

*Access to Justice Review Public Hearing*  
Le Capelain Room, States Assembly Building  
13:00-13:45, Friday 11 July 2014

**Advisory Panel:**

Senator P.F. Routier (Chairman)  
Deputy J.H. Young of St. Brelade  
Connétable J. Gallichan of St. Mary  
Deputy M. Tadier of St. Brelade

**Officers in support:**

Mr. T. Walker  
Mr. S. Cartwright

**Attendees:**

Advocate Jonathan Speck, President of the Law Society of Jersey  
Mr Neville Benbow, Chief Executive of the Law Society of Jersey  
Mr. D. Cadin, Batonnier.

[13:03]

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

We have a member of the media with us. Very welcome. Thanks for coming along. As you know, this is a public meeting. It will be recorded. It will be on our website as well, so there will be a transcript made of it. Introductions, I am Paul Routier, Assistant Chief Minister. I have been asked to chair this review panel. I am joined by ...

**Deputy J.H. Young of St. Brelade:**

Deputy John Young.

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

Constable Juliette Gallichan of St. Mary.

**Mr. T. Walker:**

Officer in Support, Tom Walker.

**Mr. S. Cartwright:**

Steve Cartwright.

**Senator P.F. Routier:**

And yourselves?

**President, Jersey Law Society:**

Jonathan Speck, President of the Law Society of Jersey.

**Chief Executive, Jersey Law Society:**

Neville Benbow, Chief Executive of the Law Society of Jersey.

**Mr. D. Cadin, Batonnier:**

David Cadin, Batonnier.

**Senator P.F. Routier:**

Thank you very much. You are very welcome. As you are aware, we have had quite a number of submissions. We are asking people to come in to expand on those. Hopefully in a positive way we can perhaps see if there is anything we can do to progress the Access to Justice for Islanders.

[13:00]

We are joined by Deputy Montfort Tadier.

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

Hello.

**Senator P.F. Routier:**

The Law Society has provided at least 8 different options for change. Perhaps you would like to just start by identifying which you think are the most viable and the ones which are worth progressing really? Really it could be an open floor to progress your ideas.

**President, Jersey Law Society:**

Sure, that is very helpful. Thank you. There is no particular order that we have set them out within the terms of the letter the Law Society Committee has sent through. Clearly what we have done is to try and identify some of the issues that we face. The lawyers are doing their best to run the legal aid system. They have come up with a number of options. I suspect a combination of some or all of the first 3 are the obvious solution. Those being, if you have my letter it is pages 10 and

11, States funding, partial States funding and then Public Defender's Office. It maybe that that last one will help answer a question that I now apprehend is going to follow a bit later on. Thank you for the signal. What is important from our perspective is that we think we have a system that has been effective in the past, but it does need adjusting. It is an unusual system, certainly. Probably unique in the fact that it is run and funded centrally by the lawyers themselves. We think, therefore, there is a role for the States to pay in the funding. We think that that is essential. But what it should look like precisely is something that ought to be a matter of careful debate between the Law Society on the one hand and its members and the States on the other. It is really for that reason that we welcome this progress and this particular process very warmly, because we are only going to really affect sensible changes by working collaboration. So, we very much see this as an opportunity to work with the States, to work carefully through the options, to work out what might be viable and then to see how we can put together a scheme, working hand in glove, I hope, that is going to deliver a service that is fit for purpose for the public, but also enables lawyers, and in particular the small firms, to thrive, where at the moment they are seriously challenged by the existing system.

**Senator P.F. Routier:**

Could you give us an example of how the smaller firms are particularly challenged?

**President, Jersey Law Society:**

I think we have given some indication in the letter. But in a nutshell, if you are a sole practitioner, for example, you have no choice over the type of legal aid that you do, no choice about the clients. So, you could end up dealing with, these days, a very complicated matter for a client who is unable to provide any funding at all. So, that that normally relatively newly qualified lawyer has to fund the whole cost of that herself or himself. They may not have particular expertise in the area with which they have to deal. Many matters these days for which legal aid applies are very complex and involve new legislation, which it is very difficult to get to grips with if you have no familiarity with it. So, you can understand the time commitment that is involved in dealing with these complex matters. They are often sensitive. They are nearly always urgent. They, therefore, have to be prioritised by that new lawyer at great personal cost, because it means that he or she cannot continue giving sufficient or sometimes any focus to the work for which they earn a living, recognising that they are likely to derive no funding at all from any source from the so called legal aid work. I do not want to mention any names, because I do not think it is fair, but certainly one firm recently, a sole practitioner, who set up over the course of the last 12 months, I think ... Neville, is that not right?

**Chief Executive, Jersey Law Society:**

Indeed, last November they set up.

**President, Jersey Law Society:**

Within months had to fold, principally because of one really heavy intensive legal aid matter, which that person could not sufficiently resource. He or she did their best, but was unable to do all the other work in which that person wanted to specialise. Bang goes that business. That person has had to accept a role working for a larger law firm now.

**Deputy J.H. Young:**

Is it inflexibility in the Law Society to deal with that then? That sounds very strange.

**President, Jersey Law Society:**

It is done on a pure rota basis. That is the way in which it has always worked. The problem is once you start to say: "Well, we will only accept specialists in that particularly area," where do you draw the line? Where do you choose? Will you be at risk of accusations of favouritism or unfairness? Bearing in mind that there is no funding at all, it is a lottery as to whether the particular certificate you get is going to result in any payment at all. That will partly turn on the resources of the person who is the client, but may also turn on whether you get any adverse order for costs in the context of litigation. How then would you go about administering a system that fairly chose which lawyer should be appointed for which clients?

**Deputy J.H. Young:**

Understood, but there is no hardship arrangement? That if a lawyer cannot simply complete the case there is no procedure in the Law Society to excuse that person?

**President, Jersey Law Society:**

We do try to be flexible and in really difficult cases, let us take for example the serious examples of criminal charges of murder and rape, they are dealt with specially. There is a system to ensure that an appropriately senior lawyer is appointed to deal with it. But where you have a run of a mill case, you have really no idea at the outset how things are going to pan out. But, yes, of course, in exceptional cases there is a degree of flexibility on the part of the Acting Batonnier - probably, David, this is more your role than mine - to assist.

**Chief Executive, Jersey Law Society:**

There is the option to make an application to the Judicial Greffier for a payment under the legal aid benefit. But, that is reserved for very, very complex and very onerous cases. Generally speaking they will not look at a case that has a court hearing of less than 3 weeks or where at least 60 hours of work has been absorbed by the lawyer, for which no payment would be made in any circumstances.

**President, Jersey Law Society:**

It is probably worth saying that of the over 1,200 legal aid certificates issued in each of the last 2 years more than 400 related to family disputes. That is normally matrimonial disputes. I think we all in this room know how difficult, intractable and, let us be honest, unpleasant and stressful those can be. One person dealing with a family legal aid certificate can find herself or himself extraordinarily busy in dealing with the toing and froing between the parties that is necessarily inherent in our system. I am trespassing on to another area, I appreciate, but the whole matrimonial system cries out for reform. In my view that is probably not really what I was going to talk about.

**Senator P.F. Routier:**

Certainly we are aware of that issue. It is part of our review.

**Mr. D. Cadin:**

Just before we continue, can I pick up on the point of Deputy Young's question about whether there is any flex in the system and whether there is any ability? At the moment there is not any ability apart from that as outlined by Neville in relation to particular onerous or particular types of criminal certificates. Everything else is just delivered on a random basis in accordance with the term of law. Could we change it? Yes, we could. If the membership as a whole decided that, for examples, new businesses setting up should be exempt from the *tour de rôle* for a period of 2 years. That could enable law firms to get their feet under the desk and to start generating sufficient cash, either to start outsourcing their legal aid arrangements or to have sufficient skills to deal with it. That would require a vote of the profession as a whole. At the moment trying to get the profession as a whole together to do anything is rather difficult. There are options that if there was a perceived need they could be discussed. I think at the moment one of the things to identify: is there a perceived need? Quite often we get a lot of firms setting up ... indeed 7 have set up recently. There are the grumbles about the legal aid obligation, but by and large they manage it.

**Deputy J.H. Young:**

Any change to the system would have to be agreed by all of the lawyers in the Island who are all in competition with one another?

**Mr. D. Cadin:**

They are in competition in terms of business, but they are working collaboratively and together to provide legal aid services. So, if you are asking me: would the larger firms be upset to say to a small firm who is about to start up: "We are going to exempt you from the legal aid rota for 2 years."? No, I do not think the larger firms would care. I think it is good for the Island. The more

lawyers there are, the more legal services are being provided and the greater the specialisations and more business is attracted.

**Senator P.F. Routier:**

Something that could be considered if that is what your profession ...

**President, Jersey Law Society:**

David have really hit the nail on the head. The legal aid system has been run by the lawyers at their cost since it was established in 1908. In order to change it it requires a vote of the majority of the lawyers attending, subject to a quorum. When you have such a broad church of lawyers in 44 different firms, ranging in size from 50 lawyers down to one, you have very different views and interests. So, I suspect were we to go along as a society proposing piecemeal reforms that would be looked at with, I think, reluctance by the Law Society as a whole. I think what they would like to see is a proper comprehensive review and reform of the whole system, rather than our trying to play around at the edges. I think there is a willingness on the part of the lawyers as a whole to continue to offer pro bono services in Jersey. I think the profession as a whole is very proud of the work that it has done for over a century in assisting the poor and the needy, the widows and orphans and so on.

**Deputy M. Tadier:**

Your change is to just enhance and improve that system?

**President, Jersey Law Society:**

What we need ideally, with your support and involvement, is to come up with a new system that is fit for purpose.

**Senator P.F. Routier:**

A completely new one?

**President, Jersey Law Society:**

Yes.

**Deputy M. Tadier:**

It is a move away from the pro bono?

**President, Jersey Law Society:**

No, no. As I said, I am convinced that the lawyers as a whole in this Island continue to be willing to provide, unlike any other profession, their services pro bono, in an appropriate manner, to those who are genuinely in need.

**Deputy M. Tadier:**

That is really useful to have on the record. There are those who say that because the service is pro bono that necessarily will end up in certain clients. We have not really spoken a lot about the client experience, when they have a mismatch lawyer case versus the lawyer experience or the fact that it is not priority for a junior lawyer, results in bad representation and, therefore, justice not being carried out for that individual. So, in fact, nobody wins under that scenario. Is it really viable to have a system which remains, if you like - it is not free for you guys, but it is free for the public - and can result in quality legal representation?

**Mr. D. Cadin:**

Can I pick that up? In terms of quality legal representation, as the Batonnier, I have overall responsibility for the bar. It seems to me that overall clients get a very good service. I think you probably have proof of the pudding in terms of the responses you got to the Access to Justice Review. Putting the proposal out in the call for evidence, the number of responses you got was extremely limited from members of the public. That, to my mind, speaks volumes. It indicates that the vast majority of people who use the court service and who come into contact with justice in the Island are generally happy. No one is ever going to be entirely happy.

[13:15]

It is a stressful, expensive process. But, they were generally happy and did not engage with the review. The example that I can give in terms of no second class service is an obvious one. My firm operates a legal aid department that deals specifically with legal aid cases. It is staffed by specialist advocates. It has specialist assistants in it. None of those advocates are going to give anything other than a first class service. The reason they are not going to do that is because if they were to do that it reflects on the reputation of my firm generally. That is a reputation that we have worked hard, across a variety of different areas, to garnish and to improve. We are not going to throw it away by employing someone who is a cowboy. We are there to deliver a service and we are committed to it. We pay for that. The suggestion that there are people out there getting second class service, I think, is wrong.

**Deputy M. Tadier:**

Okay. That is suggestions that we have had. I think the issue about engagement with the public is probably moot, because I think there are various reasons that the public generally do not

engage with certain ... it remains to be seen whether there are people that we have not managed to engage with. Anyway, put that out there as Devil's Advocate. That is always one of the arguments that we hear, for example, from some of the grass roots users. But, it is not across the board, of course.

**Senator P.F. Routier:**

Shall we move on to another question? Juliette, would you like to ...?

**The Connétable of St. Mary:**

Yes. I would just like to know: in the options that would be partially or wholly States funded, have you got any ideas of how the costs would be met by the States? Any new levies or taxes or whatever?

**Mr. D. Cadin:**

I think in terms of funding, I do not think the Law Society, certain the Batonnier, have not put it out there as: "This is your option." The way we have phrased it is that in effect the obligation to provide a justice system that is fit for purpose rests not with the lawyers, but it rests with the States. So, the obligation is yours. At the moment that obligation is being discharged by a partnership. That partnership probably does not get the respect it deserves across all levels. But, that partnership is a voluntary commitment. If you are going to move to a system that the States provide you are going to have to cost it and you are going to have to pay for it. At the moment what the Law Society have said is: "Looking at the numbers, you are in the £7 million - £8 million bracket," which is a lot of money, particularly in this climate. So, it is not a case of the lawyers saying there needs to be a levy. It is us saying: "If you want to pick up the baton and run with it that is the sort of money you are going to have to find." Candidly, I think we might recognise that asking for a fully funded system is probably a very big ask. It is not something that realistically is going to be delivered. So, whatever is delivered is going to have to continue to be a partnership. What needs to be discussed between partners, probably equal partners, is where the boundaries lie, what the standing is, what do you want to achieve. Part of the submission that I put into the Access to Justice Review was really using the benefit of your overall vision that you have for the Island, finances, for the grass root complaints you get, of identifying the sort of system you would like in place. Once you have identified the sort of system you want, where there are weaknesses in the current system and where things could be improved that is the point at which I think there should be a real dialogue about how we deliver the system you think the Island needs. We are not there at the moment.

**Senator P.F. Routier:**

Shall we move on to John's question?

**Deputy J.H. Young:**

Just a clarification of that, if I may. Presumably then at the moment your position is that the firms are meeting costs of £7 or £8 million from their own resources?

**Mr. D. Cadin:**

Yes.

**Deputy J.H. Young:**

Your submission is that effectively an equal partnership with government putting in 50 per cent is what you are looking for. Is that the position that you are taking?

**Mr. D. Cadin:**

On the part of Batonnier, I am saying the question about funding is a question for the States. It is not something ...

**Deputy J.H. Young:**

I am trying to understand your position, that is all. So, you are saying there should be discussions about an equal partnership.

**Mr. D. Cadin:**

There is a partnership at present. When I say equal partnership I do not mean financially I mean equally in terms of discussion.

**Deputy J.H. Young:**

Good. Thank you for clearing that up.

**President, Jersey Law Society:**

But if that is an offer for half the funding ... [Laughter]

**Deputy J.H. Young:**

It certainly is not. I want to understand your position. I was going to go on to say: would it be true, you say it is a voluntary commitment, that is part of the arrangements where the members of the society have exclusive right of access to the court, does it not?

**Mr. D. Cadin:**

Yes. I think that is a key issue. It is one of the things that the Access to Justice Review is going to have to look at and it is going to have to consider. From my perspective it is a key point in

preserving Jersey's identity. It is a key point about preserving the Island economy. I think when you start looking at what the detrimental impact of changing those rules might be, it would have a far greater impact than simply the 3 of us before you today. I think you might find that it would have an impact throughout society. It would also have an impact dramatically on the Island economy.

**Deputy M. Tadier:**

In what sense?

**Mr. D. Cadin:**

Lawyers bring in a lot of business. The vast majority of clients for law firms are clients from outside of the Island. They are brought into the Island because of the financial services sector, because of the quality of the legal services that they are going to get. If they are using Jersey lawyers for a particular type of structure then that is going to spin off revenues into trust companies and into banks and so on. If you suddenly take away rights of audience and U.K. (United Kingdom) law firms can do the lot ... that has to be the risk. If you say you can have U.K. lawyers going before the Royal Court then what is so special about Jersey lawyers? That means that U.K. lawyers are insured to do Jersey law work. Okay. Why do we need a Jersey law firm at all? So, you will have a London lawyer saying: "I could do the Jersey structuring." Why are they going to use a Jersey trust company? Why would they use Jersey at all?

**Deputy M. Tadier:**

Does that mean there is no scope for them doing anything if we said ... it does not mean you can do the lot, but there might be certain tasks that outside qualified lawyers could be used for, especially in the context of legal aid, which may be beneficial to other Jersey based advocates.

**Mr. D. Cadin:**

I think there is a risk. If you are going to take that route - and it may be a political decision - I think you have to weigh up the costs and benefits of doing that and the risks. If you were to do that, and take the example, say, you say we are going to set up a public defender's office, much as we have done in the Magistrates' Court, we are going to allow foreign qualified lawyers to appear in that tribunal. Which courts are you limiting that to? Most of the criminal work is dealt with by the Magistrates' Court. You could say we will have public defenders operating in the Magistrates' Court. There is no real change. If you up it and say: "Well, hang on a minute, the most serious cases are dealt with in the Royal Court. They are doing the same type of law that is being done in the Magistrates' Court, why do we not extend it there?" Then you have non-Jersey qualified lawyers appearing in the Royal Court.

**Deputy M. Tadier:**

But they could be appearing before a non-Jersey judge as well. We do have Commissioners who are not Jersey trained or Jersey based. We could argue you have already opened the door, in that respect.

**Mr. D. Cadin:**

They are prevailed upon and do apply the Jersey law. The risk of allowing non-U.K. lawyers in, encouraging them to appear in front of non-U.K. lawyers is that we lose all that is special, our laws devalue down to English law. We already have problems with that in relation to law of contract. Are we true to our roots? Do we adopt the English law? Do we follow French? We have issues of that already. We are trying to work through that. But, I think that if you started to allow other lawyers here then you run the real risk that you are taking revenue out of Jersey and putting it in other departments. Say, you employ U.K. barristers. They are paying tax in the U.K. They are not paying tax here, so your tax take goes down; you do not get a new hospital. Some of the work that comes into Jersey goes elsewhere. I think it impacts on society in a far greater extent than might be thought: "Well, we could just have an English lawyer."

**Senator P.F. Routier:**

Shall we just move on to John's question now?

**Deputy J.H. Young:**

Yes, I would like to shift the discussion on if I can, because time is moving on. How fair do you think the current rules are that you have set for the legal aid scheme? Do you get complaints that people fall outside the boundaries of that scheme? What could be done about changing that, if that is the case?

**Mr. D. Cadin:**

Again, it is something I dealt with in my submission. We have upped the limits now to £45,000 in terms of income, £150,000 in terms of capital. Interestingly, we had the Isle of Man Law Society across last week to talk to us. They have a state funded legal aid system in the Isle of Man. Their limit for entitlement is £17,000. The £45,000 is more generous. It is significantly higher than is allowed in the United Kingdom. One of the pinch points that we used to have, was in relation to ...

**Senator P.F. Routier:**

Sorry. Do you know the cost of running the Isle of Man system?

**Mr. D. Cadin:**

They indicated that it was something in the region of £2 million.

**Chief Executive, Jersey Law Society:**

Yes. They thought it was going to come in at about £1 million. They said £1.5 million - £2 million at present. But it is a smaller population.

**Senator P.F. Routier:**

Yes, okay.

**Deputy J.H. Young:**

I suppose their workload is not comparable either, is it?

**President, Jersey Law Society:**

Not quite. It is a totally different environment.

**Deputy J.H. Young:**

Okay, so we come to the other question about fairness.

**Mr. D. Cadin:**

Yes. As Batonnier I sit on the appeals from the Acting Batonnier. So, where people have been refused legal aid some of them will bring an appeal to the Batonnier. If they fall outside of the legal aid limit there is a discretion on the part of the Batonnier to grant legal aid. Now, what I have said to people previously is: "You are outside of the legal aid limits. That mean, theoretically, you have more cash, so you can use that to try and purchase your own legal services. If you do not think you have, go and see if you can borrow some from the bank or a finance company." The answer to that is they probably cannot. I then say: "Well, go and try one of the smaller firms. The advantage of the smaller firms is you get to choose your representative. You also get to negotiate on rates. You may be able to find a representative who will appear for you at a lower rate, one of your choice and will also enter into an agreement as to when they are going to bill you. If you cannot reach an accommodation with a local firm come back and see me." Out of those that I have sent out no one has come back to see me, so I assume that they have all either managed to secure alternative funding or they have come to an accommodation with lawyers willing to represent them.

**Deputy J.H. Young:**

Can I just clarify? If somebody gets a legal aid certificate from yourselves within the criteria, does that mean they pay no fees for whatever firm they are assigned to?

**Mr. D. Cadin:**

They will go to the firm and the firm will look at their income and expenditure and make an assessment as to what is fair and reasonable.

**Deputy J.H. Young:**

There is a consistent practice across the firms?

**Mr. D. Cadin:**

There are guidelines given in brackets as to the percentages. Is there consistency? Probably not.

**Deputy J.H. Young:**

Do you think that that is something that should be looked at?

**Mr. D. Cadin:**

It certainly could be looked at. The difficulty about doing that is that this is an independent obligation. Some of the firms are saying: "We are trying to provide a specialist service in that area. We need clients to contribute fees as and where they are able to."

**Chief Executive, Jersey Law Society:**

But, there are a significant number of legal aid clients who do not pay anything. Firms are very sympathetic when it comes to the end of a case and someone does not have the means to pay and they do take it as a pro bono contribution.

**Mr. D. Cadin:**

Yes.

**Deputy J.H. Young:**

Thank you for that. Moving on there from that, where, for example you get civil litigation is there scope for things like conditional fee agreements and so on that would assist in helping people get access to justice where they have those sort of claims and they do not have the money to take those actions forward?

**President, Jersey Law Society:**

That is one of the things that we have suggested be looked at. But, it would probably require a change in Jersey law to permit it.

**Deputy J.H. Young:**

The law prevents it now, does it?

**President, Jersey Law Society:**

That is our understanding.

**Deputy J.H. Young:**

What law is that?

**President, Jersey Law Society:**

Partly it is to do with the oath the advocates and solicitors have to give to the Royal Court which, for example, says - and I will try a loose translation from the French, which bizarrely is still the official language of our courts ...

**Deputy J.H. Young:**

Bizarrely?

**President, Jersey Law Society:**

If you talked about Access to Justice to the man in the street they might be surprised to hear that their first language is not the same first language of their court.

**Senator P.F. Routier:**

Yes.

**President, Jersey Law Society:**

But, there we go. You are not allowed to make any business arrangement in relation to anything to do with the matter which is currently before the courts. You are not allowed to make a business deal. It follows and flows from that that it has been generally agreed that the law, therefore, prevents lawyers doing conditional fee agreements. I think some would like to do it. It is something that we would be very willing to explore and to look necessarily with the Attorney General to see how he thinks that would work in practice.

**Deputy J.H. Young:**

Does that mean in practice that somebody, maybe without means, might have a dead cert piece of litigation, but at the moment they could not come to an agreement under the system to get that action taken forward?

**President, Jersey Law Society:**

What they can do is obtain litigation funding from a third party funder, which has recently been ruled as consistent with Jersey law by the Bailiff.

**Deputy J.H. Young:**

Do you mean borrow it from somebody?

**President, Jersey Law Society:**

It is not that straightforward, but there are specialist firms in the U.K. that operate as litigation funders. They will look at a case.

[13:30]

They will be responsible for funding the management of that case and the loss of the case, if an adverse order as to costs is made, and can reach an accommodation, effectively, with the litigant as to how the proceeds should be divvied up in the case of a success. But the lawyers cannot ...

**Deputy J.H. Young:**

That will protect the litigant bringing such a case, would it?

**President, Jersey Law Society:**

Yes. That is available here. My firm has at least one of those on the go at the moment, in the context of litigation before the Royal Court.

**Deputy M. Tadier:**

Would your firm do that for one of your own clients? If someone came to you would you be able to say: "We cannot negotiate fees with you. We cannot do a no win no fee, but we can lend you the money."

**President, Jersey Law Society:**

I think that is poor practice. I also think, from a personal perspective, it gives the lawyer a stake in the outcome of the litigation which arguably is inconsistent with the lawyer's first duty which is to the court and not to the client.

**Mr. D. Cadin:**

Can I just pick up on the no win no fee suggestion? No win no fee I think is rather a simplistic approach in terms of what is adopted for contingency fees and conditional fees. What is usually meant by conditional fees is that there is a fee charged with an uplift in the case of success. The lawyer gets a share. The risk of getting nothing is represented in the fees. It is not a case of: "We charge you fees, but if you lose we are not going to get any money, you know, we do not charge you those fees." If you wanted to go in for an arrangement with a lawyer and he said: "This is the hourly rate. It is the normal hourly rate. I think you have a guaranteed success, but if you do not

win I will not charge you a farthing.” Then that may not fall foul of the oath. What is prevented is this idea of the uplift, which is what has been endorsed in the U.K. as the approach for conditional fees. It is fair to say that within the U.K. they are moving away from conditional fees. There are all sorts of problems about who pays the insurance premium, is it right, what is the uplift. You end up almost in another argument about what sort of uplift should you have to represent the lawyer’s risk. You can then of course end up with smaller firms effectively betting everything on litigation, which is not a good model.

**Deputy J.H. Young:**

If ordinary people were to have significant pieces of litigation that fall into, let us say, the legal aid camp, are there financial risks for them of getting saddled with costs which are disastrous for them, as part of going into the sort of arrangements that you are describing?

**President, Jersey Law Society:**

That depends on the deal that they are able to do with the funder, but generally no. That puts them in a better place than the litigant who decides to take on somebody who does have money and risks losing and having an adverse order made against them by the court for the costs of the successful party.

**Deputy J.H. Young:**

That is the normal situation? That is the normal risk?

**President, Jersey Law Society:**

That is what the court will call litigation risk. That is the court’s system not ours.

**Mr. D. Cadin:**

That applies in the case of legal aid as well. In the U.K. you have a barrier. So, it means if you get an order for costs against you and you are in receipt of legal aid that order cannot be enforced without leave of the court. It is effectively the football pools. If you win the football pools, the other side will get their costs back. Here, all litigants before the court are the same. If you have legal aid you are treated as a litigant and you can afford to pay costs. So, if you just scrape under the threshold, £150,000 equity, and you lose you could risk losing your equity.

**Deputy J.H. Young:**

You can win a legal action but lose, if you like, on costs?

**Mr. D. Cadin:**

It is unlikely.

**Deputy J.H. Young:**

Right.

**President, Jersey Law Society:**

It is when you lose that you have the problem because the successful party will pursue you for costs.

**The Connétable of St. Mary:**

I was going to ask the question, but I thought I would let the expert do it. **[Laughter]**

**Senator P.F. Routier:**

In your submission you talked about wanting a justice system which is simple, consistent and transparent. I think we have skirted around that. But, are there any other improvements that you could see positively that could really achieve things?

**Mr. D. Cadin:**

I thought identifying what you wanted the ordinary man in the street to be able to do simply was probably quite a good starting point.

**Senator P.F. Routier:**

Yes.

**Mr. D. Cadin:**

If you decided, for example, we want people to be able to deal with family issues simply then I think you can look around and say: "This is how they do it in other jurisdictions. This works. That does not work." In my submission I gave you the example of the Guernsey Tribunal. That is what spin off in that a lot of the work that is being done in the Royal Court and is taking a lot of court time and resources is Public Law Children work. If you do a cost comparison between Guernsey and here, it costs Guernsey far less than it does us to do an equivalent amount of work. Again, it is looking around, seeing what is going to work for the Island and what is going to work for the public.

**Senator P.F. Routier:**

If you were to say the number one thing to change, what would that be?

**Mr. D. Cadin:**

Number one thing to change, gosh.

**President, Jersey Law Society:**

I would change the whole Matrimonial Law system. I think it is nonsense for a formal court process involving the full majesty of the law to be brought in to try and resolve intractable human issues between spouses and their children. That would be one of the biggest wins that could be thought through. A lot of work has been done in England about that. I note, in fact, that Mr. Justice Coleridge, who very recently was forced to step down as a High Court Judge in the Family Division is coming over to Jersey to speak in a couple of weeks' time. He has some very interesting ideas about reform of the Matrimonial Law system. From our perspective, again, more than a third of all legal aid certificates are matrimonial related. Leaving aside the whole legal aid burden, in terms of simplification for the court process and therefore the resources of the judiciary, all the support services that go into helping to run families who have got intractable problems, whether it is Social Security, the police, the medical service, doctors and so on, the whole system could be dramatically different. If we had a much more mediation based system for sorting out matrimonial disputes I think not only would that be of benefit ...

**Senator P.F. Routier:**

Would you include Children's ...

**President, Jersey Law Society:**

Children's work as well. Why do we need a bunch of lawyers to sort all of that out? It ought to be ...

**Deputy J.H. Young:**

Potentially, from what you have said, that could take a third of £8 million out, could it not, just on the legal aid costs alone?

**President, Jersey Law Society:**

I would not be surprised.

**Deputy J.H. Young:**

Between £2 million and £3 million taken out.

**President, Jersey Law Society:**

It is certainly the case that not only are they in number a very high percentage of the cases, but in terms of the effort that goes in.

**Deputy J.H. Young:**

So, it is higher than that? Might be higher?

**President, Jersey Law Society:**

Could well be. My expectation would be that it would be higher. Obviously the courts and lawyers are still going to have a role to play in matrimonial disputes, but that could be changed significantly.

**Deputy J.H. Young:**

So that would be your priority one?

**President, Jersey Law Society:**

It would certainly be a significant priority that could work in tandem with anything we do about legal aid. Legal aid needs to be sorted out anyway. But, a whole new approach is needed in my view. I say this as an expert knowing nothing about Matrimonial Law. That whole process needs urgent addressing and could make a dramatic difference to the wellbeing of so many different people as well as easing the burden on the State and in part the lawyers too.

**Senator P.F. Routier:**

So, that would be a win win.

**President, Jersey Law Society:**

A win for everybody, but most importantly of all the poor people who get stuck in it, which are the families concerned.

**Senator P.F. Routier:**

Do you have any other questions?

**Deputy J.H. Young:**

In your priorities that the Chairman asked you, what is your view about the current complexity of court procedures? For ordinary people, ordinary litigants, ordinary matters, not commercial conflicts, what is your view about that? Are we able to reduce that down?

**President, Jersey Law Society:**

Yes and yes. The good news is that the Deputy Bailiff is looking at all of that at the moment in another review that you probably know is going on in tandem. One easy win again is significantly to increase the jurisdiction of the Petty Debts Court. I think a big rise in the amount at issue that is within its jurisdiction ...

**Deputy J.H. Young:**

What figure would you go for?

**President, Jersey Law Society:**

I think we would need to look at it, do a bit of statistical analysis, but £25,000, £30,000, £40,000. Let us look at it. That would make a huge difference. Then, yes, a fast track simplified process for simple cases. Obviously the big multinational litigation that certainly David and I get involved in needs to be dealt with properly with the fully sophisticated, complex process available, because of the nature of the disputes. But for local people with local issues involving little money there is a better way to do it.

**Deputy J.H. Young:**

Are we talking about lower courts or tribunals or what?

**President, Jersey Law Society:**

I think the Petty Debts Court, because we have it already, we have the expertise, we have the system, let us utilise it to its maximum ability. Needs some research, we need to look at statistics, but I think with the benefit of that sort of analysis we could come up with a pretty impressive system. The infrastructure is all there. Let us maximise its utility.

**Senator P.F. Routier:**

Okay.

**Mr. D. Cadin:**

I think you could also reflect some of that procedure in the Petty Debts Court, a fixed value in the Royal Court. So, almost ... you say we are going to have a system for disputes up to £100,000, split between the Royal Court and Petty Debts Court, unified procedure.

**Senator P.F. Routier:**

Yes. Thank you very, very much. I really appreciate your comments and for taking your time coming in today.

**Deputy J.H. Young:**

Thank you being so frank with us.

**Senator P.F. Routier:**

As you know this is an interim report we will be publishing in the next week or so.

**President, Jersey Law Society:**

Can I say thank you for the invitation. We certainly value the opportunity and we hope that this will be the start of working together closely as the future comes.

**Senator P.F. Routier:**

Yes, good. Thank you.

[13:40]