

1. Statement by the Attorney General regarding the implications of the Police Procedures and Criminal Evidence (Codes of Practice) (Jersey) Law:

1.1 Mr. W.J. Bailhache Q.C., H.M. Attorney General:

The headline in the *Jersey Evening Post* on Saturday was: “Now they can lock you up indefinitely.” The secondary headline was: “Lawyers on alert as Minister scraps prisoners’ rights.” Both the headlines and the accompanying reports are inaccurate and potentially worrying to members of the public. As the *Partie Publique* responsible for many justice issues and as legal adviser to the States, I would like to make this statement about the law which I hope will be of some reassurance to the community. The provisions of Code C, which were made by Order under Article 61 of the Police Procedures and Criminal Evidence (Jersey) Law 2003 (P.P.C.E.), are guidance to the police about the treatment and detention of suspects before charge. The code was not itself designed to lay down limits on the period of detention as such, but by prescribing procedures to support the limits provided for by part 5 of the P.P.C.E., which is yet to come into force. Because part 5 is not yet in force, the position in relation to detention remains today broadly as it was before the enactment of the P.P.C.E., which is that, other than in relation to terrorism, there are no statutory limits to detention before charge. The procedures prescribed by the Order made by the Home Affairs Committee in 2004 allowed for multiple extensions of detention, but this is only part of the picture because these could nonetheless only happen to the extent that the law generally permitted detention to take place. The fact that there are no statutory limits to detention before charge does not mean that the police can detain a person indefinitely. They cannot do so and there are several safeguards in place against any abuse of power by the police in this connection. Firstly, the code itself requires that detention for longer than 24 hours must be authorised by a senior officer who can only authorise continued detention for a further period of up to 12 hours if satisfied as to the need to continue detention as prescribed in the code and so on for further periods. Secondly, as a public authority, the police are under a duty to act in a way which is compatible with the convention rights by virtue of Article 7 of the Human Rights Law. That means that they must have regard to an individual’s rights under Article 5 of the European Convention on Human Rights and ensure that he is brought promptly before the court. What amounts to promptness will depend on the circumstances of each case. For a serious or complicated offence, requiring considerable gathering of evidence, the period may be longer than in a simple or less serious case. Thirdly, Article 5.3 of the European Convention on Human Rights requires that a person in police detention: “Shall be brought promptly before a judge or other authorised officer authorised by law to exercise judicial power,” so that the lawfulness of his detention can be reviewed. Although the European Court of Human Rights has not set a specific limit, in one case, *Brogan v U.K.*, the court decided that a period of 4 days and 6 hours before a first court appearance was too long. In other cases relating to longer periods of detention, for example, *Koster v Netherlands* - 5 days; *McGoff v Sweden* - 15 days; *Salov v Ukraine* - 7 days, the court has unsurprisingly found a breach of Article 5. Because the Human Rights (Jersey) Law 2000 is in force, a breach of a convention right can be raised in the Jersey courts, so a person detained in Jersey who thinks that his detention is unlawful in terms of Article 5 can bring proceedings in the Royal Court alleging a breach of his right. There is no doubt that such an application would be heard by the court as a matter of urgency. Lastly, there is also the possibility of applying for a writ of *habeas corpus* or to the Royal Court under its inherent jurisdiction for a review of the detention. In the circumstances, it can be seen that it is highly unlikely that the right of an individual under Article 5 of the European Convention on Human Rights will not be observed. I am not aware of any challenge in the courts, whether successful or unsuccessful, to the use of police powers to detain suspects in recent times.

1.1.1 Deputy R.G. Le Hérissier of St. Saviour:

Could the Attorney General define whether there exists an absolute limit or do phrases like “promptly” make it very clear, in fact, that discretion still exists?

The Attorney General:

As set out in the statement, the Court of Human Rights has not yet set a specific limit. It is said in *Brogan* that 4 days and 6 hours was too long and the working assumption which has been taken by many member States, including the United Kingdom, is that 4 days is the maximum.

1.1.2 Deputy C.J. Scott Warren of St. Saviour:

Could the Attorney General please explain under the provisions of the Articles of the European Court of Human Rights how the United Kingdom is therefore able now to have made this legislation for 4 days and how that is going to work?

The Attorney General:

I think that is a matter for the Prime Minister of the United Kingdom rather than for me.

1.1.3 Senator S. Syvret:

In his statement, the Attorney General says that the statement in the *Jersey Evening Post* was inaccurate. Is it not the case, as it appears to me from reading his statement, that it was only inaccurate insofar as it implied that the ability to detain indefinitely was something new? It seems to me from the statement of the Attorney General, and from the Minister for Home Affairs, that we have been living in a state of ignorance and, in fact, effectively, the power to maintain indefinite periods of detention was already in the existing Regulations.

The Attorney General:

No, Sir, I think that is not correct. I refer the Senator back to my statement and it is clear from my statement that although there are no statutory limits to detention before charge, the police cannot detain a person indefinitely for all the reasons which I have given. Therefore the articles were not accurate.

1.1.4 Senator S. Syvret:

Is it not the case that it is unsatisfactory for such a basic right as a person’s liberty to depend primarily upon them having to take legal representation to court, be it *habeas corpus* or be it under Convention rights rather than it being clearly defined in legislation that a person cannot be detained indefinitely without charge?

The Attorney General:

I think that is, largely speaking, a matter for political judgment rather than for me. What I would say, I think, is that the existence of a legal right is the same, whether it arises by virtue of the Human Rights Law and the application of Convention Rights or whether it arises by virtue of a statute which the States have adopted. In either case, if the person concerned has been kept in police custody for longer than he or she should have been, he or she will have to make that application to the court to enforce his right.

1.1.5 Deputy K.C. Lewis of St. Saviour:

I think this is a question of interpretation, Sir. Would it not be expedient to include the phrase “not to exceed X amount of days” to avoid confusion?

The Attorney General:

I think, Sir, that is a matter for the Minister for Home Affairs when she comes to make the next Order.

1.1.6 Deputy P.V.F. Le Claire of St. Helier:

I have 2 questions, Sir. One, I am not a lawyer. In his statement, the Attorney General says: “Lastly there is also the possibility of applying for a writ of *habeas corpus* or to the Royal Court under its inherent jurisdiction for a review of the detention.” Could he please explain that to those of us who are not lawyers; and, on the subject of lawyers, could he tell us, as this has raised a significant degree of concern in the community, what the legal community has said to him, if anything, about these issues which have been reported in the *Jersey Evening Post*?

The Attorney General:

On the second of those questions, I am aware that there has been some e-mail correspondence passing between individual lawyers and a member of my department. I think that the result of that e-mail correspondence was that the individual lawyer was satisfied that his initial concerns were not justified, but I have not spoken to him directly so I cannot really add to that. On the first of the questions, the writ of *habeas corpus* is one of the prerogative writs. It is a very ancient writ and it literally means “let the body be released” and it is a mechanism by which one can apply to the court for an order that somebody be produced before the court to ensure that their safety is protected and they can make whichever applications to the court which the law allows them to make. It has the effect in Jersey that there can be an application to the Royal Court under its inherent jurisdiction to review detention as well, but it comes to the same thing.

1.1.7 Deputy P.V.F. Le Claire:

Is this ancient practice, which I do realise now is something that I have had knowledge of in other circumstances... but in this instance, is this an ancient right that would be difficult, lengthy, known to a person who was held and also prohibitively expensive to a person who was held or is it something that is going to produce... although it is a last measure of mechanism, is it something that would be difficult for somebody who is incarcerated to enact and receive prompt attention for in an inexpensive way?

The Attorney General:

If I may, I will restrict the question to detention at police headquarters because this is what has given rise to the statement. There are provisions under the code for a person to have access to legal advice at police headquarters and it should therefore be absolutely possible for any such person to be made aware of his rights to apply to the court either for the *habeas corpus* or under the court’s inherent jurisdiction to review periods of detention, and I would expect all practising lawyers to be aware of that right. As to whether or not it can be done speedily, the court has always taken issues of the liberty of the subject very carefully and very speedily and so I have no doubt that it would be taken quickly and speedily by the court. As to the cost, the legal aid service provided to persons in detention at police headquarters is, for all intents and purposes, free, so that should not be difficult.

1.1.8 Senator M.E. Vibert:

I would like to refer to the last paragraph of the Attorney General’s statement and it states: “In the circumstances, it can be seen that it is highly unlikely that the right of an individual under Article 5 of the E.C.H.R. (European Convention of Human Rights) will not be observed.” The corollary of that, I presume, is that it is possible, though highly unlikely, that it will not be observed and also can he confirm that without a statutory limit, an individual does not have that security of knowing that he can only be held for a certain time and would have to apply to the court if he felt it was being abused rather than there being a statutory limit which would make his detention for any period further than that absolutely illegal?

The Attorney General:

On the first of those questions, I used that language really to indicate that it was, in my view, highly unlikely that the police would not observe the right of an individual under Article 5.

There is, in my view, no doubt at all that the courts will observe the rights of the individual under Article 5 so I am grateful for the opportunity to clarify that particular point.

Senator M.E. Vibert:

The second point was that without a statutory limit, the person being detained has to rely on access to the court because there is not a statutory limit which would otherwise apply.

The Attorney General:

That is very similar to the question which Senator Syvret put to me. The legal right is there and whether it is a statutory limit or whether it is a right under the Human Rights Law, there would still need to be an application to the court but, ultimately, this is a question for the judgment of politicians when they come to look at the relevant legislation in the future. If it is thought that it is better to have the statutory rights than these rights, then, of course, that is entirely a matter for the judgment of Members. I just add that, so far, by enacting part 5 of the P.P.C.E. Law, that Members have indicated that is their judgment and I have no doubt that, at some future date, that part of the law - probably amended slightly - will be put before Members to come into force.

The Bailiff:

We have time for one more question.

1.1.9 Deputy A. Breckon of St. Saviour:

In the statement, the Attorney General has said that the detention may continue for a further period of 12 hours. That is from a senior officer. How long would that continue? Is there any guidance of what has happened in existing cases where it has, in fact, been done and the other question, Sir, which I think has been answered, is would anybody detained be aware of their rights and that this was happening and it was a 12-hour extension?

The Attorney General:

I think, Sir, in relation to how it has worked in practice, the Minister for Home Affairs has covered most of that in her statement which she is about to make, but the way in which it is working at the moment, it would require the Chief Inspector to authorise the further detention periods.

Deputy P.V.F. Le Claire:

May I ask that the States consider a proposition that we raise Standing Orders, Sir, to allow for questions to be asked on these matters today. If we set aside 3 States days for business, it looks as though we will probably be finished well within the first day, Sir, and I think given the gravity of the topic and the concern in the public, that we should really enable all Members, who have questions, the opportunity to put them to the Attorney General and the Ministers in turn upon the subject and I would ask, Sir, that the States lift Standing Orders to allow those Members who still have questions the opportunity to do so. I did see that there were still a couple of lights flashing when you called time, Sir.

The Bailiff:

Which Standing Order are you asking the States to lift? I am just checking the Standing Orders, Deputy, because I do not think it is quite as straightforward as that. My recollection, although it may be in error, is that there is another Standing Order which requires the presiding officer not to allow question time to turn into a debate.

Deputy P.V.F. Le Claire:

My request was to suspend Standing Orders so that questions can be asked and Standing Orders would cover all of the matters in relation to your judgment, Sir, on these issues. I am asking

specifically that Standing Orders be suspended to allow Members to ask these questions that they still have.

The Bailiff:

I do not think you can suspend all Standing Orders, Deputy. You have to be specific in relation to the Standing Order that you wish to suspend and I imagine that the Standing Order you had in mind was 68(3) which says that after a member of the States has made the statement, the presiding officer shall allow a period of up to 10 minutes for questions. The difficulty with that is that Standing Order 63(8) provides that neither a question nor the answer shall be made a pretext for debate.

Deputy P.V.F. Le Claire:

I am not asking for us to have a debate, Sir. I am asking for us to allow further questions.

The Bailiff:

If you lift the time limit on question time and there is no time limit on questions, you very quickly get into what is tantamount to a debate. It is a matter for Members. I think what you have to do, Deputy, is to propose that Standing Order 68(3), which is a Standing Order that limits questions after a statement to 10 minutes, be raised for the purpose of questioning the Attorney General without limit of time and that Standing Order 63(8) be raised so that the provision that neither a question nor an answer shall be made a pretext for a debate is also raised. Do you wish to make that proposition?

Deputy P.V.F. Le Claire:

I do, Sir. I do not have any questions myself but I saw that Members did have questions and I think that, given the gravity of the subject, we should lift these Standing Orders, if possible, to allow those questions.

The Bailiff:

Is the proposition of Deputy Le Claire, that the provisions of Standing Order 68(3) and 63(8) be suspended so that the Attorney General may be questioned without limit of time on the statement that he has raised, seconded? **[Seconded]**

Senator M.E. Vibert:

It seems to me that I would support continued questions but I would prefer to hear Senator Kinnard's statement as well and be able to ask questions on both rather than do it piecemeal.

Deputy G.W.J. de Faye of St. Helier:

I would like put the counter-proposition, Sir. I believe the Attorney General has made an entirely comprehensive statement on this matter which is very well understood by the majority of Members and if some Members have difficulty or wish to pursue further questions, I have no doubt, Sir, that the Attorney General would be only too happy to put himself at their disposal for explanations at a later time but I would like to press on with business because I would wish to hear what the Minister has to say on the subject and I think that the aspects of legal interpretation are now effectively over.

The Bailiff:

Before I put the matter to the Assembly for a vote, I ask the Attorney General whether he would be prepared to make himself available for other Members to explain the statement further, should they so wish.

The Attorney General:

Indeed, Sir, reserving my Article 3 rights about torture. **[Laughter]**

Senator S. Syvret:

I would like to make the counter-point to that made by Deputy de Faye. This is the Island's legislature. It is here that we publicly hold the administration of power to account on behalf of the people [**Approbation**] and it seems to me entirely right that when we are dealing with a matter of such potential gravity, and when there are still some ambiguities about the situation, we really should ask further questions.

Deputy J.B. Fox of St. Helier:

I am just questioning whether it is necessary to have an extension at this moment in time. The Minister for Home Affairs has withdrawn her Ministerial Order for the moment and I, for one, and certainly others, I am quite sure, would like to have further discussions with her and possibly the Attorney General and if she is intending to reintroduce, at least it will be done with knowledge and hopefully be done through this House as opposed to a Ministerial Order.

Deputy P.V.F. Le Claire:

In support of the statements that were made by Senator Syvret, can I just ask Members to consider the first paragraph of the statement this morning from Her Majesty's Attorney General. In the second sentence, Her Majesty's Attorney General makes the point that both the headlines and the accompanying reports are inaccurate and potentially worrying to members of the public. He then goes on to say: "I would like to make this statement about the law which I hope will be of some reassurance to the community." States Members are always at liberty to speak to Her Majesty's Attorney General if they wish. He may or may not be willing to speak to them but the matter remains that this statement was made this morning to reassure the community and private discussions among States Members, as suggested by Deputy de Faye, does not address the concerns in public of the community. I make the proposition and ask for the appel.

The Bailiff:

I ask the Greffier to open the voting which is for or against the proposition of Deputy Le Claire that Standing Orders be lifted to enable unlimited questioning of the Attorney General.

POUR: 36	CONTRE: 12	ABSTAIN: 1
Senator S. Syvret	Senator L. Norman	Deputy of St. John
Senator F.H. Walker	Senator T.A. Le Sueur	
Senator W. Kinnard	Senator T.J. Le Main	
Senator P.F. Routier	Connétable of Trinity	
Senator M.E. Vibert	Connétable of St. Lawrence	
Senator P.F.C. Ozouf	Connétable of Grouville	
Senator B.E. Shenton	Connétable of St. John	
Senator F.E. Cohen	Deputy J.J. Huet (H)	
Senator J.L. Perchard	Deputy J.B. Fox (H)	
Connétable of St. Ouen	Deputy S.C. Ferguson (B)	
Connétable of St. Mary	Deputy of St. Peter	
Connétable of St. Peter	Deputy G.W.J. de Faye (H)	
Connétable of St. Clement		
Connétable of St. Helier		
Connétable of St. Brelade		
Connétable of St. Martin		
Deputy R.C. Duhamel (S)		
Deputy A. Breckon (S)		
Deputy of St. Martin		
Deputy G.C.L. Baudains (C)		
Deputy P.N. Troy (B)		
Deputy C.J. Scott Warren (S)		
Deputy R.G. Le Hérissier (S)		

Deputy J.A. Martin (H)				
Deputy of St. Ouen				
Deputy P.J.D. Ryan (H)				
Deputy of Grouville				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy D.W. Mezbourian (L)				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy A.J.D. Maclean (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. Mary				

1.1.10 The Very Reverend R.F. Key, B.A., The Dean of Jersey:

I would want to thank the Attorney General for his statement. My concern, Sir, which he may be able to help me with, is that, as an incredibly eminent lawyer, it took him a number of paragraphs halfway down the sheet and on to the back to explain to us, who have been working at this over the weekend, and read incredibly slowly and deliberately so that we could take it in, what the situation was. We are under no emotional pressure. We have the day before us. Would he not agree, Sir, that sitting in a cell in police headquarters wondering what on earth one’s rights were, that a paragraph set out like this on a statement may be somewhat inadequate, relying on *habeas corpus* and human rights even less so, and that from the, as it were, customer’s point of view, a clear statutory limit would be easier for his legal colleagues to communicate to their clients? **[Approbation]**

The Attorney General:

I think I have answered that question already. There is a clear statutory limit in part 5 which, when the States bring it into force, will set that. The reassurance I was trying to give to the community today was that despite the fact that part 5 is not in force, in fact, the police do not have unlimited rights to detain people. Therefore, the reports that have been made in the media over the weekend were incorrect and members of the public might be concerned about that.

1.1.11 Deputy J.A.N. Le Fondré of St. Lawrence:

As very much a point of clarification here and obviously as a non-lawyer, in the fourth paragraph of the Attorney General’s statement, it stated: “A senior officer can only authorise continued detention for a further period of up to 12 hours if satisfied as to the need to continue detention ... and so on for further periods.” In the statement by the Minister for Home Affairs, which we are yet to have, the first paragraph in italics gives, as I understand it, the original Order and that refers to: “May authorise further detention up to a further 12 hours from the time of the review.” Now, the clarification I seek is that in reading that as a layman, I find there is a conflict between those 2 statements because you have: “And so on for further periods” versus: “A further 12 hours” effectively full stop. Is it that the: “And so on for further periods” is covered elsewhere in the code and we are focusing on one particular paragraph whereas we should be taking the whole of the code, as it were, or does his statement refer to the revised amendment, or is there a further clarification to make?

The Attorney General:

I am grateful for the question. The difficulty in this, which is the one which I tried to explain in the second paragraph of my statement, is that this code was not intended to set down limits for periods of detention. What it was intended to do was to set down processes for procedures for how further extensions of detention would be authorised and that is why it is framed in the way it

is. There may be more than one review of the period of detention while the person is in police custody and if there is more than one review, then the code, as it used to be drafted under the 2004 Order, required that the officer who would conduct the first review would then conduct all subsequent reviews. The difficulty in the question that has just been put to me is that it is assuming that the provisions of this Order prescribe time limits. That is not what their purpose is. They are describing procedures for extending time limits. The time limits themselves are in part 5.

1.1.12 Senator S. Syvret:

In an earlier answer, the Attorney General asserted that either way, whether there was a statutory time limit or whether the situation remained as it is, it would have to be determined in the event of a dispute by going to court. Surely that is not the case. If there is a statutory time limit, the police must automatically release the person concerned when that time limit is reached unless they have reason to detain them and it seems to me that there is a fundamental difference, then, in respect of a statutory limit and then the difficulties involved in the person having to go to court proactively or get their legal representative to go to court to gain their release. So I would like him to explain that point. Also, it seems to me that the Attorney General places a great deal of reliance upon the right of a person to apply to a court either *habeas corpus*, human rights, *et cetera*, in order to gain their release. As the *Partie Publique*, as I think he described himself, responsible for many justice issues, will he now give a guarantee to the Assembly that anyone detained for longer periods of time will have guaranteed access to the courts and to lawyers 24/7.

The Attorney General:

Leaving part 5 aside for the time being, the States could pass a law which said that the police must not hold somebody in detention for more than 4 days without presenting them to a court. If the police then held somebody in detention for more than 4 days, what happens? How are the person's rights protected? He applies to the court. Under Human Rights Law, the individual has a right not to be detained for more than 4 days without application to a court. How, then, is the right protected if the police detain him, despite that Human Rights Law? The answer is he has to apply to the court in both cases, so there is much to be said in a statutory framework, no doubt for many of the reasons which the Dean advanced. That statutory framework does exist in part 5. There have been some difficulties with it, which is why it has not yet come into force and that will be tackled later, but in the absence of it being in force, the protection is still there for persons who are in police custody. Will I give guarantees that...? I am not sure what guarantees I was asked to give but it struck me that they were in rather wide terms.

Senator S. Syvret:

I am happy to clarify them, Sir.

The Attorney General:

Please.

Senator S. Syvret:

The Attorney General places great reliance on the ability of a person detained to apply for their release to the courts. It seems to me that if that is indeed to be the backstop that people are expected to rely upon, it follows they must have, then, full access to the apparatus of justice and therefore 24 hours a day 7 days a week access to legal advisers and, indeed, to the court.

The Attorney General:

I think the question of 24/7 access to a court has been one of the problems underlying the bringing into force of part 5 of the P.P.C.E. and this really is a matter more for the Minister than it is for me. What I am certainly able to say is that when a person wishes to bring their

application to the court, I am quite sure that the court will do everything in its power to ensure that that application is heard promptly and when I say “promptly”, I mean very promptly.

1.1.13 Senator S. Syvret:

May I ask a supplementary question? The Attorney General suggests that if the police held somebody beyond a statutory period of time without charging them, the person would still have to go to the court for release. Certainly, it is true that they could go to the court but, presumably, if there is a statutory limit on the amount of time a person can be detained without charge and the police breach that, the police, then, are breaking the law and it seems to me that puts an entirely different complexion on the situation.

The Attorney General:

The police are, of course, subject to the law, as all of us are, and they are subject to that law whether it is a statutory law or whether it is the European Court of Human Rights directions as to what is unlawful or not. They are a public authority under the Human Rights Law so the position is, to my mind, 6 of one and half a dozen of the other as far as the police are concerned, but that is not in any sense to say that it is wrong to have statutory limits. The States have already adopted statutory limits. The point I am merely making is that the protection for members of the public is there at the moment.

1.1.14 Deputy G.C.L. Baudains of St. Clement:

It does seem to me that without a statutory limit on detention, the onus is on the detained person to obtain his or her own release while with a limit, the onus surely must be on the police to work within the time limits and it also, to my mind, has a secondary advantage of encouraging the police to work as quickly as possible, a pressure absent from a situation where further detention is available. Does the Attorney General not agree that a statutory limit would remove the uncertainty from a person who will be under stress at the time and instead give certainty and clarity to that person?

The Attorney General:

I have already answered this but there is no lack of certainty about the 4-day rule and to the extent that there might have been any police officers who thought there was a lack of certainty, I am quite sure that the debates that have taken place, the questions and answers given today, will make it quite plain what the position is. There is a maximum on police detention of 4 days following which the police would be acting unlawfully if the person has not been brought before a court. So I think there is certainty in that respect.

1.1.15 Deputy P.N. Troy of St. Brelade:

I would like the Attorney General to confirm that, in general, if someone is being detained for 3 or 4 days at the police station, it would normally be for quite a serious crime. It would not be for a low-level crime, as such, so could he confirm that that is probably the way in which that detention would be operated, that it is for serious crime levels rather than lower level crimes and also could he give a programme for the implementation of part 5 which is currently not in existence. What is his timescale, does he feel, for that coming forward?

The Attorney General:

As to the second question, that is a matter, respectfully, for the Minister for Home Affairs rather than for me. The first question is probably also more for the Minister for Home Affairs than for me because I am not accountable or responsible for the performance of the States of Jersey Police but, of course, I share the views of the Deputy that it is very unlikely that the police would want to detain someone for 4 days if they were investigating a parking offence and, of course, it is bound to be a serious offence.

1.1.16 Deputy J.G. Reed of St. Ouen:

In paragraph 2 of the Attorney General's statement, he speaks of the present situation which is that: "Other than in relation to terrorism, there are no statutory limits to detention before charge." Would the Attorney General be good enough to highlight what the statutory limit is relating to terrorism?

The Attorney General:

It is 48 hours' detention brought before a court and then, as far as I recall, it is 7 days when authorised by the court.

1.1.17 Deputy K.C. Lewis:

Anybody visiting London at the moment, Sir, will not fail to notice opposite the Houses of Parliament and Parliament Square that there is a demonstration by of a man complaining about injustices against the Iraqi war. It is illegal to have demonstrations there but one can apply for a temporary permit which they are entitled to. The gentleman concerned has a filing cabinet full of temporary permits which he submits every 7 days and he has been there 2 and a half years. It is just a matter of clarity, Sir, that if the inclusion was up to a maximum of X days, that will sort out the whole problem. Does the Attorney General agree that there must be clarity?

The Attorney General:

I am all in favour of clarity, Sir.

1.1.18 Deputy C.F. Labey of Grouville:

This is quite a difficult issue to understand. I might not have this right but just to put my point across, would there be an issue here if the courts, albeit with a skeleton staff or emergency type of arrangement, were prepared to sit on a Saturday or a Sunday?

The Bailiff:

I am wondering if that is a question for the Minister for Home Affairs rather than for the Attorney General. Does it arise out of the Attorney General's statement?

The Deputy of Grouville:

Well, I think so because I cannot see that there would be an issue if the person was able to be charged or let go so I think it is a question for the Attorney General.

The Attorney General:

What is under discussion here is detention before charge rather than detention after charge so once a person has been charged, the law is that that person must be produced promptly to the court. I think it is under the 1864 law and criminal procedure the expression is *aussitôt que possible*: as soon as possible. That is the current position. What we are considering here is police detention before charge and ... I am sorry, Sir, I have now forgotten what the question was. Saturday courts it was, was it not? One of the issues which is engaged in detention before charge bringing a person before a Magistrate is the problem which arises from constituting the court from having the Magistrate on call 24 hours a day 7 days a week, whether or not the court staff are going to be available to be brought on for recording equipment and so on, these are all matters, frankly, which are for the Minister for Home Affairs rather than for me to deal with.

1.1.19 Deputy F.J. Hill of St. Martin:

As Jersey does not have a lay visitors scheme, is the Attorney General satisfied that there are sufficient safeguards at the police stations to ensure that those who are in custody will have access to the proper legal advice.

The Attorney General:

As far as I am aware, Sir, there is no doubt that there is access to legal advice. The Jersey Law Society does provide legal aid, there is a duty rota scheme as a result of which lawyers are on hand to advise persons in police detention. I believe that, therefore, does take place. The lay visitors scheme is something I am more inclined to think of in the context for the prison rather than police headquarters but, of course, insofar as the moment of charge is concerned the Honorary Police and Centeniers do just the exercise which lay visitors would do to make sure that a person has got no complaints about his treatment. Again, I come back to the answer I gave to the Deputy of Grouville, that this is really more concerned with detention before charge rather than after charge.

The Deputy of St. Martin:

Could I just clarify the point that I do not wish to correct the Attorney General, but the lay visitors scheme is not anything to do with police? The purpose of a lay visitors scheme is have independent people come around the police station. One could hardly say that Honorary Police are independent even though they may be separate from the actual States police force.

1.1.20 Deputy R.G. Le Hérissier:

Recently there was a very highly publicised case where a person was arrested and could presumably have fallen foul, so to speak, of this particular process. Would the Attorney General comment on the fact where people are arrested and, in some cases, subsequently released why is there not a procedure in place where these people are asked if they would voluntarily attend at the station, and admittedly if they were not to attend there would be the possibility of arrest? Why is the process of arrest used with all the subsequent problems of finding people “guilty” before the process has run its course?

The Attorney General:

The question of whether to arrest or not is an operational question for the police and it is really not one for the Attorney. There will be occasions when, in the exercise of their operational judgment, the police think it is appropriate to exercise their powers of arrest and there will be others when they will invite persons to attend at police headquarters for interview. Really, I am not sure I can add to that. It is a matter for the police.

1.1.21 Deputy A.D. Lewis of St. John:

I wonder if the Attorney General could clarify something. That the situation with regard to the current Order that is causing Members some concern, was a result of an Order that was passed by the previous Committee and not therefore what, as some Members have suggested, that this is a result of the Ministerial system, and that that is at fault. Could he just clarify that the thing that is concerning Members is a result of an Order that was passed some years ago and not as a result of any change that has been made recently?

The Attorney General:

I think I take the fifth, Sir.

1.1.22 Deputy P.V.F. Le Claire:

I did say that I was not going to ask a question but I think in defence of the question period it has been quite useful to ask Her Majesty’s Attorney General the questions that we have, and I thank him for his fortitude or strength in carrying on with his answers. I would just like to ask him this question. Given that questioning can occur under operational procedures this morning on an ongoing basis, one that we even question about whether or not that is appropriate, if somebody is detained in Jersey today, at the same time that question time began today, and then he is technically able to apply for release to the Royal Court on Saturday morning, they could technically be held for a further 2 more days during that detention until Monday morning, when they could apply. Would they then be able to be continually questioned under the law by the

police in an operational way? Would those people that are arrested on a wrong day be able to be continually questioned under the operational guidelines within the law for those extra 2 days, or would questioning be suspended until they were able to apply to the court when the court was able to sit?

The Attorney General:

The codes which have been promoted and to which the police have been working for a long time, even before the Order of the Home Affairs Committee in 2004, do provide guidance for how the police should go about the detention of suspects before charged, what they should do to make sure meals are available, to make sure there are breaks in the question periods and so on. Ultimately, the reason that the police are questioning the suspects is because they hope to bring a charge before a court. It is the suspects' answers to those questions which the police want to get before the court. The court always has the power to reject, to not to allow the evidence of those suspects' answers to be given if it thinks that the answers have been given under some form of compulsion, answers given which do not truly reflect what the person would have wanted to say. There was a case involving a man called Prager many decades ago when the court held that his will had crumbled because he had been held in police custody for such a long time and subject to such extensive questioning that what he said was not reflective of anything that was credible. Therefore, the admissions that he made after a very long period of police custody were not admitted and his denials that he had put forward up to that point were admitted. So, the control of the matter ultimately lies in the hands of the court. As to the management of the police side, if there is no prosecution or if there is a complaint to the Police Complaints Authority or to the police about the way in which the police have dealt with the investigation that, of course, will be investigated and the ordinary rules which are set out in the codes will be applied against the conduct of the police officers conducting that investigation, which is a further protection for those who are taken into police custody.

Deputy P.V.F. Le Claire:

Can I thank Her Majesty's Attorney General for the extensive question period?