

**WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY THE DEPUTY OF ST MARTIN**

ANSWER TO BE TABLED ON TUESDAY 9th OCTOBER 2007

Question

1. (a) Does the Attorney General share Mr. Jonathan Cooper's view in his Opinion given to him by the former Education and Home Affairs Scrutiny Panel on 14th May 2007, that there is a systemic violation of Article 6 of the European Convention on Human Rights on the ground that the 'dual role' of the Magistrate does not give the impression that the Court is independent and impartial?
 - (b) Does the Attorney General share Mr. Cooper's view that the role of Centeniers in relation to fixing and listing trials in the Magistrate's Court gives rise to a systemic violation of Article 6 on the basis that it compromises the independence and impartiality of the Court?
 - (c) Does the Attorney General share Mr. Cooper's view that Article 6 now requires there to be a professional prosecutorial system in place as part of the general obligation for fairness?
 - (d) Does the Attorney General share Mr. Cooper's view that there is a systemic violation of Article 14 in relation to Article 6, insofar as a distinction is drawn between more serious offences (dealt with by legal advisers) and less serious offences (dealt with by Centeniers)?
 - (e) Does the Attorney General share Mr. Cooper's view that there may be a systemic violation of Article 8 on the grounds those victims' rights may not be properly guaranteed?
2. When the Attorney General appeared before the Social Affairs Scrutiny Panel on 6th November 2006 he suggested that there would need to be two or three legal staff plus secretarial support and that salary costs for this staff would be round about £300,000 a year if staff in his department handled all cases in the Magistrate's Court, should the Centeniers' role in Court cease. Would the Attorney General provide a detailed breakdown of this estimate?
 3. Will the Attorney General state whether a role equivalent to designated case workers, as employed by the Hampshire and Isle of Wight Crown Prosecution Service on an average salary of between £27,000-£30,000, would in principle be acceptable in Jersey (this would require amendment to Legislation) and if so how the creation of such posts would affect the estimate of the salary costs mentioned in the preceding paragraph?
 4. What capacity is there for the current legal advisers to take on additional work in the Magistrate's Court?

Answer

1. The opinion of Mr. Cooper usefully contains some references to material which is routine but necessary in the analysis of the compatibility of a trial process with the European Convention on Human Rights. Mr. Cooper also expresses however his conclusions on the application of that material to our criminal justice system. As with many human rights issues, it is possible for lawyers to advance different views – and the right place to adjudicate on those is in court.

Mr. Cooper's opinion has been useful in stimulating a review in my Department on human rights grounds of what is a very small number of cases each year where the Magistrate has a dual rôle in determining guilt or innocence – I am advised this number is approximately 20 of which in excess of 50% are likely to be the disputed administrative offences of parking infractions.

It is also appropriate to reflect that where there is an allegation of bias, whether actual bias or an objective perception of bias, the determination of the matter by the court will be heavily influenced by the facts of the case before it.

It is also appropriate to recall that the Magistrate is a public authority under the Human Rights (Jersey) Law, 2000, and that he can always call upon a Legal Adviser to present a case if he considers that in that case he is unable to perform his judicial duties without infringing a person's Convention rights.

Against that background, the answers to the questions are -

- (a) No.
(b) No.
(c) No.
(d) No.
(e) No.
2. I regret I have been away from the Island on States business during the last week and have not had the time to deal with this question. However, the evidence which I gave to the Panel was concerned with the cost of lawyers and support staff dealing with all cases before the Magistrate's Court. If one were dealing only with the twenty or so cases referred to in question 1 above, the additional cost would be considerably less than this.
3. What is acceptable in principle in Jersey as a prosecution process is primarily a matter for the States although they will undoubtedly wish to receive the views of the Crown through the Attorney General with his responsibility for the prosecution service.

There is undoubtedly more than one way in which the prosecution process could be structured. The job of dedicated case workers, as I understand it, could be viewed as very similar to that which could be performed by a cadre of trained Centeniers.

No costings have been prepared for what is at present a speculative outcome but this work can be done if the States, the Home Affairs Minister or the Education and Home Affairs Scrutiny Panel so require.

4. All parts of the Law Officers' Department work under pressure. It is no secret that I have frequently sought more resources. Until those are made available, the Law Officers will continue to do the best they can. However, if the question is intended to ask whether the Law Officers could do all the work of the Centeniers in the Magistrate's Court without any additional appointments, the answer is that we could not do so without adversely affecting other legal services given to the States and to Ministers.