

STATES OF JERSEY

Access to Justice Review

THURSDAY, 7th JULY 2016

Panel:

Senator P.F. Routier (Chairman)

Deputy J.A. Hilton of St. Helier

Connétable J. Gallichan of St. Mary

Witnesses:

Master of the Royal Court

Chief Executive, Law Society of Jersey

Chief Executive, Citizens Advice Jersey

[16:02]

Senator P.F. Routier (Chairman):

So, for the purposes of the recording we will just introduce ourselves. Senator Paul Routier, Chair of the Access to Justice Review.

Connétable J. Gallichan of St. Mary:

Constable Juliette Gallichan of St. Mary.

Deputy J.A. Hilton of St. Helier:

Deputy Jackie Hilton of St. Helier.

Master of the Royal Court:

Matthew Thompson. I am Master of the Royal Court.

Chief Executive, Law Society of Jersey:

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

Chief Executive, Citizens Advice, Jersey:

Malcolm Ferey, Chief Executive of Citizens Advice Jersey.

Senator P.F. Routier:

Thank you very much. The transcript from this meeting will go on to our website, just so you are aware of that, and the public will be able to see what is being said. We understand that the Law Society themselves have had your mediation review paper and that is also ... we are pleased that we were able to assist with that. Is it our understanding that will go on to your website?

Chief Executive, Law Society of Jersey:

It is not on our website but I think it is on the Access to Justice website.

Senator P.F. Routier:

Yes.

Chief Executive, Law Society of Jersey:

I would not describe the paper as a Law Society paper. It was undertaken by me as part of Access to Justice because of the importance of mediation and what we felt should be raised.

Senator P.F. Routier:

Okay. Well, perhaps if we just move to some opening questions, I think the Master was hoping to kick off with some responses. We are particularly interested in the Petty Debts Court mediation service. Perhaps you would like to give us an overview of how you see that operating.

Master of the Royal Court:

I have been performing that role since Easter 2014, for 2 years. The way it works is that any disputed civil debt is generally referred to mediation unless there is no point in doing so where there is only a question of law to resolve. The parties are given a time and a date, normally within 2 to 3 weeks, and they then appear before me. They are invited if they wish to do so to provide a brief summary in advance, otherwise they simply turn up with whatever they wish to turn up with. The time allowed is between an hour and 2 hours, and if it is a more complex building dispute I would allow a couple of hours because it just takes longer to understand it. What happens on the day is essentially I define the rules. I introduce it. I explain what mediation is. The key thing is quite a lot of people come along expecting me to decide their case for them and I make it clear I do not. I tend to describe myself as a facilitator or occasionally a referee. I also set out rules of behaviour and I think, most importantly, the fact that the process is confidential for the parties. So,

anything they say in mediation cannot be referred to in any subsequent dispute if the case does not settle. I put it as succinctly as what goes on in the room stays in the room. The parties then are each given a chance to explain their case. It is face to face and I think that is important because it makes parties realise what is involved in going to court and having an argument. You do have to look the person you are in dispute with in the eye across a room. It brings home to them how stressful it is and it also brings home to them the amount of work they have to do if they want to go to court. While that may discourage some from going to court, that does not really matter. They should understand what the process is once they find themselves in a process and it is a relevant factor to take into account. The process then moves from what I call explaining your case to negotiation. That is the bit where I facilitate. Whatever type of mediation you have, I think you need someone experienced to do that. It does not have to be a lawyer. It does need to be someone who can understand what are the real issues and summarise those for the parties and focus on areas of agreement. What I quite often find myself saying to parties is that disputes are backward looking. People are focusing on the past, what has gone wrong. Sometimes they focus on what happens after it went wrong, the exchanges of insults in some cases that have taken place or emails which are expressing points of view in a fairly firm manner. What I try to do is to get them to focus on the future and the choice they have to make. What I have found is that most people are ultimately reasonable and do not want to go to court. Putting them in a room and getting them to talk about their case, they will start to see what is involved. They will start to realise there may be misunderstandings as distinct from people being deliberately dishonest. There may be 2 points of view, that compromise does not involve accepting you are wrong, it is making what I sometimes call a risk assessment: do I want to go to court? Am I sure of winning? What is the cost financially and emotionally of winning? What is the cost financially and emotionally of losing? All those factors go into the melting pot and in most cases a settlement happens.

Senator P.F. Routier:

In 93 per cent.

Master of the Royal Court:

I think this year, yes. I think it is 32 out of 33, but it may change. You cannot guarantee what is going to happen and you cannot guarantee what the terms are. For example, I am aware of one case which settled because one party was absolutely determined to go to a hearing and made that plain and said: "It does not matter what it costs me, I am going to have this argument." She got stuck on a point of principle and that is not what happens in most cases. But the other party saw that and said: "We do not want to do that" and agreed to the other party's terms because they realised that if they went to court, if they won it would probably be a pyrrhic victory in economic terms; if they lost it was going to cost them a lot more. So, even that extreme case was one where

mediation was beneficial because the parties realised at an early stage ... or one party realised that they really had to withdraw because of the stance the other person was taking. Most cases are different. Most cases people do compromise, but precisely how, when and where I do not know. It just happens.

Senator P.F. Routier:

You have explained very well the success that you have had with the mediation service. At the outset, how do people become aware that the mediation service is available? I believe it is free. How do they become aware of that?

Master of the Royal Court:

I do not think they are aware until they find themselves in a dispute. There are a number of what I call debt collection agencies who operate in and around the Petty Debts Court. They are aware. I think they try quite often in advance to see if they can find a settlement through direct discussions, but that does not always work. It is the involvement of the independent third party which just seems to get people over the line.

Deputy J.A. Hilton:

Can I just ask you a question about the process? Will the individuals concerned appear in the Petty Debts Court first and it is the magistrate who will indicate that you ...?

Master of the Royal Court:

Yes.

Deputy J.A. Hilton:

That is how it happens?

Master of the Royal Court:

Yes. So they are summonsed to Petty Debts Court on a Wednesday.

Deputy J.A. Hilton:

So it goes to the court first, right, okay.

Master of the Royal Court:

The court then says: "Well, normally this kind of case we refer to mediation" and it is almost: "Is there any reason why not?"

Deputy J.A. Hilton:

It should not go, yes. Then it is referred to you?

Master of the Royal Court:

Then it is referred to me and they are given a time.

Deputy J.A. Hilton:

Okay. Can I just ask you a question? I think you said that you started doing mediation in Easter 2014.

Master of the Royal Court:

Yes.

Deputy J.A. Hilton:

What happened prior to that? Was it the same sort of system?

Master of the Royal Court:

It was the same system. My predecessor as Master of the Royal Court, John Wheeler, was also appointed a relief magistrate and he acted as mediator. It started in 2004 and it has been going on ever since with ... I think I slightly increased the success rate but that is just luck. But certainly two-thirds to 70 per cent of cases for mediation settle, and that has been a pattern that has been established over a number of years.

Deputy J.A. Hilton:

That is really good.

Senator P.F. Routier:

The process you have been going through with helping people with mediation, has there been any sort of challenges or difficulties that have ... you wish you had been able to do things a little bit differently or ...? I do not think I am explaining myself particularly well.

Master of the Royal Court:

I am not quite sure I follow. You sometimes get people who do not want to engage in the process because they are stuck on a point of principle. So, that is sometimes a difficulty. They are just not listening to what the other side are saying. They are not receiving suggestions as to the issues they might have to address. I can certainly think of one individual who had nothing to lose and wanted to argue a point of principle and that combination meant that it did not settle. That is difficult. Sometimes you get people who have misunderstood the law. I had one employer whose employee had walked out and he had brought a claim for the cost of the notice the employee

should have given, even though he had not actually paid the employee. Normally I do not express any view, but I said: "Look, I am sorry, you have slightly misunderstood this. You have not paid the employee, you have the money, so you are not out of pocket. You can claim but you would have to show that you had paid somebody some extra overtime or you had lost a job as a result of the employee walking out. You cannot claim the notice money that you have not, in fact, paid." So, occasionally you get misunderstandings. Sometimes people at the beginning do not realise that I am not there to decide the case, as I said earlier, but having explained the rules at the outset I have not actually had any difficulty with the fact that I am a facilitator. I am not sitting there as a judge. I do not know if that answers your question or whether ...

Senator P.F. Routier:

I was just trying to identify whether there are any processes or rules or anything that you felt would need ... could do with changing.

Master of the Royal Court:

I mean, it helps if people provide a short summary in advance because otherwise you spend more time drawing out what happened. There is already a guide that suggests they should do that, but you cannot make people do that if they do not want to. Sometimes I am just literally there with the summons and I have to try and use whatever skills I have to draw out what happened.

Deputy J.A. Hilton:

Generally speaking, are people aware that there is a mediation service in the Petty Debts Courts when they arrive in court?

Master of the Royal Court:

No.

Deputy J.A. Hilton:

They are not aware?

Master of the Royal Court:

No.

[16:15]

Deputy J.A. Hilton:

The mediation service has been in operation for quite a long time as well, has it not?

Master of the Royal Court:

Yes.

Deputy J.A. Hilton:

It obviously works extremely well, works really well?

Master of the Royal Court:

It is there on the website. I think it is there on the J.L.I.B. (Jersey Legal Information Board) website. That is probably because unless you find yourself involved in a dispute it is not really of interest.

Deputy J.A. Hilton:

Yes, I guess so.

Master of the Royal Court:

I do not want to steal Malcolm's thunder, but in my other role as Master of the Royal Court I have certainly been encouraging parties to make use of C.A.B. (Citizens Advice Bureau) mediation as a way of resolving lower level Royal Court disputes.

Deputy J.A. Hilton:

Yes. Certainly, in the Petty Debts Court also it is a free service, is it not?

Master of the Royal Court:

Yes.

Deputy J.A. Hilton:

There is not much free in Jersey, is there?

Master of the Royal Court:

No, I know. That is quite important.

Deputy J.A. Hilton:

It is quite important.

Master of the Royal Court:

Because I think if I had to make a party pay it might compromise my independence. One of the reasons I think the process generally works is because people see me as independent.

The Connétable of St. Mary:

It almost seems sad in a way that you have to go through being summonsed and turning up in the court to access this. It is a shame it could not happen before.

Deputy J.A. Hilton:

Happen beforehand.

Master of the Royal Court:

Sometimes that is because a lot of communication in today's world is by email or phone and it is slightly old-fashioned to get parties in a room and to talk to each other face to face, but the dynamics of doing that makes a key difference. We did have a debate within the J.L.I.B. executive board, which I am a member of, about whether we would look at online mediation. We said no because the essential point to mediation is getting parties to face each other and the realities of the dispute. So we rejected that route and that is why I said earlier sometimes I get people showing me texts of who said what to whom and they get caught up in the process after the dispute rather than what did you agree at the beginning, what went wrong, and then if you look at what went wrong you can then start to find a solution or help them find a solution; I do not find the solution. That is not my job.

Senator P.F. Routier:

You spoke about that it can be found on the J.L.I.B. website and also people have access once they have been to the Petty Debts Court. Do you think there is an opportunity to publicise it more widely?

Master of the Royal Court:

Wearing another hat, as J.L.I.B. we have spent some money on a media campaign to promote the C.A.B. because we felt there was a need to promote that particular service, which applies before any court proceedings have been issued.

Chief Executive, Law Society of Jersey:

Some of that advertising budget is going on family mediation as well to try and improve awareness, because I think a lot of it is about ... it is about awareness of the availability of mediation. But I think people do not know they are necessarily going to have something coming up in the Petty Debts Court, so it is not something ... making people aware that there is mediation beforehand may not necessarily be of great assistance.

Master of the Royal Court:

The other change that is in the pipeline relates to reforming the Royal Court rules and requiring parties before they issue proceedings to send what they call a complaint letter, I think, or a letter before action as it is sometimes known, where they set out their claim and the proposal is or will be that such a letter should include consideration of whether a party is willing to resolve a dispute by mediation or some other similar process, which might lead to a settlement. A defendant who receives such a letter, the proposal is likely to be that defendant will have to respond within a particular timeframe and also indicate their response to the claim, including whether or not they wish to sit down and discuss or go through some form of settlement process or exploration of settlement. So, certainly from my side, I am trying to encourage parties sitting down and talking to each other, whether it is a small dispute or a large dispute.

Deputy J.A. Hilton:

At the moment, the Petty Debts Court limit is capped at £10,000, is it not?

Master of the Royal Court:

Yes.

Deputy J.A. Hilton:

I believe there is some discussion around raising that.

Master of the Royal Court:

There is a proposal which is due to go to the States later this year through the Legislation Advisory Panel to increase the jurisdiction initially to £30,000, and the consultation paper that the Royal Court rules review group sent out suggested that with a possibility, depending on the impact of that change, to increasing it to £50,000 depending on a review.

Deputy J.A. Hilton:

As far as your work is concerned, do you see that increasing substantially or is it that, generally speaking, you know, the disputes involve a smaller amount of money?

Master of the Royal Court:

I do not know what the effect of increasing the jurisdiction will be. My suspicion is that there will be an increase in cases because some people are put off going to the Royal Court. I have some cases where the claim is deliberately formulated as being just under the petty debts jurisdiction limit so that they do not have to go before the Royal Court. So I suspect I will see more cases where people do not bother at the moment or are reluctant to bother than exists at present. That is why at the moment the advice to the States will be that additional resources, someone else like

me, may well be required if the number of mediations increases and, in particular, if they are more complex because there is a difference between a £500 claim and one that is just under £30,000.

Senator P.F. Routier:

The crossover between community mediation and Petty Debts Court or the services you are providing, is there an opportunity for them to be closer together? I do not know how you see that.

Master of the Royal Court:

The approach should be the same. The skills required are the same, so in that sense ... as an example, I could mediate on a community dispute just as much as I could mediate on a Petty Debts Court dispute.

Chief Executive, Law Society of Jersey:

There is not a financial element... usually the matters that are addressed in community mediation are non-monetary disputes. Not always, but they are generally non-monetary disputes, so it is a different approach. Sometimes it is points of principle more in community mediation, although there are always instances where money is concerned.

Master of the Royal Court:

Yes, it may be neighbours, it may be families have fallen out; why the Petty Debts Court approach is triggered is because somebody has brought a claim for an amount of money and to that extent it is difficult to merge in relation to community mediation because there is a Royal Court ... sorry, there is a Petty Debts Court dispute. But in terms of promoting mediation, the skills required are the same. Mediation has the same ultimate goal: can we resolve somebody's dispute and allow their lives to move on?

Deputy J.A. Hilton:

In the notes, talking about community mediation now, I mean, I was not aware that existed. I was aware of the Petty Debts Court and the work that Citizens Advice do, but I was not aware that the community mediation existed. So, to benefit from that, if you have a neighbourhood dispute - I will give you an example: barking dogs - would those individuals be able to go ...

Chief Executive, Citizens Advice Jersey:

That is a great example of how community mediation ...

Deputy J.A. Hilton:

So they could benefit from that?

Chief Executive, Citizens Advice Jersey:

Yes.

Deputy J.A. Hilton:

I wished I had known that when I first came into the States because I was involved in a case of barking dogs and it had been going on for ages and it was ... I can tell you it was an absolute nightmare. So I was not even aware that this service existed.

Chief Executive, Citizens Advice Jersey:

The slight difference, of course, with community mediation is there is a small charge, just £20 per party, and that was introduced when the Jersey Legal Information Board set the whole thing up and then we were appointed as administrators. It was really just to stop vexatious stuff, so at least there is an element of seriousness when people have to pay a small fee. But we get mediation in from different places. Sometimes it will fall into our advice process. Since the media campaign has been going and gaining strength, we have had more enquiries about it and we have had external agencies like the police popped in and said: "I have heard that advert. Tell me how it works. This is really good because I am sure there are people that we can refer to your service." With the Jersey Employment and Discrimination Tribunal where there is discrimination outside of the employment situation those individuals who take a complaint to the tribunal will be referred in the first instance to community mediation. Now, that is at no cost to the individual because that cost is borne by the Department of Social Security, who pay us and then we pass it back to Jersey Legal Information Board, but at least it gives people another avenue and another way of accessing a form of justice which is less stressful, less costly usually and much better outcomes. I think that is the difference that we find. When people sit down and they talk about things and they come to a resolution, very often both ... sometimes people walk out and say: "You know what, that was not exactly what I wanted but we are both in a better place." Some of ours can be quite acrimonious. Some of our mediations literally do start off with people shouting quite loudly, but they can end up by shaking hands when they are walking out and even spending some time outside the office chatting to each other. So, that is the really rewarding part of our work when you see it.

Chief Executive, Law Society of Jersey:

They are not issues that are likely to really end up in court or you hope they would never end up in court because, as you say, they are disputes. They might be over a fence, they might be over a barking dog.

Deputy J.A. Hilton:

Yes, noisy neighbours or whatever.

Chief Executive, Law Society of Jersey:

Yes, absolutely. It is trying to get people to see each other's point of view and trying to find a happy medium if you can and resolution.

Deputy J.A. Hilton:

We know where to turn now.

Master of the Royal Court:

The thing I would just like to add is that sometimes settlement involves sharing the pain in the sense you have parties walking out not completely happy but the other party is not happy either, but they have reached an accommodation. It is particularly important in our community because you do not often know when the mediation starts how parties know each other. Are they related? Have they worked together in the past? Sometimes the dispute is a block to a previous friendship or relationship that they had and resolving it allows them to pick that relationship up. Not in every case; but sometimes I have said to people: "You go out of the door and you turn left and you turn right", both physically and metaphorically speaking. But in a number of cases as the mediation develops you suddenly realise that these parties have known each other for quite some time and that is a factor that comes into play and is relevant to why they settle. It is also a reason why parties should be encouraged to get together to see if they can resolve their differences.

Chief Executive, Law Society of Jersey:

People, you know, they are in dispute, they threaten: "I will take you to court." The reality is unless there is a significant worth to it - it can be a point of principle - they will not take it to court and they will still harbour that grievance and dispute. Sometimes the Honorary Police are called in on some of these matters, but they are not police matters ... there is not really anything that they can do, but they have to be resolved between the parties themselves. That is where community mediation has a significant role to play.

The Connétable of St. Mary:

Yes. I find this really interesting for precisely that reason. I can think of a couple of things where we have involved the police. There has been no prosecution or anything, but we have involved them simply because we needed to have somebody in authority to step between the 2 parties and say: "Think about this."

Chief Executive, Law Society of Jersey:

It is stepping between them but not deciding.

The Connétable of St. Mary:

No, exactly.

Deputy J.A. Hilton:

Absolutely.

The Connétable of St. Mary:

I can see some business for you. [Laughter]

Deputy J.A. Hilton:

Yes, so can I.

Master of the Royal Court:

Sometimes if you ask a simple question: "The other party said this. What are you going to say in response?" a person starts evaluating that response so just by posing the question ... and you can add: "Because this needs to be dealt with" whether it is in a court process or it is some form of neighbour dispute, barking dogs or noise or anything else, you can get a party to assess the strength of its claim.

Senator P.F. Routier:

Picking up on ... I think my colleagues have given examples of where they could see more business coming your way. Do you think that you will be able to cope with more business?

Chief Executive, Citizens Advice Jersey:

What we have noticed ... on a normal year, the numbers we were getting were ... you know, although they were very successful, very small numbers. Since the campaign has started, we are only halfway through the year and I did the figures this morning. On a normal year we get about 10 to 15 tops. Where we are at the moment, we have had 10 normal mediations, 5 from the tribunals and 4 further enquiries, so we are coming up to 20 and we are only halfway through the year.

Chief Executive, Law Society of Jersey:

I think last year there were only 8 community mediations.

Chief Executive, Citizens Advice Jersey:

That is right, yes.

Chief Executive, Law Society of Jersey:

So that is a significant pick-up. One would hope that there is general awareness. I think the campaign is working but it is early days.

Deputy J.A. Hilton:

Was this the campaign through 103?

Chief Executive, Citizens Advice Jersey:

This is 103 and it is in the *Jersey Evening Post* on a Saturday if there is a paper and, of course, we are pushing it out on social media. We had a piece on the radio the other day with Sue du Feu from Jersey Legal Information Board. It is just that continual keeping it in the public mind and they will come in.

[16:30]

Chief Executive, Law Society of Jersey:

But it is not something that people go: "Ah, I need that now." It is that awareness of it being available when they do come across a dispute.

Deputy J.A. Hilton:

Yes. Is there any sort of waiting list with community mediation?

Chief Executive, Citizens Advice Jersey:

Generally speaking, what we will do is, you know, if a mediation comes in it is as quick as we can get the 2 parties together. So the only waiting time is we write out to the other party and invite them to mediation. Generally speaking, once both parties have said yes, all we need to then do is get a mediator and we are away.

The Connétable of St. Mary:

Does that generally happen, both parties agree?

Chief Executive, Citizens Advice Jersey:

Yes. What you normally find is, well, out of those ... out of those numbers I gave you, 4 were enquiries that did not reach conclusion. So what we do find is when people have made that effort to both come, they are almost always going to come to a resolution because all they say to them: "All you have to lose is a couple of hours of your time and £20 but what this might do is put a problem that perhaps has been going on for years to bed and you can both move on with your lives."

Deputy J.A. Hilton:

Yes, absolutely.

Senator P.F. Routier:

So if you are sort of promoting the service at the present time you must have some indication whether your capacity is going to cope with what might come forward?

Chief Executive, Citizens Advice Jersey:

Yes. We probably could not do 5 a week just because there are not sufficient mediators and one thing that you do find is sometimes there will be the same person bringing similar claims against different organisations. So we would normally in those circumstances stop using the same mediator for a further complaint with the same individual. So, of course, some people have conflicts of interest, you know, like anyone needs to look to make sure there is no conflict. So, sometimes people will be excluded for different reasons or mediators will not be able to mediate on that, but it will be a long time before we run out because there is a list of mediators who, of course, give their time voluntarily. They do not get paid for it and it is a particular skill set that they have. They have all been through the course and certificated.

Senator P.F. Routier:

That is what I was going to ask about, the training of mediators.

Chief Executive, Citizens Advice Jersey:

Yes. It is a very intensive training course where they are certificated at the end of it and, you know, the skill is being a facilitator, not sitting in judgment in any way but basically getting the 2 parties to talk or finding out what each party wants. Generally, the way it works in our office is we have 4 interview rooms and normally the 2 parties will sit in separate rooms initially, the mediator in the middle, and there has been occasions where the 3 parties have never come together because there is ... but they still reach an agreement. There is tension but they still reach an agreement. Nine times out of 10 at the eleventh hour one party will say: "Well, we might as well just be adult about this and sit in the room with them." But they can take, as I am sure Matthew can tell you, a lot of time, hours, will very often go on to 3 or 4 hours and I am always happy, as long as there is a positive outcome at the end and it is time well spent.

Master of the Royal Court:

The training, just to go back to that slightly, is the same for any kind of mediation and the process is the same. It may take longer, but after an hour or two quite often you get to that point thinking this is not going to settle and then suddenly it does. That does not matter whether there is

hundreds of thousands of pounds involved or a neighbour dispute. The only difference in terms of the process in the Petty Debts Court is the parties start off together and I keep them together as long as possible because I think that is helpful to the process. But if it gets to a point where there is a log jam of some kind, then I will split them up and engage in the shuttle diplomacy, going between rooms.

Chief Executive, Law Society of Jersey:

In relation to family mediation, that is not always or rarely would that be concluded in one mediation. It depends on the individual circumstances and it is not just family mediation. It is not just undertaken for the divorces and separations. No, it is family disputes of all sorts where they need professionals to help people to get things resolved and maintain the relationship because mediation tries to look to the future and helps to end the problem, not the relationship.

Senator P.F. Routier:

Yes, and we conveniently have moved on to family mediation and we wanted to speak about that. I was just comparing, you have the Petty Debts Court, which is a free service, you have your £20 charge and you have a different fee structure for dealing with family mediation. How do we justify that?

Chief Executive, Law Society of Jersey:

The mediators they are paid, not huge rates but they are professionally accredited through National Family Mediation. It is felt important to have a charge for that because most of the people that will be involved in family mediation would otherwise go to a lawyer. Quite often there is a combination of the use of family mediators and using their lawyer. As I say, there are discrete issues that may be dealt with most effectively through family mediation and others that have to go through the court process. Yes, there is a charge based on income but this year, family mediation being charged at an individual level, 50 per cent of all people who have been through mediation have not paid at all, based on their individual income.

Master of the Royal Court:

I would probably also like to add, Neville, that family disputes are more complicated than the sort of disputes that I deal with in the Petty Debts Court, which tend to be single-issue disputes in most cases. There's going to be an extra cost in terms of getting a qualified mediator for the time needed to get to the resolution. By contrast, with what I do, there is a benefit to the court service if I can resolve disputes early and quickly. It is not the main motivation. The main motivation is to help the community but it does have the knock-on consequence that if there are less trials there is less time being spent on court time and that saves costs and, therefore, the courts can focus on other issues and process their other responsibilities.

Deputy J.A. Hilton:

I was just going to ask, is family mediation offered where there are children involved in a divorce automatically? Who suggests it?

Chief Executive, Law Society of Jersey:

It is generally suggested by the lawyers because no one really wants to end up in a contested divorce hearing. You want resolution as quickly as possible for everybody's interests. It is suggested by the court, it is suggested by the lawyers and there is an awareness of it but it needs to get better.

Master of the Royal Court:

By the courts that means the Family Registrars, or in a civil case which happens to involve a family, it could be by me. All of us have powers to suspend the court process to, say "Go off and talk to each other." You say: "Nothing is going to happen for a month or 2 months and you will, in the meantime, make every effort to try and resolve your differences."

Chief Executive, Law Society of Jersey:

Potentially, in a divorce or separation there are a lot of financial issues and those are not always best dealt with in terms of asset allocation, not necessarily best dealt with in mediation, not in family mediation. Not everybody will be suitable for mediation. Sometimes you have a little bit of inequality involved and if you have a strident party in a divorce who holds the financial powers and they are less minded very often in a mediation environment and sometimes the court is required to make those orders. But, of course, the stress level of court, as well as the cost for people, should be avoided wherever possible. The use of mediation in all sorts, whether it be a financial dispute, a family dispute or a civil dispute, has got to be the right thing. The more we can do to bring that to the fore to the people of Jersey the better.

Master of the Royal Court:

It is amazing how quickly the stress and depression associated being within a dispute disappears once there is a settlement.

Deputy J.A. Hilton:

In family mediation the court can order that parties go to mediation.

Chief Executive, Law Society of Jersey:

They can stay proceedings and suggest that the couples explore it because, as I say, it will not suit everybody and compulsory mediation really is not ... and, as I say, the Petty Debts is not, as I

made clear in the report, compulsory mediation but it is generally accepted. Compulsory mediation does not necessarily work and is unlikely to work because you cannot force people to come to the table.

Master of the Royal Court:

There is sometimes a timing issue but when it is right for parties to mediate. Sometimes they need to exchange some information and have some arguments and then mediate. There is also a human rights argument; ultimately people have a right to have a dispute determined by a court. If you said: "You must go to mediation" you are taking that right away. What is appropriate to say: "Well, here is an opportunity to go to mediation and if you do not go or you behave unreasonably in the conduct of a case subsequently, sanctions can be imposed by the courts." The courts have already made that clear in a number of cases. It is encouragement because of the positive benefits. There may be adverse consequences if you do not. But it must always be remembered that parties have a right to go to court to have their day if they wish to do so. I think what mediation might help them realise is what that means in reality, rather than in principle.

Senator P.F. Routier:

You mentioned that it was best to try and get people to go to mediation where possible when it was appropriate but do you think it is common practice across the whole of the profession for people to explore that option or do some perhaps aim for courts?

Chief Executive, Law Society of Jersey:

Lawyers definitely do not aim for court because the court time is incredibly precious and you want resolution as soon as possible. Generally speaking, lawyers will introduce mediation or suggest mediation and, as the Master says, it may not be at the outset. It may be part way through at an appropriate juncture for particular discrete issues that are difficult to resolve or could be very time consuming within a court setting where the individuals can come to their own agreement and they tend to feel better about it than being told by a judge what they shall do. It has better acceptance at the time and afterwards.

Master of the Royal Court:

The other point relevant to that is that courts follow a logical structure and a logical way of thinking, well legally logical at least. Therefore, things that may matter to the parties may well be completely irrelevant from the court's perspective in making a decision. It may be fundamental and critical to the parties and mediation allows you to explore the personalities, the relationship issues in a way where a court does not and a court ultimately makes a decision where one party wins and the other party loses and the consequences are then something the parties have to live with.

Senator P.F. Routier:

Yes. No, the only reason I sort of touched upon that is because we have had some submissions that sort of suggest that there has been a desire to go to court, the lawyers have wanted to go to court. It is really just to get some assurance, I mean I think you have given it but there are some people suggesting to us that may not be the case.

Chief Executive, Law Society of Jersey:

I think if you talk to the Family Registrar I think they would say that it is raised. Very often before anything gets near the family courts because you do not want disputes, so it will be suggested as part of the discussion with any client trying to resolve matters before they get to the stage of court. As I said, indeed a lot of the people who are within the family court are on legal aid and there is absolutely no benefit to the lawyer in proceeding to court.

[16:45]

It is in everybody's best interest, including that of the lawyer to resolve issues as amicably and as quickly as possible because the time taken to go through the court process, in a divorce and separation, elongates the pain.

Master of the Royal Court:

That was my experience in private practice. I was in private practice for 20 years before becoming Master. Certainly for most lawyers there is always the ability to pick up the phone, have a discussion and explore settlement and the court was seen as the last option, everything else having failed. Does that apply in every case? I think one has to recognise that there may be exceptions but it certainly was not the general pattern of behaviour that I saw.

Chief Executive, Law Society of Jersey:

We are seeing an increasing number, not necessarily through Family Mediation Jersey but the use of mediation and quite often bringing a specialist mediator over from the U.K. (United Kingdom) to resolve an issue in a day that saves the court time.

Master of the Royal Court:

And the parties' time.

Chief Executive, Law Society of Jersey:

The parties' time and then something then goes before the court to, effectively, approve what has been agreed and makes it so much easier.

Senator P.F. Routier:

I do not think you will get much disagreement among us that mediation is the best way forward. I think we are all on the same page with regards to that. In this review we are doing, is there anything we can enhance to ensure that people are aware of the service and can get access to it really? I think that is what we are hoping to try and achieve from this.

The Connétable of St. Mary:

Is there anything we can add to the campaign that is already ...

Chief Executive, Citizens Advice Jersey:

Yes. I mean we are starting to feel the effects of the campaign. The important thing is it is a year-long campaign, so we did not want to just do something quickly and then fall back from it. But it does include Family Mediation Jersey as well, so both of those organisations will heighten their awareness in the public's mind. Of course, it is drilled into our advice places as well because relationships is our biggest single issue that we deal with on a day-to-day basis. We refer a lot of cases on to other mediation services that can help.

Senator P.F. Routier:

Do you think there is any merit in sort of the 3 legs of mediation working closer together and perhaps having a single point of contact so people know that the mediation service is there?

Chief Executive, Law Society of Jersey:

I am not convinced that that is the most effective way forward because the petty debts mediation is discrete and only kicks in at the point of when the Magistrate says: "Right, that is a family matter, let us move to mediation." There is, shall we say, a gentle persuasion on that. The community mediation is civil disputes that arise at any time. Family mediation is very specific to the family. I am not sure how the interrelationships between them would necessarily work in a single-referral service. But, of course, as Malcolm said, if any inquiries go to Jersey Citizens Advice that relate to family matters, they refer them to family mediation as a matter of course.

Master of the Royal Court:

But I also have referred the odd case in the Petty Debts Court to family mediation because while the claimant has gone: "You have not paid for maintenance, you should have paid under a court order", when you talk to the parties what became clear was that there were problems with the

underlying court order and I said: "This is beyond my skill set. What you really need to do is to go to family mediation." I made a referral and that allowed them to explore the real issue, which was not the non-payment of maintenance, it was to do with an example such as where one party had found a new partner, one is living the high life and all the sorts of exchanges that happen and one had lost his or her job, they could not afford to make the previous payments. That required a much more detailed review than you could achieve in an hour. I think we are all aware, and happen to know each other and we can talk quite happily and exchange information and experiences and I do not have any problem with that sort of approach. But I think I agree with Neville that a formal mediation service I think slightly misses the work different areas are fulfilling, even though the skill set is the same.

Senator P.F. Routier:

It is an option but it is really just trying to help promote mediation ...

Chief Executive, Law Society of Jersey:

It is the awareness of that and I think, to me, particularly awareness of what is available at the community level, which there can be some of the most vitriolic and upsetting disputes that are, on the surface, so simple.

Master of the Royal Court:

I think you can make your political colleagues aware of the different services, the more that other honorary services are aware the better. The Honorary Police is an obvious example. If they come across issues that is a body that can be educated.

Deputy J.A. Hilton:

Yes. I think the Parish magazines would be a good source of information as well, to get some ... because the Parish magazines go out on a very regular basis and I think it would be really helpful to have ...

The Connétable of St. Mary:

Yes, I think you are right. I can think of a couple of things we have dealt with recently that were not policing matters but among the traditional Jersey sort of folk, they look to the Centenier or something to sort of come to ...

Chief Executive, Law Society of Jersey:

Go and talk to them really, yes.

The Connétable of St. Mary:

Yes, exactly.

Chief Executive, Law Society of Jersey:

The Centenier probably will go and talk to them but it will not necessarily resolve the issue.

The Connétable of St. Mary:

No, and they have not probably expressed training that a mediator would have to identify it. I think this is really interesting.

Senator P.F. Routier:

I think we have asked you quite a few questions, is there anything you think that we could perhaps, in doing our final report, that you have any ideas in regard to mediation that you think that could be of assistance?

Master of the Royal Court:

I think if there are funds available ...

Senator P.F. Routier:

No funds. [Laughter]

Master of the Royal Court:

Anything that can be done in terms of encouraging awareness is key to that. I know you have that message but in terms of anything promoting dispute-resolution awareness among those who are likely to come across disputes so that they can make referrals is key. I think there are enough, at the moment, mediators out there with the different skills. We are not struggling for mediators, we talk to each other. I did want to say that it is obviously and one to recognise there are some disputes that will not settle. One reason is that a ruling on a point of law is needed and the dispute cannot be resolved until that ruling happens. I think the other is when a case is not just an argument between neighbours, it becomes some form of crusade, whether moral or political. Those are very difficult to resolve because the normal process of people assessing risk disappears because somebody wants to establish a point of principle. However much you raise awareness you will not resolve that kind of case. This is not a criticism of those cases, those cases are maybe necessary for an issue to be resolved. Maybe that sort of challenge is needed in some cases.

Chief Executive, Law Society of Jersey:

I think, quite simply, it is awareness rather than funds

Senator P.F. Routier:

Yes, that is very clear.

Chief Executive, Law Society of Jersey:

But the focus on raising awareness, so people know where they can turn to in that time of need.

Senator P.F. Routier:

Hopefully, our reports will make strong recommendations.

Chief Executive, Citizens Advice Jersey:

Yes, exactly. I think even individuals that have been through the mediation process, they tell other people that they have had a successful result.

Chief Executive, Law Society of Jersey:

Breed success or resolution, breed resolution.

Chief Executive, Citizens Advice Jersey:

Exactly, that is the one. That in itself will snowball it.

Senator P.F. Routier:

Good, okay. Thank you very, very much.

Deputy J.A. Hilton:

Yes, thank you so much, it was interesting.

Senator P.F. Routier:

We really appreciate that, so thanks for your time.

The Connétable of St. Mary:

Yes, it was interesting.

Senator P.F. Routier:

We shall look forward to the next report to the States, which will be soon.

Deputy J.A. Hilton:

Thank you.

The Connétable of St. Mary:

Thank you very much.

[16:54]