

Access to Justice Review Public Hearing
Le Capelain Room, States Assembly Building
14:30 – 15:15, 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:

Mr Malcolm Ferey, Chief Executive of Jersey Citizens Advice Bureau.
Mr James Lambert, Director of Services, Judicial Greffe
Mrs Sue de Feu, Programme Director, Jersey Legal Information Board

[14:34]

Senator P.F. Routier (Chairman):

Thanks for coming in to see us.

Chief Executive, Jersey Citizens Advice Bureau:

Okay, it is a pleasure.

Senator P.F. Routier:

As you know this is a public hearing, although the media has left, we are recording the hearing so it will eventually end up on our website. So say what you like. So introductions, I am Paul Routier, I am the Assistant Chief Minister, chairing the panel.

Connétable J. Gallichan of St. Mary:

Juliette Gallichan, Constable of St. Mary.

Deputy J.H. Young:

Deputy John Young.

Deputy M. Tadier:

I am Deputy Montfort Tadier. I will give my apologies, I have to leave slightly early, before the end of the meeting.

Senator P.F. Routier:

Okay, and yourselves?

Programme Director, Jersey Legal Information Board:

Programme Director of Jersey Legal Information Board.

Director of Services, Judicial Greffe:

I am from Court Service and the Jersey Legal Information Board.

Chief Executive, Jersey Citizens Advice Bureau:

I am the Chief Executive of Jersey Citizens Advice Bureau.

Senator P.F. Routier:

Thank you very much. Thank you for your written submissions and we were that interested in what was in there that we thought it would be useful to have chat about them. The Legal Information Board made a suggestion that perhaps a survey should be carried out about the pathways to justice model. Perhaps you would like to explain what it is ... how you would see that happening and progressing.

Director of Services, Judicial Greffe:

You will be pleased to know we do not want to talk about legal aid, which I am sure you have heard enough about. It seems to me that in undertaking an Access to Justice Review that some sort of legal needs survey should be undertaken to establish what the grass roots level of regard for the justice system is and the area of engagement. There is a well worn tradition of these surveys which have been undertaken in a number of jurisdictions over the last few years with varying degrees of success but I think it would be remiss of the review if it did not take account of what individual citizens feel their needs are in relation to Access to Justice. It is not just about citizens, small businesses in particular are an area which would bear fruit in terms of undertaking a survey. The paths to justice is just a survey methodology I think. That would be my understanding so it is not particularly about using that methodology although it is a well worn path and therefore might be a kind of shortcut to getting the answers that the review might wish to receive from the public. But nevertheless I think there is a very strong need, both from the perspective of the

Jersey Legal Information Board who is trying to increase the accessibility of the justice system as well as the C.A.B. (Citizens Advice Bureau) in terms of the work that they do and, indeed, the 2 organisations do together. So that really sets the scene. I do not know whether you want to add to that, Sue?

Programme Director, Jersey Legal Information Board:

Well, we have looked at some comparative studies. Most jurisdictions are bigger than ours that have undertaken them but I have looked at jurisdictions that have got different make ups. So if you look at somewhere like Nevada State, they have had ... their population has exploded in the last 20 years and will continue to change in the near future. Growth of the state as a whole, coupled with changes to the demographic make up present unique problems for serving the States needs for civil and legal services. I think that kind of sums up ... we have this explosion of population not over 20 years but over slightly longer and the groups of people who have come to us have different needs, have come from difficult cultures, have different approaches to how they would access justice. Looking at somewhere like Nevada, it greatly Hispanic but it does not matter what the ethnic make up is, the fact is they have come from other places and they have different expectations, they have different cultural make up, so in some case they will not go outside family whether they have problems or not, in other cultures they will, they know where to go for help. Looking at that, and I looked at also British Columbia and I have got the objectives of the British Colombian legal needs survey. It was kind of like where I would like to see a survey going here. To measure the incidence of justiciable problems faced by British Colombians, to determine the impact these problems have, to identify what action, if any, was taken, to better understand the perceived barriers to taking action to address legal issues and to determine the perceived fairness of the justice system. I thought that was a set of really sound objectives that I would be interested in pursuing. It is quite an interesting result in British Columbia. I know the sizes of these places is so big but you can look at the results from other places and think about how we would tackle it and what results we might get out of it. So really that is all I want to say.

The Connétable of St. Mary:

But when you have been looking at the other places, what is your opinion on how we could carry that survey out? Is it something that we need to get specialist agencies in or could the logistics unit perhaps do it?

Programme Director, Jersey Legal Information Board:

I think it needs impartial outsiders. A company specialising in these kind of surveys. The methodology of these things is so complex to get the right across the board make up profile of your people.

The Connétable of St. Mary:

Have you got any thoughts on fund?

Director of Services, Judicial Greffe:

No.

Programme Director, Jersey Legal Information Board:

No, not at the moment.

Director of Services, Judicial Greffe:

We have not got that far. I did say that it could be undertaken through J.A.C.S. (Jersey Advisory & Conciliation Service) but I do not think we will get the results that would be of value so there is a need to spend a bit of money on this. There are number of people at University College, London who have been closely involved in these surveys, including Dame Hazel Genn, who coined the path to justice phrase. So there is a huge centre of excellence there, I think, that we could possibly explore and research further in terms of how we would undertake it, who would be involved and obviously what the costs would be.

Senator P.F. Routier:

That is useful, thanks.

Deputy M. Tadier:

Can I ask, in terms of timescale would you envisage that this would form some kind of second part of our review or would it be something that would happen subsequent to the end of the review?

Director of Services, Judicial Greffe:

I just think the review needs to take cognisance of the fact that ... with all due respect to the review, I guess a lot of the people that are coming to you are members of the legal profession. If we do not go in the other direction and go out and try to reach the various sectors of society and community, they might feel they have been a little bit let down by the review. I think it needs to probe deeper. Whether that happens after the review is completed and is a recommendation of the review, I think that would probably be the obvious way to go.

Programme Director, Jersey Legal Information Board:

Yes, although it could happen in parallel.

Deputy M. Tadier:

It is consistent with discussions we have had recently anyway. We know that it is always more challenging to get wider public engagement than necessarily professional and it is appreciated.

Deputy J.H. Young:

I wonder, for example, do the C.A.B. have any anecdotal information that would lend weight to the need to do this, to have this kind of subjective view to find out how big the requirement is and what is being served and what is not being served.

Chief Executive, Jersey Citizens Advice Bureau:

To put it into context, we see over 1,000 people every year with legal problems. Now that is obviously across the board, and if I can just touch on legal aid, each year we help about 200 people with making applications for legal aid. So we certainly touch those people who would be able to give us very good feedback and we would be happy to be a part of any survey as a gateway for people to be able to respond to that.

Deputy J.H. Young:

Do you have any preliminary thoughts on where the gaps might be in legal provision? That committee itself, where does that anecdotal evidence suggest at the moment we need to look at the survey?

Chief Executive, Jersey Citizens Advice Bureau:

Anecdotally the gaps have always been a classic thing, cost is one of the biggest obstacles for most people. There is an element of trust there as well. Some people do not want to engage a lawyer for whatever reason, they do not trust them perhaps because of experience they have had in the past and that is no slower on the professionalism of anyone working in the industry, it is just the way that some people feel. I think also some people do not necessarily see that as a way of sorting everything out and, as Sue said earlier, sometimes there are cultural differences and they do not necessarily see that is the way that they need to resolve their issues.

[14:45]

Programme Director, Jersey Legal Information Board:

Sometimes they do not understand that they can be helped, do they?

Chief Executive, Jersey Citizens Advice Bureau:

Yes, exactly. When people come to Jersey from other jurisdictions they understand that legislation is different here and there is not parity with what perhaps we are used to at home, so they just

assume - perhaps wrongly - that there is nothing in place to protect them because they hear of all the things that are not in place so they assume that there is no protection on many levels.

Senator P.F. Routier:

Okay, the submissions mention the community mediation service and it talks about that. Do you see any way that that could be improved upon from what currently exists?

Programme Director, Jersey Legal Information Board:

It is not widely enough known. We need to advertise it but we never have funding to do that.

Chief Executive, Jersey Citizens Advice Bureau:

That would be the biggest help because the mechanism is set up through the bureau, the relatively few mediations that we do have are very successful and it is a rewarding part of my job when people come in at each other's throats and they can leave 2 hours later shaking hands with some sort of resolution. That is an instant resolution to their problem, without the recourse to the courts, the cost and the stress they can, if they have both got a willingness to - both parties have a willingness to - resolve their problem on the day.

Senator P.F. Routier:

So what is the block ...?

Chief Executive, Jersey Citizens Advice Bureau:

The main issue is, you know, we promote it - and I promote it - at every opportunity that we get but it is something that really needs the weight of advertising behind it because people just are not aware that this is another way that they can resolve their problems. The numbers have been increasing but we are still talking in the teens, where it should be in the hundreds.

Senator P.F. Routier:

Is it all done by volunteers or is it paid?

Chief Executive, Jersey Citizens Advice Bureau:

Yes, well basically the way the system is set up is we have a trained mediator who offers their services free of charge, obviously the bureau is the focal point for bringing the 2 parties together but that is really and truly our only involvement. Each party pays £20 and they sit around and discuss the problem, come to a resolution which is then written down and they sign up to. If, for whatever reason, one party or another reneges on that agreement, that does not prejudice any further action that they might want to take. So I say to people: "You have nothing to lose but £20 and a couple of hours of your time. Nine times out of 10 it is a really good resolution, a really good

way for people to resolve their differences. The concept that myself and Sue had discussed is a decent advertising spot say between the news slot on Channel Television where you see things like the Samaritans and those things that get embedded in your brain, with then a follow on of a snapshot of that on to the radio and into the ... you know, that sort of structured media awareness campaign over a protracted period of time, I think that we would start ... it would be money well spent because we would start to see people ask for the service rather than ... most of the time the reason people eventually end up having the services is they come to us and they say: "I have got this particular issue" and one of our trained volunteers says: "Have you considered this as a possible resolution." Most people have not heard of it. Just occasionally we do get someone who contacts us and says: "I have seen this on the website, I want to engage this solution for my problem." That is by far the most common way; we recommend this as a possible solution.

Deputy M. Tadier:

Do you have a social media presence?

Chief Executive, Jersey Citizens Advice Bureau:

Yes, we do. We have Twitter, we have Facebook. We push it out on a fairly regular basis. It all helps.

Programme Director, Jersey Legal Information Board:

I do our website as well.

The Connétable of St. Mary:

What sort of things are accessing, what areas?

Chief Executive, Jersey Citizens Advice Bureau:

It can be from the sublime to the ridiculous. It really is. It can be from wedding cakes to people who are splitting up and have property together. The cap is set at £10,000 but we have had mediations where property has been involved and in fact one of your previous people who gave evidence took that mediation and at the end of it she said: "Those people have just had about £3,000 worth of advice for £20 each." That was a successful outcome where they both agreed and they stuck to their agreement.

Senator P.F. Routier:

You mentioned somebody who was in here early and has made a submission to us about the use of the C.A.B. as a gateway to legal services. What is your opinion?

Chief Executive, Jersey Citizens Advice Bureau:

I would like to expand the service in any way that I can, and that for me would be a great way for us to sort of embed what we do for the community. So if it is within budgets and it is within our capability, that is something that I would love to explore further.

Deputy J.H. Young:

Within whose budgets?

Chief Executive, Jersey Citizens Advice Bureau:

Well, our budget and if there was a willingness to make the gateway set that way as long as there was the provision behind it of any funds that were needed then I would be happy to explore that.

Deputy J.H. Young:

Do C.A.B. get a grant now from government or ...?

Chief Executive, Jersey Citizens Advice Bureau:

Yes, we do. Yes.

Deputy J.H. Young:

That comes from which bit of government?

Chief Executive, Jersey Citizens Advice Bureau:

That comes from Health and Social Services. Yes, we get approximately £250,000 a year. That covers all of our operational costs.

Deputy J.H. Young:

What percentage of your costs is that roughly?

Chief Executive, Jersey Citizens Advice Bureau:

What percentage of ...?

Deputy J.H. Young:

Yes, of your total costs of running the organisation?

Chief Executive, Jersey Citizens Advice Bureau:

Okay, that is less than we need to run the whole of the organisation, it is about 90 per cent of what we need, the rest we go out and get ourselves.

Deputy J.H. Young:

In looking at the development of the service, have you got capacity within the existing resources to expand it or are you at the limit of what could be done now?

Chief Executive, Jersey Citizens Advice Bureau:

Okay, yes, this dovetails very nicely with something that I am working on at the moment, which is just across the road there, that particularly property. Where we are is we are shoehorned into a building which, although it is very nice and friendly, it is compact and bijou is the way an estate agent would describe it. It is to the point where we cannot move. We do need more space and if we had that more space we would be able to take on more resource. I am in a situation where because the C.A.B. has such a strong brand I get people contacting me of a fairly regular basis saying: "I would like to volunteer for your organisation" and we are in a situation at the moment where we cannot physically accommodate any more volunteers. Even training people is ... you know, people end up sitting in the kitchen trying to do their training.

Deputy J.H. Young:

That would be the principle means of expanding, taking up that volunteer base that is potentially there?

Chief Executive, Jersey Citizens Advice Bureau:

Yes. If we physically had more space then we would be able to train more staff, then we would be able to take on more issues and more resources.

Senator P.F. Routier:

Can I just go back to the survey thing that we were talking about earlier, the aspect of getting views from adults, but also from children? My understanding is that in New Zealand they were trying to get the views of children. Do you know if that is ...?

Programme Director, Jersey Legal Information Board:

I do not know, I have not seen a New Zealand survey. In British Columbia, did they ... no, it just says on age and gender, 18 years or old. So, no, British Columbia did not and I cannot remember whether Nevada did, and I also looked at Victoria in Australia, it was all adults.

Director of Services, Judicial Greffe:

There was a 1997 survey in New Zealand that included children. I do not have any further details of it.

Senator P.F. Routier:

Regardless of whether it has happened or not before, is there any value in trying to understand what children's access to justice need is? Because children need to be represented in court sometimes so ...

Director of Services, Judicial Greffe:

Yes. Certainly down to a certain age, I think it would be ...

Programme Director, Jersey Legal Information Board:

You are perhaps talking about 10 upwards, I am not sure about beneath that age.

Deputy M. Tadier:

Presumably there is a way to ask parents if they have had ... it would not be direct but on behalf of their children.

Programme Director, Jersey Legal Information Board:

Yes.

Director of Services, Judicial Greffe:

What their involvement has been.

Programme Director, Jersey Legal Information Board:

But also all the guardians and the ... there are loads of carers and people who would know exactly what children's needs are.

Deputy J.H. Young:

I just want to be a little clearer if we can about the survey, as to how it relates to the existing service provided by C.A.B. and particularly the ideas put forward for using or developing that into a legal aid front end, as it were. Where do you, Sue, as the kind of expert on the process side if you like, see this survey leading to? What are the outcomes potentially of it that will help us deal with these other aspects or bridge those gaps?

Programme Director, Jersey Legal Information Board:

Well, we might not be providing any assistance in certain areas that we do not know about. It is the old: "We do not know what we do not know." So we need to know what the areas where people have problems, whether they know they can go for help, whether they think: "No, it is impossible because that kind of help is not provided", it is about perhaps developing services in a way that maybe Malcolm does not anticipate because he does not know there is a need.

Deputy J.H. Young:

Also perhaps barriers to service provision as well, identifying those barriers and how you might overcome them.

Programme Director, Jersey Legal Information Board:

Yes.

Deputy J.H. Young:

How long do you see that piece of work taking then?

Programme Director, Jersey Legal Information Board:

I do not know, we would have to ask the universities that ...

Deputy J.H. Young:

But have you a feel for it at all?

Director of Services, Judicial Greffe:

A month or 2.

Programme Director, Jersey Legal Information Board:

It is only a month or 2.

Deputy J.H. Young:

So it is really a short term piece of work?

Programme Director, Jersey Legal Information Board:

Yes.

Deputy J.H. Young:

That will inform the discussion about linking up these elements of service when these ideas have come forward?

Director of Services, Judicial Greffe:

I think there is an issue of there being a kind of latent legal demand that we do not know about based on the fact that people have rights now that they do not know exist. If the questions are framed in the right way then I think we can get to the heart of some of the issues. Malcolm might be able to assist with through C.A.B. and through a wider portal.

Chief Executive, Jersey Citizens Advice Bureau:

Yes, and going back to where would a survey sit in the process, I think if we left it as a firm recommendation to the end, all that is going to do is make the process even more protracted. I think it has to run in tandem because the results of the survey will drive those recommendations.

Deputy J.H. Young:

So you suggest it should be done now?

Chief Executive, Jersey Citizens Advice Bureau:

Absolutely, yes.

Programme Director, Jersey Legal Information Board:

Yes.

Senator P.F. Routier:

I know we are shifting backwards and forwards but the mediation service, how do you see that working? Does it work equally well for the business community and individuals or is there a different approach taken?

Chief Executive, Jersey Citizens Advice Bureau:

Yes, the Citizens Advice Bureau service is primarily there for the individual. Having said that, if 2 people wanted to resolve their dispute, whatever it was, we will always look at it and if we can accommodate it we absolutely will. But it tends to be, you know, someone who is ... again I can give you some examples, some who has put a deposit down on a cake, okay, and then it all went wrong and they thought that they had cancelled it and the cake was still produced.

Senator P.F. Routier:

These cakes keep on cropping up. **[Laughter]**

Chief Executive, Jersey Citizens Advice Bureau:

For a lot of people, of course, you are not talking vast sums of money but you talking other things that had gone wrong in their lives and obviously the cake just became the focal point. But so that is an individual against a company, if you like. Now, as long as both those parties are happy to come to mediation ... and we have had it with Government departments. All that we ask it the person who does represent that department is empowered to make a decision on the day, otherwise we end up in one case having 3 mediations on one issue because the right person was not there at the time.

Deputy M. Tadier:

So you can have your cake and eat it.

Deputy J.H. Young:

Are you willing to express an opinion on the current kind of need the mediation service provided through the Petty Debts Court?

Chief Executive, Jersey Citizens Advice Bureau:

Yes. Obviously I am aware that mediation is in every tier of the court process and there have been some great successes of mediations. When I was at Social Security I used to represent the department in mediations over contributions and we had a great success rate because, again, I was empowered to give a little bit of ground in order to get money in for the department which, at the end of the day, was all that was really needed. So, yes, it is a part of dispute resolution which people - for one reason or another - are just not aware of, despite our best efforts.

Senator P.F. Routier:

While touching on the Petty Debts Court, do you have a view on the level that they are able to look at? Do you have a view on that?

Chief Executive, Jersey Citizens Advice Bureau:

Yes. Again, as well as the Access to Justice Review I am also sitting on the Royal Court Rules for Review Group, as you know, and that is one of the subjects that came up very early at one of our meetings. That was 14 years ago I think that was set at £10,000. In reality that needs to be reviewed with a view to it increasing.

[15:00]

I am aware of clients who are owed £15,000 and will take a Petty Debts Court judgment for just under the threshold because one in the hand is worth 2 in the bush and it is a much easier process. The argument was if that was set at £20,000 people, if they were owed £25,000, would settle underneath the £20,000. But at least it would make it more realistic in today's values.

Senator P.F. Routier:

So people cannot claim more than what they are owed.

Chief Executive, Jersey Citizens Advice Bureau:

Yes. But people will do that rather than refer it to the Royal Court process because they know it really becomes protracted and lengthy and, in all fairness, of the 2 courts that court is far more intimidating than petty debts.

Director of Services, Judicial Greffe:

Nevertheless, the small claims mediations in the Petty Debts Court are judged like mediations. So, from the purist point of view, they are not the kind of mediations that Malcolm provides for and they are in a court setting so they are kind of halfway between the judicial process and the mediation process.

Deputy J.H. Young:

I think what you are proposing is layers of process so people do not have to go higher up the chain than they need to go. They are forced to go into the Royal Court, as it were, which suffers all these problems.

Director of Services, Judicial Greffe:

Yes, absolutely.

Programme Director, Jersey Legal Information Board:

Just to go back to the question of small businesses. Where there are disputes between trades people and customers, how much better for them if they can settle out of court in community mediation. It is the element we need to get across as well.

Deputy J.H. Young:

Where there are disputes with Government do you see a roll for tribunals as opposed to court processes? You must get people who come to you with issues of Government, do you not?

Chief Executive, Jersey Citizens Advice Bureau:

Yes, absolutely, yes. I think it is ...

Deputy J.H. Young:

Or community mediation, is that where they go?

Chief Executive, Jersey Citizens Advice Bureau:

Again, sometimes. Like I say, we have had mediations between certainly government departments and individuals.

Deputy J.H. Young:

But then the government departments have to co-operate with that, do they not?

Chief Executive, Jersey Citizens Advice Bureau:

Absolutely.

Deputy J.H. Young:

Do they?

Chief Executive, Jersey Citizens Advice Bureau:

Well, they normally do because they cannot ... occasionally we try to set up a mediation and one party just will not attend. When a government department gets called to a mediation they are almost duty bound to attend really, if nothing else just to save face. But, like I say, in that situation they sometimes send the wrong person and all that person does is delay matters. I do not think they do it intentionally but we do state very clearly in our correspondence: "Please ensure that the person who is coming" ...

Deputy J.H. Young:

Does this need statutory backing or can it function as kind of a voluntary thing, as it were?

Chief Executive, Jersey Citizens Advice Bureau:

The whole point, I think, of community mediation is that it is fairly loose and it is agreements that people are prepared to make, rather than take that extra step. I think if it is sold, if you like, the correct way to people and they see the value of it, the amount of people who walk out and they say at the end: "I am just so glad I took this route." You almost need some real case studies, some real people who have been through to explain its virtues because they are just so relieved that they have managed to get a resolution.

Director of Services, Judicial Greffe:

It is worth perhaps making the point that the Jersey Family Mediation Service - which was rebranded and re-launched a short while ago as Family Mediation Jersey - is succeeding quite well in delivering successful family mediations. The next obvious question is why they are succeeding and the community mediation service is less successful. I have not ...

Programme Director, Jersey Legal Information Board:

Because family is family and you understand what that is about and you do not understand what the community mediation is.

Deputy J.H. Young:

Are the courts directing people to go to the Family Mediation Service?

Director of Services, Judicial Greffe:

Yes.

Deputy J.H. Young:

So maybe it is a little bit of pressure from the courts.

Chief Executive, Jersey Citizens Advice Bureau:

It could be, and of course that is something else that we refer clients to is Family Mediation Jersey.

Deputy J.H. Young:

That is appropriate.

Senator P.F. Routier:

Well, I have no other questions. Thank you very, very much for your submission and it will be on the website at some stage, the report of this. An interim report will be lodged fairly soon by the Chief Minister and then there will be a bigger piece of work going on. But I have taken note of what you are saying about the survey that needs to happen, I think that is quite important.

Director of Services, Judicial Greffe:

I think J.L.I.B. (Jersey Legal Information Board) and the court service would be keen to assist in that and help to promote it.

Senator P.F. Routier:

Yes. Thank you very much.

[15:05]