

**WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY DEPUTY M.R. HIGGINS OF ST. HELIER
ANSWER TO BE TABLED ON TUESDAY 6th NOVEMBER 2018**

Question

Will H.M. Attorney General advise members how many unsuccessful prosecutions have occurred in the Magistrate's Court in each of the past three years and of the resultant amount of money paid out by the Crown in costs to defence lawyers; and will he state the rationale for the payment of such costs and how the figures in such cases were determined?

Answer

An unsuccessful prosecution is generally regarded as a case in which the defendant has entered a plea of "not guilty" and upon which the court has acquitted the defendant having heard evidence at trial.

All cases are subject to continual review. Where, following a defendant entering a plea of "not guilty", circumstances arise whereby either the evidential or public interest tests are no longer satisfied then the prosecution will be brought to an end by the offering of no evidence and the defendant will be discharged.

The number of Magistrate's Court cases prosecuted by the Law Officers' Department in the past three years can be broken down as follows:

Year	Total Number of Magistrate's Court Cases	No. of Guilty Pleas	No. of cases in which No Evidence was Offered	No. of Trials	No. of acquittals following trial
2015	513	407	88	18	3
2016	528	468	43	17	1
2017	504	431	54	19	5
2018 (as at 30/10)	240*	202	10	28	7

*In 2017 a system was introduced whereby legal advisers from the Law Officers' Department provide early pre-charge advice in the majority of cases. The success of the system can be seen in the comparative reduction of the number of cases which "No Evidence" has been offered.

These figures only relate to cases which have been prosecuted by the Law Officers' Department. A substantial number of more straightforward cases are presented by Centeniers. The Law Officers' Department conducts all contested cases and trials.

The percentage of acquittals after a trial from 2015 to date as a percentage of the total number of cases prosecuted by the Law Officers' Department is 0.9%.

The power of the criminal courts to order the payment of costs in criminal proceedings is provided for in the Costs in Criminal Cases (Jersey) Law 1961 ("the Law").

Article 2(1)(c) of the Law provides that where any person is prosecuted or tried before either the Royal Court or the Magistrate's Court, the court may, if the accused is discharged from prosecution or acquitted, order the payment out of public funds of the costs of the defence. The costs payable shall be such sums as

appear to the court reasonably sufficient to compensate the accused for the expenses properly incurred by the accused in carrying on the defence.

In practice, unless there are good reasons not to do so the Court will order that an acquitted defendant be paid their reasonable costs under the principle that costs follow the event. An example where the court may refuse to make such an order is where a defendant has lead the Prosecution to believe that the case against the defendant is stronger than it actually is.

Article 2(7) of the Law states that the amount of costs ordered to be paid shall be ascertained by the Judicial Greffier.

In practice, the Law Officers' Department will consider whether the Defendant's claim for costs is reasonable, and if so, the costs payable to the Defendant's advocate are agreed if the Judicial Greffier agrees that the amount agreed is reasonable. If the Law Officers' Department does not consider the Defendant's claim for costs to be reasonable the Judicial Greffier will be asked to assess the claim for costs in a process that is known as taxation of costs whereby the Judicial Greffier considers the reasonability of the work undertaken.

The following table shows the defence costs claimed and allowed in the Magistrates' Court for the years 2015 to date:

Year	Amount Claimed £	Amount Allowed £
2015	144,654.78	81,471.27
2016	291,156.18	184,044.71
2017	145,133.58	84,216.45
2018 (to date)	237,017.35	Figures not finalised.