

**WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY DEPUTY M.R. HIGGINS OF ST. HELIER
ANSWER TO BE TABLED ON TUESDAY 5th JULY 2011**

Question

Further to his answer about so-called 'super injunctions' given on 7th June 2011, would the Attorney General -

- (a) explain why the existence or otherwise of super injunctions should be denied to States Members and to the people of Jersey;
- (b) set out the circumstances and grounds upon which such injunctions could be granted in Jersey?

Answer

For the purposes of this question and answer the expression "super injunction" is taken to refer to an injunction that prevents not only something from being done but also prevents the disclosure that such an order has been made.

The Royal Court has a wide jurisdiction to grant interim or final injunctions. Interim injunctions (injunctions granted pending the final determination of the issue between the parties) may be granted *ex parte* or after argument depending on the circumstances of the case. Any party subject to an *ex parte* injunction can apply to the court granting it to discharge it. A final injunction is one granted on the final determination of the issues between the parties. Any person subject to an injunction, interim or final, can appeal against it to the Court of Appeal.

Whilst there is a presumption that justice is done in public and the decisions of the court and the reasons for them are known, that presumption can be set aside and there are circumstances in which it does not apply or is qualified (in cases relating to children, for example, the court sits in private to hear the argument and anonymises its judgement for the purposes of publication of what has taken place).

The Royal Court has the jurisdiction to grant a super injunction as defined above. It is impossible, however, to set out the circumstances in which such injunctions may be granted definitively. The injunction is a flexible tool and may be used in many different circumstances.

It would not be hard, however, to suppose that the court would be sympathetic to the grant of an injunction in such terms where to do otherwise would compromise the personal safety or life of a party or another person or would compromise the integrity of legal proceedings or an investigation.

It should be born in mind, however, that the Court is a public authority and must exercise its discretion in a Human Rights compliant manner. In considering, for example, an application to restrain publication of information about a person the Court would have to balance competing rights such as the right to respect for private and family life (Article 8 of the European

Convention of Human Rights and Fundamental Freedom (“ECHR”)) with the right to freedom of expression (Article 10 ECHR). The Human Rights (Jersey) Law 2000 at Article 12 requires the Royal Court to have particular regard to the right of freedom of expression.

I am not aware of any Judgment of the Court that sets out the principles of a grant of an injunction that balances Article 8 rights with Article 10 rights and prevents publication of the fact that an injunction has been granted. In my opinion the Court would probably only grant such an injunction in exceptional cases where the matters of which the applicant sought to restrain publication represented an egregious invasion of the privacy and family life of the applicant or his dependants or was tantamount to an abuse of the right to freedom of expression that could not be justified on compelling public interest grounds.

I repeat, however, that it is impossible to be definitive about the circumstances in which such an injunction might be granted.

It should accordingly be apparent that the grant of such a “super injunction” would be very rare and done in exceptional circumstances in which the Court, in balancing the competing considerations, has found that there is a compelling case for this measure of secrecy. It is for that reason that the existence of an order in any particular case should not be known to anyone, States Members or otherwise, outside the Court, the parties and their lawyers.

The answer given to the question on the 7th June 2011 simply reflects that I would not be aware of such an injunction if I was not a party to it and if I was a party I would be prevented from referring to it. For the reasons referred to in my answer of the 7th June, I could not therefore answer that question.