovery or POC Law). This shown graphically below:



The following tables are break-downs of how the requests were handled during 2009:

	Number of Requests
Assistance under Fraud Law	25
Assistance under 2001 Law	25
Assistance under Civil Asset Recovery Law	3
Assistance under Proceeds of Crime Law	3
Other type of assistance	7

### **Number of Notices/Orders issued in 2009**

Notices under Fraud Law	54
Notices under 2001 Law	36
Orders under Civil Asset Recovery Law	3
Orders under Proceeds of Crime Law	3

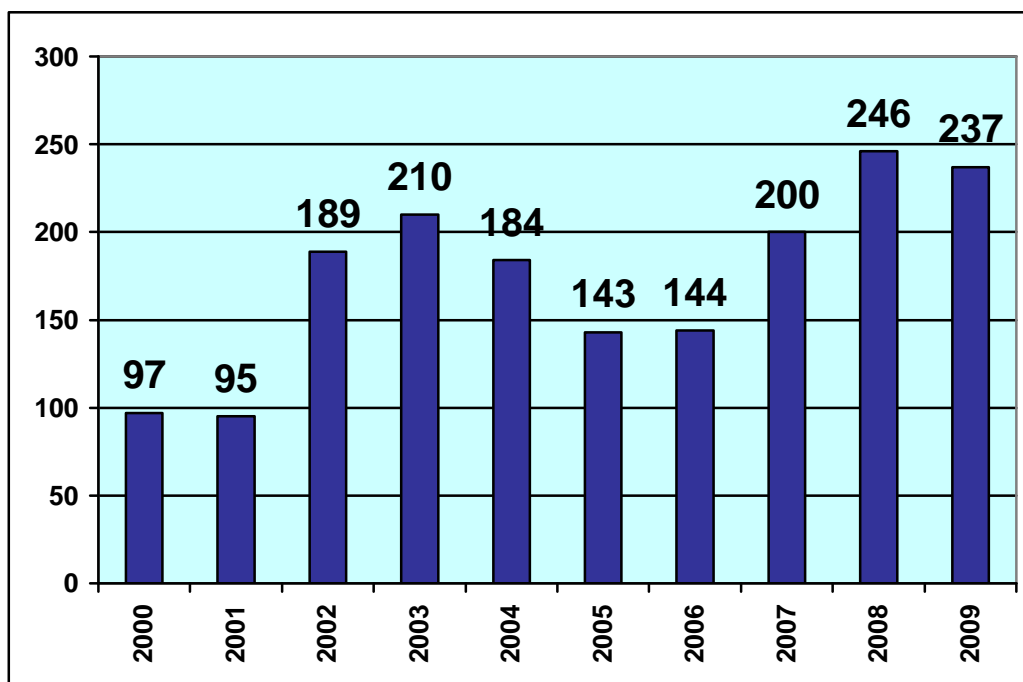
In addition to the new requests received in 2009, a number of Supplementary Requests or pre-2008 Requests were dealt with during the year.

In the past year, 15 new letters of request for assistance have been sent by Jersey to other jurisdictions (2008 – 6) seeking evidence for use in local investigations.

Several hearings were held before the Viscount Substitute under Article 5 of the 2001 Law at the request of various overseas authorities.

### **Office of the Legal Adviser to the Police**

During 2009, the Legal Adviser to the Police's team dealt with 237 prosecutions in the Magistrate's Court (2008 total – 246), slightly fewer than in 2008 but still the second highest number in recent years. This is shown graphically below:-

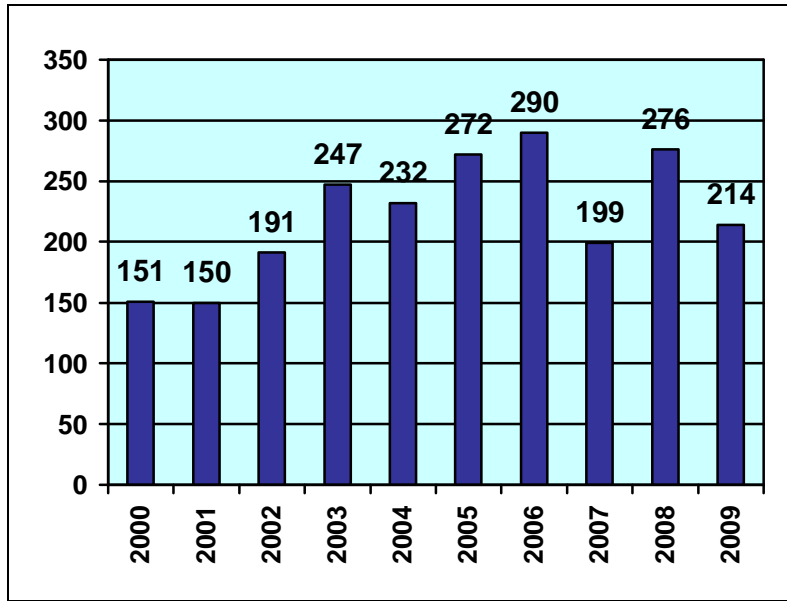


### Magistrate's Court Prosecutions

The principal offences for the cases dealt with in the Magistrate's Court (i.e. excluding those committed to the Royal Court) by members of the Legal Adviser's Office for the last four years were as follows:-

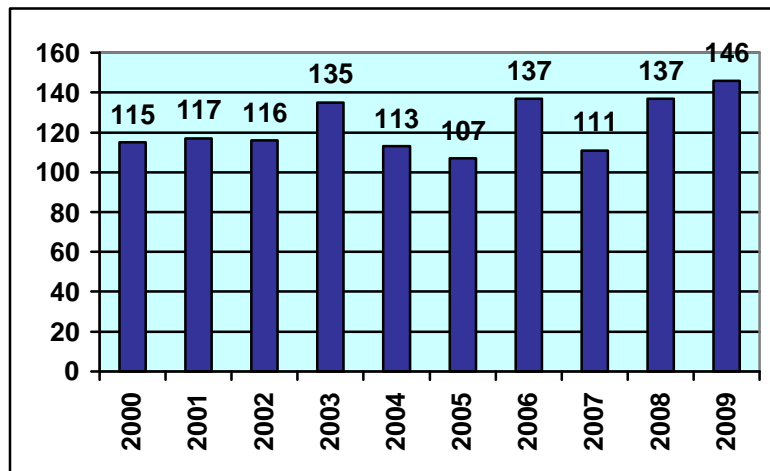
	2005	2006	2007	2008	2009
Drugs offences	11	11	14	23	14
Violence against the person	50	51	62	63	56
Breaking and entry / Illegal entry	4	5	8	9	12
Larceny and receiving stolen property	16	8	13	10	12
Sexual offences	4	12	12	13	8
Fraud and other offences of dishonesty	6	6	8	7	6
Motoring offences	14	14	30	36	35
Public order offences / Resisting arrest	12	9	18	27	33
Infractions	2	0	4	11	8
DIC	16	13	14	16	17
Miscellaneous	4	13	12	27	30
Malicious damage	4	2	5	4	6
<b>TOTAL</b>	<b>143</b>	<b>144</b>	<b>200</b>	<b>246</b>	<b>237</b>

The Legal Adviser answered 214 requests for advice from various agencies in the criminal justice system (2008 total – 276). Again this is shown graphically below:-



### Requests for Advice Answered

146 files were prepared for the Royal Court during the year (2007 total – 137), the highest number since 2000, although not all of these were indicted before the Royal Court during 2007.



### Royal Court Files Prepared

## Civil Division



Richard Whitehead  
Director - Civil

*2009 saw the Law Officers' Department divided into two distinct sections – the Civil Division and the Criminal Division. Within the Civil Division sit the Advice Group, which – as the name suggests – focuses on the provision of legal advice to administrations of the States, and the Civil Litigation Group. The work of each Group is described below.*

At the time of writing, the Advice Group (“the Group”) is overseen by the Director of the Civil Division (the “Director”) and consists of two Senior Legal Advisers, two Legal Advisers and four Assistant Legal Advisers. There is one secretary who supports the Director and Senior Legal Advisers. The Group is sub-divided into four teams, each concentrating on the areas of work outlined below.

The wide range of legal work undertaken by the Group includes the provision to the public sector of legal advice relating to the following -

- International, Constitutional and EU Law (“ICE Team”) i.e. the constitutional relationship between Jersey and the United Kingdom, Jersey and the European Union and Jersey’s international legal obligations;
- Human Rights Law (“HRL team”);
- Legislation, Court and Customary Law (“LCC Team”); and
- Commercial and General Law (“CGL Team”).

Each team is managed respectively by the two Senior Legal Advisers and the two Legal Advisers. The management of these teams is overseen by the Director (see below).

The work undertaken in respect of legislation includes giving advice to Ministers and their Departments on proposals for new enactments (including advice on human rights compatibility and penalty provisions), preparation of reports for the Privy Council, assisting with drafting instructions for some major items of new legislation, including the preparation of Orders in Council extending Acts of Parliament (with any necessary adaptations) to Jersey, and advice as to whether such extensions are necessary or desirable.

The drafting of Rules of Court (which are made by the Superior Number of the Royal Court) is also undertaken from within the Group.

In addition to the matters mentioned above, the Group also deals with a very wide range of other advisory work. This includes -

- advice to the Honorary Police and, in public law matters, to the Parish administrations generally;
- legal advice to the States' administrations relating to a variety of commercial and other contracts;
- advice on employment law issues for the States as an employer; and
- advice on data protection law.

Other functions undertaken by members of the Group include:

- in-house notarial work;
- the swearing of affidavits;
- representing the Attorney General when passing contracts of immovable property on behalf of the Public of the Island of Jersey;
- appearing in the Royal Court on behalf of the administrations of the States in respect of debts;
- appearing, from time to time, in the Petty Debts Court on behalf of the administrations of the States in respect of debts; and
- translating legal documents to and from French;

In respect of new and forthcoming legislation, several items were of particular note.

Reforms to the Court of Appeal (Jersey) Law 1961 contained in the Court of Appeal (Amendment No 8) (Jersey) Law 2008 were finally able to be brought into force with the passing of rules of court jointly

by the Superior Number of the Royal Court and the Court of Appeal. The reforms relate broadly –

- (i) (in civil appeals) to jurisdiction, limitation on appeals, practice and procedure and powers exercisable by a single judge; and
- (ii) (in criminal appeals) to time for appealing, the right to be present, admission to bail, records of proceedings at trial, review of unduly lenient sentences and rights of appeal concerning confiscation orders.

Further extensive work was done in connection with the reform of succession rights of illegitimate children, as a result of which the draft Wills and Successions (Amendment) (Jersey) Law 201- has been passed by the States and awaits Royal Sanction. The amending Law places illegitimate children on the same footing as legitimate children for the purposes of succession, and represents phase 1 of an ongoing review by the Legislation Advisory Panel of inheritance law.

Rules of Court were drafted –

- with a view to the new Gender Recognition Law being brought into force;
- to provide for the procedure on appeal to the Royal Court under the High Hedges (Jersey) Law 2008

Work also commenced on Petty Debts Court Rule changes that will in due course be needed as a result of the Residential Tenancy (Jersey) Law 201- (presently awaiting Royal Assent).

Work continued on proposals for reform of the law relating to the capacity of minors (which has developed from the earlier Law Society proposals for reform of the law on *tutelles*). In the wider area of law reform, the Group has also been tasked with the preparation of a law drafting brief for an overall reform of the legislation relating to security on immovable property.

In connection with the Supply of Goods and Services (Jersey) Law 2009, assistance was given in connection with draft Regulations under the 2009 Law limiting the exclusion or restriction of warranties in contracts for the sale of goods or the supply of services or in hire purchase agreements.

Advice was (or continued to be) given in 2009 in connection with draft legislation, or the need for it, governing –

- the International Criminal Court
- the Armed Forces (resulting from the UK Act of 2006)
- repatriation of prisoners and mutual recognition of judgments in certain criminal matters
- civil partnerships
- security on immovable property
- 'e-borders' and other aspects of the Immigration Acts respecting the Common Travel Area
- carriage by air (the Montreal Convention)
- the jurisdiction of Centeniers at Parish Hall enquiries
- the residual police jurisdiction of the Connétables
- removal of nationality requirements for advocates and solicitors of the Royal Court
- changes in the mode of election of Jurats of the Royal Court
- disciplinary procedures under The Law Society of Jersey Law 2005
- television licensing and other broadcasting and telecommunications matters
- reciprocal enforcement of judgements of the new 'Supreme Court' in the United Kingdom
- the rules of the Jersey Mutual Insurance Society, Incorporated

In respect of international, constitutional and EU law matters, the Group also provided advice in the following general areas:

- the compatibility of Jersey law with various international conventions and implementation in Jersey law of the requirements of such conventions where necessary;
- the constitutional relationship between Jersey and the United Kingdom;
- Jersey's relationship with the EU pursuant to Protocol 3;
- the applicability to Jersey of EU legislation by virtue of Protocol 3 to the UK's Act of Accession to the EC treaty; and
- the compatibility of Jersey law with the requirements of EU law and the implementation and enforcement of relevant EU law in Jersey law.

Members of the Group also provided support and assistance (as appropriate) in respect of States-wide matters *e.g.* Sanctions Working Group.



## **General comments and the view to 2010**

The inception of the Group has been viewed positively within and outside the Department:

### **Promotion**

The Senior Assistant Legal Adviser was promoted to Legal Adviser grade in the course of the year.

### **Numbers**

Two additional Assistant Legal Advisers were recruited to the Group.

### **Management**

Four members of the Group were given the designation “Team Leader”. Team Leaders meet with the Director on a monthly basis to discuss the progress of work and points arising within the respective teams. Additional team level meetings are held to focus on specific advice.

### **Interaction with other parts of the Civil Division**

The Director chairs monthly meetings with all legal staff across the Civil Division. This is an opportunity to be updated on developments, to flag any issues of interest or concern and to keep abreast of work being undertaken across the Division.

### **Future developments**

It is hoped that 2010 will provide an opportunity to improve work practices, including greater co-operation with counter-parts in Guernsey, streamlining of procurement of external legal services, improved know-how and training and – the holy grail – the more timely provision of valued legal advice against a backdrop of burgeoning workloads.

## **Orders in Council and Privy Council Reports**

2009 was again a busy year for the States, with 28 new Laws being adopted. As is customary, all were presented at the next available sitting of the Royal Court after return from the Department for Constitutional Affairs, following Royal Assent.

The Attorney General has a duty to report to the Privy Council following the adoption of legislation by the States and to draw to the attention of the Privy Council any features of that legislation which might affect the interests of the Crown.

A total of 20 reports for the Privy Council were prepared in 2008 (41 in 2008). These reports are sent in the first instance to His Excellency the Lieutenant Governor. The Department's aim (and therefore the Group's target) is to forward reports to the Lieutenant Governor within four weeks of States approval. Further efficiencies in this process have been achieved by the introduction of the use of electronic mailings to and from the Department for Constitutional Affairs. It is noteworthy that the target was achieved in every case during the year.

The 41 reports in 2008 were transmitted within the following timescales:-

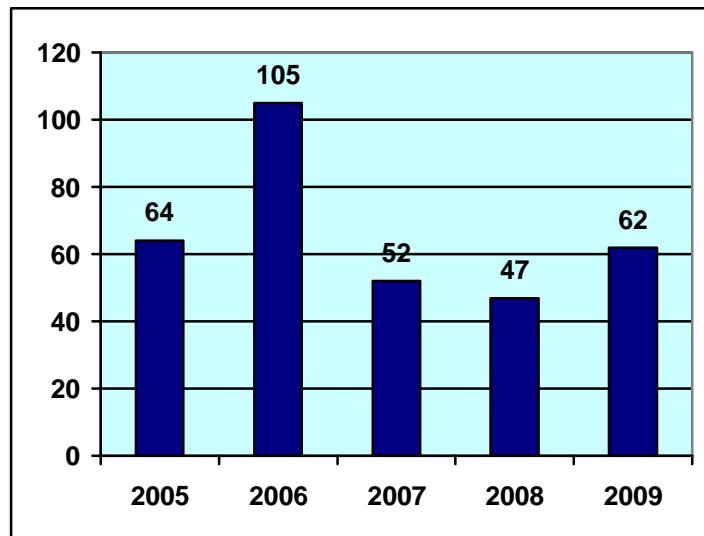
	2005	2006	2007	2008	2009
Less than 10 days	31	22	36	17	7
Between 11 and 20 days	10	6	6	13	13
Between 21 and 30 days	1	2	2	11	0
Between 31 and 40 days	0	0	0	0	0
Between 41 and 50 days	0	0	0	0	0
Over 51 days	0	0	1	0	0
<b>TOTAL</b>	42	30	45	41	20

All reports were therefore transmitted within one month. The average time for transmission was 11.5 days (performance indicator 28 days).

In addition to the Orders in Council relating to Laws passed by the States of Jersey a total of four Statutory Instruments and Orders in Council extending UK legislation to the Island were registered in the Royal Court. (3 in 2008).

## Hague Convention – Service of Documents

Dealing as it does with some international matters, the Group is also responsible for the administration of requests from overseas authorities for the service of judicial documents under the 1965 Hague Convention on the Service of Documents. In 2009, 62 sets of documents were received (47 sets in 2008) and processed. The total reverts therefore to a level comparable to those occurring during some past years. The data are shown graphically below.



Documents received for service under the Hague Convention  
2005 - 2009

### **Loi (1862) sur les teneures en fidéicommiss et l'incorporation d'associations**

The Civil Division also oversees applications to the Royal Court for the incorporation of associations under the Loi (1862) sur les teneures en fidéicommiss et l'incorporation d'associations. The constitutions of seven new associations were approved by the Department in 2009 (2008 total – 4 constitutions) and Acts of Incorporation granted by the Royal Court.

## Civil Division – Litigation Group

*The Litigation Group forms part of the Civil Division and – deals with two major work streams –*

- *advising and representing Ministers and States Departments in relation to civil litigation, such as some claims against the States in contract and tort (which are not handled by States insurers) and in some planning and judicial review cases; and*
- *representing and advising the Minister for Health in children’s cases. The second of these takes up by far the greater share of the Group’s resources.*

From July 2009, the Litigation Group (“the Group”), which is overseen by the Director of the Civil Division (the “Director”), consists of two Advocates at Legal Adviser level and one Assistant Legal Adviser. Some assistance with the children’s work is provided by the Attorney General’s Assistant Legal Adviser, who is a UK solicitor with extensive experience in children’s cases with UK local authorities. There is one secretary who supports the Legal Advisers. The Group is not sub-divided but one Legal Adviser is assigned to deal only with children’s cases and the other, in theory, deals with some children’s cases as well as the other litigation and advisory functions mentioned above. However, this division of resources proved to be insufficient to cope with the large number of complicated and resource intensive children’s cases and it has been necessary for the time of the Legal Adviser who is supposed to deal with other litigation matters to be devoted, almost wholly, to children’s cases. Even that arrangement has proved not to be enough resulting in a number of cases having to be outsourced to the private sector, at considerable expense. The statistics for the number of children’s cases dealt with in the year under review are given elsewhere in this review.

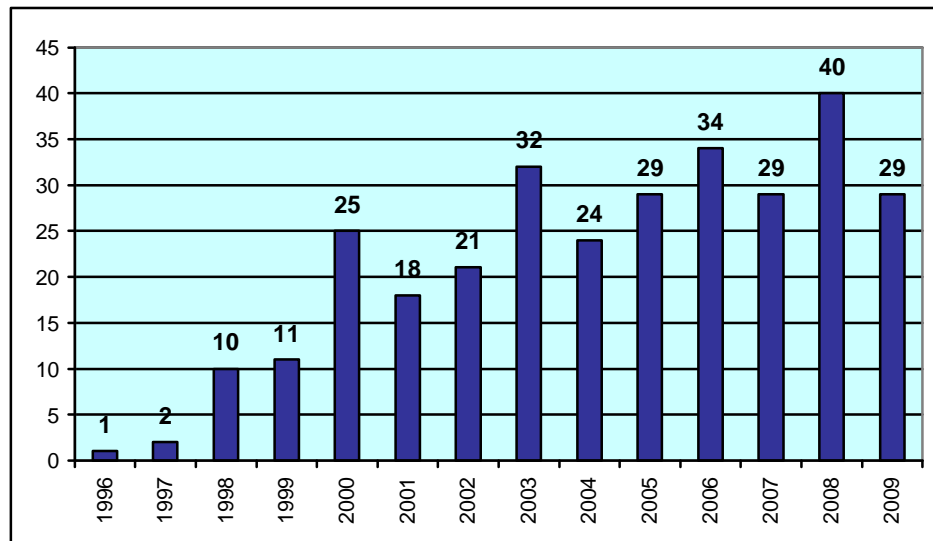
During the year the States accepted the recommendations in the Report by Andrew Williamson into child protection in Jersey and, as a result, extra funding was made available by the States on a permanent basis to the Health Minister for extra manpower resources. This enabled the Law Officers to agree with the Minister that some of the extra funding should be used for recruitment to extra posts within in the Group, dealing solely with children’s cases. The process of recruiting the extra staff had commenced at the end of 2009 and was expected to be completed during 2010.

During the year it was agreed with Children’s Service that there would be benefit in developing a service level agreement with the Children’s

Service. This was in progress at the end of the year, as was work on a memorandum of understanding with the Children's Department on the management of professional differences. Both should be completed during 2010.

## Children's Matters

The Department acts for the Children's Service in care order proceedings, adoptions and various other matters. These matters can be extremely urgent and time consuming and represent a significant work load for those members of the Department who deal with them. In 2008, the Department dealt with 29 new matters (2008 total – 40) of this sort. The nature of many of these cases is that the work continues until the child attains his or her majority and there is a cumulative factor which makes the Department's workload increasingly onerous as well as being of vital importance.



### New Children's Matters Referred to the Department

## Legitimacy Petitions

The Civil Litigation Group also deals with legitimacy petitions and curatorships. Two new legitimacy petitions were reviewed by the Department during the year (2008 total – 2). The performance indicator for this area of work is that an initial response should be given within three weeks of receipt of the initial letter. A response was given in the following times for the three new cases:

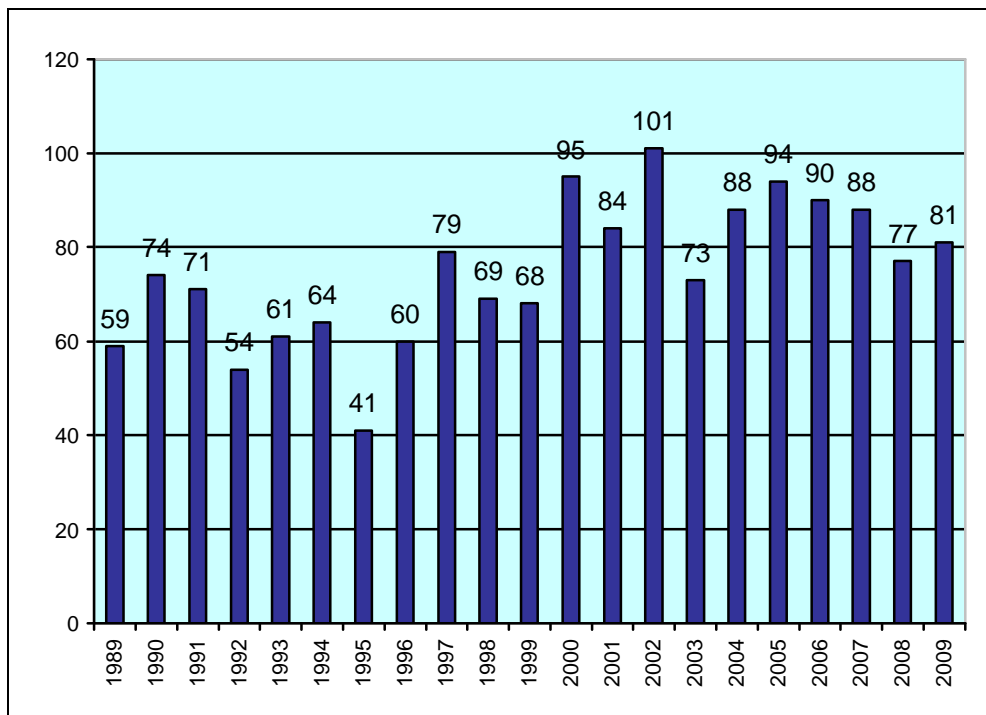
	2005	2006	2007	2008	2009
1 to 7 days	3	2	3	2	2
8 to 14 days	0	0	0	0	0
15 to 21 days	0	0	0	0	0

22 to 28 days	0	0	0	0	0
28 to 30 days	2	0	0	0	0

Both petitions received in 2009 were processed within the target time.

## Curatorships

The Civil Division carries out the administrative work associated with the establishment of curatorships where a person is appointed by the court to look after the financial affairs of another deemed incapable of doing so themselves through mental incapacity. In 2009, the Department dealt with 81 (2008 total – 77) new curatorships for new interdicts but this figure does not include the work done on existing curatorships such as for changes of curators or for curatorships not proceeded with. This represents a continuing increased work load as can be seen from the graph below:



Curatorships – 1989 - 2009

## Claims against Departments

The Department dealt with new civil claims against Ministers and other States Departments where proceedings were issued or threatened. Where appropriate, all were referred to the States' insurers within the time specified by the performance indicator in the Business Plan. The claims were as follows:

	2005	2006	2007	2008	2009
Economic Development	0	0	1	0	1
Education, Sport and Culture	1	6	1	2	1
Employment & Social Security	0	1	0	1	0
Harbours and Airport	0	1	0	0	0
Health and Social Services	5	5	4	3	6
Housing	0	1	1	0	2
Home Affairs	0	3	3	5	2
Transport & Technical Services	3	5	1	2	0
Planning & Environment	-	0	0	0	1
States of Jersey Police	0	1	1	1	1
Other	2	0	0	1	0
<b>Total</b>	<b>11</b>	<b>23</b>	<b>12</b>	<b>15</b>	<b>14</b>

## General comments and the view to 2010

### Management

The Group meet with the Director on a monthly basis to discuss the progress of work and points arising within the respective teams. There is frequent more casual contact between the members of the Group and the Director.

### Interaction with other parts of the Civil Division

The Director chairs monthly meetings with all legal staff across the Civil Division. This is an opportunity to be updated on developments, to flag any issues of interest or concern and to keep abreast of work being undertaken across the Division.

### Future developments

The recruitment of the extra staff made possible by the Williamson Report should be completed in 2010 and the Senior Management Team has agreed, to a proposal by the Director to re-organise the Group once the new posts have been filled, into two separate Groups. The Children's Law Group would deal solely with that area of work. It would comprise two Advocates at Legal Adviser level and one Assistant Legal Adviser, devoted exclusively to that area of work, plus another shared with the Litigation/Property team. The day to day work management responsibility for this Group would be that of the more senior of the Legal Advisers in post.

A new Litigation team, consisting of two Legal Advisers, one an Advocate, the other being the Legal Adviser currently assigned to the Property Group, plus a part of the Assistant Legal Adviser, would deal with the existing litigation work, including the planning appeals, both modified procedure and others, and property and planning law advice.

The Advocate would also attend the majority of the Samedi Court sittings, provide emergency cover for Children's work in the absence on leave or sickness of the Advocates in the Children's Group, and should have capacity to provide back-up for the advice Group to relieve acute work pressure.



## Property Group

The sales of properties to Housing tenants in accordance with P6.2007 continued apace throughout the year. These sales combined with the usual advice work made 2009 a busy, interesting and challenging year.

One particularly notable undertaking was the implementation of the "Jersey Homebuy Scheme" ("JHS"). This was an initiative promoted by the Planning Minister with the aim of providing affordable housing to first time buyers. The developer was to be obliged in a planning obligation agreement to sell 45% of the houses in a development to a non profit organisation ("NPO") i.e. a Housing Trust, the Parish or the Public. These properties were then to be sold on to qualifying purchasers at the same discounted price that had been negotiated with the developer. The balance between this price and the first time buyer market value being secured as a charge against the property, which charge was to be eventually paid to the NPO upon the first alienation of the property.

Unfortunately "Scheme" turned out to be a misnomer because it implied that a detailed plan had been drawn up by which it was to be implemented. The JHS had been approved in principle by the States Assembly but no detail had been agreed. Planning had identified 46 houses on the La Providence development which would be suitable for the scheme. The Housing Department were tasked with identifying suitable purchasers for the properties. It was decided that as no detail had been formulated that the sales of these properties would be used as a pilot to gauge whether the scheme would work. As there was to be no funding provided by the Treasury, the purchase of the properties from the developer and the sale to the purchasers had to take place on the same day. Fortunately the transactions passed over a period of a few weeks, so the logistical problem of having to pass so many purchase and sale contracts on the same day was averted.

In June 2009 the Public completed a contract lease with the Dairy, paving the way for the Dairy to build a new purpose built facility at Howard Davis Farm. In respect of matters dealt with by the Property Group arising from the Planning Department, time was also taken with advisory work to the Planning Minister and acting for him in respect of planning obligation agreements and planning appeals. The most significant planning obligation agreement was in respect of the release of the 46 properties mentioned above for the Jersey Homebuy Scheme. In respect of planning appeals, 2009 saw the Minister for Planning bringing an appeal to the Court of Appeal - Civil Division against the decision of the Royal Court on a planning appeal. The appeal was successful. This was the first time for 7 years that the

Minister/Committee had challenged a planning appeal decision of the Royal Court. In respect of other appeal work, 2009 saw a steady stream of planning and third party planning appeals, the timing of which can have a significant effect on the workload for the Group.

The Conveyancing Section of the Department undertook the following transactions before the Royal Court during 2009:-

	2005	2006	2007	2008	2009
Property sales and sales of rights	57	41	47	55	75
Property purchases	18	1	3	9	47
Deeds of arrangements, parties to contract, deeds of exchange and counter-exchange	33	27	33	32	15
Contracts with Jersey Electricity Company	4	2	0	2	0
Other contract leases	7	3	7	7	2
Mortgages secured by simple conventional hypothec	1	0	0	0	0
New Agricultural loans and other loans served by judicial hypothec**	1*	0	1	26	60
Existing agricultural loans re-registered	7	6	5	2	3

\*Judicial Hypothec – Caledonia Close, £585,000, repayable 30<sup>th</sup> June 2006

\*\* Housing Department stock sell-offs

The values of the transactions for which the Conveyancing Group were responsible during the year were as follows:-

	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
Gross value of sales completed on behalf of the Public and the Crown	£9,970,352	£20,654,578 <sup>5</sup>	£8,540,178 <sup>6</sup>	£10,375,801 <sup>7</sup>	£21,020,467 <sup>8</sup>
Gross value of purchases completed on behalf of the Public and the Crown	£3,480,340	£10	Nil	£755,420	£12,772
Gross value of all new loans registered	£109,000	-	£79,033	£2,052,915	£9,710,500
Gross value of all existing loans re-registered	£770,622	£345,036	£147,646	£89,071	£399,874
Gross amount of legal fees recovered from third parties	£15,210	£91,690	£24,000	£23,405	£19,400

JEC Leases annual rental receipts (total paid in advance) -

Crown Leases annual rental receipts -

Public Leases annual rental receipts (2) – £160,000

(Jersey Aviators Ltd and Jersey Dairy Property Ltd)

Considerations received on Deeds of Arrangement £90,988<sup>9</sup>

Fees paid by Public to Lawyers £11,000

<sup>5</sup> Includes £1,998,9673 AHP sales/transfers

<sup>6</sup> Includes £746,452 approx AHP sales/transfers and £2,500 Crown sale

<sup>7</sup> Includes £1,333,508 AHP repayment of States loans. Discounted prices of housing sales used. Balance shown under new loans registered below.

<sup>8</sup> Includes £2,000 sale of rights by Crown

<sup>9</sup> Reimbursement of States loan on 188 Le Clos des Sables

## Finance and Administration

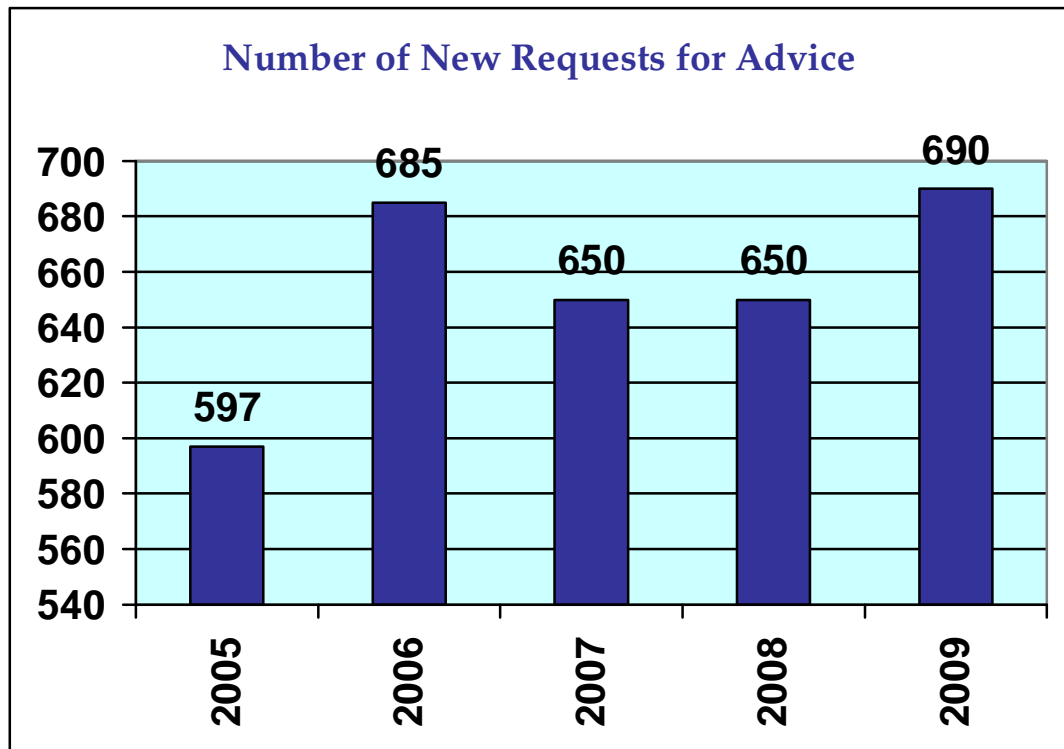
Administrative support is provided to the Department under the direction of the Chief Clerk. During the year, the newly created post of Records Manager was filled and the new post-holder has started reviewing and revising the Department's policies and procedures in order to ensure that the requirements of the Public Records (Jersey) are met and to improve the efficiency of the record keeping within the Department. Other support is provided across the Department by the Finance Manager, Information Manager and Court Proceedings Officer as well as by the secretarial staff. The current ratio of one support staff member to 2.42 professional staff suggests that the administrative overhead to the Department remains remarkably low.

### **Advice to Ministers and Departments**

The Department continued to advise Ministers and Departments on a wide range of legal issues. Advice on many matters referred in previous years continued and the total number of new formal requests for advice opened on the Department's database system during the year (excluding Conveyancing enquiries, advice to the States Police and some other organisations) was as follows:-

	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
Economic Development	5	15	19	7	16
Parishes and Honorary Police	73	80	72	59	50
Data Protection Registrar	16	18	9	13	4
Education, Sport and Culture	11	22	20	15	22
Employment & Social Security	6	12	22	13	13
Treasury and Resources	5	20	38	14	18
Harbours & Airport	5	8	4	9	4
Health & Social Services	30	24	15	7	13
Home Affairs	106	106	91	164	71
Housing	3	7	3	8	2
Income Tax	4	7	4	1	3
Planning and Environment	30	30	55	64	39
Population Office	0	2	5	2	2
Transport & Technical Services	19	31	27	23	27
States Human Resources	0	0	2	13	13
Chief Minister's Department	46	48	32	47	158
Scrutiny	13	16	8	3	2
States Member (Individual)	12	2	0	1	0
Other	213	237	224	187	233
<b>Total</b>	<b>597</b>	<b>685</b>	<b>650</b>	<b>650</b>	<b>690</b>

This information is shown graphically below but these figures do not of course include the many informal requests for advice which are dealt with over the telephone or by e-mail where no separate or new file is established. The trend appears to be continuing to rise.



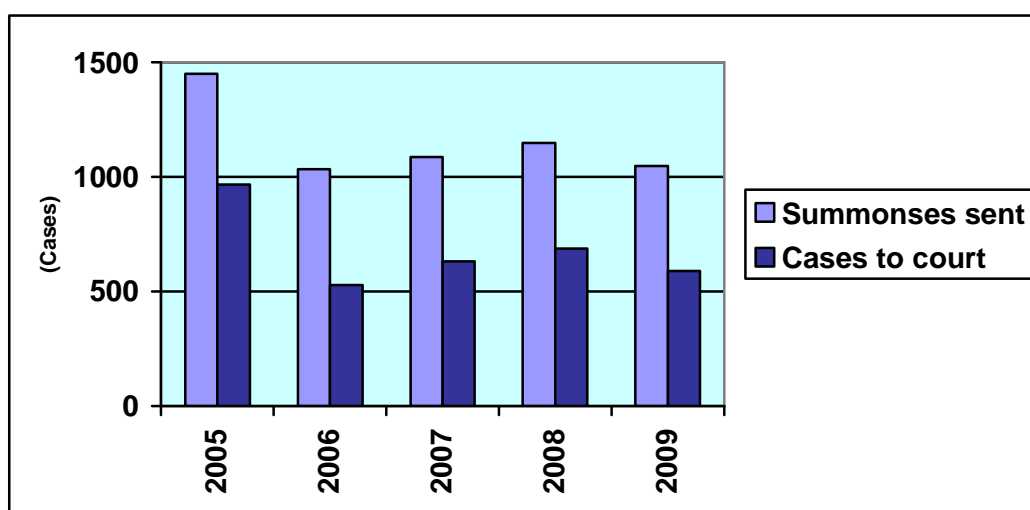
In addition the Department continued to provide advice to Departments where new issues arose out of existing matters and to H.M. Receiver General in relation to legal matters. Advice on Human Rights matters (part of the remit of the Civil Division) continues to form an increasing part of the Department's work, particularly in the consideration of new legislation which requires a statement of Human Rights compatibility before being presented to the States Assembly for debate.

## Debts

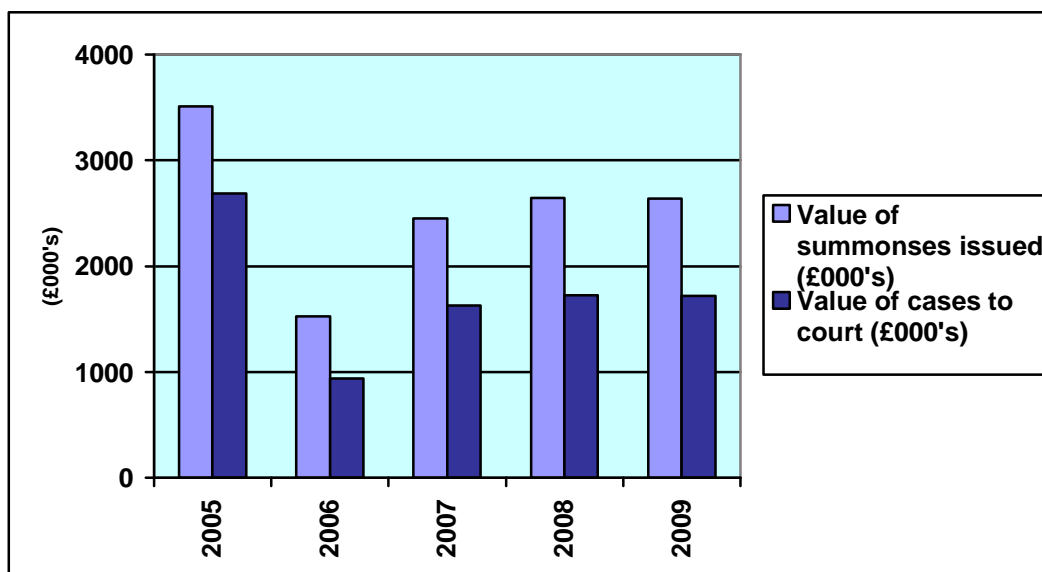
The work of the Department's Finance and Court Proceedings Officer resulted in:-

### Petty Debts Court

	2005	2006	2007	2008	2009
Summonses sent	1450	960	1087	1148	1049
Total for summonses issued	£3,514,479	£1,526,739	£2,448,785	£2,613,378	£2,640,441
No. of cases to court	967	477	632	688	589
Total for cases to court	£2,686,850	£943,450	£1,631,559	£1,728,122	£1,719,728



**Petty Debts Court Summonses and Cases (Number of Cases)**



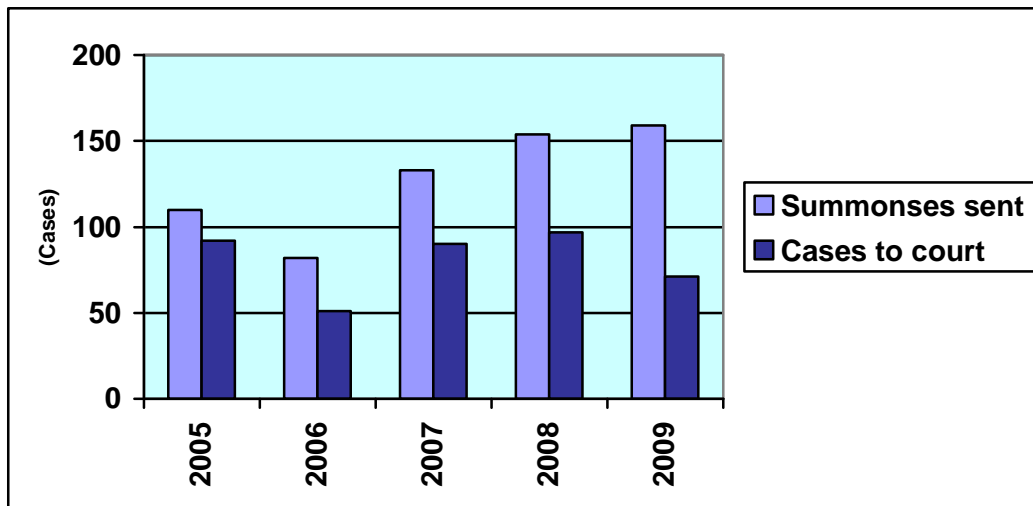
**Petty Debts Court Summonses and Cases (Value)**

### Royal Court

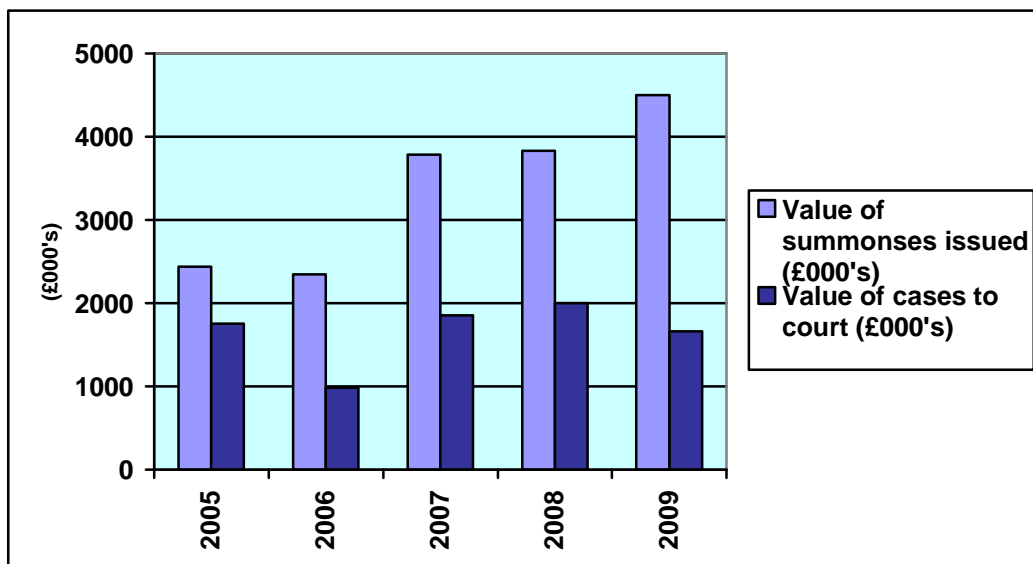
	2005	2006	2007	2008	2009
Summonses sent	110	82	133	154	159
Total for summonses issued	£2,444,842	£2,351,907	£3,788,342	£3,833,479	£4,498,273
No. of cases to court	92	51	90	97	71
Total for cases to court	£1,755,156	£986,806	£1,859,798	£2,007,676	£1,664,504

A total of £3,754,481 was recovered before the court date and £70,749 was recovered via the Viscount's Department. (Monies paid direct to individual departments after an Act of Court has been obtained and wage arrests are not included in the above figures.)

This information is shown graphically below:



**Royal Court Summonses and Cases (Number of Cases)**



**Royal Court Summonses and Cases (Value)**

The level of activity in the Petty Debts Court remains stable following a reduction from the levels in 2005. The number of summonses sent to the Royal Court in 2007 increased significantly from the previous year and the results for 2008 and 2009 suggest a continuing upward trend. The debts collected by the Department as a result of undertaking this work for other States departments represent a significant income for the States as a whole. Although the Department charges for this work, it represents a significant saving to the other Departments if this work was carried out by private sector companies. The number of summonses sent to both the Petty Debts and Royal Courts dipped very significantly between 2004 and 2005 but has risen



steadily since then. It is thought that the changes to the collection of income tax through the introduction of ITIS reduced the number of arrears of income tax payment resulting in court action at that time. It seems likely that the current economic downturn may result in more debts being owed to States departments and that the work of the Department's Finance and Court Proceedings Officer will continue to rise over the foreseeable future. The Department will continue to monitor the position closely.

## SECTION 5

### 2008 BUSINESS PLAN DEVELOPMENT ACTIVITIES REPORT ON PROGRESS

The Department did not publish a Business Plan during 2008 as there were difficulties setting a balanced budget for the year. This resulted in lengthy negotiations with the Treasury and Resources Department, finally reaching a satisfactory conclusion towards the middle of the year. The Department continued to progress the development activities set out in the 2007 Business Plan and progress on these is shown below.

**Activities that have been achieved are shown in green.**

**Activities that are only partially complete or are on-going are shown in blue.**

**Activities that have not yet been undertaken are shown in red.**

### Key Activities Relating to Organisation and Management of the Department in 2009

4.1	Implement recommendations of the review of the Department undertaken by the Comptroller and Auditor General	A re-organisation of the Department to clarify reporting lines and responsibilities was implemented in July 2009
4.2	Recruit additional staff as agreed in the States Business Plan	The final members of staff to be recruited took up their posts during the year.
4.3	Implement changes to the file referencing system and records management procedures	The new Records Manager, one of the above new members of staff, has started work on this. It is on-going in 2010 and expected to be completed during the year.
4.4	Train staff in the use of the new time recording system and implement it.	This project was put on hold until the Records Manager had formulated the new referencing system for files.
4.5	Pilot and then implement re-written debt recovery system.	Completed.
4.6	Consider the results of the States-wide staff survey and implement changes to Department procedures as appropriate.	The results were considered and where appropriate, implemented.
4.7	Implement changes identified in Accounting Officer's Statement.	Completed.

4.8	Produce 2010 Business Plan to agreed corporate standards	Completed.
4.9	Produce 2009 Attorney General's Review.	Completed

## SECTION 6

This Section was introduced in 2006 and reproduces the Statement of Internal Control made by the Accounting Officer for the Department (the Chief Clerk) as a requirement of Financial Direction 2.2. Progress made on the significant control issues identified within the Statement over the year will be reported in the next Review.

### Statement on Internal Control at December 2009

#### Law Officers' Department

**This section outlines the main features of the Law Officers' Department system of internal control and internal audit arrangements. The Statement of Internal Control is a requirement of Financial Direction 2.2.**

#### 1. Scope of responsibility

Under the terms of the Public Finances (Jersey) Law, 2005, the Accounting Officer of a States funded body is personally accountable for the proper financial management of the resources of the body in accordance with that Law.

The Accounting Officer of a States funded body must, in particular, ensure –

- a. that the expenditure of the body does not exceed the amount appropriated to it by a head of expenditure and is used for the purpose for which it was appropriated;
- b. that, in so far as practical, all money owed to the body is promptly collected and paid into an appropriate bank account, and that all money owed by the body is duly paid;
- c. that the body keeps proper accounts of all its financial transactions and proper records of those accounts;
- d. that the records of the body are promptly provided when required by the Treasurer for the production of the annual financial statement;
- e. that the body is administered in a prudent and economical manner;
- f. that the resources of the body are used efficiently and effectively; and
- g. that the provisions of the Law in their application to the States funded body are otherwise complied with.

In the Law Officers' Department, the Chief Clerk is the Accounting Officer and is responsible for all financial matters relating to the Department.

## **2. Purpose of internal control**

The system of internal control is designed to manage risk to a reasonable level rather than to eliminate all risk of failure to achieve or maintain policies, aims and objectives. It can therefore only provide reasonable and not absolute assurance of effectiveness. The system of internal control is based on an ongoing process designed to identify and prioritise the risks to the achievement of the Department's policies, aims and objectives, to evaluate the likelihood of those risks being realised and the impact should they be realised, and to manage them efficiently, effectively and economically.

The system of internal control has been in place in the Department for the year ended 31<sup>st</sup> December 2009 and up to the date of approval of the annual report accounts.

## **3. The risk and control framework**

The Department's Annual Business Plan provides the framework for the use of resources, the ways in which the Department will contribute to the States' strategic objectives and internal improvements in the way in which the Department functions and is managed. The Business Plan complies with State standards as appropriate to a non-executive, judicial Department and is published in both hard copy and on the States internet site. The possible risks to the success of implementing the Business Plan are identified in the Plan.

The performance of the Department is reported annually in the Attorney General's Review and includes statistical measures of performance, financial data and reports on performance indicators. Again, the Review is published in hard copy and on the internet.

As a small department, there is no delegation of budgets to anyone other than the Finance Manager and Chief Clerk who have regular informal meetings on an almost daily basis, where any problems are discussed and agreement reached on solutions.

The Department complies with Financial Directions as appropriate (see below regarding capital expenditure, for example) and with other States policies as appropriate to a non-

executive, judicial Department. Any omissions from the requirements of the Financial Directions are shown below.

The States Strategic Plan includes a commitment to adopt Generally Accepted Accounting Principles. The adoption of GAAP is scheduled for 1st January 2009.

#### **4. Review of effectiveness**

##### **Organisational restructure**

As a result of a review carried out by the Comptroller and Auditor General in 2008, the Attorney General and Solicitor General have approved a reorganisation of the management structure of the Law Officers' Department which has been developed by the Department's Senior Management Team, in consultation with the staff of the Dept.

From 1<sup>st</sup> July, 2009, the Department will be organised in three divisions – a Civil Division, a Criminal Division and a Finance and Administration Division. The purpose of the new structure is to provide a more efficient delivery of the functions of the Department to provide clearer management reporting lines for both staff and clients.

##### **Income**

Systems have been documented and communicated to the appropriate staff for claiming and collecting income due to the Department. Regular income is confined to conveyancing fees and fees due from other States departments for debt recovery.

The Finance Manager reconciles income/debtors on a quarterly basis to ensure that all income is fully accounted for and chased up where outstanding.

**Costs** – The Crown is occasionally awarded costs by the Court, either a total amount or in settlement of a bill of costs in the normal way. Similarly, occasionally confiscations and asset sharing agreements with other jurisdictions produce monies which are to be credited to the Criminal Offences Confiscation Fund. Such awards and confiscations are only made occasionally and are therefore easy to identify and alert to the prosecuting crown advocate the possibility of income generation.

##### **Expenditure**

The Department complies with Financial Regulations on expenditure.

**High Cost Cases** – The Department has a number of criminal investigations and prosecutions which result in high expenditure which is charged to the Court and Case Costs account.

Following reviews by the Internal Audit Department of the Treasury and by the National Audit Office, procedures recommended by those reviews have been put in place to monitor and control expenditure. In addition, regular internal review meetings are held to monitor progress of the investigations and their costs.

**Quarterly Reports** – The Department's budget is monitored centrally through the reports which are sent on a quarterly basis to the Treasury which include forecasts of expenditure to the year end and possible overspends. In addition, the Senior Management Team reviews income and expenditure each quarter at its regular monthly meetings.

**Payments** – The Department uses the Shared Services section of the Treasury to make payments to suppliers. The Finance Manager reconciles all payments to the JDE records and ensures that any errors are corrected.

**Stock Control and Petty Cash** – The Department's stock of stamps for contracts is reconciled on a regular basis and at end of year by the Court Proceedings and Finance Officer and verified by the Finance Manager. Petty cash floats are similarly reconciled by their holders and verified by the Finance Manager.

#### **Capital Expenditure**

The Department is not responsible for nor involved in any capital projects.

#### **Asset Register**

A register of assets, including IT and office equipment, is now complete. The Department has no individual pieces of equipment with a value greater than £5,000.

#### **Assurance Statements**

Statements have been supplied by the Accounting Officers of the Treasury and Resources Department, the Information Services Department and the Human Resources Department that the systems in place for services provided by them which the Department uses comply with the requirements of the Public Finances (Jersey) Law, 2005.

#### **Audit Reviews**

The Internal Audit plan for 2009 included a review of departments subject to Court and Case Costs and the effectiveness of systems, procedures and controls in place. Two departments with the most significant costs were reviewed, these being the Judicial Greffe and Law Officers Department.

A further 'special' Court and Case Costs audit report was commissioned towards the end of 2009. The scope of the report was limited to the review of adequacy of procedures and controls, accuracy of forecasting and compliance with Financial Directions.

In 2010 the Treasury and Resources department will be conducting a Comprehensive Spending Review (CSR) on several high spending service areas, which will include a review of Court and Case Costs. The CSR will be using findings of the special audit and other recent and historic reports, to develop a draft delivery plan for the review.

#### **Audit control environment rating**

The adequacy of the internal control environment to manage risk for Court & Case Costs was rated 'Adequate' (rating 3). The opinion of the way management are delivering the recommendations and attitude to pro-active development of the issues raised was rated 'Improving Well' (rating 3).

#### **5. Significant control issues**

<b>Control Issue</b>	<b>Mitigating Actions</b>	<b>Officer Responsible and Time Scale</b>
The department receive funding from the Criminal Offences Confiscation Fund (COCF) for expenses incurred by the Department in such matters as dealing with the consequences of serious crime and assistance to other jurisdictions. The department's performance with respect to the budget may not be seen to portray an accurate and transparent view of the overall budgetary position of the department.	Implementation of the CAG's recommendation that the Law Officers' department's budget be 'augmented to cover the amount utilised from the COCF'.	It is now understood that the COCF can no longer sustain the additional funding required by the Department. The Chief Clerk as Accounting Officer for the Department has written formally to the Treasurer of the States about the situation and has been reassured that funding will be made available.
Court & Case Costs are demand-led & exceptionally volatile in a way that	Given the unpredictable nature of court and case costs annual budget overspends and	The CSR team will address all aspects of the Court & Case Costs, including:



cannot be controlled by a Department. In addition, the expenditure is so large that departments cannot be expected to absorb the effects of volatility.	underspends occur frequently.	Ensuring value for money - e.g. cost drivers, procurement etc. Setting financial "rules" - e.g. a definitive list of items chargeable to C&CC, what is controllable/uncontrollable & how it is treated (DEL/AME) Financial Management framework - financial reporting (incl.coding), performance indicators (financial & non-financial), forecasting.
Errors in making payments to suppliers by staff of Shared Services section	Finance Manager reconciles all payments to JDE records and arranges corrections as appropriate	Finance Manager On-going

## 6. Closing statement

To the best of my knowledge, the internal control environment, as identified above, has been effectively operated during the year, subject to the actions identified the previous section.

Signed: T Allen Date: February 2010  
(Accounting Officer)

APPENDIX

The organisation chart below shows the structure of the Department as at the end of 2009 following a fundamental restructuring of the Department which took place in July 2009 with the creation of the three separate Divisions.

