

2017.03.14

#### **4.2 Deputy M.R. Higgins of St. Helier of H.M. Solicitor General regarding the responsibilities of H.M. Attorney General for prosecutions in the Island: [1(137)]**

Does H.M. Attorney General consider that he is the sole prosecuting authority in the Island and, if so, what arrangements are in place to supervise decisions to prosecute in the Magistrate's Court taken by States departments?

##### **Mr. M.H. Temple Q.C., H.M. Solicitor General (Rapporteur):**

Her Majesty's Attorney General is ultimately responsible for all prosecution decisions made in the Island. The Attorney General, lawyers in the Law Officers' Department, and Centeniers make decisions to prosecute, not States departments. Guidance issued to all States departments in respect of potential breaches of laws and regulations that fall within their competencies and on the process to be followed in such cases is published on the Law Officers' Department website.

[11:15]

As the previous Attorney General said in response to a similar question from Deputy Higgins in December 2014, the guidance makes it clear that all matters considered appropriate for prosecution should be referred to the Law Officers' Department for the department to check whether a prosecution should be brought. The only exception to that practice is in relation to marine resources cases where, owing to the urgency of those matters and the familiarity of Centeniers with them, charges sometimes need to be laid without recourse to the Law Officers' Department for advice but that is the only exemption.

##### **4.2.1 Deputy M.R. Higgins:**

Will the Solicitor General advise the States whether that has always been the case and whether the Environment Department went direct to the Magistrate's Court and the Centenier as opposed to going through the Law Officers' Department?

##### **The Solicitor General:**

I think the Deputy is referring to 2 specific cases which were dealt with in the answer of the previous Attorney General in December 2014. I can read from that answer where the previous Attorney General said that he is aware that there were 2 instances of proceedings being started in the Magistrate's Court, one in 2012 and one in 2013, as a result of a direct approach by officials from the Planning and Environment Department to the Honorary Police. Both cases were dealt with initially by a Centenier in the Magistrate's Court, both defendants pleaded not guilty, and the matter was referred to the legal advisers at Police Headquarters, which is part of the Attorney General's Department, who subsequently handled the cases on the Attorney General's behalf. In one case, the charges were dropped and the other, the defendant changed his plea to guilty. Again, repeating from that previous answer given, as a result of these cases guidance was given to the Honorary Police that they should ensure that advice has been given on the Attorney General's behalf by a legal adviser before charging any cases which have been referred to them by States departments. The Attorney General then said: "I have no reason to believe that this practice is not being followed in all such cases" and that is my belief today, 3 years later.

##### **4.2.2 Deputy M.R. Higgins:**

Just a point of clarification from the Solicitor General. One of the cases that pleaded not guilty led to the person being convicted of a criminal matter which was subsequently appealed in the Royal Court and led to the quashing of the conviction as being unsafe. Is that not the case?

**The Solicitor General:**

That case, which I am aware of, yes, the conviction was subsequently overturned in the Royal Court and I believe that there are civil proceedings that have been issued in relation to that case and it would not be appropriate for me to comment on those proceedings as they are *sub judice*.