

# STATES OF JERSEY

## Access to Justice Review

**THURSDAY, 22nd OCTOBER 2015**

**Panel:**

Senator P.F. Routier: (Chairman)

Deputy M. Tadier of St. Brelade

Deputy J.A. Hilton of St. Helier

Connétable J. Gallichan of St. Mary

Mr. T. Walker, Chief Officer

Mr. A. Metcalfe, Director, Constitutional Affairs & Justice

**Witnesses:**

President, Law Society

Chief Executive Officer, Law Society

Bâtonnier

[13:00]

**Senator P.F. Routier (Chairman):**

We will begin with introductions so we all know who we all are. I am Senator Paul Routier; I chair the Access to Justice Review Panel. I am joined by panel members ...

**Deputy M. Tadier of St. Brelade:**

Deputy Montfort Tadier.

**Deputy J.A. Hilton of St. Helier:**

Deputy Jacqui Hilton.

**Connétable J. Gallichan of St. Mary:**

Constable Juliette Gallichan with quite a croaky voice.

**Senator P.F. Routier:**

Officers?

**Mr. T. Walker:**

Tom Walker with responsibility for justice policy.

**Mr. A. Metcalfe:**

Andrew Metcalfe, Director, Constitutional Affairs & Justice

**Senator P.F. Routier:**

Okay, and yourselves?

**Bâtonnier:**

Bâtonnier.

**President, Law Society:**

President of the Law Society.

**Chief Executive Officer, Law Society:**

Chief Executive Officer of the Law Society.

**Senator P.F. Routier:**

Thank you very much. I asked everybody to introduce ourselves because we are being recorded and there will be a record of the meeting. I just need to ask members to have their phones off because it might interrupt with the proceedings, and members of the public will be listening. Thank you very much. So the purpose of this hearing is to find out about how you are progressing with the review that you are carrying out about access to justice. You will be aware that we have been doing some work and meeting various people about how we are just gaining information at the present time. We have had an interim report and we will be hoping to get ... I think when we last spoke with you there was an indication that you will be doing your work and we have allowed a bit more time so as to get the response from yourselves. So we have an end of July date to try and get things finalised. This is the final report for ourselves. So we are very pleased that you are doing your review and during the meeting we will find out how that is going and how you are progressing with that. We have a number of questions which we would like to put to you so perhaps if we could just start with the first one. We are going to share the questions between myself and Monty and others will be chipping in as we go through. Your review that you are

carrying out, could you give us an indication ... because we have not seen it, we just know that it is happening, that is as much as know. Perhaps the purpose of the review and what you are hoping to get out of it?

**President, Law Society:**

Yes, at the moment very much like you, we are at information gathering stage and also procuring the views of our different members. As of today we have 323 members of the Law Society, which, as I am sure you will appreciate, is a very broad church. We have, I think, 45 firms now, varying in numbers from one to, I think, 45 members of the society in the biggest firm. There are only 6 firms which have 10 Jersey lawyers or more. So you have an extraordinary diversity of different types of practice, some doing predominantly international law, others doing almost exclusively local law of various different types. As you will appreciate, therefore, the differing views of the differing members are very wide and the most important thing, I think, in the first instance, is for us to understand what the views of the members are as to how we can best go about honouring our obligation to society, our obligation to court to ensure that there is a proper legal service provided for those who are in need. That is what we recognise as an important function and it is terribly important as a society we do our best to collate all those views. We have done a survey among all the membership, as you can imagine it is quite a lengthy and involved survey to make sure we cover as much material as we possibly can and we are now in the process, which will take us a little while, of reviewing the responses that we have had. Our initial preliminary review shows that there are a number of areas that we might look at and perhaps we can come on to those in due course during this afternoon. But the objective, of course, mindful of your own timetable, Senator, is to see if we can come up with some firm proposals as to what the lawyers think should be the system, hopefully by June, in advance of your July date.

**Senator P.F. Routier:**

All right, okay. Are you able to share with us the terms of reference or the survey? Is that possibility?

**President, Law Society:**

It has been very broadly drawn. We have not collated yet all the results and I would like to give them a proper consideration first and to report to the membership as a whole what we think the outcome of that is, what the views of the committee are, before we are then in a position to see what we can extract from the data that we procured, together with another bit of information gathering that we have been doing in and about a survey of the legal profession, which we are also at the moment considering.

**Deputy M. Tadier:**

Do you have a terms of reference, though, that you are working to?

**President, Law Society:**

The terms of reference are a review of the legal aid system.

**Deputy M. Tadier:**

Okay, so it is fairly broad?

**President, Law Society:**

It is very broad, to understand how the system works at present, to understand whether there are any gaps, whether it is fit for purpose and what, if anything, needs to change to ensure that it remains fit for purpose, bearing in mind that the system that applies today has not changed significantly in substance since 1906.

**Deputy J.A. Hilton:**

Can you just tell Members when you started the whole process of this review and the percentage return that you have received from your members in response?

**Chief Executive Officer, Law Society:**

We started the survey or the survey was issued in July across all members. The review attracted a full response, and I say a full response from 33 per cent of members initially but that included a number of firm responses which will increase the proportion effectively of the return to around 50 per cent.

**Deputy J.A. Hilton:**

Are you happy with that response?

**President, Law Society:**

It would be marvellous if everybody replies but, as we know, when you ask electorates to turn out, to get a substantial majority to do so is not always easy. As I mentioned earlier, we are dealing with a very broad church of people with extremely wide interests and practices. So I would say that I am disappointed that it was not greater but I am not surprised and I think it gives us a sufficiently statistically suitable, broad, range of views to make it a realistic and sensible review.

**Chief Executive Officer, Law Society:**

I think it is also worthy of saying that we are following that up with further work with firms because as you will have been referenced when we last met with you, it is of course the equity partners in

the firms who take the financial responsibility of a discharge of the legal aid obligation. So the key thing is that we have a representative view and I believe that that is a representative view.

**Bâtonnier:**

I think it is worth picking up on one of Jonathan's points about the broad church of people involved in the legal profession. So for a financial services lawyer who really never goes down to the Magistrate's Court, is never involved in any sort of legal aid type work, their responses are not going to be particularly valuable and their insights are not going to be particularly valuable so you might not expect them to respond. Whereas someone whose is at the cutting edge of the legal aid, who is down the court every day looking after members of the community, their response is likely to be more valuable and they are likely to respond. So from my perspective as Bâtonnier, yes, I agree I would like to see more people engage but I am not surprised.

**Deputy J.A. Hilton:**

You mentioned that 6 firms employ 10 or more lawyers, did the 6 firms involved, did they all respond to you? Did you have 100 per cent ...

**President, Law Society:**

Yes, we have had responses from ... it is important to remember that generally speaking the responses have been from individual members and not from firms. In a few cases they are from firms and, as Neville has said, our next job is to speaking individually to the firms to make sure that we have got the views of those who are funding legal aid, of how it is working at the moment. But bear in mind that until this morning there were 175 out of 320 who were on the tour de rôle, in other words those Jersey lawyers who are eligible to serve on the legal aid system. So that immediately reduces the number who are likely to be participating, if not the number who are contributing financially, in terms of day to day work.

**Deputy J.A. Hilton:**

How confident are you that you will bring forward firm proposals by June next year?

**President, Law Society:**

I am confident that we will do so. Until I have had the opportunity finally to work out what the response is and how the different firms react, I cannot give any definitive assurances because it is not in my gift. At the end of the day it is a matter for the Law Society in general meeting to decide what mandate they want to give to the committee. So, regrettably - perhaps I should not say this - it is not a dictatorship, I am but a humble servant of the members and I do what they ask me to do.

**Deputy M. Tadier:**

Is there any potential tension between individuals who may make a submission in their own name on what the official position of any given firm might be with regards to legal aid.

**President, Law Society:**

It would surprise me if there were any tension. Certainly my experience of dealing with both firms and individual lawyers is that the firms themselves are more than happy to allow people to have their say. I have no experience of any firm seeking to gag any of the individual participants. Clearly when it comes to writing cheques there is a slightly different dynamic but I am not aware of anybody being asked to shut up, for example. Everybody has had the opportunity to have their say and even where that has been against the groundswell of views in particular firms, that has not caused any difficulty. Like I can speak for my firm which has a very large number of individual members and we are more than happy for people to say whatever they would like to say but there will naturally be a view of the partnership when it comes to bearing the cost.

**Bâtonnier:**

I think from recollection the survey was anonymous?

**President, Law Society:**

Yes, it was, so there is no come back.

**Deputy M. Tadier:**

So if we can move on the next part then. Just more question about the survey, what the next steps for the Law Society review?

**President, Law Society:**

As I mentioned earlier, with the benefit of the results that we have had so far, it will be consultation with the individual firms to see what their collective views are so we can see whether it is possible to extract a consensus among the firms about a way forward. That is going to be an ongoing process. We have started it and clearly we want to have that completed by the end of the winter.

**Deputy M. Tadier:**

Okay. Is there likely to be any consultation outside of the Law Society on the outcomes of the review? I suppose there will be some inevitably but will there be any led by yourselves?

**President, Law Society:**

I think it is almost inevitable that we will want to be speaking to the various different stakeholders, that includes yourselves, it includes the court system, it includes the Attorney General and his department but, as you know, we are also part of the expert group on the access to justice

investigation and we are engaging with them regularly to understand the views of various different stakeholders represented at that level.

**Deputy M. Tadier:**

What is the timeline for the implementation of any actions that arise from the review? I accept that it is not going to be necessarily within your remit.

**President, Law Society:**

I think all I can say is it depends on the outcome. We will need to understand what the outcome is. Whatever we have come up with as a society we will want to share with you, hopefully before we finalise our views so that we can explore to what extent there is a scope for us to work in partnership with the States to achieve the solutions that we are looking for.

**Deputy M. Tadier:**

It is not a question that we have written down, but is there perhaps an expectation that there might be some changes that you could implement in-house without necessarily consulting, which could be done perhaps fairly quickly and others that you would envisage a need to discuss ...

**President, Law Society:**

That is certainly possible but when we are looking at a root and branch review of the whole system, my personal inclination is not to adopt a scattergun approach but to have a cohesive plan that all hangs together effectively.

[13:15]

But, yes, of course, if we discover in the course of our discussions that there are lacunae, if there issues there that can and should be fixed in the short term we will look at doing that.

**Deputy M. Tadier:**

Are there any key milestones that the Law Society thinks that between now and the end of the review may be apparent?

**President, Law Society:**

What sort of milestones did you have in mind?

**Deputy M. Tadier:**

That is a good question. I think I am pretty much just reading this as it is written. I am guessing the implication of the question is are there any significant events or any likely outcomes that you envisage already without having needed to look at the results?

**President, Law Society:**

The answer is it is going to be an iterative process, it is going to take a little time. Until we have canvassed the views of all the stakeholders, I think it is too early to set milestones. While I think it is important to have a clear and objective process, the more you try to limit it I think the chances of coming out with a satisfactory outcome are less likely. So we are trying to make it as open a process as we can among the lawyers but engaging with yourselves and others.

**Mr. T. Walker:**

You mentioned at the outset that there some initial views, themes, emerging from the work you had done so far and I wondered whether there was anything from that that might be helpful to share with the panel.

**President, Law Society:**

There are some obvious headings and the start is to look at what should be the eligibility criteria for legal aid. At the moment those criteria in Jersey are significantly more generous certainly than England and I suspect in other jurisdictions. I do not have all the details at my fingertips but if you need them we can provide them. The second obvious area to consider is what should be the scope of legal aid in the sense of what subject matter should it cover. Should it cover every area of law or should it be limited in some way? At the moment my understanding is that 50 per cent of legal aid certificates relate to criminal matters at all levels, 30 per cent relate to matrimonial matters at all levels, and the balance various other generally civil disputes, but we might look at refining the categories of case for which legal aid ought to be applicable. For example, in England there is a whole raft of different types of issues which do not bear legal aid. I have got some ... we can get these online, there is a list of things like consumer and certain other contractual disputes, immigration disputes, private family law issues, divorce for example, dissolution of partnerships and so on, children matters, an extraordinary range of matrimonial subject matter is not covered by legal aid in the United Kingdom. There are also other criteria that relate to criminal matters. It might be more serious offences for which you would expect to get criminal legal aid, as opposed to the much wider range that is covered in Jersey. Then there are all sorts of other disputes that are not covered, perhaps most notably in England, personal injury, which again is probably quite a large range of the legal aid certificates that get granted in Jersey.

**The Connétable of St. Mary:**

Do you have any feeling for the percentage of things that we cover here that might not be covered in the U.K. (United Kingdom)?

**President, Law Society:**

I have not got the empirical data that I can answer that so I would rather not guess, but all I will say is that breadth and depth of the system in Jersey is much more generous than that which applies anywhere else.

**Chief Executive Officer, Law Society:**

I think one area which is very significant in England and Wales is that in relation to family law where only if there is abuse in a relationship or violence is legal aid likely to be granted if they are financially eligible. That is not the case here. But even here non residents are eligible for legal aid under the scheme as it stands in lots of matters and that is a typical area that needs review and needs to be looked at, and was one that was highlighted by our members as saying that needed to be looked at.

**Deputy M. Tadier:**

Of course the amount of money the U.K. Government puts into their legal aid scheme in the U.K. is obviously a lot more than in Jersey for obvious reasons, so we may have a more comprehensive service but it is certainly not paid for by the government.

**President, Law Society:**

No, correct. There is a limited legal aid vote that is available for certain issues in and about serious criminal trials, but that does not impact with any degree of significance on the general legal aid burden, which is funded by the lawyers and probably costs in the range of £7 million to £9 million a year to the lawyers.

**Deputy M. Tadier:**

It is reasonable to ask what kind of service we can expect if the government did start putting money in? Could it be even better?

**President, Law Society:**

My experience is, and I hope my colleagues will agree, especially the Bâtonnier who deals with any issues arising from legal aid, is that the work that I have seen does not differentiate between legal aid clients and non-legal aid clients. The duties are the same, the liability is the same, the risks are the same and the service levels provided are, in my experience, as good in legal aid matters as it is in paying matters, if we can call them that. Were it otherwise I would expect to see complaints, if people are not discharging their duties properly in legal aid then we would expect to

see a complaint and it would be treated in exactly the same way as a fee-payment client. So there is no basis for a lawyer to act differently towards people who are not paying them as against people who paying them. I have certainly seen no evidence that that is the case. I have the responsibility as a matter of statute to review any complaints that are received by the Law Society and I have not got experience of anybody complaining about the service quality on a legal aid matter. I think that is a fair comment. I cannot speak for the Bâtonnier, but he is more than able to speak for himself.

**Bâtonnier:**

Yes, I would echo those comments. I think I said last time to the committee, if you take the example of my firm, why would my firm risk its reputation for giving second class advice? There is no incentive to do that whatsoever. We have employed advocates to give proper advice, as Jonathan says, the risk is exactly the same and the service levels we want to give and we do give are exactly the same. That applies throughout the profession. If it were otherwise, not only would you have complaints from members of public, you would also have complaints from the court and one simply has to look at the speeches that are given by the Bailiff at the assize each year commending the profession for the service it gives. In my view there is no 2-tier system. People who rely on legal aid in Jersey get a first class system at no or very limited cost.

**Deputy J.A. Hilton:**

Can you just explain to me how ... I know there are different specialities within the law and some companies concentrate on the commercial law. How do you deal with the situation where an individual has got a legal aid certificate for a criminal defence but the person next on the roll does not have that much experience in criminal law matters, how do you normally deal with that?

**Bâtonnier:**

If I can answer that. In terms of tour de rôle, we are dealing with pretty straightforward matters. They are the sort of matters you would expect advocates in general practice to be able to do. They are quite often appearances in front of the Magistrate's Court. They are the sort of things that advocates do day in day out and they do quite competently. If there is a specialised lawyer - so one of the lawyers, for example, who has been sworn in, who is a financial service lawyer, and is on the tour de rôle - they are most unlikely to do their own legal aid obligation. So although they get a certificate, that certificate will be dealt with by their firm. I can give the example of my firm, we have a specialised legal aid department, it deals with criminal matters and it deals with civil matters that come to us on a legal aid certificate. The reason we do that is that they have the resources to deal with these matters but they are the specialists. So a financial services lawyer will never see the certificate, it comes straight into the firm, it is allocated by the team and it is dealt with by the team.

**Deputy J.A. Hilton:**

So how many of the 6 larger firms have a specialised legal aid department? Do they all have?

**Bâtonnier:**

I would have thought they all have.

**Deputy J.A. Hilton:**

So what would happen in the instance a one or 2 man band that had a client up with a legal aid certificate but they did not have the broad experience to deal with ...

**President, Law Society:**

Sorry, does it help if we give a specific example? Some people were sworn in at the Royal Court only this morning, they will be immediately eligible for legal aid but let us take an example if somebody turns up seeking a legal certificate tomorrow for a very serious criminal matter than involves a jury trial, it will not go to somebody who was sworn in yesterday. The Bâtonnier and his team - and I will pass on to you - have a system to ensure that is properly handled. There are always going to be difficult cases and those will not be allocated to someone who is not going to be in a position to handle it.

**Deputy J.A. Hilton:**

So you have never had a complaint from an individual who believes that the person who was assigned to them did not have the necessary knowledge or experience to ...

**Bâtonnier:**

I suppose there is another dynamic to your question, which is what happens ... we are now seeing more and more specialised firms setting up in the Island and some of these firms are non-litigation firms so they are providing specialist advice to the financial services sector. They obviously go on the tour de rôle. What do they do? Well, they do not go down to court, they will engage a general firm to discharge their legal aid obligation at cost. So they are paying for each certificate that comes in the door and they will pay someone else to deal with it. That is part of their obligation. You do not get people playing with these certificates, they are serious certificates and the profession takes its obligations responsibly.

**Senator P.F. Routier:**

Okay, you mentioned the speech in the assize with the Bailiff but you also made a speech as well and you talked about the partnership between the States, the courts and the Islanders and the lawyers, and you also mentioned that there was probably a degree of change that needed to

happen between everybody. Would you like to perhaps elaborate on what you thought that change might be?

**Bâtonnier:**

I think it is very much part of the process that your committee is going through, it is looking at where the access to justice will end up in the Island. There are a variety of different tensions, there are a variety of different needs from different stakeholders. We have spoken previously about, for example, consumer rights. At the moment we have a contract law that, if you can find it, is confused, it is probably banked in French text books that most of the population cannot read let alone access. Now, it seems to me that is a job for the States. If the States are able to step in, are able to make these resources accessible, comprehensible, able to be updated and to deal with everyday situations well that may reduce some of the demand on the lawyers because people can actually find out their rights for themselves. Now, that also may impact on court hearings. If you can make people understand what their rights are, they may need less recourse to courts. So it seems to me that there are a variety of different but independent mechanisms at work here and in terms of change it seems to me that there is room for change on all parts. So from the Law Society's perspective we have to look at our scheme. We have to look at what we can do to improve it, to make it fairer for members but also to cover the bases that the politicians want us to cover in terms of service to the community. We also expect that members of the community will play their part. That is not within our gift but it is within the legislators' gift.

**Senator P.F. Routier:**

I was quite encouraged by your speech and the Bailiff's speech. I was very pleased to hear the things that were said. You also mentioned the KPMG report and the contribution made by your profession to the economy. Will that report be made public at any stage?

**Bâtonnier:**

I think that is a matter for the Law Society.

**Chief Executive Officer, Law Society:**

It is not our intention at this stage. It was a report for members, although we are reviewing it. There are elements of that ... we are very happy to share some of the findings of that with you over and above anything that was detailed by the Bâtonnier in his speech. The full report is a report for members, however it is something we are now looking at to say do we repeat this and do we make it on an annual or biannual basis so that we can update the public on what we are doing and what our contribution is to the public.

[13:30]

Because it is significant, it has grown exponentially, and I think it is important that the public are aware of what the legal profession does for Jersey plc and for the public. I think one of the key aspects for that was 45,600 hours of time was spent on legal aid by the profession in 2013, either free or at a reduced cost. That is a very significant contribution, which as Advocate Speck said, is worth £7 – 9 million that is paid for by the legal profession.

**President, Law Society:**

It is the equivalent of 42 lawyers working full time doing nothing but legal aid, free legal aid, so it is a very significant contribution. We are looking at refining what we do in terms of getting information so that we can put it in the public domain. We want to ensure it is useful information. We want insure that it is accurate, carefully put together and transparent. I would not want you to think that we are trying to hide anything here. What we are keen to do is ensure that we go through things in a disciplined way, that we produce statistics that stand up to scrutiny and help the community to understand what the lawyers ever did for us.

**Deputy M. Tadier:**

Can I challenge that? I can understand your position, obviously you want to put as much good news out there as you can but those kind of figures do not give much comfort to perhaps some constituents that we hear from, rightly or wrongly, who say: “We have had a bad experience, we have been left with a big bill, we did not get the results we wanted to.” I admit you can never keep everyone happy or the vast majority, I think, who just do not engage lawyers unless they can absolutely help it because they are so worried about the perception that the fees are going to be high. That kind of message seemed to be reinforced by the Bailiff’s speech when he gave a message to the minority of elements within your profession who do have issues in that area.

**President, Law Society:**

I will be the first to acknowledge that we have a P.R. (public relations) job to do because I think people do misunderstand the position. It worries me to hear you say that you have constituents who have got complaints about legal services. They are not coming to me. So please encourage them to do so immediately and they will be looked at. We have a very rigorous system for ensuring that complaints are properly dealt with. So please send them to us. But, no, we have a P.R. job to do. That is something that we are looking at and we are determined to demonstrate to the Island that if they have fears, they are misplaced. We have got a job to do in explaining what we do do. We have a job to do then explaining what the legal aid system is about and the benefits that are available. I think broadly speaking that if people need to find out, if they want to find out, there are an extraordinarily wide range of resources available to them to find out. There is yourselves as States Members, there is the Citizen Advisory Bureau, and any number of other organisations, the very people who come along, for example, to the Access to Justice Experts’

Group, who are more than capable of answering questions themselves or saying: "I know someone who can answer that for you" and send them to us. So I am not convinced there is as big a problem as some of our critics would like to suggest but I accept we will do more and we need to do more in getting across the good work that we are doing as a profession.

**Senator P.F. Routier:**

The Bailiff did seem to think there was a issue in his speech, he talked about the fees charged by some legal firms are not reasonable and not proportionate to the value of the job of the client. Is that case?

**Bâtonnier:**

You will note I accepted the Bailiff's comments that if there were firms out there that were not behaving properly that was a matter for the Law Society to address. Our problem, and candidly it is a problem, is that no one has given us any particulars about this. So beyond making a broad assertion that there are issues out there, we do not have any visibility. The only visibility the Law Society gets is over complaints. So if complaints are not made we do not know there is a problem. Insofar as the Law Society is concerned at the moment, we do not see there is a problem. We are told by the Bailiff that there is so we have arranged a meeting later in the year with the Bailiff to explore that.

**President, Law Society:**

We want to know because if there is a problem then the willingness is there to do something but until we have got the evidence of the problem we are at something of a disadvantage.

**Senator P.F. Routier:**

I am just quoting what the Bailiff said. I have not had anybody come to me to say that, I am just ...

**President, Law Society:**

Well, that would be the reasonable thing to do, absolutely fair.

**Bâtonnier:**

I think that is probably quite a good example of the partnership. So if you look at who is involved in those sort of matters, you have got the lawyer, you have the client, you have got the court. Any one of those 3 can raise a concern. When I say that, the lawyer is not going to raise a concern about himself but his opponent or his peer might. Now, if none of those triggers are being pressed, we do not know there is a problem. So in terms of operating a partnership, a partnership is having an open dialogue about these things and that is what we need.

**Deputy M. Tadier:**

Can I go back to the issue, and this is not meant critically because I do not think a lot of this should be your responsibility, but there may be a perception which is understandable or valid, clients who feel aggrieved may not wish to complain to the Law Society because they feel like they are complaining to an in-house body and that may be, certainly from my perspective, understandable. Is there an argument that we should be implementing a legal ombudsman, perhaps not necessarily as the first port of call but certainly as a supplementary port of call to deal with issues which maybe cannot be or would not necessarily be best placed dealt with internally?

**President, Law Society:**

I could understand that as a proposition if there were genuine problems with the existing system. Nobody has every raised any serious argument that the current system does not work properly. In any event it is not the lawyer sitting in judgment on themselves, the majority of any disciplinary panel consists of 2 lay members who are selected by the States. So it is they who sit in judgment on the lawyers. Ultimately the tribunal that decides whether a lawyer has done something wrong or not is the court because the final say and the most severe punishments available to discipline a recalcitrant lawyer rest, rightly, with the court. That is something that the court jealously guards, rightly in my view.

**Deputy M. Tadier:**

Which number of the court?

**President, Law Society:**

I will be in terrible trouble if I get this wrong but I think it is the superior number.

**Deputy M. Tadier:**

Okay, some of whom are elected by ... who are the Jurats elected by?

**President, Law Society:**

The Jurats are elected by an electoral college but I am sure you will not begin to suggest that that makes them in so way in the pocket of the lawyers?

**Deputy M. Tadier:**

I think the perception issue is there so I think ...

**President, Law Society:**

How many people have said that? Give us an example.

**Deputy M. Tadier:**

Well, I think the issue of perception can be there. I think the problem is, and again this is not wanting to be critical, it is the system we have but clearly when you have an oversight body as an appeal mechanism which is appointed by lawyers, we know that States Members and advocates are the electoral body that appoint Jurats in the majority and that is clearly a problem for an impartial observer I think.

**President, Law Society:**

I think that the proper test is for an impartial observer with the benefit of a reasonable understanding of the circumstances. The Jurats in my experience do an extraordinary job. They are unpaid. They devote an incredible amount of time for a very difficult role and we are extremely lucky to have such a fantastic example of honorary service, and long may they continue. They are, in my view, very, very placed on behalf of the community, who can have confidence in them because they can find out exactly who they are, they are the best people to decide in this sort of case. I think to start setting up an ombudsman that would almost inevitably bring in experts from another jurisdiction is not the way for Jersey to move forward. I think it is the "if the system isn't broke, don't fix it". Anybody who understands, who asks about what the system is can easily find out. I would very, very firmly encourage everybody to support the existing system.

**Senator P.F. Routier:**

Can I just move on to another ... sorry, did I interrupt?

**Deputy M. Tadier:**

I was just going to say, that is fair enough, it seems that this obviously has been instigated and I guess the underlying issue is that it is for government to administer justice. We are the ones with the human rights obligations, not us as in Assembly Member but the government is the one with the E.C.H.R. (European Court of Human Rights) obligation and it sounds like ... the question, I suppose, to you is that would you be even doing this review if it was not for the fact that we were doing our own review?

**President, Law Society:**

I am going to have to disagree with you immediately on one point. It is not for government to administer justice, it is for the court.

**Deputy M. Tadier:**

I am saying we are the ones open to human rights challenge.

**President, Law Society:**

You are open to an Article 6 human rights challenge clearly to the extent that the government does not put in place a system that allows justice to be administered properly but it is not ... this is the classic importance of the separation between government and the administration of justice. I can tell you that whether or not the access to justice system, the access to justice inquiry or committee, had been established, there has for a number of years been a groundswell among the lawyers that have said: "We need to review the system." So I am confident that whether or not this panel were put in place we would be doing an exercise along these lines. It has been something has been bubbling for a number of years in any event.

**Chief Executive Officer, Law Society:**

Indeed, in support of that, it was the Law Society that approached the Chief Minister in the first instance which directly led to the Access to Justice Review, when we initially wrote to the Chief Minister to ask for support in the review of legal aid. That led to the Chief Minister saying: "Yes, we will do that but we want it to be wider" which we fully supported and are participating in the access to justice.

**Senator P.F. Routier:**

I recall the meeting, I was there.

**Deputy J.A. Hilton:**

Can I just mention, I think going back to an earlier point, the court did reprimand a lawyer a few months ago, did it not, in open court about some fees that had be charged so it certainly does happen.

**Chief Executive Officer, Law Society:**

Indeed. Yes, we are satisfied that the process is robust, it is sufficiently independent and indeed there is no other professional body that has statutory responsibilities in relation to discipline of its members. Certainly in Jersey there is no other body that does that. So for lawyers it is controlled under the Law Society of Jersey Law 2005, the President has statutory responsibility to refer any complaint which relates to professional misconduct to a disciplinary committee and he discharges that responsibility. Anybody who is unhappy about that initial decision can refer to the Attorney General in his capacity as *partie publique*. But any cases that go to a disciplinary committee ultimately they have sanctioning capability and, as the President said, that is led by ... there is a lawyer member of that committee but 2 lay members appointed by the States Assembly and they will judge those issues and if a matter is too serious they will refer it to the Attorney General to take to the Royal Court. That is what happened in that case.

**Deputy J.A. Hilton:**

So that came directly from the Law Society in that particular case?

**Chief Executive Officer, Law Society:**

Indeed, that particular case was the first case I dealt with when I was appointed as Chief Executive. It arose from a complaint and in fact the complaint had originated from Citizens Advice, which was a good example of how the scheme should work. Where someone was not happy, they came to us, we took it forward, it ultimately ended in a significant fine for a practitioner and the bill itself was waived.

**Senator P.F. Routier:**

Just developing on the issue about charging. Is there a need for perhaps greater competition in prices that are charged by the profession? I do not know if you have a feel for that at all.

**Chief Executive Officer, Law Society:**

There are 45 firms in operation. There is no actual cap on what they can charge or no tariff, but with that number of firms, of which 18 are sole practitioners, there is very significant competition. More firms are providing services on a fixed fee basis. We have seen particularly in the likes of conveyancing matters, you may recall the scale fee that used to prevail, that no longer is in place. There is significant competition. I do not know whether ...

**Bâtonnier:**

On competition, competition is quite interesting from a legal aid perspective because in terms of competition the legal aid scheme provides that a litigant gets a certificate to a particular firm, so they do not have the luxury of choice. If there were to be choice then one could see that there might be some competition in that area. But the way the scheme is set up and the way the voluntary obligations are undertaken by practitioners means that it is quite difficult to see how one could introduce that element of competition while still accepting a certificate.

[13:45]

**Senator P.F. Routier:**

Yes, I was probably thinking outside of the legal aid system to a certain extent.

**Chief Executive Officer, Law Society:**

But outside legal aid people can and do shop around. I think with that number of firms I do not see that as a problem. Forty-five providers is significant.

**Deputy M. Tadier:**

Can I ask a related question to the Bâtonnier, from your speech again, you said that: “As a profession I think we have an obligation to ensure that we do not end up with an oversupply [of lawyers].” Can you elaborate on that statement?

**Bâtonnier:**

Yes, I can. We have a large number of Jersey lawyers at present. Many of those ... so we start off with a lot of Jersey lawyers in practice and in industry. Through Sir Phillip’s endeavours we now have an Institute of Law. We have Jersey students who are growing up in the Island, who are doing their law degrees at the Institute of Law, who are qualifying as lawyers and then moving forward to get a professional qualification in Jersey law. Now it seems to me we are possibly in danger of embarking upon the same issues that the U.K. had, where there is an oversupply of lawyers, there is an expectation at the end of this that the States having spent good money, parents having invested in this, that at the end there is a job for everybody. I am not sure there and I am not sure that the rate of increase in terms of the legal profession, in terms of students qualifying as lawyers, people coming to the Island to work as lawyers is sustainable. Now, that, I think, has implications for Jersey and it has implications for Jersey plc. For example, if there are a large number of Jersey lawyers, too many to be supported in the Island, if they all were all to leave and go and supply Jersey legal advice through the U.K. one might see that the market for legal services in Jersey itself decreases, the States tax take decreases and it has a knock on effect on the economy. It also has an effect because you have lawyers outside of the Island providing Jersey legal advice. It is a problem other dependencies have had. So, for example, the B.V.I. (British Virgin Islands) has a problem with foreign lawyers providing B.V.I. advice - it is often said there are more B.V.I. lawyers outside of B.V.I. than there actually are in the B.V.I. - and they are bringing in mechanisms to deal with that, because it has an impact on their society, it has an impact on their revenues and it just degrades the quality of advice being given. So I think we have to be careful about this.

**Deputy M. Tadier:**

So when you say you have an obligation, to whom do you have the obligation, because it sound counterintuitive perhaps from a consumer point of view that the more Jersey advocates there are it is better for competition. That is what the natural assumption would be. So while your comments could be understood very easily from a protectionist point of view, from somebody within the profession, it is counterintuitive perhaps to what one would expect.

**Bâtonnier:**

Yes, it is certainly not intended to be protectionist. It is intended to be a message to Islanders and ... forgive me, I used the Bâtonnier’s speech as an opportunity to talk to the profession, to engage with the profession, to tell them some of the issues that we are facing. One of the key issues that

we face offshore, here and in other jurisdictions, is the question of recruitment. Finding good people, hiring good people and keeping good people. One of the tendencies, and I do not say this critically, is when one has found a good person is to try to hand on to them as a good lawyer. If that means sponsoring them through the Jersey law course firms will do that. If one firm has a good lawyer and they say: "We cannot see a business case for putting you through the law course" they will go to another firm who will put them through the law course. So not only does firm A lose the employee but firm B picks up a person who they will put through that course in any event. At the end of the day there is another Jersey lawyer qualified that need a home, that needs resources, that needs to be fed. Now, are they going to carry on in business in Jersey? There is probably a finite market. If one does the research there is a fantastic statistic, which is the number of lawyers that are beneficial for society, and I think we are possibly over that. **[Laughter]** Possibly not for reporting. But when one looks at that it seems to me is the Island big enough to accommodate all these lawyers? I think there is a real risk that you get too many lawyers for the Island and they move off Island and that is where the loss occurs.

**Deputy M. Tadier:**

Okay, I understand the context now, I think that is helpful clarification.

**Bâtonnier:**

It is certainly not: "I do not want another law firm competing against me." To my mind, and again speaking candidly, the more law firms the better because it creates a buzz about the Island, it creates competition and it makes noise. Noise means people come into the Island looking at the Island and think if they are going to put business through the Island. To me that is healthy and beneficial for all.

**Senator P.F. Routier:**

If we just move on to a different area now about the courts itself, because we have had the benefit of doing a tour of the Royal Court and the Youth Court, and we are due to go to the Magistrate's Court quite soon. Do you have a view on the facilities within the courts, whether they are up to scratch?

**President, Law Society:**

Yes. **[Laughter]** I think a fantastic job has been done with the Magistrate's Court and rightly so. I think that is an excellent facility. I think the States are to be congratulated on the job they have done there. If only we could have similarly excellent facilities in the Royal Court. Now, there are lots of issues here. We are an ancient listed building, the scope for expanding the facilities is minimal and, to be frank, we cope and we understand the financial imperatives of not spending large amounts of money where it is not essential. It would be wonderful if we had superior courts

that were designed for the purpose of modern day court hearings. They are not but we make do. It is not ideal, I think the most important thing is do we have the ability to ensure that the cases going through the court are handled well, efficiently and effectively? That is where the good news is. I think that answer to all of those questions is yes. There is always scope for improvement but I think the way in which the court system operates in practice is incredibly impressive, especially for such a small place with the budgetary constraints that the court system has to act within. So I think that is ...

**Senator P.F. Routier:**

There is the Royal Court and then there is the number 2 court and there is the youth ...

**President, Law Society:**

Correct, and then we use the library, the old library, for court hearings. We even use the States Chambers when you are not sitting for court hearings and we get to sit in Senator's seats, which is rather nice, without having been elected. That is probably the only time I will ever get to sit in them, but there we are.

**Senator P.F. Routier:**

There is a chance yet.

**Bâtonnier:**

I would echo Jonathan's comments. I think there is a sense that we are making do and getting through the facilities. There are examples where there have been large cases that have required greater resources than the courts can provide. We have gone out into different places, so the R.J.A. and H. (Royal Jersey Agriculture and Horticulture), they have used that for court hearings, local hotels and so on. So lawyers have been creative about working with what they have. What I think is interesting is that there is mention of a project afoot which would enable, especially in the Magistrate's Court, video hearings to take place. So you will be able to keep your States of Jersey Police Officers at the station doing constructive work and giving their evidence via video link to the Magistrate's Court; having defendants giving evidence from the prison feeding directly into the Magistrate's Court, which again may result in a saving, may enable people to participate in trials, increase the through flow of court cases but reduce expense. I think things like that need to be looked at. It is an opportunity for the States to take a creative view of the facilities that are available and how best you might use that.

**Chief Executive Officer, Law Society:**

There is exploration of electronic documentation and everything being digital, so digitising a lot of the processes in terms of court papers for disclosure is something that is being looked at through the Jersey Legal Information Board.

**Bâtonnier:**

That is one of those examples I think of partnership again, because at the moment when one says you are going to court, it is incumbent on the law firm to produce a bundle, that bundle needs to be lodged with the court and that may be very similar to a bundle that I lodged last month in a different case using the same authorities but I have got to produce it, I have to paginate it, I have to photocopy it and I have to send it down to the court. The court probably has 200 copies of the same authority lurking on its files if it has not shredded them already and it has got the same authorities available on J-Link. If we could have a joined up system, where they are simply told: "You are creating a virtual bundle out of these documents" that would save everybody time and expense.

**President, Law Society:**

Can I add to that and say how proud I am of the system that operates in our courts here. I was in a meeting last week with lawyers from 17 different jurisdictions, most of them what we would call these days international finance centres, and the London lawyers there were bemoaning at great length the poor quality of the court system and judiciary in a wide number of those centres. I will not name them, it is invidious to do so, but what was particularly apparent was the very high regard which all of them had for this jurisdiction, that they had for our judges, for the system, how it operates. Jersey is very much perceived as a Rolls Royce place when it comes to the quality of its justice system. We have every right, I think, to be proud of that and we want to work together to ensure that we continue to have that. That is in a large part down to the system as it is today, significant praise is due to the judges themselves and I am not just saying that because I am appearing in front of a judge very soon, but I think they are excellent. They are dedicated, they are of the highest quality and they have the highest reputation around the world. In the work that I do, I cannot tell you how important that is for the Island. It is really quite impressive and the longer that we can safeguard that the better for all of us. Now, how does that apply locally, that is another matter. I think the system is exactly the same whether you are the world's biggest bank appearing before the Bailiff or whether you are an immigrant who is at risk of being thrown out of the Island, or whether you are a local resident who had a dispute over his boundary.

**Senator P.F. Routier:**

You have spoken very eloquently about the good things about our system and our facilities, what are the negative things?

**President, Law Society:**

We could do with more courts. We could probably do with another full-time judge. It is not always quick to get a date for a court hearing.

**Senator P.F. Routier:**

That was my next question.

**President, Law Society:**

It could be quicker. That is no criticism of the judiciary or of the system that operates here because the individuals involved are incredibly dedicated and work extraordinarily hard. I have already mentioned the commitment that is on the shoulders of the Jurats but I think it is the space. We could do with another place where we could have regular court sittings. We could probably do with another judge. Whether the Bailiff agrees with me, I do not know because I have not had the privilege of discussing it with him. But I think that would make a difference. I think the courts are very accessible and what the courts do in Jersey is to bend over backwards to accommodate people, especially in urgent cases. What we know is that if you have a child case involving local residents, if you have got a criminal case where the liberty of the subject is at issue, where you have got an urgent family issue that needs to be resolved, the court will make it happen but sometimes that puts too much pressure on the system. The lawyers cope, it works but we could improve it.

**Senator P.F. Routier:**

Certainly the evidence we have heard previously about the ability of people to get those very urgent things dealt with appears to be the case.

**President, Law Society:**

Again, compared with the people I talk to in London, it is phenomenally better here in terms of getting dates, in terms of getting a hearing, in terms of getting a judge who has read the papers and understands what the case is about. The system here is one that the English, I think, are jealous of.

**Senator P.F. Routier:**

Do you have a view about facilities in the Family Court room?

**Bâtonnier:**

It is possibly less than ideal. It is a single room, there is no separate break out rooms, effectively family practitioners have to use their offices, they come to court, they are already put in a fairly hostile environment, it is fairly stressful, there is no opportunity for them to go apart and that clients

are put together, possibly unnecessarily. Family I think is one of the issues that politicians need to look at because when one talks to the judges the lists are full of family cases. Quite rightly, given the current model but it may be if family cases were put into a better environment, into a different system, you would free up the current Royal Court system. You would free up the judges to deal with other things and you might be able to control costs and improve outcomes. But that is a wider discussion, but to me it seems like a self-contained issue. It needs political will and it needs a grown up, open debate about it.

**Senator P.F. Routier:**

Thank you for that. I think I had come to the same conclusion myself.

[14:00]

**President, Law Society:**

One of the other important strands of work that we have not got around to is the Bailiff's own Access to Justice Review that has resulted in a root and branch review of the rules, led principally by the Master, Advocate Matthew Thompson. He is doing an excellent job in streamlining the process. That is in consultation at the moment but we expect to see real improvements next year. Again, the Master is to be congratulated, if I may, in coming up with a system that encourages alternative dispute resolution. That is an important way forward. It is always better to try and resolve your differences without engaging in litigation and the more that that is encouraged by the judiciary, in appropriate circumstances, the better. Sometimes it is essential to have your day in court but not always, and if we can encourage people to use those mechanisms it saves time, it saves cost and hopefully it reduces hostility.

**Deputy J.A. Hilton:**

Have you had an opportunity to read any of the written submissions in the review, particularly from Barbara Corbett?

**Chief Executive Officer, Law Society:**

Yes, we have, of course. Obviously Advocate Corbett has looked very significantly at the side of divorce and of course mediation is a key element of those proposals which, of course, are already included in the proposition to the States.

**Deputy J.A. Hilton:**

She was suggesting that maybe the Citizens Advice Bureau should operate some sort of gateway to legal aid and I did not know whether you had a view on that.

**Chief Executive Officer, Law Society:**

That was a thought. It is not one that we think is necessarily right, because we are very conscious of the limited resources that Citizens Advice have anyway. We already provide legal aid duty advocates to give advice through Citizens Advice but that being a gateway is not in our view, at this stage ... we are looking at it but it is not one that we think necessarily would work most effectively. The current system of allocation of legal aid on application, it works. The allocation works, it is not a perfect system and that is what we are looking at. That, of course, will look at all aspects of it including how cases are allocated to ensure that we are absolutely focused on access to justice.

**Deputy J.A. Hilton:**

Just one other question. Are you aware of any lawyers who offer free assistance to Islanders outside of the legal aid system?

**Chief Executive Officer, Law Society:**

Absolutely. There are many who offer free advice clinics anyway as a matter of course. Some might say that is business development, but no it is trying to resolve things at an early stage, give people an indication. We know that it takes some time potentially to get an appointment through Citizens Advice. A lot of firms say: "Let us have a half an hour or an hour" almost just an exploration discussion. I think most firms will do that.

**Bâtonnier:**

There are separate clinics, so people are offering separate clinics, there is the "come for free half hour advice". You have had a look at my speech from the assize, I think I mentioned there were 26 separate voluntary organisations that get free support from lawyers. Again, they are giving gratuitous advice out there. You have also got people who are assisting voluntary organisations by doing it themselves. So going down to Citizens Advice. One of the strands of work done through Citizens Advice is the community mediation project. Again, you will find qualified lawyers, such as myself, who are qualified mediators give our time voluntarily to go and resolve issues down there. So among the profession there is a huge amount of goodwill to assisting the Island.

**Deputy M. Tadier:**

To follow on from what Jacqui was asking, and perhaps in one way it is the killer question, let us hope members do not mind me asking it. I note from your submissions, and particularly yours, Advocate Speck, that there is of course a diverse view in the practice as to the legal aid obligation. If we were to say to you tomorrow that we could relieve you of your legal obligations without necessarily you having to consider where that money would come from or the political implications of it, would that be something which you would welcome or which your profession would welcome?

**President, Law Society:**

I think the lawyers would want to continue to make a contribution. Each of the lawyers takes very seriously the oath that they give that dates back at least to the Code of 1771 and beyond that promises the court that we will look after the widows, the orphans, the undefended and the needy. I would expect a groundswell of our membership to want to continue to do that in some shape or form. Maybe not all. I would not like to see a blanket change without a dialogue. That is why I welcome this opportunity. I am very grateful to you in your busy schedules for making the time to hear us. I think it is incredibly important to keep talking to see if we can agree among us what the solution is rather than anyone trying to say: "Well, this is what you should do." This has been incredibly helpful and we would like to thank you all for your time.

**Bâtonnier:**

Just on that point. We are part of this Island community, we want to give back to the Island community and I think the suggestion that suddenly everything could be alleviated by the States, I think that ignores the fact that we are part of this community and we have views.

**Senator P.F. Routier:**

May I thank you for your contribution as well. It has been really useful and your enthusiasm for being prepared to think about change is refreshing and great, we really appreciate that. You mentioned the Master and his review, that is looking very positive as far as we are concerned and hopefully by the middle of next year we will know where we are heading and we will be able to tick a box and think we have achieved something together. So thank you very, very much for your contribution.

[14:07]