

**Event: Public Hearing
Review of the Roles of the Crown Officers**

Date: 1st July 2010

**Review Panel: Lord Carswell, Chairman
Mr G Crill
Dr S Mountford
Mr I Strang**

Witnesses: Miss S C Nicolle QC

Lord Carswell (Chairman): Miss Nicolle, we are very grateful to you for coming to give evidence to us. We have already received your written submission, for which we are also grateful. I do not think I need to explain the object at all. These are the members of the review panel. Mrs. Backhurst could not be with us this afternoon, but Dr. Mountford, Mr. Crill and Mr. Strang are here. Mr. Millow you have met already, our Project Manager. We are, as the terms of reference say, looking into the roles of the Crown Officers and keeping fairly distinct in our mind the difference between what the roles should be in principle and whether they have at times gone wrong with the way they have been done; that is not what we are concerned with. It is a public hearing and members of the public are welcome to attend. The proceedings are transcribed. Before they are put on to the website you will have an opportunity, of course, to check the transcript and make sure that it is correct, but then it will be in the public domain. We have read with care your very helpful submission of 31st March. Before I ask people for questions, are there any matters you would like to add to that or to amplify in any way?

Miss S.C. Nicolle: I do not think I need to amplify it and if there is anything that needs amplifying presumably somebody will ask. The only thing I can add is that a further suggestion as to an alternative was reported in the paper, Advocate Hanson's, and obviously I did not comment on that because it had not been made at the time. If it was correctly reported, I thought that that probably was not workable either. I can run over my reasons why I do not think his suggestion was workable.

Lord Carswell: Yes, please do.

Miss S.C. Nicolle: The suggestion as reported was that there should be a rota of lawyers. He said he thought that lawyers would welcome it and that he himself would like a break from the office work. He thought that they would not need to be paid and he thought that there would be no shortage, and in support of that he referred to the Relief Magistrates who appear in the Magistrate's Court. The reasons why I think it would not be workable or I would be surprised if it was workable are that you would need a fairly wide pool of lawyers. The States ... the sittings vary according to the business, but notionally there is 3 days to sit and there is a considerable amount of material to read beforehand. The person who presides should read the material before they sit. You have to read through some fairly massive draft legislation and so on. It is, therefore, going to be quite a lot of work which you would presumably want a fairly extensive rota of lawyers so that they would not be appearing every week. But anybody who sits is going to have to be really intimately familiar with the Standing Orders and the practice, and I do not know how many Standing Orders there are now; there were quite a lot even when I was ...

Lord Carswell: Well over 100 I have seen, yes.

Miss S.C. Nicolle: Yes. I think they were going up towards the 200. It is not enough to say that you can look them up and any lawyer can look it up because unless you have got it in your subconscious you do not know when someone is talking whether they are moving towards a danger area. So, you would have to find a body, quite a panel of lawyers, who are prepared to familiarise themselves - and that means really familiarise yourself so that it comes naturally to you - with the Standing Orders and who will give the time to reading the preparatory material. So far as the suggestion that they would do it unpaid, who can say, but I do not think that the Relief Magistrates are a basis for saying you can assume that people

would go unpaid to the States because the Relief Magistrates may be unpaid but I did not think that they were. If they are, indeed, paid then I do not think you can use the fact that people are prepared to do something on a paid basis as an argument for saying other people would be prepared to do something gratis. There is also the fact that lawyers, depending on the nature of their work, do have other commitments and I know certainly for the Crown Advocates whom we used and who prosecuted quite a bit, there were occasions when it was very difficult to find a private sector Crown Advocate to take a piece of work on. As Solicitor General I had more than once to take a criminal case or criminal appeal over because it was not possible to get a Crown Advocate because they had other commitments with their clients. So I think it would be fraught with many practical difficulties and I do not think it would give as good an end result.

Lord Carswell: Well, that is very clear and we see force in the points you have made so we now have them conveniently marshalled, thank you very much. One of the things that we have been considering is the responsibility and duty of the Attorney General to the Crown and to the States and/or Council of Ministers. From your experience of office, have you seen any conflict arising between those 2 roles and how is it handled?

Miss S.C. Nicolle: I have never seen a conflict in the sense of the 2 potentially squaring up for litigation against one another or even disputing against one another. Very, very rarely there might be an incident where you cannot advise both sides in the same way as a lawyer cannot advise both the purchaser and a vendor. I do not think that is quite the same thing and an example is where advising the Receiver General about Crown property and there is going to be a lease of Crown land or something like that, an agreement between ... to take an example of one of the ones I have dealt with, an agreement between the Planning and

Environment Committee and the Receiver General for putting a footpath through some woods. You have to advise on the usual things: the public are going to use it; who is liable; how do you exclude liability. Sometimes you simply say: "Look, I am advising both of you" and depending what the nature of the thing is both sides are happy. I cannot ... I honestly do not think I can ... oh, one other one, when the - I cannot remember the name of it - replacement for the Merchant Shipping Act was going through, and I am sorry, I have totally forgotten the name, the Receiver General was receiver of wrecks and there were going to be various duties placed on him and so on. I was advising the Receiver General and I said: "Look, I cannot, someone else is advising the Committee on the legislation" and there is a certain amount of arm's length there. There may be one coming up; I saw it reported in the paper, a proposition to vest the assets of ... where there are untraceable heirs or no heirs to vest the assets in the public rather than in the Crown as at present. Well, obviously someone is going to have to advise the Crown and someone is going to have to advise the public. But I cannot ... I genuinely cannot think of any actual disputes.

Lord Carswell: That sort of case is fairly easy to see coming because the conflict is apparent and does not require great insight to see that it could be a problem. Lawyers are accustomed to this; they position themselves accordingly.

Miss S.C. Nicolle: Yes.

Lord Carswell: What about ordinary legislation going through? The Attorney General has to advise the Crown that it does not pose any constitutional problems. If the Attorney General has ... I will start again. Supposing there is a potential Article 6 question under the

convention, the Attorney General before ... will he have seen it and advised before it is certified by the Minister?

Miss S.C. Nicolle: Yes. A lot of the major legislation has someone within the Law Officers' Department working with whoever is doing it. Certainly something which is dealing with areas of that kind would have the involvement of a Law Officer. As for it being a conflict, I would like to think the States would not want something to be constitutionally improper either.

Lord Carswell: No, because if the Attorney General is satisfied it is convention compliant he then says to the Minister: "Yes, I am satisfied. You can certify." He then is in a position to say to the Crown: "I have already considered this. It is convention compliant so that is all right." Is there any risk that there might be a case where he would say: "I really do not think it is but it is very debatable" and the States would want to go ahead, in which case what would he say to the Crown?

Miss S.C. Nicolle: What is done, if the ... I say what is done, I have never done it myself, it has never come up and I cannot think of any of the other Law Officers doing it, but what one should do and what would be done is if there is anything which is going to be the subject of adverse report to the Privy Council you tell the States before it goes.

Lord Carswell: Yes, I would have thought so.

Miss S.C. Nicolle: If this provision goes in, we will have to advise the Crown such and such, and the States would be told. But as I say, I would hope that the States themselves would not want things to be ...

Lord Carswell: No, I entirely agree, but I suppose there may be cases where the States would say that they really feel they have to go ahead with something and the Attorney has had reservations. He would have warned the States but then he would simply say to the Privy Council in accordance with his duty: "I am not happy about this because ..."

Miss S.C. Nicolle: Yes. Well, certainly that was the practice in my day.

Lord Carswell: I think that deals with quite a bit of the concern we were feeling about that. Anything else on that line that occurs to you?

Dr. S. Mountford: No.

Lord Carswell: The other advisory issue which has been rumbling around with various people is the question of Scrutiny and the Attorney General's advice, Law Officers' advice being given to the Council of Ministers or to the States and then Scrutiny wants to know about things. Have you had personal contact with this difficulty? Can you throw any light on it from your own experience?

Miss S.C. Nicolle: It was certainly something that the then Scrutiny Panel Members were not happy with at the time when I was a Law Officer and, in fact, I think in virtually the last debate I attended there was a debate over the code which was to regulate the relationship between the Ministers and Scrutiny. What had been supposed to be done I think was that the Ministers and Scrutiny had been supposed to agree a code and they could not agree over that particular provision. I am going from memory now but this is as I remember it. It

therefore went to the States for debate and the bone of contention was whether Scrutiny and the Council of Ministers should be entitled as of right to see one another's legal advice or not. It was debated and that would have been in March 2008 it was debated. As it happened, the States voted against giving Scrutiny a right to see the advice to the Council of Ministers.

Lord Carswell: There is an obvious problem in principle there about privilege, that it may be over-emphasised at times by one party or another.

Miss S.C. Nicolle: Yes.

Lord Carswell: From your experience, have the questions asked by Scrutiny really involved anything other than a pure answer to a pure question of law or been in areas where the Law Officer really does not want his advice passed around?

Miss S.C. Nicolle: My personal advices to Scrutiny were quite limited. Certainly there was nothing in the advice which I gave on the occasions when I gave it that were problematic in any way. But, as I say, they were very limited. One was about water resources and who has the right to water, and really it is all pretty well textbook stuff, except there are no textbooks which is why they had to ask their lawyers. The other one was about lowering the age of homosexual consent and I had to advise the Scrutiny Panel on that one as well. But I cannot recall advising Scrutiny very often.

Lord Carswell: Have you had the reverse where you have advised the States or the Council of Ministers and Scrutiny wanted a copy of your advice and they felt they should not ... the recipient of the advice felt it should not be produced? Have you had that?

Miss S.C. Nicolle: Well, I do not know what the recipient of the advice felt but I know that I have given advice that I felt should not have been shared. I would say my number one was planning because quite often planning issues do arouse a lot of public interest, even individual sites. They often end up in court and really the idea of having the public, including a potential appellant, reading my advice with my assessment to the committee of its position - to the Minister as it is now - was a lawyer's nightmare.

Lord Carswell: Well, that sort of position is not simply stating what the law is; it is stating what the likely result of application of the law will be. That is a very large part of any lawyer's advice.

Miss S.C. Nicolle: Yes.

Lord Carswell: Did any problem arise on those occasions or did Scrutiny obtain its own advice and deal with the matter?

Miss S.C. Nicolle: Scrutiny must have either done without advice or obtained its own advice, I think.

Lord Carswell: Because in such a case there is no point in having an agreement that, yes, you will pass on the gist of the advice if it is only on legal matters. If it is actually dealing with the application of the law to a certain case and trying to advise a client what to do in the light of what the court is likely to do, that is classic ...

Miss S.C. Nicolle: Yes.

Lord Carswell: That is helpful, thank you. Anything on these lines, Geoff?

Mr. G. Crill: Are you conscious of any ... when you are giving the advice, are you conscious of any differential between who is the client, whether it is Scrutiny, whether it is the Council, whether it is an individual Minister?

Miss S.C. Nicolle: I do not think so, no. You know, think of them in terms as a client: a client is a client; you give them the best advice you can, really.

Mr. G. Crill: Was the nature of the requests for advice different?

Miss S.C. Nicolle: Usually yes, because apart from anything else it comes in a different format. From a Minister you may get all the departmental papers; from Scrutiny a number of specific questions. In a sense, when you are advising a Minister you are to a certain extent formulating questions as well as giving the advice, whereas Scrutiny are already scrutinising a particular thing; therefore, they know what questions they want to ask.

Mr. G. Crill: So you are more aware of the context when you are advising the Minister?

Miss S.C. Nicolle: Yes, though as I say, I cannot recall having advised the Scrutiny Panels a lot. There was not a very long period between Scrutiny coming in and my retirement.

Mr. G. Crill: The opportunity or the standing invitation for the Attorney General to attend Council of Ministers' meetings it is suggested has been one of the causes of the perceived alignment of the Law Officers with the executive of government and has helped to create the feeling of division between the Council of Ministers and Scrutiny. Is that a system that works, the attendance with the Council of Ministers, or should it just be, do you think, some other available accessibility type of arrangement?

Miss S.C. Nicolle: I think one has to remember that the Council of Ministers has a different function from Scrutiny. They are decision-makers and policy-makers and there are times when, depending on the nature of the decision and the policy, people may need legal advice for which they have not specifically asked, you know, to, say, alert them to a problem. I can see why there is a perception, I can understand that, but if you are somebody's lawyer you really do need to give them the advice they need. I do not see how it can be done. If you look at the Minister's agenda and there is something on it that may throw up legal problems ...

Mr. G. Crill: As the adviser to the States, were you entirely comfortable that you could give advice equally to the Council and to the other components of the legislature?

Miss S.C. Nicolle: I must say that personally I did not feel a difficulty. The law is the law and the public interest is the public interest.

Lord Carswell: Just coming back to a point you were making earlier about Standing Orders and the need to be thoroughly familiar with them, is this something which you feel requires

legal training or would simply considerable familiarity with the content and the practice in the States fit somebody to preside?

Miss S.C. Nicolle: I think you probably need a certain basic legal training. You may not need to be a leading lawyer, I do not know, but there are some provisions where you do need to interpret them and, indeed, to apply all the rules of interpretation like read it in the context and whether one thing overrides another. You certainly also need to be very ... you need to be familiar with them and with their working.

Lord Carswell: Because you get Standing Orders of other bodies which nearly always are rather less complex than the States' Standing Orders. I am thinking of bodies like church synods and so on. The person who is presiding or assessor to the presider needs to have a very good working knowledge of what is in them. That is very often done by laypeople very successfully without any legal training, just using familiarity and good sense. Is that enough for most cases?

Miss S.C. Nicolle: Ideally, I would like to look at the Standing Orders again before answering that, but it might be depending on the layperson - I mean, there are laypeople and laypeople - and on what they are used to doing in their other activities.

Lord Carswell: So if you are choosing a substitute for the Bailiff you would not need just to take anybody off the next bus?

Miss S.C. Nicolle: No.

Lord Carswell: The Bailiff seems from the figures we have been given to have spent quite a lot of time in the States in the past few years because the sittings of the States have grown rather. In this day and age, to have a highly trained lawyer with lots of experience and ability in judicial work, is it a good use of manpower to have the Bailiff in the States?

Miss S.C. Nicolle: I do not know if that is really a question for me. Whether it is a good use is up to the people who are using him, I do not know. I think it comes back to what can you do instead. If there is no workable way of proceeding instead then it is obviously not a ... sorry, if there are any number of good workable alternative options then possibly not, but ...

Lord Carswell: We have had a number of representations about this. From your experience, to what extent is the Bailiff called on for really difficult rulings which require his skill and authority? Has that happened very often or most of the time is it more routine stuff?

Miss S.C. Nicolle: I would not say there was a very high proportion of complex stuff, but there is a regular recurrent amount of application of Standing Orders and so on.

Lord Carswell: We have heard quite a bit from different witnesses about the Law Officers attending the States and being available to answer questions. You must have done a fair bit of that from time to time?

Miss S.C. Nicolle: Yes.

Lord Carswell: It has been suggested that some of the questions really were rather wasting the time of the Law Officers, that they could have been very well handled another way or not asked at all. Do you feel able to venture an opinion on that?

Miss S.C. Nicolle: I do not know that I can remember being asked questions that really should not have been asked at all or were a waste of time. I think if a States Member has a genuine problem with a piece of legislation and wants some legal advice on it, then it may appear to me like a very simple question and why could they not understand it themselves, but if they need the advice it is right that they should have somebody there to give it.

Lord Carswell: It has struck us in thinking about it that if questions were such as could be answered off the cuff by a Law Officer they would not be of the most complex kind.

Miss S.C. Nicolle: It depends what one means by “of the most complex kind” I suppose in a way. It is like answering questions off the cuff in the Court of Appeal; you may be able to answer them off the cuff but that does not mean they are easy stuff or that everybody could do it. You see, depending what they are asking about, there are some instances of customary law that nobody could go away and look them up. Sometimes they feel relatively straightforward when you are answering them but ...

Mr. G. Crill: Did you feel that it was an appropriate use of your time to be in the Assembly in anticipation of any such question or could those questions just as easily have been submitted to you either before, during or after the debate?

Miss S.C. Nicolle: Sometimes there are questions I think which possibly could be submitted before and, indeed, sometimes States Members do ask a question before, send an email and ask a question about some legislation that is coming up. Sometimes a question arises out of what is being said by somebody during a speech. One Member will make a speech; another one will say: "Can the Solicitor General say whether such and such is right?" As for asking the questions afterwards, that would work possibly in some cases but not where they are going to have to take a vote at the end of the debate because they want to know what the position is before they vote.

Mr. G. Crill: But presumably if the legal question was considered to be so fundamental then the questioner could ask for an adjournment of the debate until that and the Assembly could then decide whether or not it shared his view.

Miss S.C. Nicolle: The answer is probably in Standing Orders. **[Laughter]** You can, anyone can move that they should move on to the next item, but you may have a serious and important piece of legislation which everybody wants to see go through and it might take quite a lot of determination or even quite a lot of awkward-mindedness for a Member to defer a debate on something which people are already complaining because it has not been passed, particularly if they are debating it at the end of the session.

Lord Carswell: Is it possible by looking at advance business and the paperwork to forecast where questions may lie?

Miss S.C. Nicolle: You can anticipate quite a lot, and also I said earlier that depending on the nature of the legislation if someone in the Law Officers has been working with the Law

Draftsman on the file you will occasionally ... or certainly when I was there one would occasionally get from the Member or the Law Officer who had been working on it a note of things that might come up.

Lord Carswell: Yes. What has been mentioned fairly regularly is that other legislatures do not have the benefit of having a Law Officer present all the time. They are there for some things and away for others and so on, and they seem to manage. Is that because they have other sources of advice that are available on the spot or have already given Members their advice?

Miss S.C. Nicolle: That I do not know. It may be because other legislatures have party politics and, therefore, politicians to a certain extent are not voting according to their own reading of the legislation or whatever it may be, whereas in Jersey the individual Member is going to decide at the end of the debate, if he has not decided before, how he is going to vote and, therefore, may want to be satisfied on particular points in order to be able to decide how to vote. Sometimes someone will say during a debate: "Depending on the answer to my question I shall ..." do such and such. I think if you have a party whip out telling you which way to vote that basis falls away.

Lord Carswell: We have also had quite a lot of discussion suggested to us - though it has not always turned into a lot of debate in our hearings - about whether there should be a Director of Public Prosecutions separate from the Attorney General. What is your thinking on that?

Miss S.C. Nicolle: Now, this would be a Director of Public Prosecutions with a complete divorce from the Attorney General and no ...?

Lord Carswell: Yes.

Miss S.C. Nicolle: It is a very small jurisdiction and you would need to set up a quite extensive body. There are a lot of the customary functions of the Attorney General where I think being the public prosecutor and being the *partie publique* sort of merge into one another. I am not quite sure how you would draw the dividing line. As *partie publique* the Attorney General is the Minister for Justice and has a general watching brief over the workings of justice generally. To a certain extent the public prosecutor role is subsumed in that. If you say the Director of Public Prosecutions takes over all criminal roles from the Attorney General that presumably takes over the supervisory role for the Honorary Police. If you do that you are then eroding some parts of the *partie publique* role, or so it seems to me. I think it is something that would be very complex and difficult to work out. It does not mean it cannot be worked out. Indeed, whether the total result would be a beneficial one I would not like to say.

Lord Carswell: We are told that there now is a specific department in the Law Officers' Department of criminal justice dealing with prosecutions.

Miss S.C. Nicolle: Yes.

Lord Carswell: Had that been instituted when you were in office?

Miss S.C. Nicolle: No, that came after I had left. The Department was in sections and there was a serious crime and international assistance section, but there was ... I was going to say lower class crime. There was the less serious crime, the routine crime, the ordinary prosecutions. The Magistrate's Court work was part of the general section work. Now, as I understand it, that is all in the criminal section.

Lord Carswell: Do you see any advantages or disadvantages in that sort of set-up?

Miss S.C. Nicolle: I think it is probably a good idea. The Department now is large enough for people to specialise. When I first started it would have been totally impossible because you did not have enough people to specialise.

Lord Carswell: Yes. If you translated the Director of Criminal in the Law Officers' Department into a full-blown D.P.P. (Director of Public Prosecutions) he or she would have to be responsible to somebody because classically a D.P.P. has the Attorney General hovering somewhere way up overhead and will be reporting to parliament if there are problems. A D.P.P. in a situation who is not answerable to an Attorney General in any way has to have some either select committee or somebody to whom ... before whom the D.P.P. can be called and can be asked about policy matters. Is there any body in the Jersey practice that would equate with that, any of the committees extant?

Miss S.C. Nicolle: I do not think so, really.

Lord Carswell: I suppose the States could create a committee for the purpose if it wished.

Miss S.C. Nicolle: They could create a committee just as they have created a police authority. You have, of course, to find the members for it, I mean appropriate members.

Lord Carswell: Yes, and they are all probably fairly heavily committed on other things if they are useful people.

Mr. I. Strang: In your experience was there any difficulty in advising the executive, say, in planning or something and then, say, a prosecution comes along? Was there enough staff in the Attorney General's Department to keep those separate so that the person who is advising, say, planning is not then deciding whether a prosecution goes ahead?

Miss S.C. Nicolle: I cannot recall any problems. The prosecutions usually came independently. If you got someone prosecuted, it was usually without having previously been asked for advice on the civil side. A housing infraction, people who commit housing infractions did not usually make applications to Housing to do things lawfully in the first place.

Mr. I. Strang: No, okay.

Mr. G. Crill: But where it is the Minister who is being prosecuted or the department?

Miss S.C. Nicolle: I am sorry, I think I misunderstood you. There have been a few. I do not think they caused any particular problems.

Mr. G. Crill: How are they managed internally? Could the person dealing with the prosecution have access in the office to the advisory file?

Miss S.C. Nicolle: Yes, but the prosecutions are usually for things that we would never have advised them.

Mr. G. Crill: Pollution laws, for example, or something?

Miss S.C. Nicolle: The prosecutions that I can recall are pollution, possibly somebody once got done for health and ...

Mr. G. Crill: Health and safety infractions or something?

Miss S.C. Nicolle: Yes, I was just going to say health and safety, somebody once I think was prosecuted for health and safety. They are generally the sort of things that they do inadvertently.

Lord Carswell: You mentioned the position of the Attorney General as titular head of the Honorary Police, wherever the title came from. Have you come across occasions when the Attorney General had to exercise authority over the Honorary Police in some respect?

Miss S.C. Nicolle: Much of it is statutory anyway. It is in the legislation for things like complaints against the police. You hear complaints. You may hear complaints. As for exercising any power over the Honorary Police outside that, the only one that I can think offhand of having exercised is directing a prosecution should not take place.

Lord Carswell: That is really all part of the prosecutorial function in any event, yes.

Miss S.C. Nicolle: Yes, but I cannot ... you see, it goes back to the days when prosecutions followed a very different course. The Constable gave the Attorney General a report and the Attorney General took the report to the Royal Court and prosecuted on the report. So the Attorney General could do things like tell the Constable ... if a report was not presented well and an offence had been committed, the Attorney General could tell the Constable: "Go and investigate that one and let me have a report so I can prosecute." There was no paid police, no publicly employed police. Therefore, if the Attorney General thought that some prosecution had not been properly investigated or no report had been forthcoming, he could direct them to go and do it. But, of course, the need for that has fallen away, really, because you have a professional police body and I think the ... the Attorney General does things like give guidelines for the conduct of Parish Hall Inquiries but that is not directing a specific officer to do a specific thing.

Lord Carswell: No. You mentioned the complaints jurisdiction. If a complaint is made against a member of the Honorary Police, how is it handled?

Miss S.C. Nicolle: I will have to go from memory ... and memory is fading. **[Laughter]** I think it is generally investigated by the States Police. A States Police officer above a particular rank investigates and you receive a report and you make a decision. You can have a hearing at which the complainant is entitled to be present.

Lord Carswell: Who would be the tribunal at the hearing?

Miss S.C. Nicolle: The Law Officer, unless they have changed the legislation. Certainly I have done it. You have the hearing. The States Police officer is there who is presenting it. The complainant is there should they wish to be there. The Honorary Police Officer in question is there and accompanied by someone like his Chef de Police. You hear them and give a decision.

Lord Carswell: The decision may involve some sanction depending on finding?

Miss S.C. Nicolle: Yes, sanction, reprimand, suspending, or even requiring someone to resign. You do not necessarily have to have a hearing because in a case where there is no dispute about fact you ...

Lord Carswell: Does the Law Officer have any assessors or does he or she sit alone in that?

Miss S.C. Nicolle: No, no.

Lord Carswell: One of the things that was mentioned to us is if a police authority comes into being it might take over that function but it did not seem possible that it could take over the hearing of complaints. That is not a police authority function in the ordinary way, certainly not the decision on the sanctions. Police authorities are back-up for the police force.

I think the Attorney General himself, the present Attorney General, felt that it might not be the system you would set up if you were starting from scratch, but he did not see that there was any constitutional or principle problem about his being the person who carries out this

function of directing in the ultimate or hearing and deciding on complaints. I think you feel the same, that it works and it is not wrong in principle?

Miss S.C. Nicolle: I think that is probably a fair assessment of how I see it, yes.

Lord Carswell: I am not sure whom one would recommend to do it in his place, but maybe that is not for us if we thought that should be. The last Attorney General, present Deputy Bailiff, expressed himself unhappy some time ago, or rather a little disturbed about it. Have you ever felt that it was a difficulty yourself?

Miss S.C. Nicolle: I cannot say I have ever felt it, but I probably did not do as many as he did so it may be that that is based on greater experience.

Lord Carswell: It is not the most welcome task, hearing complaints, but it has to be done by somebody and if it is to be done by somebody it had better be done properly.

Miss S.C. Nicolle: Agreed.

Lord Carswell: Anything else occur, ladies and gentlemen?

Dr. S. Mountford: Can I just ask ...?

Lord Carswell: Please.

Dr. S. Mountford: I want to go back to ... you started talking about slightly the suggestions about an alternative to the Bailiff. I think you refer to him as President of the States/Speaker.

Miss S.C. Nicolle: Yes.

Dr. S. Mountford: You do in your submission say that he is ... you draw parallels with the House of Commons and say that he is responsible for the standards of behaviour. Do you think this is because of his role or because, I guess, the standards of behaviour or compliance with Standing Orders? I was not sure what you meant by that.

Miss S.C. Nicolle: To a certain amount compliance with Standing Orders. I mean, things I have seen include telling a Member not to interrupt other Members, one Member making jokes during another's speech would be told to stop it, and I have witnessed that. You know, not exactly heckling but it is controlled in a way that, as I say, I have never been to a sitting of the House of Commons but if they are accurately reported then they seem to have standards of behaviour rather different from what goes on in the States.

Lord Carswell: More robust you mean? **[Laughter]**

Dr. S. Mountford: Can I ask you a "what if" question? Could a Speaker maintain the standards of behaviour in a different way if the Bailiff was not President of the States?

Miss S.C. Nicolle: You would have to have someone who was prepared to do it and from whom the States Members were prepared to take it.

Dr. S. Mountford: If they elected?

Miss S.C. Nicolle: Yes.

Dr. S. Mountford: In your submission you refer to the fact that it would be better that someone with legal training ... if there was a Speaker they should have legal training. Do you think it is possible that there could be a Speaker without that and still be able to maintain the ...?

Miss S.C. Nicolle: Yes, the legal training bit I think is a different aspect from the maintaining standards of behaviour.

Dr. S. Mountford: Okay. You did use the word “inferior”, too, when you referred to it would be an inferior situation if it was not the Bailiff President of the States.

Miss S.C. Nicolle: I am afraid I do not have a copy of what I said.

Dr. S. Mountford: Yes. Well, I think that has answered it anyhow. It is a “what if” question.

Miss S.C. Nicolle: Right.

Lord Carswell: Presiding is partly knowing your stuff and partly just having that indefinable way that people will respond to, whether you call it authority or acceptability or whatever way.

Miss S.C. Nicolle: Yes.

Lord Carswell: It is remarkable how well in legislative assemblies people will accept the Speaker just because the person has been appointed Speaker. Now, there was an exception in the papers this week about the House of Commons, but I think it is quite noticeable how rare it is that Members, however little they may think of the Speaker, will challenge him, and that is a good thing.

Miss S.C. Nicolle: Yes. I suppose one would hope that they would behave in that way.

Mr. G. Crill: Do you think the Bailiff's authority comes from being Bailiff per se or from being Chief Justice or ...? I am really trying to see whether ... or from being civic head? Do you think that the things are all inter-related?

Miss S.C. Nicolle: I think they are inter-related. I think that the role is one of historical importance and I think it does carry a weight with it.

Mr. G. Crill: If he was not present in the States then that might sort of unpick it a bit, really, or could affect his authority.

Miss S.C. Nicolle: Yes, it is very difficult to tell what the effect of change would be.

Mr. G. Crill: The role of the Crown Officer is so broad - in charge of prosecutions, as director of international constitutional matters, direct advice on any manner of legal matters plus, of course, answering questions from Members which may be simple or not so simple - is the job

too big? Do you think that the job can be retained within one department and that it is reasonable to expect the head of that department to be able to cover all those bases?

Miss S.C. Nicolle: Well, it certainly cannot be done without a good support staff underneath, and that means good at senior level as well, not just a lot of people but people who can take on a lot of individual responsibility because one person cannot do all of that. I think it is fair to say that even in my time neither Law Officer would have been able to cover the whole. I mean, I did property matters and I do not suppose the Attorney General ... either of my 2 Attorney Generals would have joined in on that, but conversely I would not have wanted to take over some of the stuff that they did.

Mr. I. Strang: If given that there had been such pressure on the resources in the Department, is there any element of the work that you would consider should not be within the Department? You can say this now that you have retired, can you not? Yes.

Miss S.C. Nicolle: I can indeed, yes. I was just trying to think, assuming that everything is still done as it was when I was there. I find it difficult to identify anything. From time to time, at times when we have been really pressed, certain areas of work have been farmed out but a lot of the time that just ended in tears. It was not successful. There was also ... when it came to handing some stuff out there was also a tendency of whoever you had handed it out to regard the Law Officers as the sort of back-up and safety net and sometimes you found yourself doing quite a considerable amount of work on something you thought was passed over.

Dr. S. Mountford: You make a suggestion about an on-call basis rather than sitting in the States constantly. Would that help at all?

Miss S.C. Nicolle: Sorry, did I make the suggestion?

Dr. S. Mountford: Yes, in your submission that it being on an on-call basis ... you have talked about how you can be prepared.

Miss S.C. Nicolle: Well, it does happen depending on the nature of the debate. For some debates it is just inappropriate. You know, a complex piece of legislation, you really need to be there in case something comes up where you have to offer advice even though you have not been asked for it. Sometimes, depending on the nature of the debate, you will ask for leave of absence and get it. The Law Officers certainly in my day were linked by radio to the States so one could listen to the debate and work on something else at the same time and then get called across if there was a question. In some debates it is perfectly obvious there are not going to be any serious questions or any questions at all for the Law Officers.

Dr. S. Mountford: That would be time that you could do other things rather than just ...?

Miss S.C. Nicolle: Well, yes. As I say, if there is a debate about ... when they are debating something like the grandstand at Springfield, there is not much in the way of legal issues.

Dr. S. Mountford: Yes.

Lord Carswell: Miss Nicolle, we have travelled over quite a lot of ground very succinctly, but covered a lot of issues and I think we have benefited considerably from what you have been able to tell us. We are very grateful to you. We also have your written submission which we are taking into account. We shall send you a transcript before it is published to make sure that you are content with its accuracy and then it will go on to the website in due course. We are now approaching the end of our hearings and then we shall deliberate and produce, we hope, a report in proper time and present it to the States. But we are very grateful to you for your assistance. Thank you very much.

Miss S.C. Nicolle: Thank you.