

STATES OF JERSEY

Education and Home Affairs Scrutiny Panel Quarterly Meeting with the Minister for Home Affairs

WEDNESDAY, 8th JULY 2009

Panel:

Deputy R.G. Le Hérissier of St. Saviour (Chairman)

Deputy T.M. Pitman of St. Helier

Deputy M. Tadier of St. Brelade

Witnesses:

Senator B.I. Le Marquand (The Minister for Home Affairs)

Mr. S. Austin-Vautier (Chief Officer, Home Affairs)

Also present:

Ms. S. Power (Scrutiny Officer)

Ms. E. Liddiard (Scrutiny Officer)

Deputy R.G. Le Hérissier of St. Saviour (Chairman):

We are now on formal recording so I would like to welcome our guests for the quarterly meeting with the Minister for Home Affairs and, for the purposes of the recording, I will introduce myself, Roy Le Hérissier, Chairman, Deputy of St. Saviour.

Deputy T.M. Pitman of St. Helier:

Deputy Trevor Pitman, St. Helier No. 1, Vice Chairman.

Deputy M. Tadier of St. Brelade:

Montfort Tadier, Deputy of St. Brelade.

Senator B.I. Le Marquand (The Minister for Home Affairs):

I am Ian Le Marquand. I am currently the Home Affairs Minister.

Mr. S. Austin-Vautier (Chief Officer, Home Affairs):

Steven Austin-Vautier, Chief Officer, Home Affairs.

Ms. S. Power (Scrutiny Officer):

Sam Power, Scrutiny Officer.

Ms. E. Liddiard (Scrutiny Officer):

Liz Liddiard, Scrutiny Officer.

Deputy R.G. Le Hérissier:

Okay, thank you and we have a missing friend. Constable Butcher cannot be with us this afternoon as he is at Planning. I would like to welcome members of the public and welcome members of the media. So, thank you very much. Okay, we have got a series of general questions. If this morning is any example we might run over but we will try and finish in approximately one hour but, as you can see, there is some fairly heavy stuff there so we could well overrun, if you do not mind.

Senator B.I. Le Marquand:

No, no problem.

Deputy R.G. Le Hérissier:

So, what you might call the warm-welcoming question, having now settled into your role and there can be no further excuses, what are your priorities as Minister?

Senator B.I. Le Marquand:

Well, I have got some documents for you. I have just pinned them together which is a revised list of priorities. I have got a copy also for the lady and I basically tried to re-work my priorities. What I have tried to do is they are in time order so that you have got a 2009, 2010 and then some 2011 and then within the years I have tried to give some idea of the relative priorities in my own mind of things. So, if

something is towards the top of a year it is probably viewed by me as more important than if it is towards the bottom. Do you want me to run through them or ...?

Deputy R.G. Le Hérissier:

Well, not all of them but perhaps if you could tell us what you think is very important to you at this particular moment.

Senator B.I. Le Marquand:

Well, obviously I am very much focused on the Sex Offenders Law. We now think we have got the final draft of that, the 32nd draft. In fact, I think you have been provided with a copy of that. Yes, we sent a copy. I would obviously be interested to know if you want to scrutinise any part of that. If you do, if you could do that sooner rather than later because obviously we want to get on with this. Costings of it, we are still trying to work out what it is going to cost. It is going to be more expensive than we thought originally. Our current figures are over £400,000 a year in terms of what it costs, some of which has already been done so it is not an additional cost of £400,000 but there are a number of new posts which are reckoned to be necessary to make it happen. It is the mapper stuff, the co-ordination once orders have been made, and also you understand that when it comes into effect we will have a backlog. I think the figures we reckon there are about 25 people who are previous offenders who would really ought to be very closely looked at but the total numbers we have got is 250.

Deputy R.G. Le Hérissier:

Without getting into massive detail about this Law, Mr. Minister, how will it capture people who are on the Sex Offenders Register in the U.K. (United Kingdom)?

Senator B.I. Le Marquand:

If they come here?

Deputy R.G. Le Hérissier:

If they come here and if they come here without telling the supervising jurisdiction, is there any way of knowing really?

Senator B.I. Le Marquand:

The law requires them to notify upon arrival and obviously if they do not then we are going to be reliant on systems like e-Borders and information exchanges and so on because it is an offence for them not to notify us. So if they are picked up from other information that is coming into the Island and do not notify they will be subject to arrest and charged.

Deputy M. Tadier of St. Brelade:

Is there provision for information sharing?

Senator B.I. Le Marquand:

Yes. That is quite a complicated area where there is going to have to be protocols worked on, indeed the law itself makes provision for time periods for working on protocols as to popular information sharing and safeguards and so on.

Deputy T.M. Pitman of St. Helier:

What type of timescales are we talking about in the first place?

Senator B.I. Le Marquand:

The sort of timescale that we are talking about here would be that we would be lodging as soon as we have got the financial figures. I think we are aiming for a debate towards the end of September, start of October. If it goes through the States then if we estimate 6 months for the Royal Assent and so on, hopefully we can have got all the protocol sorted out during that period so that we can then put it into force straightaway. I would like to get on with this and it is unfortunate that I had to put it back in February. There were issues and nobody had worked out how it was going to be done. The agencies involved have not met together to decide how they are going to operate it so even if we had gone ahead

we would have caught up with problems later on. So, that is that one. Williamson implementation I just put in because obviously I have got a part in that, although it is not strictly my area but I have a keen interest. The Criminal Justice (Young Offenders) (Jersey) Law, as you know we seem to be facing an upturn of offending from under 15s. There are particular problems on that and I am keen now to proceed with getting appropriate legislation in place so that the courts will have some sentencing powers for under 15s to appropriate enforceable orders but also there is a need for amendments to the Children's Law because the provision there, in relation to ... is it secure placement orders?

Mr. S. Austin-Vautier:

Yes, it was secure care orders.

Senator B.I. Le Marquand:

Secure care orders, or whatever they are called, is not right. We were in Guernsey yesterday looking at what they have been doing in relation to the Scottish system and it is very interesting that a number of the issues that I have been saying were wrong in our law, they have put right. They have come across the same issues and solved them and we need to catch up on that.

Deputy T.M. Pitman:

Have you changed your position on the naming and shaming of young people as a possible deterrent to get them into the criminal ...?

Senator B.I. Le Marquand:

Well, courts have got a discretion to do it although the position in law is that they should only do that where they think they represent a risk. I personally am happy with that.

Deputy T.M. Pitman:

It is not used greatly, to be fair, is it?

Senator B.I. Le Marquand:

No, it is not used greatly. I mean, you would have to pass a law to change the criteria.

Deputy T.M. Pitman:

Do you think there is some value in there? As a former youth workers I think there is.

Senator B.I. Le Marquand:

It is a double-edged sword. It can become a badge of honour to some of the youngsters that they have been named or whatever. I am kind of ambivalent on it. I think I am happy with it because of the arrangements of public protection that it is only in that case. It is not going to work with the sort of youngsters that I am talking about who are regularly offending. It is not going to have any effect on them whatsoever. They get to a stage where they really do not care what happens to them.

Deputy T.M. Pitman:

You do not think there would be an impact on parents who do care and might take more of an interest if their youngsters were named?

Senator B.I. Le Marquand:

If you are talking about parents who are looking after their children and who are not keeping proper control of them, yes, it might have some embarrassment factor for them but the vast majority of the people who are regular offenders in the sort of group that I am talking about are not even living with their parents. They have been taken into care and relationships have broken down or the parents are so inadequate themselves that they are doing their inadequate best. I do not see it as a real solution I have to say, but it is arguable.

Deputy T.M. Pitman:

Even with serious, vicious attacks you do not think there is anything to be gained?

Senator B.I. Le Marquand:

That is where the public safety issue would come in. That is a classic where, if you thought that people ought to know: “This is a dangerous child, keep your children away from him”, that would be a proper use of the power now. It is going to have to remain with the courts to decide. The Royal Court has been more willing to use the power than the Youth Court has. I personally found, as Chairman of the Youth Court, there were occasions on which I, sitting on my own, would have but the majority of my colleagues were against me.

Deputy R.G. Le Hérissier:

On the issue of the age of criminal responsibility, you were not swayed by the recommendation of the Howard League, were you, at the end of the day?

Senator B.I. Le Marquand:

No, I am not. Well, in the short term it does not meet the problem anyway. We have got to find a solution to the problem of youngsters under 15 who are regularly offending and who are persistently offending and all systems do this. In Europe they tend to use a civil system and raise the age of criminal responsibility but you still come back to the same thing. You still come back to the same kind of institutions. To do a massive change of the whole system to achieve, effectively, the same results by another means, it does not seem to be worthwhile. There are some interesting things though that came out of our Guernsey visit in relation to the Scottish system because, although I do not think it would be useful to bring it in in Jersey in relation to criminal matters, because of the use of the parish hall inquiry which has been very much praised by all visiting groups, I think there is a strong case for bringing something in on the civil side. I have to say our present system of care orders and so on or secure placement orders from the Royal Court is tremendously unwieldy. I have great respect for the Jurats as capable, thoughtful people and for the judges but when you are with children you want to be talking to them one to one and engaging with them. It is just not a good system. I think we need to think about maybe bringing in something like the Scottish system which is a tribunal system to which youngsters are referred if they are regularly absconding from school or whatever. They come in either on a civil route

or a criminal route and then if we did have that sort of approach we can make orders and make provisions and so on for them using the civil system. Then we could use the parish hall inquiry system as a route into that as well. So they would come in via a criminal route at a lower level but could then be pushed on to this. I was thinking about it and I mean all 3 of us, myself, Jacqui and Steven, were struck by the fact that although it would not work on the criminal side in Jersey that it could work very well on the civil side. I think it would be well worth exploring that.

Mr. S. Austin-Vautier:

I think the interesting thing also was that, of course, the age of criminal responsibility in Scotland is 8 so, in a sense, it is a red herring and also they retain the option of putting a child who has erred into the criminal route if it is a reasonably serious offence. So, it is absolutely a false thought to think that everything goes to a hearing and nothing is ever dealt with as a criminal matter. What they have is options and that is always a good thing.

Deputy M. Tadier:

Minister, what is your preferred age of criminal consent? Sorry, criminal responsibility?

Senator B.I. Le Marquand:

Criminal consent? I am trying to get my head around the concept of criminal consent. Criminal responsibility, I think with our present system 10 is okay. I think that is okay. You must understand I was coming across 11 year-olds who were already very persistent offenders and so that can be a real problem. Unless we are going to totally redesign our system ...

Deputy M. Tadier:

So, essentially you are saying at the age of 10 someone knows the difference between right and wrong?

Senator B.I. Le Marquand:

Yes. It raises the question about low intelligence and so on. You have heard me, I think, at one or 2 of

the schools and there is a difference. You get a person of really low intelligence but they understand right and wrong. So, the difficulty with youngsters is that throughout adolescence they do not understand the significance of some of the things they are doing. I do not understand why but they do not.

Deputy T.M. Pitman:

The same as States Members.

Senator B.I. Le Marquand:

I am sure that is so. [Laughter]

Deputy M. Tadier:

I am sorry I did not follow that. Hopefully it is not too much of an open question but it is a slightly philosophical one. Presumably if someone at the age of 10 knows the difference between right and wrong then why should there be any difference in the way that they are punished or they are given justice compared to an 18 or 25 year-old?

Senator B.I. Le Marquand:

All right. Well, the reason is partly because they are very young and they change very quickly. Youngsters can change astonishingly quickly for good or for ill. Six months later they can have got in with a bad crowd of people and got in trouble or, alternatively, 6 months later they may have been before in a bad crowd and they have totally changed. They have the capacity to change very, very quickly but also the other difference is that essentially the emphasis has got to be on helping them to change. There is a debate that blows around as to the use of the word “welfare”. I prefer the term “in the best interests of the child” because that includes a concept of helping them to break habits of wrongdoing and so on and so forth. There are very clear differences on all sorts of levels, psychological, developmental, ability to change rapidly, et cetera, et cetera.

Deputy M. Tadier:

So, presumably in older age there is not the same focus on the ability to change one's behaviour.

Senator B.I. Le Marquand:

No. That is why we want to do more positive stuff but it takes longer. It simply takes longer and the methods we need to use are different.

Deputy R.G. Le Hérissier:

Okay, thank you. We will just conveniently divert from the list of priorities to what are your next items to do with the management and operation of the police, so I will ask Deputy Pitman to lead on that.

Deputy T.M. Pitman:

Indeed, I am sure everyone will be piling in. What are the current management issues within the police service and, following on from that, how are you dealing with those issues?

Senator B.I. Le Marquand:

Yes. I wondered in what sense you meant management issues because I have got some stuff prepared in relation to proper systems of control of information and intelligence and that sort of thing but I did not know if that was the sense in which you meant that. Management issues is just such a wide term, I did not know what you wanted me to focus on.

Deputy R.G. Le Hérissier:

I think probably both, Mr. Minister: management in the sense of how are you managing, in the broader sense, the police and holding them to political account and secondly, within the police service, what do you observe of the management issues that they are coping with at the moment?

Senator B.I. Le Marquand:

Okay. It is my role ultimately to set policy. I found that difficult in the short term because I am

obviously in a situation where I am dealing with the Acting Chief and not with the Chief so I have held back to a degree in terms of engaging too much in trying to change the general policy directions, but it is undoubtedly my role to set overall policy for the police and it is their role to carry it out. Now, in relation to operational matters that is their function. It is not my function to intervene and you have heard me in the House saying: "No, I cannot get involved at this stage. This is an operational issue." That is not just an excuse. That is important, it is a constitutional principle but once the dust has settled it is open to me to investigate any operational matters, the way they have dealt with it, to check that it was dealt with properly and to try to learn policy issues from that. I personally get on extremely well with the current acting management. I think we have a good relationship and a relationship of mutual confidence and trust but that does not mean I am not going to check into things. For instance, I have requested a report from senior management on how they handle sensitive information and confidential information. I believe the House would want me to be doing that. It is important that I look at what their systems are so that I can report back whether or not I am satisfied. I have done the same thing, incidentally, in relation to the Customs and Immigration people because obviously in their drugs area they are obtaining confidential information and also in immigration and so on. So I am actively engaging with checking that they have proper systems so that something like Operation Blast cannot happen again. In wider management issues, obviously there are issues in relation to confidence in senior management but below the level of the current Acting Chief and Assistant and I think it is likely that there may be some moves shortly in that regard but I actually do not want to say too much about that. There are complex issues. That was bound to be seen as a result of Operation Blast, apart from anything else.

Deputy T.M. Pitman:

Speaking on from there, can we ask you if there are any issues within the police service beyond those that you have already placed in the public domain? It would seem that clearly there are.

Senator B.I. Le Marquand:

There are issues of performance of individual officers, of course, at any given time. The structure in

relation to that is that disciplinary matters are a matter for the Acting Chief Officer. Alternatively, they come in via the Police Complaints Authority. I do not, strictly speaking, have a role in relation to either of those except to ensure there are proper systems and fair systems in place for that. There are still issues, stressful issues in the back of my mind in relation to culture, in particular.

Deputy T.M. Pitman:

Could you enlarge on that?

Senator B.I. Le Marquand:

Well, I expressed concern some time ago as to whether there had, at times in the past, existed a culture of bullying. This may, of course, be an individual matter but there are still concerns. There are still issues that need to be looked at there.

Deputy T.M. Pitman:

You have touched on the matter of Operation Blast and, as you probably anticipated, we would like to know if you are aware that the Attorney General himself was aware of the files that were being kept on States Members. Can you answer that?

Senator B.I. Le Marquand:

I have no reason to believe that.

Deputy T.M. Pitman:

You have reason to believe that?

Senator B.I. Le Marquand:

No, I have no reason to believe that. You must understand that my sources of information, at this moment, are limited pending a full investigation, which is likely to be undertaken by the Wiltshire Police. There are 3 aspects, potentially, of that investigation: one would relate to the role of the Police

Chief, one would relate to the role of other officers and one would relate to whether or not there are criminal offences. It has taken a bit of time to set this up correctly. My other source of information, of course, is a document sent to me by the Police Chief which appears to have been leaked to the press on the same day as I got it. I can talk about that because he has raised confidentiality on that and it does not include any suggestion of involvement of law officers in any way.

Deputy T.M. Pitman:

Yet it does refer to other individuals.

Senator B.I. Le Marquand:

Well, it refers to a number of other individuals in different contexts. What is peculiar about it is it does not provide an explanation of Operation Blast. There is information about allegations of things which were said to have occurred but they fall short of the validation of any requests for criminal records or the formal keeping of files.

Deputy T.M. Pitman:

I am sure that my colleagues will want to come in but can I just press you. To what extent does that memo lead you to believe that there were instructions from above, as it were, to implement Operation Blast?

Senator B.I. Le Marquand:

Well no linkage with Operation Blast as such. What you have got is some information about the different reasons for files having been kept on certain matters and then you have got a suggestion that there was a general request to keep an eye on States Members or people who are potential Ministers or whatever, a general request of that sort of nature, and in that context 2 people are mentioned but then the document then does not go on to say: "Well, we did it by doing Operation Blast." It does not provide any linkage.

Deputy M. Tadier:

Can you clarify who those 2 Members are?

Senator B.I. Le Marquand:

Yes, yes, Frank Walker and Bill Ogley.

Deputy R.G. Le Hérissier:

Just reverting to broader issues, when you say, Mr. Minister, that there are, in your view, cultural issues within the force, without in any way undermining management, do you ever hear informally from the ordinary constable in the force?

Senator B.I. Le Marquand:

Yes, I do occasionally get emails from people and information about things which have happened in the past.

Deputy R.G. Le Hérissier:

What sort of issues do they raise? Have you found a theme to their issues?

Senator B.I. Le Marquand:

Where there have been complaints there have been bullying type allegations. Also I meet the police officers in other places and at other times and one tries to have a general chat with people to get a feel as to what is going on. I expect I would do that even if I was not the Home Affairs Minister.

Deputy T.M. Pitman:

One other point relating to the files, if I may: were you put under any pressure to suppress information regarding those files, i.e. keeping them from States Members?

Senator B.I. Le Marquand:

No. No, I thought I might be but I was not. There was absolutely no suggestion from anybody that I should do anything other than go public. Obviously I took advice from a variety of people as to how to go public and so on but, no.

Deputy T.M. Pitman:

Long term you obviously must think this is a positive move, and, indeed, we would all agree with you that they should be made public, but do you think there is a negative impact on the police by the existence coming to light?

Senator B.I. Le Marquand:

Yes, I think there must be and you inevitably start some about the public concern. Yes, it has affected me, yes. Sorry, I have lost the question.

Deputy T.M. Pitman:

The negatives, any negative impact on the police by these coming to light, lack of confidence for the public?

Senator B.I. Le Marquand:

I think that is inevitable. I think it was inevitable that whatever the reasons for this there would be damage done to the reputation of the police. I knew that.

Deputy T.M. Pitman:

It will only be resolved ultimately by, in your opinion, what measures?

Senator B.I. Le Marquand:

I think obviously in the short term I am checking that they are operating according to correct procedures. I have got my senior people trying to check there is not anything else that would be of public concern. In the long run or in the medium run I recognise we need to set up a structure which is

not so dependent upon the capabilities of the Minister and also so dependent upon the capabilities and integrity of the senior police officers. I think that is important, the structure of the police authority, how that is going to work, how that is going to relate. I think you have to get the right structures for long term because you may not always have the right people.

Deputy T.M. Pitman:

One further question and I will shut up. Have you yourself seen any indication to verify perhaps the rumours that are going around, and they are going around, that there are files kept on people who are politically active, not necessarily States Members but wider surveillance? Have you seen anything to suggest that is true?

Senator B.I. Le Marquand:

Well, I need to qualify that. Not in the sense of Operation Blast but then is confidential information kept on people for legitimate reasons? Some of it comes through the national police system and would be shared, Jersey would share, and there is secret intelligence shared on people for a variety of ...

Deputy T.M. Pitman:

But what is a legitimate reason? The fact that Joe Bloggs is a member of such and such a pressure group to me is not a legitimate reason and I am sure you would agree with that.

Senator B.I. Le Marquand:

That would not be a legitimate reason itself unless there were issues of national security or they feared that they might go and blow up Grosnez Castle or whatever as a protest matter.

Deputy M. Tadier:

But like my colleague said, presumably national security in the Jersey context could relate to the finance industry and so if someone was to see it as being a threat to the finance industry and they were seen to be political, as my colleague has just said again, maybe steps could be taken to ensure that that person

did not get elected.

Senator B.I. Le Marquand:

I would not see that as being proper. I would not have thought that sort of information would be coming through from a national source. The fact that someone may not agree with the kind of political thinking is not a reason to keep information on them. It is only if you have suspicions of criminal activity that might flow from that in some way.

Deputy M. Tadier:

If I can follow on with a couple of more questions that I would have asked as I think it is probably very topical, certainly at the moment. There are presumably lots of secret investigations and files that are kept, for whatever reason, which if the public or even States Members found out about there would be a huge outcry about. So the question I am really asking, I would contend that what has surprised Members is not particularly so much that the files are being kept but it is that they have been released at all. I think it would be helpful if you could maybe just clarify very quickly the circumstances under which this file almost seems to have dropped into your lap. For those of us with more suspicious minds, it does seem very strange.

Senator B.I. Le Marquand:

I do not agree with your premise that there would be secret information and files which would horrify the public. I would expect there would be all sorts of secret information on people who were suspected of being drug dealers or criminals in various different ways and all that would be entirely proper collection of information in relation to indications from people that their next door neighbour regularly drank and drove. All that would be quite properly collected information. There are very clear protocols, so I have been told. I could read out the details of it and I am not sure I even understand it at this stage as to that. I have now made the mistake of answering the first part and forgetting the second again. Sorry, what was your main question?

Deputy M. Tadier:

The essential point is what I am contending is that one is not surprised that such files are kept or have been kept. What one is surprised by is when the secret files become leaked for whatever reason or that the information that comes ...

Senator B.I. Le Marquand:

I find it highly surprising that such files were kept, particularly criminal records of people without there being any suspicion of criminality on their part. That offends me deeply and my sense of proper operations of the police force. I have to say, I do not think anyone would really dispute that. All I can say is that the initial source of information was the Solicitor General because the Acting Police Chief first of all shared matters via the Law Officers Department and that is the route it came in to me. It came in in very general terms. When I first got information it could have been just a filing system with contact numbers and so I decided to write back and said: "Look, please tell me more before I start initiating any investigations or anything on this." There was then, unfortunately, a misunderstanding as to where the source of the information was, the S.G. (Solicitor General) having thought it came from the Wiltshire Police whereas in fact it came from Mr. Walker and why there was a misunderstanding. So, there was a gap in time before the information came back from the S.G. which alarmed me. I then asked the S.G. if he would actually go and look at files for me, sample files, so that I would be in a position not only to say that Mr. Walker was telling me this was here but also that the S.G. had independently looked at them. So that is the route it came in.

Deputy M. Tadier:

I guess if we are to talk more candidly, is there any indication that these files being released represented a convenient opportunity to slur Graham Power and Lenny Harper which would politically maybe make sense?

Senator B.I. Le Marquand:

Well, it would require a forgery of the documents, would it not? That would have been an extraordinary

thing to do.

Deputy M. Tadier:

I am not saying that the documents were forged but I am saying that the fact that it was released ...

Senator B.I. Le Marquand:

The fact I released it?

Deputy M. Tadier:

The fact that the documents, some secret documents which presumably were secret, were released conveniently. Some people would see that as being timed in such a way as to denigrate Graham Power and Lenny Harper. Those are not my words but there was a suggestion as to the timing of that.

Senator B.I. Le Marquand:

The alternative is, you are saying, that Mr. Walker, upon becoming aware of the stuff, should have suppressed it. That is effectively what is the alternative and that would have been totally wrong.

Deputy R.G. Le Hérissier:

Okay. Well, you may come back later, Monty. So can we move to the next item which is anti-discrimination legislation, Monty.

Senator B.I. Le Marquand:

Yes.

Deputy M. Tadier:

Yes, when will the anti-discrimination legislation be brought to the States?

Senator B.I. Le Marquand:

I have got it down in my list for action starting some time later this year. We still do not seem to have resolved issues in relation to how it will be run through a single tribunal combined with the Employment Tribunal. We need to resolve those issues and then start redrafting. There are now a number of delaying factors with this but I think it is right to get on with the law and get it in place. I mentioned last time I was here, which unfortunately was misreported so alarmingly by the press, that we did not have any law drafting time for 2010 for the first set of regulations and you will see that that is put into 2011, it is item 28. There is also a financial issue now because as part of the current round of savings I have accepted that I will not have any money in 2010, and indeed a reduced sum of £100,000 in 2011 and thereafter. So I could not bring it in earlier anyway; I would not have any money to do it.

Deputy R.G. Le Hérissier:

Did you resolve the human rights issues around the Anti-Discrimination Bill or Law?

Senator B.I. Le Marquand:

I am not sure I know what those are.

Deputy R.G. Le Hérissier:

Sorry, I may have got the wrong law. Perhaps it is the Sex Offenders Law.

Senator B.I. Le Marquand:

I think it might have been the Sex Offenders Law.

Deputy R.G. Le Hérissier:

But I do remember one you said that there were human rights issues.

Senator B.I. Le Marquand:

Yes, the Sex Offenders.

Deputy R.G. Le Hérissier:

Okay, we will come to that later.

Senator B.I. Le Marquand:

Yes.

Deputy M. Tadier:

I think we all, to a greater or lesser extent, think anti-discrimination legislation is desirable, sometimes more than others, but I would say, as a panel, we are quite worried at how low it is down the list. I know you have given an explanation but it is, 11th, is it not, on part 8 on your list of priorities?

Senator B.I. Le Marquand:

It does appear quite low down my list of priorities for 2009, yes, and that is partly because of the fact that even if we do rush it in 2009 we are not going to go off and do anything on the regulations until 2011. So, there is no great advantage in rushing it through and then getting stuck at the next stage.

Deputy M. Tadier:

So it is mainly a practical consideration?

Senator B.I. Le Marquand:

Yes, it is. It is, yes, and also, in a sense, I have looked at major pieces of legislation and Sex Offenders is my first but if you look down the list of major pieces of legislation you will see a provision at part 5 of P.P.C. (Privileges and Procedures Committee) on the list and the Police Bill is my next, which we are almost ready to go on that as well, and you will see discrimination is the third in terms of major pieces of legislation. So it is quite high in my priorities; it is just there is a lot of other stuff in between.

Deputy T.M. Pitman:

Obviously you have got a 6-year term, lucky you, but when would you hope to get that through in 2011?

Senator B.I. Le Marquand:

We get a lot of drafting time in 2011 which presumably means the Law Draftsman starts drafting at some time during 2011.

Deputy T.M. Pitman:

The reason I ask that is I think it is something that is important. Certainly in the last election I am aware that one, thankfully unsuccessful, candidate in the election had to be challenged on defacing another candidates' posters which was a racial issue. I would certainly hope that for the next election legislation is firmly in place so that can be followed up, hence the question on 2011.

Senator B.I. Le Marquand:

They could charge the person with malicious damage if they had found them and argue it was racially aggravated. If they found the person who would need ...

Deputy T.M. Pitman:

You do not think that would sit better though within the proper anti-discrimination legislation? That is the way I certainly would look at things.

Senator B.I. Le Marquand:

Yes, of course, you can treat existing offences as racially aggravated and as being more serious for that reason.

Deputy M. Tadier:

Is there also currently a law about incitement to racial hatred or whatever the wording would be for that?

Senator B.I. Le Marquand:

No, this will not do that either, I do not think.

Mr. S. Austin-Vautier:

That is a piece of criminal law and there is an early draft but it has been held back pending the future of the discrimination law but there is such a draft.

Deputy R.G. Le Hérissier:

Okay, we will move on. We are going through the different lists of legislation in waiting, so to speak. We have had a position paper on vetting and barring. Where is that up to in terms of comparatives?

Senator B.I. Le Marquand:

We have first of all got to block the hole that has opened up and that, by virtue of the change of systems in the U.K., unfortunately they changed the system yet again without considering the effects on us and without a piece of legislation over there we would start to lose our access to the wider information. We would still have access to criminal records. So that is the first thing that has to happen. The second thing that has to happen is (I will turn to my notes) part 5 of the Police Act which is going to be extended to Jersey and we need to bring that for approval by the States. I think the constitution position now is the States approve things and request that there be an Order in Council put in place extending the Act. This is a U.K. Act that needs to be extended to us. That then gives us continued access to the criminal records aspects; is that right?

Mr. S. Austin-Vautier:

Under the Criminal Records Bureau which gives us access to the barring list.

Senator B.I. Le Marquand:

Okay, so we have to do those 2 things first of all. That is just to keep us where we are, as it were, because of the changes which have happened elsewhere without consultation with us and then after that we have got our own larger piece of legislation which we are intending to go with in ... I think we have to go with in about October 2010. The stance that I have been taking is that we need to buy into the

U.K. system rather than setting up our own system. There are issues then about appeal rights and so on. Our current thinking would be to give rise to the U.K. system but perhaps to sometimes invite some of their people to come over here to conduct an appeal hearing so that people locally have access. You understand if someone has been barred on the U.K. list and want to appeal against that they may not want to go over to the U.K. to do that. We may need to bring the U.K. panel here.

Deputy T.M. Pitman:

Is that decision, to buy into the U.K., is that also partly financially driven?

Senator B.I. Le Marquand:

The alternative is we would have to set up our own structure and then we would still have to determine how we were going to deal with people who are barred under the U.K. system, whether we were going to have automatic recognition or whatever. It is just much more logical to buy into the larger system and their information, in the same way as we do in relation to criminal records and things like that, otherwise we would just be keeping our own system locally. We need that information with such a large interchange of movement of people from the U.K. over here. There are difficulties and weaknesses of course in relation to foreign nationals coming from other countries in terms of access. The way the system works is basically that whereas at the moment if you want to coach youngsters in one football club and you are also involved in a church youth group elsewhere and you are a youth worker as well, you end up having to fill in 3 sets of forms which are set up by 3 different people for vetting. What happens here is you will be vetted once and you will basically get your status established and your secret code number and people can then go in and check what your status is. It will make life much, much simpler. It will be a reduction of work.

Deputy T.M. Pitman:

I can certainly echo that from my own experience. It makes no logical sense to have vetting of the same person by 3 different agencies. It seems to be not cost effective.

Senator B.I. Le Marquand:

That is exactly what is happening at the moment, yes.

Deputy R.G. Le Hérissier:

You said there, Mr. Minister, there is a gap with foreign nationals. We know, for example, a lot of the residential homes for the elderly are staffed, often to a large extent, by foreign nationals who do, I should say, an excellent job under the most trying of circumstances, but obviously there sometimes is a rogue element. How are you going to deal with that?

Senator B.I. Le Marquand:

They are going to have to apply to be registered under the U.K. system but what I do not know is how accessible records in their own home countries would be even to the U.K. system.

Mr. S. Austin-Vautier:

They will attempt to get criminal records in the same way as if somebody appears in court. There would be an attempt to get what is known about somebody. The real gap is in the other information, which is what went wrong with Soham of course. It is not necessarily what somebody has done but what they are up to otherwise and what else is known that they may be susceptible to. Of course that would be the difficult information coming from Poland or Portugal or anywhere else because that is a very sophisticated line of inquiry.

Deputy T.M. Pitman:

With foreign nationals, what powers do we have to demand information or what powers will we have?

Mr. S. Austin-Vautier:

I doubt that we can demand information.

Deputy R.G. Le Hérissier:

The issue with Sohm - I am sorry and then I will shut up - as I understood it was, the person involved had been interviewed by the police about a series of very serious crimes but it had never come to the point of charging or conviction and the police took a very literal view, apparently on human rights grounds, that as this person had never been convicted therefore they could not report upon this person.

Mr. S. Austin-Vautier:

Well, the Safeguarding Vulnerable Groups Act, which is what is being brought in, makes it a legal requirement to report those things and that information will be available centrally. The trouble there was it was in various constabularies and there it stayed. What the U.K. system will do it will make people subject to monitoring on a continuous basis and that information, in theory, gets updated regularly so if anything comes to light, if the system works properly, then the bells will start ringing about somebody and their status will be reviewed.

Deputy R.G. Le Hérissier:

Good, we will keep moving on. Does anyone wish to raise any further points about the Sex Offenders Law? We will then move to another issue that is not grinding its way but slowly and surely moving its way: user pays.

Senator B.I. Le Marquand:

Yes, we have got 3 areas that we are looking at at the moment. One is the old chestnut of the major events policing. Unfortunately we have just missed the boat in terms of timing on that one again in relation to a particular major event and we will have to come to some arrangement as happened last year. We have produced a policy document. The Council of Ministers has looked at it. One of the Ministers wanted to have further discussions on that before we went ahead and lodged it for approval. But clearly we need to have something in relation to major public events which cannot be policed within the normal policing resources. We also need to have safeguards of course that the assessment of what policing levels are required will be reasonable. So we have come up with a structure in relation to that.

Deputy M. Tadier:

When will this proposition be brought to the States?

Senator B.I. Le Marquand:

Autumn, I think. Some time in the autumn.

Deputy M. Tadier:

Presumably when you are talking about the major event, you are talking about Jersey Live.

Senator B.I. Le Marquand:

I am, yes.

Deputy M. Tadier:

Something that I am interested in - and you have touched on it - is who decides the level of this policing for those types of events or even indeed whether there should be any States police presence at all when you could have private security doing the same job?

Senator B.I. Le Marquand:

As the policy is drafted, it will be a matter for discussion and for debate. If we arrive at a situation of fundamental disagreement, I suspect the Minister will get drawn into it to some degree. It is not just an operational matter. But I do not think it has been a problem in recent times. If we were to have a real tension area it would be if Jersey Live were able to get permission for people to be camping overnight. That would take things up by another level. I think they tried to get that permission but did not get it this year. But certainly that would require a much greater presence and availability because you cannot expect all your police officers to be awake 24 hours a day.

Deputy M. Tadier:

But getting back to the other part of the question, why is it that these events tend to be able to police

themselves in the sense that they will have their own private staff who, I am sure, do a very satisfactory job?

Senator B.I. Le Marquand:

That is part of the negotiations and discussions, is it not, as to what extent they are going to provide that themselves and to what extent you need policing presence and so on? It is part of the discussions. The second area is Customs and Immigration Service immigration fees where we are looking to set a level of fee for things like work permits and so on. But we are looking to set at a much lower level than the U.K. equivalents. Again, that is a matter that will come for approval to the House. That is right, is it not, Steven?

Mr. S. Austin-Vautier:

Sure.

Senator B.I. Le Marquand:

People can say whether or not they are happy with that. Obviously there are substantial costs in relation to these things. Sometimes people are being brought over specifically by employers and, therefore, the cost may be passed on to them. So that is an area. The third major area is the Fire and Rescue Service. I have got a very long paper which I do not fully understand and you will not want me to go into that much detail anyway. But the most obvious areas are work which is done by the fire service in terms of new buildings and plans for new buildings. They have done a huge amount of work in relation to the Waterfront development which may or may not happen, depending on how people vote shortly and thereafter, but they have spent a huge amount of time on it. You have got to ask yourself the question: is it reasonable that the fire service should be spending hours and hours on what are profit-making developments? At the end of the day, why should they not be charging a reasonable charge for the time spent in advising, et cetera, et cetera? Then you have got other issues which are perhaps more controversial in relation to fire certificates on a continuing basis and that kind of thing, whether charges should be made. Currently we have one fireman down per shift on where we should be according to the

independent Scottish report and we have major pressures on finance, both in terms of equipment and otherwise in the fire service. So I am keen that we find appropriate places in which we can make proper charges. All that is very detailed and will come in due course. Those I think are the 3 areas we are currently looking at.

Deputy R.G. Le Hérissier:

Thank you. We now come to another issue which has become prominent of late which Deputy Tadier will deal with: mentally disordered offenders.

Deputy M. Tadier:

What progress has been made with dealing with mentally disordered offenders in the Island?

Senator B.I. Le Marquand:

Yes, this is a really difficult area. We have held meetings with Health and Social Services. I think we are making some progress but I cannot tell you we are going to come up with any perfect solution. There are different categories. There are people who are mentally ill in the short term, in which case we can take them out to the prison and take them to a psychiatric hospital where there will be people keeping an eye on them, guarding them while they are there. They can be then treated for a period. Obviously psychiatrists can come in and assess people within the prison and so on. I think that is okay. That I would put in the general category of just normal illness, if you like, which happens to be psychiatric. The really difficult areas are the people who suffer from long-term psychiatric problems which render them dangerous or the people who suffer from things like personality disorder where they do not have a treatable psychiatric condition but, nevertheless, are strange and laypeople might view them as being psychiatrically ill. If the situation is extreme - and we currently have 2 people probably in the prison or arguably 3 in this sort of category - there are grave difficulties in creating a special secure unit in Jersey. I will explain those. They fall in 2 different directions. Firstly, it is very costly to create a specialist secure unit for psychiatrically ill patients who are going to be there for a long duration, because the numbers are going to be low at times and scale and so on. The second problem is that in the

U.K. they have a whole number of different grades from sort of Rampton and Broadmoor for the really dangerous at the one end down to semi-secure places at the end. They also have different categories depending upon other issues which may exist apart from psychiatric illness in terms of educational issues or ... I am forgetting the name of the other conditions that one gets.

Mr. S. Austin-Vautier:

Personality disorders.

Senator B.I. Le Marquand:

No. Sorry, if I put it into lay terms I will be insulting so I do not want to use a non-technical term. It is not learning difficulties. It is sort of more perception difficulties type of thing.

Deputy M. Tadier:

Behavioural interaction difficulties?

Senator B.I. Le Marquand:

There are a whole bundle of different things. The difficulty we have got is if we try to create somewhere locally (a) it would be very expensive and (b) it just would not meet the specialist needs of people. I think the conclusion that we have come to is that probably we are going to have to settle for a situation in which they are sent away. We currently have one person away and we have 2 others who probably will go. The mechanism for that is they get transferred to a prison in the U.K. and then once there they come under the U.K. mental health regime and they can be transferred out. We have got problems because we do not have a regular statutory framework for this under our mental health law. There are failings there as well. The difficult area if I can say - and I am thinking about a particular individual at the moment, I will not mention his name - is where you have got somebody who is strange, at times perhaps not acutely mentally ill but strange.

Deputy M. Tadier:

Can you define strange a bit more because presumably we are all strange?

Senator B.I. Le Marquand:

It could be a low level personality disorder which could manifest. The person I am thinking of is a person who has had psychiatric difficulties in the past but who is not currently mentally ill but who tends to drink alcohol and when they drink alcohol it affects them oddly. They become slightly psychotic. So they do odd things like take their clothes off in churchyards and other ...

Deputy M. Tadier:

But surely that is hundreds of people on a Saturday night, is it not? **[Laughter]**

Senator B.I. Le Marquand:

They do it in the middle of the day and so on. The particular person I am thinking of is just about manageable with a care package. From time to time they will overstep the boundaries of that and need to spend a period in a prison and then they will come out. But with a good care package and psychiatric nurses relating to them on a daily basis and so on, they can just about be contained in the community. That is a difficult area as to how you categorise people like that. We have a few people like that. In the U.K., we were talking to several psychiatrists and said what would happen with them in the U.K. They said they would probably die because they would not be deemed sufficiently serious to be placed in a long term hospital and they would probably just slip through the care structure, end up on the streets uncared for.

Deputy M. Tadier:

I will just come in with the part you have mentioned about sending people who may have a temporary mental disorder to a psychiatric unit. There have been concerns raised from people in Health that there are various issues with doing that insofar as first of all the nurses who are essentially not trained to deal with mentally ill offenders who might be more violent and more erratic than your regular type of inmate in those institutions. Is there anything being offered? Is there a lot of communication between the

prison, for example, and ...

Senator B.I. Le Marquand:

That is the difficult area. That is exactly the difficult area where even if you do send a prison warder out with them and they rotate on a 24-hour basis, you would still feel that they are too violent to be safely contained. That is a problem. Again I am thinking of an individual - without naming the name - who suffers from bipolar and at times just gets increasingly high and if he does not start taking his medication he is quite dangerous. So it would not be possible to take him out. Interestingly enough, this individual has on a few times gone through the route I have described of being sent back to the U.K. and coming back into the psychiatric services with time.

Deputy M. Tadier:

How many individuals would you need to be sending to these kinds of places in order to justify a secure unit in Jersey?

Senator B.I. Le Marquand:

I think at any given time it is unlikely that we would have more than 3 or 4 people away.

Deputy M. Tadier:

But what kind of numbers would you need to justify building a safe unit?

Senator B.I. Le Marquand:

It is not just the numbers. It is the quality of different grades of care that is the problem. You could never do it. You could never provide the level of particular care that they need for their specific thing. You would end up theoretically if you did it perfectly with about 4 3-bedded units, most of which would have one or no people in at any given time. This is the problem and it would be very, very expensive.

Deputy M. Tadier:

It is a slightly peripheral issue but on this subject of sending individuals up to psychiatric units, I think it has been pointed out that some of the more lucid ones can abuse the system insofar as it is slightly more lax when you are in a hospital as opposed to a prison. It has been suggested that certain prisoners, when they get to these psychiatric institutes, take advantage of being able to access more visitors, for example, and things like and they can play the system.

Senator B.I. Le Marquand:

What, do you mean, they pretend to be ill when they are not?

Deputy M. Tadier:

Yes, basically. They certainly have points where they are more lucid and then they can milk the system. I did not know if you were aware of that or ...

Senator B.I. Le Marquand:

My experience has been the other way round. It is quite hard to persuade psychiatrists that you are mentally ill sufficiently to warrant being hospitalised.

Deputy M. Tadier:

My understanding is though once they are sent there, they may just have bouts and then they will extend the bout. I am not saying that happens all the time but that has been pointed out to me as an issue.

Senator B.I. Le Marquand:

I have no information on that.

Mr. S. Austin-Vautier:

I think if you talk to prison officers who are dealing with the 2 most challenging people at the prison at the moment there is no way they would agree with that because they are persistently challenging. You have got to take your hat off to the staff who are dealing with it at the moment. We have got 3

registered psychiatric nurses on staff at the prison but when it comes down to running the segregation unit it is the prison officers who are doing that. They are having to pull out the stops to do that. These people would be very good actors if they were keeping that up on a 24-hour basis.

Deputy R.G. Le Hérissier:

Thank you. We will continue with the line of questioning on the prison and on a related area. The 2008 Annual Report outlined that there was a 10 per cent increase in the number of prisoners referred to the psychiatrist in 2008. What offending behaviour treatment programmes are run by the prison, in particular by the psychology department?

Senator B.I. Le Marquand:

I have got a lot of information - almost too much information - and I am not sure how I am going to break it down. I have got references to aggression control training groups. I have got references to a drug and alcohol team with offending behaviour work on a one-to-one basis. I have got references to alcohol and drug programmes with a 28-day psychosocial intervention. I have got a reference to a drug and alcohol awareness course, to Alcoholic Anonymous and Narcotics Anonymous who attend the prison on a daily basis. It says: "Interventions are based on cognitive/behavioural therapy, motivational interviews, harm reduction model, 12-step model ..." which is the Alcoholic Anonymous and Narcotics Anonymous approach. I think to paraphrase that, we are doing psychological stuff; we are doing drugs stuff; we are doing the sort of stuff that Probation would do in terms of aggression control and other things of that nature; and we are doing drug addiction type work as well.

Deputy R.G. Le Hérissier:

Obviously there is an incredible variety of programmes, some of which operate on a very different basis to others. In other words, they make different assumptions. Given all this variety of programmes which appears to be very impressive, how do you measure which is successful and which is not?

Senator B.I. Le Marquand:

You asked that question I think recently, did you not?

Deputy R.G. Le Hérissier:

Yes, I know and I never got an answer then.

Senator B.I. Le Marquand:

I did not have a very satisfactory answer at the time in the sense that we were saying we have only just started doing this. I cannot remember the answer I gave you. Can you remember the answer I gave you? **[Laughter]**

Deputy R.G. Le Hérissier:

Basically you were going to ... it was not a question of doing an accrued thing on the basis of all prisoners, did they succeed or not. So much depended on the variables at play in terms of, for example, the background with each prisoner. It is rather like they try and do in schools these days. You try and work out what value added is brought to that prisoner's rehabilitation by a particular programme or set of programmes, which is quite a complex thing to do.

Mr. S. Austin-Vautier:

Yes, and before they go out what you can do ... and there are tried and tested ways of testing a risk of reoffending as to whether the programme is likely to work in the longer run. Clearly once they are released that is more difficult. In fact you hope you never see them again. But Probation do the same thing. They do an assessment of the likelihood of reoffending.

Senator B.I. Le Marquand:

Yes, Probation do the same thing and of course Probation naturally tries to assess the effect of different things. Statistically you can only look at rates of reoffending to get a broader picture but the work of groups like Narcotics Anonymous, Alcoholics Anonymous and so on is, by its nature, not secretive but confidential. In the long run or in the medium term one would hope to start seeing a reduction in the

prison population from people who were local residents. I am very pleased to say that when I visited Guernsey yesterday they have experienced quite a substantial reduction in their prison population.

Deputy R.G. Le Hérissier:

What were the reasons?

Senator B.I. Le Marquand:

This was very interesting. We were very keen to ask them, as you would imagine. There have been a number of reasons. One is that they have had such programmes probably for a little longer than we did although they are still hoping to enhance them. The second reason was, of course, that recently they have taken on board community service as a sentencing option and, therefore, there are people now not being sent to prison who would have been. Of course we are ahead of the game on that one. But the clear reason seemed to be to do with the fact that they thought they had a lot less drug addicts than we did.

Deputy R.G. Le Hérissier:

Really?

Senator B.I. Le Marquand:

Our prison population is very much fuelled by people with drug-related issues, either in terms of being mules or dealers or in terms of acquisitive crimes to feed their drugs habit. I think that is the bottom line. It is also a very interesting thing they told us that they have gone through a period where there had been a massive use in Guernsey of so-called legal highs. So, although people were no doubt blowing their brains out with whatever they were taking, they were not being prosecuted for it. That probably also had some effect. But I think they are just fortunate. For some reason our drug addiction problem is worse than theirs. I asked some questions about the market price of different drugs and they did not know the answers to that but I would suspect the market price was lower and, therefore, there was always a greater incentive to dealers to try to sell into Jersey. But it is interesting because at the end of

the day, whatever approach you have in relation to enforcements, the more successful you are, the higher the market price goes, therefore, the greater incentive there is for dealers to try to break into a more profitable market. So you have a vicious negative circle there. At the end of the day I have almost taken the view that you only ultimately solve the drug addiction problem if you no longer have people who wanted the stuff.

Deputy R.G. Le Hérissier:

You would not go for decriminalisation then?

Senator B.I. Le Marquand:

Okay, Steven has got to go and do something else.

Mr. S. Austin-Vautier:

If I can take my leave, Chairman. I have got a briefing to do.

Senator B.I. Le Marquand:

He is doing something else equally worthy.

Deputy T.M. Pitman:

Can I ask you about the news story last week in Portugal where there have been serious moves made to not prosecute people with drug problems but guide them into rehabilitation programmes? Much to their surprise they found that the drug problem had dropped quite dramatically. Is that something that you feel is worthy of investigation?

Senator B.I. Le Marquand:

In a sense that has already been happening in a sense that access to the Alcohol and Drug Service and to other programmes already exists. I think that the courts, certainly in relation to possession of class A drugs, viewed our role as being there to channel people into such programmes. There is no doubt

whatsoever that if people go voluntarily they are more likely to respond. At the end of the day, when you talk about addiction issues the desire for change has got to come from inside, has it not? It is very hard to impose that externally. When people are in prison obviously what we are trying to do is utilise their desire for change to try and help them and reinforce that. But if you are asking me whether I would be in favour of not charging people, say, who were in possession of heroin or whatever, personally, no, I think they should be charged and we should use that as a means of channelling them into the system. That is what we are trying to do.

Deputy M. Tadier:

I guess there is an argument that they could be charged but not necessarily given a custodial sentence and that the recourse after that could be into a programme of rehabilitation.

Senator B.I. Le Marquand:

That was the general sentencing policy of the Magistrates Court when I was there. I have no reason to believe it has changed.

Deputy M. Tadier:

To what extent are those in prison for drugs couriers or do you ever get the real criminals?

Senator B.I. Le Marquand:

We have probably got a higher percentage of couriers because of the relatively high sentencing tariff for that. Obviously you are going to get people who are there as dealers, as Mr. Bigs as it were within the small Jersey context. You are also going to get people who are there because of robberies committed because they were desperate to get drugs, to get money, or burglaries or whatever. A whole gamut of things there.

Deputy T.M. Pitman:

Yet we see anomalies like a businessman getting just 240 hours community service who was involved in

importation of more than £20,000 worth of cocaine. What message do you as Home Affairs Minister think that sends out? To me that is a highly negative message.

Senator B.I. Le Marquand:

I do not know the facts of the case but I find that a surprising sentence.

Deputy T.M. Pitman:

I think we do not go there.

Deputy M. Tadier:

What would the normal sentence be for something like that? Obviously you cannot talk about the specifics of this case. What would you normally expect to see?

Senator B.I. Le Marquand:

Importation with expectation from a dealer?

Deputy M. Tadier:

I think it had a street value of £24,000 perhaps.

Senator B.I. Le Marquand:

£24,000. I am thinking 3 or 4 years but that could be wrong. One of the problems is I just sent those cases up to the Royal Court, I never had to deal with them myself. I would have thought 3 or 4 years.

Deputy T.M. Pitman:

The businessman did quite well by the sounds of it.

Deputy R.G. Le Hérissier:

Trevor, do you want to follow on with the other questions?

Deputy T.M. Pitman:

Yes, indeed. Will there be any operational difficulties arising from the uniform grades moving to a 37-hour working week in June 2009?

Senator B.I. Le Marquand:

Are you talking about at the prison?

Deputy T.M. Pitman:

They did move in June 2009.

Senator B.I. Le Marquand:

Yes. Fortunately we have obtained additional numbers of staff to compensate for that so that is fine. Obviously there is an increased overall cost. That was part of the deal that was negotiated last year with which effectively they got paid meal breaks which allowed them to be paid for a period when they were not working but were still on the site. That was the effect of that deal.

Deputy R.G. Le Hérissier:

Is the overtime bill under substantial control now?

Senator B.I. Le Marquand:

No, that has come right down of course, again for the same reasons. The increased manpower availability has meant that overtime hours have come way, way down. But I think that is part of the reason we were able to find money for some of the things because we have got to have extra posts but we have got reduced overtime. I have not unfortunately got figures on that. I had not anticipated financial questions. I have got figures on prisoner accommodation but I have not got figures on that.

Deputy M. Tadier:

That probably leads on the next one, does it not?

Deputy R.G. Le Hérissier:

Indeed. Do you want to go with that one?

Deputy M. Tadier:

Once the new accommodation block is completed, how many prisoners will still not have access to an in-cell toilet?

Senator B.I. Le Marquand:

I am not sure, is the answer to that. There will be sufficient in-cell accommodation so theoretically everybody would be okay. But the difficulty is the fact that we are running 2 vulnerable prisoner units. It is possible that we may still have some left in a unit that does not have ... the total numbers with access to an in-cell toilet at the moment is a 107 but we get up to 144 extra so that would take us to 251 and our prison populations are running in the 180s to 190s. But it is a difficulty, as I say, of these small units. We need to get the young offenders out of the young offenders unit somewhere else. Do you understand what I am saying? We have enough but we will not have them in enough different places, as it were, to allow for segregation. I cannot answer that but I obviously hope it is reduced right down.

Deputy T.M. Pitman:

What other programme developments are planned for the prison in the near future?

Senator B.I. Le Marquand:

We are hoping, subject to States approval, to get in the 2010 capital programme the new visitors accommodation/staff accommodation block which again is part of the deal done last year in terms of staff, of them having somewhere to eat. After that it is going to get more difficult in terms of further capital projects. In terms of developments of training and so on I think the only additional thing that I know of there is that we are hoping to be able to link each cell with the training network in a sense.

Each cell at the moment has access to a television and we are going to have to replace in any eventuality because of digital. So the idea is to build in behind them a small computer which will link you in with the training. If you can imagine a prisoner who has reading difficulties, is he going to want to go down to a training block and admit to his mates that he cannot read? It is difficult, it is embarrassing, whereas he may be willing to work in his own cell on a computer on some sort of programme that helps him with reading and writing skills. That is something we are going to try to do.

Deputy T.M. Pitman:

What is your timescale for that, do you hope?

Senator B.I. Le Marquand:

I am not sure. I am not sure whether it is this year or next year but I know that is something we discussed and if finance is allowed we want to do it.

Deputy M. Tadier:

I am not sure if I misunderstood your last point but presumably somebody who is illiterate is not necessarily going to have the computer literacy skills to be able to learn to read using a computer. Would they have another course to become computer literate first maybe by reading a book or ...

Senator B.I. Le Marquand:

I think a lot of people who have got problems with reading and writing skills can play computer games.

Deputy M. Tadier:

I guess it is in the nature of the ...

Senator B.I. Le Marquand:

I understood what you are saying. They have to get to a certain level of operation. But that is the idea because we think there are people who will not go to formal training classes who on their own would

make use of the education, plus there are other advantages as well.

Deputy R.G. Le Hérissier:

Thank you. We come to the last formal question. Montfort.

Deputy M. Tadier:

Yes. Are succession plans in place for appointments to senior positions in the uniformed services?

Senator B.I. Le Marquand:

In some places, yes. In other places, no.

Deputy M. Tadier:

Can you give examples of maybe where they are and where they are not?

Senator B.I. Le Marquand:

The fire service obviously one cannot say what will happen in the future but we have a chief officer who is over here on, I think, a 5-year contract. We have a deputy chief officer who may well have the skills to replace him. That is certainly the intention. In relation to the police force, things are not looking at all good in terms of succession planning, I am afraid.

Deputy T.M. Pitman:

Could you enlarge on that?

Senator B.I. Le Marquand:

Obviously at some point David Warcup is due to replace Graham Power and the latest date for that is the end of 2010 in any event so we are talking about 18 months maximum.

Deputy T.M. Pitman:

But you are not saying that Mr. Power is definitely not coming back?

Senator B.I. Le Marquand:

No, what I am saying is that that replacement will take place within 18 months whatever. But then there will be a need to find a new deputy and I have to say that there is no apparent local person for that and there are, I am sad to say, issues in relation to the ...

Deputy M. Tadier:

Is that a systemic problem, is it? Within the police force is it always difficult to be able to get management material?

Senator B.I. Le Marquand:

I do not want to talk too much about individuals, you understand. I have already hinted that there are some difficulties. But I think you have to start developing people at the inspector level with a view to the future. There is always going to be a problem that ideally you would start sending some of your high flyers away to get training or to work in other forces. They may not come back. They may not come back again or they may not develop in the way that you hoped they would develop. But ideally my own view is you ought to have this one out of the top 3 who has local knowledge. The tendency historically has been to alternate, is to have - Roy can probably remember this better than I can - a locally-based chief. Then everybody said he did not have the experience outside and too inbred and so on and so forth. Followed by a chief from away and everybody said he has some new ideas but he did not understand how things really worked in Jersey, et cetera, et cetera. Then you go back to a local one again. I think it is going to be difficult. I think it is going to be some time before we are going to be able to work through.

Deputy T.M. Pitman:

We obviously have local inspectors. Is it fair to suggest that with all the difficulties that surround the police many locals already in the force would not want the job anyway?

Senator B.I. Le Marquand:

I do not know. We must work with the people we have got with a view to that but it is not looking good there. Prison, unfortunately our number 2 there is due to retire fairly shortly, although there are people at the next level who may well move up, we just have to wait and see in relation to that. The exception is Customs and Immigration where almost the whole department is home grown and they seem to naturally retire and somebody moves up within the organisation. You could say there is a disadvantage to that as well but that is the way that organisation is structured. So the position is patchy.

Deputy T.M. Pitman:

It is probably very true to say that something that really angers a lot of local people is that many top posts are never filled by local products, as it were.

Senator B.I. Le Marquand:

Yes.

Deputy T.M. Pitman:

Obviously you can only talk as Home Affairs Minister but are you happy that we are going in the right direction to change that for the future? As you say, it is looking pretty grim in some areas of prison.

Senator B.I. Le Marquand:

That is what I certainly want to do. Whatever planning there has been in the past in the police force seems to have broken down, sadly.

Deputy R.G. Le Hérissier:

Thank you, Mr. Minister. Yes, that is a worrying area. We will see if the members of the panel have any other areas just to wrap up. I was going to ask you, if I can jump in first: as you know, this story it happens fortuitously in today's *J.E.P. (Jersey Evening Post)* where a member of the public did suffer

greatly in the great wheel clamping matter recently and apparently no progress has been made. There were promises of progress to reform that area. Where is it at as far as you are aware?

Senator B.I. Le Marquand:

Interestingly enough I just looked at it again recently. One of my staff came up with a very good idea, basically which was to adopt the U.K. approach which was to have a code of practice. You kind of make that code of practice enforceable because if wheel clampers will not buy into the code of practice then you do not allow them to have access to the motor registration system. You also try to ensure that private people using their services are also brought into that. This is a very good idea but unfortunately it does not work in Jersey at the moment because we have a problem which is that that system would assume that the law of Jersey was the same as the law of the U.K. The law of the U.K. has basically gone down a line in which providing you put up a notice warning people that if they park where they should not that they are deemed to have entered into a contract to agree to the terms of the penalties contained in a notice. That is the way the law has developed in the U.K. It is a very strange development of contract law because what person other than the completely crazy person agrees to a £200 fine or whatever? It runs rather contrary to one's normal concept of formation of contract. Elsewhere, as in Scotland, they went down a completely opposite route where they almost criminalised wheel clamping for a time. The problem we have got in short to adopting the U.K. code of practice is that you would assume that the law of Jersey approved of the principle of putting up signs and so on and this authorised you to clamp, et cetera, et cetera. We have had no case law on this. When I was a magistrate we were so concerned about what was going on that we got to a point that we were not willing to give wheel clampers a judgment even in default, even if the defendant did not turn up, until we had a test case. The wheel clampers clearly did not want a test case because they had never had one. They kept on giving up if people ...

Deputy T.M. Pitman:

What stakeholders have you been speaking to in trying to improve this matter? I am aware we have even got one member of the public here who has certainly fought his battles with the wheel clampers

and it is a big problem.

Senator B.I. Le Marquand:

Yes. The answer is I have not but we had a consultation process some time ago. Because of the problem with the law, my view is that the way out of this is we have to have a statute unless we can have a case, unless we are going to have a case which is going to determine the law which is what we really want. So if someone is going to be clamped shortly, make sure they fight it through to a defended case if they can so we can get a decision and know what the law is. But, barring that, I think the way to do it would be a statute which would basically establish what principles we were going to apply. We probably would need to go with the U.K. principles and say provided you have put up a sign and so and so you are entitled to penalties not exceeding such and such or whatever. Then basically you then back that up with your code of practice type of approach.

Deputy M. Tadier:

When you refer to the U.K. you presumably mean England and Wales because you have already said Scotland has a different system.

Senator B.I. Le Marquand:

Yes, sorry, I said U.K. I meant England and Wales, yes.

Deputy M. Tadier:

Presumably there is also a compelling argument to adopt the Scottish system in terms of clarity and just say wheel clamping is illegal and that you are not allowed to do it.

Senator B.I. Le Marquand:

This happens to be one of my specialist areas, as you have probably gathered, besides having considered it at the Magistrates because I also did some work to advise a private client years ago by coincidence in exactly the same area so I have some understanding of it. The difficulty is that you have got extremes of

case. On the one hand you have got a person who accidentally parks in the car park next door to what was the old Odeon or Forum or whatever at Mr. Lewis' place thinking it was a car park for the place. Then some wheel clamber comes along and demands some unreasonable sum and they are disabled, et cetera, et cetera, and they are rude to them and threaten them. I am painting the worst scenario. Okay, but let us look at the worst scenario the other way. You have got someone who rents a flat in town and they have got a parking space attached to it and somebody deliberately goes and parks there for a couple of days and does not move the vehicle. They know they should not be there and the person cannot park their car there because it is a blatant, deliberate, abusive use of it. That is the trouble. That is the difficulty of it. You have got these extreme cases in both directions. How do you create a law and a set of principles which is fair to all those categories of case? That is the problem. The problem if you take the Scottish approach but do not have a statute which deals with it, if you go down that road then you have to go down the road also of criminal trespass so that the person in the category I am talking about who has deliberately parked there knowing they should not can then be prosecuted, have their vehicle towed away under a criminal thing. That is the alternative route. You can see why this is a very difficult problem to solve. Either way we are going to need to have a set of legislation. Do we go down the U.K. type of route, a code of practice, or do we go down a criminal trespass type of route, in which case we have got to be careful because ...

Deputy M. Tadier:

Presumably it is no different. If someone is parked in your own driveway, you are not going to wheel clamp them because you are not going to have the ability to, but there must be a recourse to ...

Senator B.I. Le Marquand:

But you might block them in.

Deputy M. Tadier:

They might block you in.

Senator B.I. Le Marquand:

They might block you in, I know. There is no easy answer to this. It is never going to be viewed as a high priority for law drafting time. That is the other problem.

Deputy M. Tadier:

So legislation will be in place by ...

Senator B.I. Le Marquand:

Very optimistically if we got that far you will see it is item 29 for 2011.

Deputy R.G. Le Hérissier:

Yes, at the very end.

Senator B.I. Le Marquand:

It is there. It is there. It is stuck in there.

Deputy R.G. Le Hérissier:

I will ask the members, any final questions from the members?

Deputy M. Tadier:

I do. I just want to bring it back to Operation Blast. Basically we know that you said that you have had a lot of difficulty finding out anyone who will admit to knowing anything about the files at all. Presumably they cannot all be telling the truth. Can you just explain has that been a problem for you?

Senator B.I. Le Marquand:

I am only aware of 2 people who have said anything about it so far and both of them seem to be saying they do not know about it. Obviously there is going to be an investigation now and from that will come out, I hope, who knew about it, why it was set up, how it was set up, et cetera, et cetera. But it would be

wrong of me to speculate.

Deputy M. Tadier:

There must be more than 2 people. We have already heard that Bill Ogleby, the former Senator Frank Walker and also the Attorney General said that he knows nothing about the files. What I am saying is that if there are lots of people who have said that they know nothing about the files ...

Senator B.I. Le Marquand:

I see. Sorry, yes.

Deputy M. Tadier:

... presumably that is a problem, because you cannot believe everyone.

Senator B.I. Le Marquand:

That is why you have to have an independent investigation in relation to it and you see what comes out of that. They cannot have manufactured themselves.

Deputy M. Tadier:

It was put to us before that the statement has been made that it is unthinkable that the Attorney General would not have know about the existence ...

Senator B.I. Le Marquand:

Unthinkable that he would not have known?

Deputy M. Tadier:

That is not my opinion but that is the words of, I think, another politician.

Senator B.I. Le Marquand:

Can I just express a personal view based on a fairly long period of working in the legal services? I would have been absolutely astonished if the law officers had know anything about this. It is just not in their sort of area of interest or involvement.

Deputy T.M. Pitman:

Not official interest. Not in their ...

Senator B.I. Le Marquand:

Yes. I mean, it just is not. It is just not the sort of area that professional lawyers would even think about. It just is not.

Deputy T.M. Pitman:

Unless they are involved in areas they should not be, I suppose would be the twist thought to that.

Senator B.I. Le Marquand:

Yes, you would not do it this way. If you want to do something naughty, it is not the way you would do it. There is a very interesting area which I am aware of and which one could enter into very theoretical arguments about as to whether or not Jersey should have some form of safeguards in relation to people working in public office. How do you know I am not corrupt?

Deputy R.G. Le Hérissier:

Thank you very much for that payment before.

Senator B.I. Le Marquand:

There is an interesting question but I think if you were to go down the route and if it went down the road of independence, for instance, then that would be a route we would have to think about going down as part of that, but then you would have to set it up in a proper way. You would come to the States of Jersey with legislation for the scheme with proper safeguards, et cetera, et cetera. There is an issue I

think theoretically there but it would have to be done properly and openly.

Deputy T.M. Pitman:

I think most politicians would say if that was part of the job description, you knew when standing for election you could face investigation into you, criminal record checks and that was all upfront, that would not be so much a problem. It is this evidently covert nature that this has been done and from your perspective you must see that the implications are very damaging for government. Someone has got to be responsible, have they not? We do not know who but somebody has got to be.

Senator B.I. Le Marquand:

I am not trying to in any way defend what has happened here and the way in which it is set up. What I am trying to say is that there is a question where people at governmental level would be making major decisions. They have got the same issue in the U.K., if you think about it, at a national level. In the Cold War, have the Russians planted a mole somewhere in the Conservative Party or whatever who eventually will come up to be Prime Minister or leadership or whatever. You may say it is a bit farfetched by Jersey standards but those are legitimate interests. That is why in the U.K. with national government they have an MI5 and an MI6. If we ever got to the point in Jersey where we thought we needed to do this kind of thing, it would have to be done openly and publicly and democratically and so on. I am not suggesting we are there.

Deputy R.G. Le Hérissier:

Okay. Are there any final comments you would like to make, Senator?

Senator B.I. Le Marquand:

No. Thank you very much for a very nice afternoon. I am not sure the scrutiny process is meant to be as enjoyable as it is normally is with you gentlemen.

Deputy R.G. Le Hérissier:

We do not want it to be too enjoyable. Anyway, end of recording. I would like to thank you for coming, members of the public, and that is it.