

STATES OF JERSEY

Education and Home Affairs Scrutiny Panel

WEDNESDAY, 8th APRIL 2009

Panel:

Deputy R.G. Le Hérisser of St. Saviour (Chairman)
Deputy T.M. Pitman of St. Helier (Vice Chairman)
Deputy M. Tadier of St. Brelade
Connétable G.F. Butcher of St. John

Witnesses:

Senator B.I. Le Marquand (The Minister for Home Affairs)
Mr. S. Austin-Vautier (Chief Officer Home Affairs)

Deputy R.G. Le Hérisser:

We will move into formal mode, now. I would like to welcome you, Mr. Minister and Mr. Chief Officer, to the meeting of the Education and Home Affairs Panel where, essentially, we are having our regular catch-up meeting, so to speak, and we will look at a whole range of issues. So first of all, we will make ourselves known. Roy Le Hérisser, St. Saviour, Chairman of the panel.

Deputy T.M. Pitman of St. Helier:

Deputy Trevor Pitman, St. Helier No. 1.

Connétable G.F. Butcher of St. John:

Constable Graeme Butcher, St. John.

Deputy M. Tadier of St. Brelade:

Deputy Montfort Tadier, St. Brelade No. 2.

Senator B.I. Le Marquand:

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

Mr. S. Austin-Vautier:

Steve Austin-Vautier, Chief Officer, Home Affairs.

Deputy R.G. Le Hérisser:

Okay. Thank you very much. The structure of the meeting, which will finish at approximately 11.00 a.m., is that we will go over issues that you discussed last time, most of which were matters that you were going to reconsider as a result of legislation or proposals you had inherited, so we will obviously be interested to see where you are at. Then at the end we will deal with a few other matters that have arisen. I should add one of them obviously will be this whole issue of the operational control of the police, where it resides and where the boundaries lie and so forth. So, Mr. Minister, if we could ask you first in terms of, as I said, what you reported at your opening meeting, antidiscrimination legislation, you said that funding pressures were, amongst other issues, impeding the early implementation of the law.

What progress has been made to resolve that issue?

Senator B.I. Le Marquand:

I am not sure that is exactly what I did say. I think what I said was that I did not feel that I would be able to, in the present pressures, justify an expenditure of a quarter of a million a year. I was keen to see the law implemented but that we had to find a cheaper way of doing that; I think that is more strictly what I said. We have been working on that and there have been some joint meetings. I am not the lead Minister on this in the sense that my Deputy, Jackie Hilton, is leading on this and attended a key meeting together, I think, with Mr. Austin-Vautier, with the Social Security Minister. We believe we have got agreement in principle from Social Security in relation to there being one tribunal rather than 2 tribunals; therefore, one set of premises, but there will still need to be a dedicated officer to work in this area because the view of the Employment Tribunal is that they do not have the necessary skills base. So what we are hoping to achieve is one tribunal which deals with both matters. Now, I have seen a letter from the Law Draftsman raising various different issues. The key issues which need to be addressed -

which would have to be addressed anyway, I have to say - are, firstly, the issue as to what procedures would be followed by the Discrimination Tribunal. Clearly, it will need to have a different set of procedures to that of the Employment Tribunal; they will need to be adjusted in some way. The other issue is going to be one of political accountability. Now, I think this is only going to work effectively if we have a kind of split accountability initially whereby Home Affairs remains responsible for running with the project in terms of the legalisation. Because you appreciate that behind the law will be sets of regulations which will bring in the operational law in relation to different aspects of discrimination. That, I think, is going to be some of the most difficult work that is going to need to be done and is going to take some time. I think Social Security, with all the pressures on them, are perhaps a little loath to take that on and I am happy to continue running with that. But I think there will need to be one committee who takes responsibility for operation of the tribunals, and that should be Social Security. So, in a sense, it may continue to be a Home Affairs project but the actual implementation of the tribunal itself, I think, will need to pass to the Social Security Department.

Deputy R.G. Le Hérisier:

Having analysed what the issues were, are you at this point able to give us a time line when the legislation will be brought to the States?

Senator B.I. Le Marquand:

No, because I do not know how long it is going to take in terms of the drafting. I have got a letter from the Law Draftsman raising various different issues and this particular time of Easter, obviously, is a quieter time for the States and, therefore, I get some time, theoretically at least, to look at catching up on projects; and this is obviously one of those which is on my list but I have a lot of others. You will appreciate that my number one priority at the moment is getting the Sex Offenders Law back and that is what I have been working on, mainly. So I cannot really give you a time scale.

Deputy M. Tadier:

Through the Chairman, if I may, you mentioned about priorities. If you cannot give an exact time scale,

could you perhaps situate it in your list of priorities?

Senator B.I. Le Marquand:

In my initial list of priorities for 2009 it was in my B list, not in my A list, which meant that it was going to be looked at primarily in the second half of this year. But I am a new boy as a Minister. I mean, I do not know how my work pressures are going to work out and, obviously, I have now got past the strategic planning stage, which has been taking a great deal of time. I cannot tell what crises might blow up in different directions; a week can be a very short time in politics, as you all know. But my aim is to be looking at this seriously in the second half of the year. But you must remember, as I explained to you last time, that even if we get the law passed, nothing is going to happen until we get the first set of regulations passed. Now, I think I am right in saying this is the bad news, that we do not have drafting time for those either this year or next year.

Mr. S. Austin-Vautier:

That is correct, Minister.

Senator B.I. Le Marquand:

So this is another reason why in a sense we are in a situation where, even if we get the law in place, we are not going to get the first set of regulations in place before some time in 2011. So that is another reason why it is not so high up my priority list, although we need to solve the problems.

Deputy R.G. Le Hérisser:

When you say it is not high up your priority list, Mr. Minister, as you know, this has been hanging around the States for years and years and different models have been proposed. The early legislation committees of the late 90s took it on board. They worked through different models. I mean, where do you take your cue from? Would you say, in terms of the States priorities, it is indeed a high priority for the States?

Senator B.I. Le Marquand:

I have no way of knowing that.

Deputy R.G. Le Hérisier:

Not even through the strategic planning process; it does not come out through that?

Senator B.I. Le Marquand:

I do not think it has come up in the context of that, other than in the most general terms. The trouble is the strategic planning process throws everything into the pot; it does not tell you what priority you should give to different matters. As I say, to a certain extent, though, you will understand that having had the news that we have not got law drafting time for 2009 or 2010 for regulations, you can understand why there is very little point in my making this my first priority and then finding that we are going to be then sitting on it for 18 months.

Deputy R.G. Le Hérisier:

I know this may involve your predecessors that I will keep quiet for Deputy Pitman, but this was anticipated years ago. Various models were worked through; ultimately, a certain model was alighted upon which you yourself are now seeking to modify. There was no booking of the time for law drafting for the regulations done some years ago in anticipation.

Senator B.I. Le Marquand:

I am looking at Mr. Austin-Vautier.

Mr. S. Austin-Vautier:

Yes. My understanding is because, of course, it was a Chief Minister's department project for a long time, that the law drafting time was allocated for the law but for the 4 sets of regulations there does not appear to be anything for those. We have recently raised it in the context of asking the question whether the law can mean anything until the first set of regs is in being. I would add that the law drafting time

has not been fully decided; it is yet to go to the Council of Ministers, so it is still the case that the Council of Ministers could change its mind. But, as we stand, what the Minister has said is the case, that there is nothing in the programme at the moment.

Deputy R.G. Le Hérisser:

Yes, it is going to be desperately disappointing. Sorry, I will move to you.

Deputy T.M. Pitman:

Yes, just fully accepting what the Minister has said, but would he not accept that we are talking 2011; that would probably bring about quite a bit of disquiet from members of the public because this has, as the Chairman said, been around a very long time.

Senator B.I. Le Marquand:

That may be so. I am heartened by the Chief Officer suggesting that I might be able to have a second bite at the 2010 cherry, and that is certainly something I am willing to do.

Deputy R.G. Le Hérisser:

Of course, as you know, it was always argued under the grounds of meeting our international obligations and there were these regular analogies, regular reports, put in by the Chief Minister's department on various covenants to which we have signed up. For a long time they have been saying that this is a work in progress.

Senator B.I. Le Marquand:

Yes, it does not make very much sense to be going ahead with the law without having drafting time to deal with the first set of regulations. So thank you for raising that and I was unaware that I had this possibility of a second bite of the cherry, or the first bite, in my case, in terms of the prioritisation. So we will need to seek to do that.

Deputy R.G. Le Hérisier:

Okay. Moving to the next item; again, an item where you were obviously reviewing that which you had inherited, the establishment of a police authority. How is your review going and what have you identified as the key issues and when do you think you will be ready to move?

Senator B.I. Le Marquand:

If you remember, on that matter, I indicated that I was not intending to move very far this year because I did not feel that I would be getting well-thought-through responses in the light of current events and I felt the dust needed to settle on matters such as the disciplinary matter of the police chief. But, at the end of the day, we are going to be left with the same problems. I have been looking at some correspondence; interestingly, some comments by the Attorney General on aspects of the authority and the same problems are going to exist whatever we do. The difficulty of defining the role of a Minister and defining the role of the police authority, making sure they are not tripping over each other. Remember we discussed last time the difficulties caused by the proximity of the Minister to events, hence the questions that you are hinting that you may have for me today which would never, never be asked in a parallel situation in the U.K. (United Kingdom). I have been starting to think in very general terms about other possibilities and one of the possibilities I am thinking about is, in fact, whether or not we should not think of constituting a more heavy-weight police authority. One of the difficulties I think that they have come across in the U.K. is that if you have a light-weight police authority then, effectively, there still is not a proper strategic and policy oversight over the police forces. So I am toying with the idea, and I have been speaking informally to some of my colleagues about this, as to whether we should not have something the equivalent to a committee so that you would have the Minister fulfilling the ministerial roles but you would have a police committee which would be constituted of probably the Minister, the Assistant Minister and some States Members and possibly some people outside so that you had a much more heavy-weight body. But that is just the direction my thinking is going in at the moment. It is very, very preliminary.

The Connétable of St. John:

Can I ask a question through the Chair? I was on the last Home Affairs panel and we did look very briefly at the police authority issue and I think, if I remember rightly, there were discussions about trying to bring the honorary police on board under the police authority but I think Mr. Austin-Vautier can probably confirm it looked as though, if that was tried, it would put something like about a 5-year delay on things because of the differentials between the 2 forces.

Mr. S. Austin-Vautier:

The previous Minister, yes, Senator Kinnard, you may recall; I think it was September she came along to the Comité des Connétables and asked the specific question whether the Constables would want to be part of the first stab at a police authority and she was told no. But you have rightly addressed one of the difficulties is the potential delay and the complex nature of that body.

Connétable G.F. Butcher:

That is right. Sorry to butt in. I do not think it was the fact that the Constables did not want the honorary police to get involved, it was the complications within the law and the legislation that would have presented quite a major problem.

Mr. S. Austin-Vautier:

But you went away with that decision and that was one of the foundations, then, from which he was working. So I think, from that date, it was decided to develop a police authority that encompassed the States police only.

Deputy R.G. Le Hérisser:

Okay. What was the main objection voiced by the honorary police to take part?

Mr. S. Austin-Vautier:

I think it was not so much of an objection, it was to do with how complex a body that would be, trying to set up something new to accommodate both the uniformed service and an honorary service. The

feeling was it would be better to get something up and running that was successful and then join up the honorary service at a later date.

Deputy R.G. Le Hérisier:

Good. We will come to what is known as parole. I wonder if Deputy Tadier would like to do 1(c), introduction of discretionary release.

Deputy M. Tadier:

It was stated at the previous meeting that this legislation was with the Law Officers' Department for human rights compliance checks so we are looking to have an update from you, please, Minister.

Senator B.I. Le Marquand:

We got a response from the Law Officers. I am not sure how long it took to get that but we got a response which is very complicated and it is indicating that there could be problems with some areas, other areas are grey areas. It is a complicated response. In the meanwhile, of course, I realise that the draft law does not do that which I want it to do. In fact, I would not want it in its current form because it would create a bizarre position in which people who are released on licence would remain on licence for the rest of their term of their sentence, which would mean right up to the full term without taking an account of remission. That would create a bizarre situation. I had always envisaged that a parole system would operate between the point of one half and two-thirds so that it would end at parole. But it does not do that and that, unfortunately, I have now discovered to my horror, takes me back into the wording of the criminal justice policy which has used exactly the same words, until the end of the sentence. Now, I suspect that those who drafted that, certainly those like myself who have read and commented on it, assumed it meant taking into account of normal remission. But the law does not, so there are wider issues now that need to be looked at. But although the opinion answers some questions, in other areas it just says there are grey areas. So I am going to need to do a major review of this, if I can put it that way, in the same way as I had to do a major review of the Sex Offenders' Law, and it is a question of when I can find the time to sit down and do a major review of it and see what I want to achieve and then look

back at the human rights stuff and so on. But it is quite a complex area because there are apparently contradictory judgments, as well, as to when the executive can make a decision to release people early and when there should be a proper quasi judicial process which is subject to human rights standards. It is quite complex.

Deputy M. Tadier:

Minister, I hope you do not have to do too many reviews, otherwise you will leave no work for Scrutiny.

Senator B.I. Le Marquand:

You can do anything you like as far as I am concerned but I will have to do my review first. I mean, it is unfortunate but, as I said to you before, it is the advantage, and a disadvantage, of having a new Minister who has spent much of his working life working with legislation, that he is likely to find the faults in bits of legislation and then have to start spending time putting those right.

Deputy R.G. Le Hérisser:

But do you not find it strange that when you look at parole, which has obviously been operating in a lot of countries including common law jurisdictions for some time, is it not odd that we seem to have come up with problems which presumably have been ironed out, or are being ironed out, in other countries? Why do we seem to have to start all over again and hit these incredible problems?

Senator B.I. Le Marquand:

I do not know the answer to that because I did not design the law. He does.

Mr. S. Austin-Vautier:

I can give you some background.

Deputy R.G. Le Hérisser:

Yes, Chief Officer, very briefly, if you could tell us why do we reach these situations?

Mr. S. Austin-Vautier:

The review in I think it was the 2003 Criminal Justice Act, the big change there was to make parole automatic, that is the 50 per cent point. There was a lot of discussion between the former Ministers and the court about that in a small jurisdiction and whether that was robust enough for our special circumstances in Jersey. In the end the Ministers decided, taking into account what the court said, that we needed a discretionary system in Jersey that would allow a parole board to take a view on everybody who was reaching the 50 per cent point whereas in England they only do it for people who have committed certain offences. Therefore, that is where your complications start because what we are really doing is thinking about bringing in the pre-2003 Act system which the U.K. have moved away from. That is not to say that, necessarily, the U.K. system is going to prove to be right in hindsight. But that is why we are different and it is more complicated.

Deputy R.G. Le Hérisser:

Because that decision was taken that the courts wanted total discretion?

Mr. S. Austin-Vautier:

The consensus at the end of the day was that automatic release was not necessarily right for Jersey in a small place.

Deputy R.G. Le Hérisser:

Why was that a special issue in a small place as opposed to being a broader issue?

Senator B.I. Le Marquand:

Can I say I believe that is a political issue. Obviously, I was one of the consultees and my view is that we should have a discretionary system. But the point of it being that you only release people on parole if you are satisfied, the body that deals with it is satisfied that these people no longer represent a substantial risk to the public. Otherwise, if you follow the automatic system as they are doing in the

U.K., you are releasing people after a half who do represent a substantial risk to the public. What you are doing is you are cutting sentences by the back door and I, personally, would believe the primary regulation for that in the U.K. was simply the prison population issue.

Deputy M. Tadier:

Mr. Chair, can I push on that? That does not seem like the same response we have had from the Chief Officer. I mean, we were told that the system in Jersey is not appropriate so that we need more robust measures in Jersey. Your objection is an ideological one.

Senator B.I. Le Marquand:

Absolutely.

Deputy M. Tadier:

So what are the circumstances which are different in Jersey that are not the same in the U.K.? That is what we were trying to find out in the previous question.

Senator B.I. Le Marquand:

Their prisons are too full in the U.K. and they appear to be willing to do almost anything to reduce the prison population, whereas in Jersey we have a society which values law and order and public safety more highly. It is a political ...

Deputy M. Tadier:

So it is a pragmatic ...

Senator B.I. Le Marquand:

No, it is a political view.

Mr. S. Austin-Vautier:

I think, also, if I can add to that is that people live cheek-by-jowl here and most often the potential ... the person you are going to release is known by a lot of people. They are going to go back into a small community and it was felt that there should be a risk assessment about every individual who you are thinking of releasing before the term that the court said they should serve. That would draw in all the usual Multi-Agency Public Protection Arrangements (MAPPA) arrangements and inter-agency information in order that a conscious decision is taken rather than a mathematical one based on 50 per cent of the sentence that was handed out.

Senator B.I. Le Marquand:

Can I just say that we have had some experience of both systems in the past in a sense that we already have a system, as you know, whereby people may be eligible, at least to go out and get work experience, up to 12 months before their normal release date but then return to prison at night time. Then, in the last 6 months, they may be eligible for release for a similar reason but on the basis of being tagged; one of the questions you are going to ask me later on covers this area. Now, we have a system there whereby that is being done with an assessment of risk under the existing system and we did go through a period when we had a former prison governor who appeared to be releasing people willy-nilly, if I may put it that way. So there were horrendous stories of people who had been assaulted and the person had only fairly recently been sentenced and they were running into them in swimming pools and things like that. So we have had experience of an indiscriminate release system without assessment of risk and it was most unsatisfactory.

Deputy R.G. Le Hérisser:

Okay, thank you. I will now move to Deputy Pitman.

Deputy T.M. Pitman:

If we could turn to the introduction of measures that will have the effect of deterring criminal elements entering Jersey, at a previous meeting the Minister commented that he did not believe this legislation was possible with E.U. (European Union) nationals. Has anything dramatic changed?

Senator B.I. Le Marquand:

No, that is still the position. I believe that to be the position and what we have been doing is we have been taking steps, which you may have picked up, to tighten up on the situation in relation to people who are subject to deportation orders. If I can quickly explain that. That, of course, in a sense is not keeping people out but that is booting people out, if I can put it that way in the vernacular, where it is not in the interests of the Island that they be here. That is non British and non Irish nationals; it can include E.U. nationals. What I discovered earlier in my sort of visits around was that we had a peculiar situation in which the courts would make a recommendation for deportation. That recommendation has to be confirmed by the Lieutenant Governor but, because reports in relation to that were coming to him quite late in the day, he has to consider various matters, some of which are matters the court will already have considered, others of which are matters like whether it is a safe jurisdiction for the person to go back to, and so on. What we were discovering was that, of course, people who were potentially subject to a deportation order were being released on the early release scheme, which I have referred to. So this meant they were going out, getting work experience, building relationships in the community, when ultimately at the end of the day they may be subject to a deportation order. This seemed to me to be completely and utterly wrong because, fundamentally, a deportation recommendation is only made where it is reckoned it is not in the public interests that the people be here. So what we have managed to arrange is for the assessment by the Lieutenant Governor to take place earlier so that he is able to make his decision as to whether the person is going to be deported earlier. Those people then, once he has made a decision that they will be deported, are no longer eligible under the early release scheme. We are seeking advice as to whether we can bring it even earlier upon the basis of the recommendation of deportation as opposed to on the basis of the confirmation. I have a certain reluctance in relation to that because then we would be treating people differently prior to the order having to be confirmed, but we are seeking advice on that. So that is something we are trying to do, if you like, to get rid of people who are viewed to be undesirable to the community.

Deputy T.M. Pitman:

Could you clarify what sort of consideration was given by other small jurisdictions who are not in full control, perhaps, of their borders? Has that informed your thinking?

Senator B.I. Le Marquand:

Our problem, if we have a problem, in relation to this is, firstly, we are British so we cannot keep out British people, and I think that also applies to Southern Irish people. But we also have got to think about we are all part of the common travel area with the rest of the U.K., the rest of the British Isles and also with Southern Ireland. So there are no border controls within the common travel area. But, secondly, of course, we have responsibilities by virtue of the E.U. accession treaty whereby we do not have the right to prevent E.U. nationals from coming here. So it is an extension, if you like, of Britishness to E.U. nationals; that is the problem.

Deputy R.G. Le Hérisier:

Is there any way you can deal with the situation, given that you cannot legally control the movement of E.U. nationals or debar them from coming to the Island? Do you use things like police intelligence as some kind of substitute?

Senator B.I. Le Marquand:

Yes, that is right. We have access to such information and, of course, the e-border system, which is often confused in the minds of States Members with the Immigration Act, is exactly an information exchange. So we can have some knowledge of who the people are who are coming in, even if we cannot prevent them. Of course, when we get the Sex Offenders' Law in place, part of the trigger of that is people who have got sex offences elsewhere who come into our jurisdiction who have a duty to report into the system and become subject to it. So in a sense, again, the information from e-borders and so on will enable us to know they are here and, if they do not report as they should do, they can be arrested for failure to comply with that.

Deputy T.M. Pitman:

So could we turn neatly there to the draft Sex Offenders' (Jersey) Law? First, the Minister made a statement in the House on 4th February simply stating that the law will be brought back to the House as soon as possible. Could he update us on that?

Senator B.I. Le Marquand:

Yes. Well, it will be. I subsequently, I think, indicated my intention to bring it back within 3 months of the date. That is going to be tight; I may just manage to lodge it. The areas of concern which I had in relation to it were ... there were a number of different areas of concern. Firstly, I was aware that we had a problem in relation to gross indecency in terms of whether it should always be an offence trigger for this purpose. I mean, this is a technical issue related to homosexual conduct which might be criminal because it was not in private in appropriate circumstances. The general view was that homosexual activity which happened to be criminal because it was not in the appropriate place, if you understand, should not be a trigger for a person to be on the sex offenders listing. So this is a peculiar problem to Jersey because we have retained this particular offence in the current form. So that we have been working on and I think we have now come up with an appropriate solution. So that was a purely a small technical problem. There is a big issue here, which I am still thinking about but I think I am happy to go with, about how this interlinks with Data Protection Law. Because on the one hand you have got to know that it is lawful for information to be shared appropriately; on the other hand, you have got to know that if people do not share information appropriately that there are appropriate criminal penalties in place in relation to that. Now, this also is a live issue at the moment in a different context. I had a meeting with the Data Protection Registrar and the Acting Police Chief to discuss this very area, and I think I am content that we do not have a specific criminal offence in here. There was one but it was really over the top in terms of its wording. There was one. I think I am content that we have relied on data protection principles provided that the penalties under the Data Protection Law are increased, as they have been in the U.K., which would mean them not just to be a fine but also imprisonment of up to 2 years. You understand there is going to be incredibly sensitive information floating around about individuals who have got records which is going to be going out, under controlled circumstances, to various different agencies and we have got to be sure that that is not going to be linked to the public

because the consequences in terms of lynch mobs or whatever to the individuals involved could be very, very serious. I have got to be satisfied of that. The other side of it is that I was unsure as to where the appropriate mechanism was to control how and when information could properly be put out. Having met with the Data Protection Registrar, I am now satisfied it is under the terms of an agreement which has to be reached by the Ministers and various other groups of people and that will create protocols as to the safe use of data. So there was that whole area that bothered me. There was an area in relation to the appeal procedures which was just wrong, and I knew it was wrong, and we had been in correspondence with the Deputy Judicial Greffier who at first did not comment on it and then, when I went back to him and said: "Well, why have you not commented on this?" he said: "I thought someone had made a policy decision on that" which, of course, it is just wrong. So that needs to be changed. There are technical issues that need to be resolved as to the status of orders as to whether they are criminal in nature or civil in nature and, therefore, of the burdens of proof, which is an area I was working on yesterday. There is something else, but I cannot think what it is.

Deputy T.M. Pitman:

That already seems quite a lot that is still in progress. Are you genuinely hopeful that this will come before the summer recess?

Senator B.I. Le Marquand:

Yes, I have almost resolved most of these issues. I mean, I have been writing off to the Law Draftsman yesterday giving him some revised notes as to what we want to achieve. We do have a problem in relation to what it will cost to put into place and the difficulty with that is that the detailed work has not been done on how exactly this will be implemented in Jersey and, therefore, estimating the costs in relation. I am perfectly happy to take the law to the States at an early date, get it passed, get it on the statute book but on the understanding that it cannot be implemented until such time as funds are available.

Deputy M. Tadier:

Can I just come in here? It is a more general ...

Senator B.I. Le Marquand:

Yes, well, that is just a minor detail. Sorry, forgive me, Constable. The Constables wanted to be added as an interested party but I had agreed that inference.

Deputy M. Tadier:

If I can just come in on a more general point. Whilst I think I and the board would commend you pushing through this and prioritising it, it could be seen that this is purely a populist thing. It is a very emotive issue and sex offenders is very emotive with the general public and with the tabloid press in particular. But my concern, and perhaps the concern of the panel, is that other equally valid legislation, such as antidiscrimination and human rights legislation, is always getting pushed back on to the back burner simply because there is no immediacy or urgency to enact these also necessary legislations. I mean, how would you answer that?

Senator B.I. Le Marquand:

I think this is important legislation; we are talking about the protection of children here from paedophiles and, unfortunately, there is no effective method of treatment of paedophiles. You can contain them, you can help them to learn techniques to avoid putting themselves in risky situations and, I am afraid, we have been made only too acutely aware by publicity in the last 12 months of just how damaging the effect can be long term on children who have been subject to sexual abuse. I mean, this is serious stuff. I have just remembered the other 2 areas, if you will bear with me. Do you remember I mentioned there were 2 controversial areas that I needed time to review? One relates to being able to treat certain offences which are not sexual offences as if they were because there was some element to them. I am satisfied there are cases like trafficking of people with a view to sexual exploitation which fall into that sort of category. And the other one, and a really big one which I have had to think about a great deal, was this whole area where there are people who have done acts which, on the face of the wording, such acts could include purely innocent matters but, nevertheless, the act was of such a nature

that it was necessary for the courts to have the power to make a control order, I think it is called, in relation to the person because they were reckoned to constitute a risk. Now, the view I am taking is that the issue of the protection of children is so important I am prepared to take this to the States. If the States take the view that this is a step too far, so be it, you know. But I think it is my duty to take the matter to the States because the primary issue is the protection of children.

Deputy T.M. Pitman:

Your last point, is that issues like grooming and such?

Senator B.I. Le Marquand:

Yes, it is. It is behaviour of that sort of nature whereby an individual has not got a criminal conviction but, nevertheless, there is reason to suspect that they represent a risk. There are appropriate safeguards because, firstly, the Attorney General has to bring an application and, secondly, a court has got to be satisfied that they do constitute a risk and, therefore, that an order needs to be made in order to protect people. It does not put them on the sex offenders register, not that that exists, but it does not put them into that system but allows an order to be made. I am prepared to take a robust view and if I am overturned in the House, well, so be it. I feel my duty lies in seeking to protect children.

Deputy R.G. Le Hérisier:

Okay. Thank you, Mr. Minister. Constable Butcher will now address the issue of mentally disordered offenders.

The Connétable of St. John:

Okay. Minister, it has been heard recently in the media about the lack of facilities at La Moye, and the Island in general, to take care of mentally disordered offenders. Can you please advise the panel of what initiatives have taken place at La Moye to provide facilities?

Senator B.I. Le Marquand:

Yes, I can tell you what we are currently doing. I mean, firstly, can I say that neither myself nor my Assistant Minister consider the current situation to be fully satisfactory and we consider ourselves to be in a state of non agreement - I do not want to say dispute but non agreement - with the Health and Social Services Department over this, and it is my intention to take a paper to the Council of Ministers at some point. But I am friendly with the Health and Social Services people but we have a disagreement in relation to whether it is appropriate for people in a certain category, which I will highlight, to be dealt with through the criminal justice system rather than in another way. The primary difficulty arises with individuals who are in a prison who are not deemed by the psychiatric services to be suffering from treatable mental disorders. The classic situation is normally termed a personality disorder whereby a person behaves strangely but they are not suffering from a treatable psychiatric condition, i.e. something which responds to tablets, et cetera. Sadly, sometimes that occurs because of the way they have been treated in childhood; their past experiences et cetera. Now, the prison is doing its best to care for all prisoners and it contracts in G.P. (general practitioner) services and also other healthcare professionals. It also employs its own in-house nursing team, 3 of whom are registered mental nurse qualified, and the nurse officers provide a service to prisoners throughout the day and are on call at night. A prison in-reach service - I am not sure what that means but that is what my notes tell me - is provided by Mental Health, comprising of a consultant psychiatrist and a community psychiatric nurse, both of whom visit weekly. Appropriate medication is prescribed to those with a history of mental problems but the prison cannot administer this to non compliant prisoners against their will; that is one of the problems with not being a mental institution. The prison also employs a full-time forensic psychologist and a psychological assistant and prisoners can self refer to this team in addition to being referred by other disciplines. Prisoners in need of more intense assessment can be transferred to Orchard House at St. Saviours Hospital. There, of course, if they are, then they go under guards with the staff from the prison going with them. But the fundamental problem remains: how do we deal with people who are not currently acutely ill but who have personality disorders, who in the U.K. would be in either secure accommodation such as Rampton or Broadmoor, or at lower levels might be in semi-secure. There is an interesting history to this because apparently there was a lady called Rosemary Wool, and I am not quite sure of her qualifications, who produced a report in 1996, which interestingly Mr. Austin-Vautier was a

part of, which recommended the setting up of secure accommodation for the psychiatric hospitals for patients who have committed offences which pose a risk of danger to the public and a recommendation was a 6-bed unit. That did not happen and I think the reason it did not happen was probably because of cost considerations. Then subsequently in 2004 she came back 8 years later and produced a secondary report on the healthcare needs at La Moye where she recommended a mental health team should be established as well as a comprehensive mental health strategy for the prison. I assume that the changes I am referring to, the things we have done, are in response to that, but I am looking at Mr. Austin-Vautier. Is that right?

Mr. S. Austin-Vautier:

That is correct.

Deputy R.G. Le Hérisser:

Can I ask a second part to that question? In a recent meeting with the panel you alluded to the fact that it was difficult to provide facilities in a small island, or more difficult than it is in a bigger jurisdiction. Are you doing any research with other small communities to see how they provide facilities?

Senator B.I. Le Marquand:

Well, you have asked the question we have been trying to ask questions of our colleagues in Guernsey and so on but have not had a response. What I have picked up from meetings is that the position in England and Wales and Scotland is that the people of this nature are dealt with within the psychological services. In Northern Ireland they are dealt with within the prison service but we do not know the details of that, and obviously we need to contact Guernsey and the Isle of Man, who are the closest parallels. I would be very surprised if they had a special unit. I think the answer is going to come back that they have exactly the same problem. Nevertheless, I suppose the issue arises as to whether, if a person is suffering from long-term mental problems, even if they are not treatable in a normal psychiatric way, as to whether putting them in a prison is an inhuman and degrading punishment. That is the bottom line in terms of the human rights considerations. I am unable to express a view on that, but

that has occurred to me as an issue. So, we have an ongoing concern here. It is a resourcing issue.

Deputy M. Tadier:

Has there been any consideration of whether Jersey and Guernsey could pool certain resources? Is that a possibility?

Senator B.I. Le Marquand:

Well, there has not, no.

Deputy M. Tadier:

The reason I raise that, if you think in the context of the hospital there has always been talk about sharing certain facilities.

Senator B.I. Le Marquand:

You do get problems then of access of relatives and people like family and so on, when you get that.

Deputy R.G. Le Hérisser:

What is the point of disagreement between you and the health ministry in this matter?

Senator B.I. Le Marquand:

It is really as to whether the first Wool report should be implemented or the second. The first Wool report recommended the setting up of a special unit within psychiatric services. We would have to have people who were capable of dealing with the physical restraint aspect, if that was necessary, but nevertheless we placed responsibility there. The second report seems to have been a pragmatic approach to: "Well, we cannot achieve that, so what is the best we can do within the prison?" I want to emphasise that the psychiatric services and the prison authorities are seeking to work together on these cases but there is a fundamental issue of principle, as it were, as to how such people are dealt with. I can give you an example of the sort of problems that arise. I mean, I have within the last week signed a ...

Mr. S. Austin-Vautier:

Removal From Association.

Senator B.I. Le Marquand:

... Removal From Association Order in relation to a prisoner who falls in this category and who also at times has florid psychiatric symptoms, but does not have currently, is currently taking medication and not responding, and frankly he is shouting out in the middle of the night and waking up all the other prisoners in his wing area. I have made an order to remove him from association, partly for his own protection because he is going to get attacked by other prisoners who are going to be so angry that they are not sleeping. Also, it raises the whole danger of the area but it is not a satisfactory state of affairs.

Deputy R.G. Le Hérisser:

Are you suggesting, Minister, that that person should move to a psychiatric environment like St. Saviours with appropriate security?

Senator B.I. Le Marquand:

Yes, effectively so, yes. You then have to look at the technical details as to how they are fed in there under the law, if they have come in via a criminal route. In the U.K. the primary system what works is if a person is deemed unfit to plead and then if it is proved that they have done the acts which constitute the offence then the courts can commit them to an appropriate mental institution indefinitely, in fact, but particularly you will see it for cases where people constitute an ongoing major threat to the public. It is important, whereas in Jersey what would happen is they would serve their sentence and then come out again and be out in the community again and still represent a significant risk.

Deputy R.G. Le Hérisser:

You have no powers in the courts or there are no powers in the courts to send them to a place like Broadmoor, if such is the severity of their condition?

Senator B.I. Le Marquand:

We are getting into a difficult area here because I am aware of a case where a person is currently serving a sentence but has just been charged with a further serious offence alleging attempted murder of a staff member at the prison, and I am being told that if the person is found guilty of that charge and sentenced to a long sentence then a methodology will be found to transfer them. Presumably they will be transferred to a U.K. prison and then go into the U.K. system in some way. I am not sure of the technical details, but that is a pretty extreme case. Many of the cases I am thinking of, like the gentleman I referred to before, do not represent as high a level risk.

Deputy M. Tadier:

May I just come in with a point there? I want to take this slightly a step back to not looking so much at the way we house people with mental illnesses but the crime detection phase. I will give a general example. It is a hypothetical one, but I do not think it is an atypical example either. An area of concern is, for example, you may have somebody who is an alcoholic or drug addict who commits a crime and although that may not necessarily equate to mental illnesses, certainly an illness in terms that you may have chronic alcoholics who continually re-offend. My concern is that the actual root cause of their behaviour is never picked up by either the police or the honorary system so that when it gets to court they are given a sentence which is not appropriate. It might be a fine or it might be something else and it never deals with the fact that they have an illness. They are treated like ordinary criminals and they do not have the same sensitivity.

Senator B.I. Le Marquand:

Well, I must say I think you are being very unkind to magistrates in those comments because I can assure you the magistrates are very, very aware of these sort of issues and will want to get background reports to ensure that if there was a treatment issue that they go down that road.

Deputy M. Tadier:

If I can come in, I am not trying to be unkind to magistrates and I know they have a hard job, but they are only as good as the information they have and if the information is not picked up at source then they cannot be expected to know the ins and outs of every case.

Senator B.I. Le Marquand:

No. If the person is coming up regularly, or more than once or twice, routinely they will get background reports from probation and from the alcohol and drug service to assess them. I was busy in the last year or so, with my period as magistrate, writing section notes, guidelines for my colleagues, which were never finalised because circumstances overtook me, but they are still there and certainly those notes were referring to a person coming up for a third conviction within a relatively short period for drink-related matters that you would as a matter of course get these reports. So, there are safeguards in place. I mean, the judges of all the courts, and particularly of the lower courts who deal with people regularly, are very well aware that particular offences may have particular root causes. For instance, shoplifting offences of a certain category are very often a signature of drug addiction and magistrates gain that experience and knowledge very quickly that this is not just a shoplifting case; there is more to the background than this. So, I can assure you they are very fast on that. Mr. Austin-Vautier was a former clerk to the court so he can back up what I am saying.

Mr. S. Austin-Vautier:

Yes. That is why I know all about the 1996 Wool Report, but also it is worth adding that I think what you are getting at is detecting signs and causes. The community safety strategy, which is called B.A.S.S. (Building a Safe SocietyStrategy), that funds an arrest referral worker to pick up these problems at point of arrest. So, that person works with the police and goes down to the cells regularly if they have somebody who is in one of those odd categories. It also funds a court diversion officer who picks this up at the time of court, which is a post within probation in order to pick up problems earlier and get the right reports to court. So, I think it would be wrong to assume that there are no efforts being made to pick up causes as early as possible, quite apart from the people, as the Minister says, who are known anyway because we are in a small community.

Deputy M. Tadier:

I am partly reassured by that. I would be happy to give conflicting evidence to the Minister in private.

Senator B.I. Le Marquand:

Well, if cases are going wrong in individual cases that may happen, but thank you, yes.

Deputy T.M. Pitman:

Could we just ask a final question? I hope it is not too political, but obviously in this area there is a need to work with health, with our current Minister for Health possibly ... well, he is facing a vote of no confidence. Is there danger that if there is a change in health that this could delay getting to where you want to be in this area? Or do you think it is purely technical matters really?

Senator B.I. Le Marquand:

Well, I mean, it is but this is an ongoing problem. You can see the dates of the Wool Report. It is 1996 and 2004. This is a long-term issue. I am a realist and it is going to be very difficult in the present financial climate to be getting money to set up the sort of area that ultimately should be set up. So, it is an issue for me to raise. I think the best I could hope for at the moment is to get recognition by the Council of Ministers that there was a problem and it is necessary that we need to be working towards addressing it. You are right, a change of Minister could delay matters by a few months but no more than that.

Deputy T.M. Pitman:

A few months? Thank you.

Deputy R.G. Le Hérisser:

Okay. Thank you, Trevor. We will now come to Criminal Justice Policy, Mr. Minister. You did say last time that the investigation for the greater use of electronic monitoring, that there was a study in

progress on that regard. Has that been moved further in terms of applying it to post-custodial supervision?

Senator B.I. Le Marquand:

Well, I think the issue as to whether we are going forward to the second stage, I mentioned that in the last 12 months a person could be released to go out and get work experience and be getting back into the community and that they return at night time, and then in the last 6 months you move on to a stage beyond that where they remain out. We are looking at the possibility of extending, if you like, the last 6 months to the whole of the last 12 months. I am not quite sure exactly where we are on that. Am I awaiting a paper on it?

Mr. S. Austin-Vautier:

Yes.

Senator B.I. Le Marquand:

Okay. I am awaiting a paper on it. I just know that it is a ...

Mr. S. Austin-Vautier:

Because it is linked to discretionary release as well it is part of the same ...

Senator B.I. Le Marquand:

It is part of the current discretionary release system.

Deputy R.G. Le Hérisser:

So, you cannot give a timeline on that?

Senator B.I. Le Marquand:

I am looking at what my notes say. It says: "The present government is currently exploring the

possibility of extending this scheme to include prisoners in workplaces in the community as they prepare for release.” He would need to get my approval of any changes in relation to that. I know that in parallel with that, as yet another alternative, we were considering whether those in the first 6 months or the last 12, if I can put it that way, if they came back and moved into what is currently the offender’s institution that in fact they could have doors unlocked so that they could wander around at night time in that area. There are advantages to putting them there, if we can. I mean, after September we get extra accommodation. We then need to move the Y.O.I. (Youth Offenders Institution) into part of that accommodation and that would then free up the Y.O.I. building. The advantage of having the people who are coming back in there is that if they were minded to smuggle drugs or other things back into prison they are actually out on a wing where they cannot, if I can put it that way. So, we are thinking of a number of different things.

Deputy R.G. Le Hérisser:

Can we move to another issue with the Criminal Justice Policy; the vetting and barring scheme?

Deputy M. Tadier:

I believe during our last panel meeting we were told that this was an area that was in progress and there was talk of the department leading a cross-departmental working group to review the arrangements for vetting and barring which take into account that factor and similar schemes being rolled out in the U.K.

Senator B.I. Le Marquand:

Yes. The difficulty we have is that they do not seem to be clear in the U.K. what they want to do yet and so it is difficult for us to start designing a scheme when it is not yet even clear the way they are going to do it. My understanding is that our intention is to designate an existing officer of the Home Affairs Department as a project leader for an 18-month period. This is a very, very big task and that lady, who happens to have background skills in this sort of area, will then head up the project as a project leader, but it is difficult to be doing anything too meaningful when they are still debating exactly how they are going to do it in the U.K.

Deputy R.G. Le Hérisier:

Well, what do you think, Mr. Minister, needs to be done here? Do you think there is as much a compelling need to do something here as there is in the U.K.?

Senator B.I. Le Marquand:

Yes. I think we need to buy into the U.K. system; to set up our own separate system would just be very, very difficult. We need to buy into the U.K. system so that people are effectively being vetted nationally, if I can use the term nationally to include the British Isles for a moment. But the advice we are getting is that there will still need to be a local appeals procedure in relation to that so that if people have been barred nationally they can still appeal locally.

Deputy R.G. Le Hérisier:

These people being barred, for example, Mr. Minister, does it relate to the Selwyn(?) case where people were not convicted but they had a history of long contact of serious matters with the police?

Senator B.I. Le Marquand:

Yes.

Deputy R.G. Le Hérisier:

Would it involve also, for example, workers in residential homes for the elderly who for some reason concerns have been raised and have not necessarily resulted in convictions?

Senator B.I. Le Marquand:

I think so. I think it is for people generally, is it not?

Mr. S. Austin-Vautier:

Well, it is very wide in its interpretation, but it splits them down into regulated activity and what we call

controlled activity, and the regulated is people who have direct contact with children or vulnerable adults and the controlled are those with indirect, maybe over the internet and that sort of thing. It is the regulated ones, the direct contact, that is the priority in the U.K. to get those people subject to monitoring, it is called, where they are registered with the I.S.A. (Independent Safeguarding Authority).

Deputy R.G. Le Hérisier:

If, for example, a home said: “Look, we have a person we wish to employ” the intention is you would be able to approach the police and they would tell you contacts that they had throughout the U.K., you would not just be confined to the Island?

Mr. S. Austin-Vautier:

Well, if you take the U.K. scheme to its final genesis, if you want to employ a teacher at home, say you wanted a private teacher for maths or something, you ought to be able to say to the person: “Are you registered with the I.S.A.? If so, what is your number?” If they are willing to give you that, you should be able to go online, put their number in and check that they are subject to monitoring. Clearly if they’re not then there is a problem, but that is the ultimate goal in the U.K. system.

Senator B.I. Le Marquand:

Yes, I understand it is a general registration system whereby people in different professions would register and be cleared as opposed to merely a system that once a person applies for a job then you vet them.

Deputy R.G. Le Hérisier:

What about residential care homes where there are a lot of people employed from overseas? How would your proposed system deal with these employees?

Mr. S. Austin-Vautier:

Well, the difficulty with the U.K. system, let alone any Jersey one, is just that. It will considerably

tighten up the U.K. for people for whom there are records, but if you have lots of people from outside the British jurisdiction then there are problems with that because it is only as good as the information that enters the system.

Deputy M. Tadier:

I have nothing to add to that.

Deputy R.G. Le Hérisier:

Are there any other comments? Just the standard questions; when are you aiming to bring this forward?

Senator B.I. Le Marquand:

Well, again, I am afraid you are getting my standard answer: I do not know. I mean, the fact that we are waiting for them to decide what they want to do in the U.K., the fact that we are looking at having someone seconded to this purpose for 18 months I think probably means we are looking at 2 to 3 years. I mean, I am looking at what this says: "U.K. vetting and barring scheme will be introduced in October 2009 but applications for registration will not be accepted until July 2010 and then only through applicants entering relevant work areas for the first time. The roll-out period extends to 2015." So, even in the U.K. it is such a massive task, they are looking at something like a 5-year implementation period, presumably starting with the most sensitive areas. So, I would imagine ... I am guessing. My head says 2 or 3 years. My heart, based upon knowledge of how slow projects are in reality in Jersey, tells me probably at least 5 years, but there we go. If we have someone working ... Steven is looking a bit askance at me now.

Mr. S. Austin-Vautier:

Well, no, it is just that there is a lot of detailed work going on right now that clearly we can only move at a certain pace, depending on how the U.K. are doing, but the thing we know for sure is that if Jersey is to access the U.K. scheme then we need extended to Jersey via Order in Council, the Safeguarding Vulnerable Groups Act 2006 and part 5 of the Police Act 1997 because the first one gives you access to

the Independent Safeguarding Authority, the second one gives you access to the Criminal Records Bureau. What the Law Officers are doing right now - in fact we have been talking to them this morning about it - is liaising with Guernsey law officers and the U.K. Home Office legal department to work out how that might be possible. Because without those legal vehicles in place we cannot really do anything. So, that's the critical part.

Deputy R.G. Le Hérisier:

Good. I will come to a more general question but I will maybe come to it when we come to the end. It is certainly directly related to the Minister's previous experience but perhaps not to his current experience. But Deputy Tadier will be asking a question about Parish Hall inquiries.

Deputy M. Tadier:

Do you want me to do that now, Chairman?

Deputy R.G. Le Hérisier:

Yes.

Deputy M. Tadier:

So, the general question is why are decisions made at the Parish Hall inquiries not publicly accessible when decisions made in the Magistrates Court are?

Senator B.I. Le Marquand:

Well, here is my understanding of the situation. The Magistrates Court is a public court and it is a public court of record as well so that decisions made there are accessible to the public. The Parish Hall inquiry is not a court as such; it is the prosecution process and so it is simply not public. It is a different sort of process. It may lead at the end of the day to a situation in which a person is fined or cautioned, or it may lead to a situation in which the matter is referred up to the Magistrates Court. Particularly in the latter sort of cases you can readily see why it could not be public because it is a preliminary stage; it

is part of the prosecution decision-making process. But I think that is the reason. I actually have a cop-out in this which is, of course, that this is an area that is not subject to my oversight but to that of the Attorney General, so really you should be asking questions of him, but I have given you as much information as I have.

Deputy M. Tadier:

Are you concerned about the possible inconsistencies? I can be forthcoming with some examples if you like.

Senator B.I. Le Marquand:

Sorry, are you talking about inconsistencies in sentence or inconsistency in decision to prosecute?

Deputy M. Tadier:

Just in the information that is available. One example, of course, is that if someone has been to Parish Hall and they have pleaded guilty and they may get a substantial fine which would be the equivalent to what they would have got in the Magistrates Court. So, in one scenario, just on a superficial level, a certain person would be subject to the very officious workings of the *J.E.P. (Jersey Evening Post)* who will print a column saying: "Such and such was convicted on a certain day. He got fined this and that". Someone who went to Parish Hall and got exactly the same fine is not subject to that kind of stigma, if we can call it.

Senator B.I. Le Marquand:

Yes, well, that is true and that is a downside of the Parish Hall system.

Deputy M. Tadier:

Do you have any ideas to address this flaw that you have acknowledged?

Deputy T.M. Pitman:

And what is the timescale? That is not my department. [Laughter]

Senator B.I. Le Marquand:

You know my methods. I think it is inherently part of the system. I think part of the problem is, as I said before, that it is by the very nature of the system the outcome is uncertain. I suppose you could say in speeding cases below a certain level it was not uncertain because it was a general practice of the Centeniers to deal with it, but in principle it is still uncertain because the first decision which has to be made at a Parish Hall inquiry is as to whether a person should be prosecuted or not and every case that goes there theoretically could be prosecuted in the Magistrates Court and, therefore, the confidentiality type aspect that I referred to must apply. The second aspect, of course, is that if a person is, as it were, fined they first of all have to accept the decision of the Centenier that they are guilty and, secondly, they have to accept it is a reasonable fine. The Centenier can only proceed consensually and, of course, he does so on a basis of generally fixed scales of matters. So, you do not know whether the person is going to accept it or not.

Deputy M. Tadier:

But surely theoretically that process could take place in a Magistrates Court. You could meet the magistrate before and say: "I am happy to plead guilty. I am happy to accept whatever punishment you give me and I do not want my name to be put in the newspaper" and all the other implications it has ...

Senator B.I. Le Marquand:

No, the Magistrates Court is a long-standing public court and a court of record. To achieve what you want you would have to convert the situation at a certain stage that the nature of the Parish Hall inquiry was converted from a prosecution inquiry into a sort of court. Although that is not without its difficulties because the moment it would become a criminal court then all the gamut of the human rights comes into play. So, that is quite complicated. This is the hard question. I think you should ask the Attorney General. [Laughter]

Deputy R.G. Le Hérisier:

We will put a line under our formal questions. We will now move to additional questions and Constable Butcher is going to lead off with the operational control of the police.

Constable G. Butcher:

That was the question. Could you define the operational control of the police? I think the key is in the word “control” probably.

Senator B.I. Le Marquand:

Well, I think I can answer that one very simply. Operational matters are down to the police and not down to the Minister. I mean, ironically there were those who at the time of the vote as to who would be the next Home Affairs Minister were saying that Ian Le Marquand would want to interfere with operational matters. That is the very last thing that I want to do. I mean, having worked within the criminal justice system and played different roles at times I well know what my role is at a given time and operational matters are down to the police. The police will determine which matters they think are worthwhile investigating and they will also determine how they then proceed in relation to that. Now, my roles lie in the area of policy and also in the areas of efficiency. I have a standard of duty to ensure that there is, I cannot remember the exact words, but an efficient and effective police force. I have the right words, have I? Efficient and effective police force. So, I have a general oversight as to efficiency and effectiveness. It is not my role to get involved in individual cases, but if I were to say that things were constantly going wrong in a particular area then it might fall within the policy area or within efficient and effectiveness, but that would be relating to the system, if you understand me, not relating to the management of individual cases. It is very, very important that that is so because otherwise you would have systems that were amenable to political manipulation and the moment your police force ceases to be constitutionally independent it is amenable to political manipulation with all the dangers that go with that. I passionately believe in equality before the law and that each and every person, whoever they may be, should be treated in the same way. I do not want to give away any confidences but I was involved as a magistrate in a case some years ago which involved a States Member who was

prosecuted in circumstances where I did not think he would have been prosecuted if he had not been a public figure, and I believe that is absolutely wrong.

Deputy M. Tadier:

Did you say that was several years ago, or this week?

Senator B.I. Le Marquand:

No, several years ago.

Deputy M. Tadier:

Oh, sorry.

Senator B.I. Le Marquand:

When I was a magistrate. That is absolutely wrong. It is absolutely vital that conversely no one is above the law and those 2 principles of no one being above the law on the one hand and on the other hand a situation where a person should not be treated in an especially different way because of who they are, that is vital.

Deputy T.M. Pitman:

Could I just draw you on that one, without wishing to go into specific cases?

Senator B.I. Le Marquand:

You are not going to get any response from me whatsoever on operational matters.

Deputy T.M. Pitman:

I am not going in that direction. I am just saying with this week's events I think the public will be quite reasonably asking questions: who does control this and monitor it? Because while no one should be above the law, indeed, as you just said, people should not be treated any differently and what we have

seen this week has disquieted a lot of people out in the general public. Would you have any observations on that?

Senator B.I. Le Marquand:

It is an operational matter. This is an operational matter and not in my area. I mean, an example, the general policy in relation to the police, shall we say, in relation to the use of arrest, when they arrest a person and when they do not I think is a policy matter and a matter within my remit. Interestingly, I have already had discussions in the past, before this week, with the Acting Police Chief in relation to that and we are in full agreement on that issue, that in fact people should not be automatically arrested, but only arrested where it is necessary and indeed in many cases they can be invited to attend the police headquarters, et cetera. That is my view. That is the view of the Acting Police Chief. That, I believe, is a policy issue which fairly falls within my remit but how that is actually implemented in individual cases is simply not a matter for me to get involved with.

Deputy R.G. Le Hérisier:

Would you not accept, Mr. Minister, that say a Member was arraigned for drunk and disorderly or being involved in a violent altercation, that is a very clear, for want of a better term, normal crime, so to speak. But where a Member is arraigned or is arrested in an instance where it appears to trespass into the performance of their political duties, rather like the Damian Green case in the House of Commons, for example. I am sure you must be aware that it will ring political alarm bells and it will draw attention to the tension between the parliamentary privilege we have in order to perform our duties and to areas where it may be perceived that in the performance of those duties we appear to be trespassing into the criminal law.

Senator B.I. Le Marquand:

There is no parliamentary privilege, as Deputy Tadier will know, because the P.P.C.E. (Police Procedures and Criminal Evidence) Committee has had advice on this in recent times. There is no parliamentary privilege issue which would authorise a person to commit a criminal offence. That is the

bottom line. *Per se* I cannot comment on individual matters. Can I say that the whole debate is very interesting because I have alluded earlier to reasons why I think it is going to be quite difficult to get a sensible viewpoint generally in relation to the balancing point. The danger is that in response to certain events suddenly the public cry goes up: "We must have stronger control of the police." Then if you get that and it oversteps the boundaries in a way then you end up with political control of the police and that we must not have. So, this is what makes the whole area very sensitive because in my own role, can you imagine if a county councillor was arrested in Manchester, can you imagine the effect of being asked questions about it? It is ludicrous. That is part of the difficulty of the proximate role.

Deputy R.G. Le Hérisser:

We were discussing this before you came in. You mentioned Manchester, of course, and while it is not to do with politics and then we will revert to Deputy Pitman, you may remember when Mr. Anderson was the Chief Constable of Manchester he had a particular interest in homosexuality, as you may recall.

Senator B.I. Le Marquand:

I did not recall.

Deputy R.G. Le Hérisser:

Certainly the allegation was made that the police force there, during his tenure, was very active in this area and that reflected his particular beliefs and so forth.

Senator B.I. Le Marquand:

Active in arresting homosexuals?

Deputy R.G. Le Hérisser:

Yes, in arresting people.

Senator B.I. Le Marquand:

Oh, I see. No, I did not recall that.

Deputy R.G. Le Hérisier:

So, in a way what you were having there, you could argue - and I do not know the details - you had a Chief Constable who had particularly strong views in a certain area of law enforcement and what were the checks and balances applying in that situation?

Senator B.I. Le Marquand:

Well, that is exactly the problem if we can look at it conversely. I mean, you may recall not very long ago a case in which a Christian couple were handing out leaflets to a Gay Pride march I think expressing their views that what homosexuals did was wrong and they were arrested and questioned and so on and so forth. Now, you could have a situation in which you had a police authoritative area which had very liberal views and, therefore, anything that went against those liberal views would be stamped upon. In fact, in that particular case I think they eventually were paid compensation. But both scenarios, either way, are indications of the difficulties which can arise if a police force becomes politicised and the reason why it must not be politicised or allowed to become politicised.

Deputy T.M. Pitman:

Could I just take on from that point, certainly in my memory we have seen another case with a ... I am not sure if it was a Minister but certainly a Senator breaching data protection laws, and I am sure the reporters here would know better than I, but there was certainly no screeching of unmarked police cars to arrest the particular politician. It is not consistency that concerns them.

Senator B.I. Le Marquand:

Well, I cannot comment because you are asking me to comment on operational matters and, indeed, of course, when a decision was made to investigate a matter that decision may be made in isolation by the police, or it may be made after advice from lawyers. I cannot comment on that because that would be talking about an individual case, but very often prosecutions and investigations may operate with legal

advice at an early stage. They may do, they may not do. Again, that is another reason why it is vitally important to have an independent prosecution service whereby the prosecutors are seen to be independent and objective in what they are going to do. The difficulty in all these things is that judgments have to be made as to how seriously a matter is going to be treated, the appropriate way to proceed with an investigation, et cetera. These are quite difficult judgments. The one that I mentioned to the panel on a previous occasion, the one role I have not played in the judicial system is that of prosecutor. I have played every other role: defence lawyer, clerk to the courts and judge, and each discipline has its own approaches and so on and so forth. It is vitally important again that we do not have any attempts to politically interfere with the prosecution process. I mean, I have to say some of the things which have been occurring in recent times in the States have greatly alarmed me that in my view there are attempts being made by some politicians to politically interfere with the prosecution process, and that is wrong for exactly the same reasons as I have indicated the importance with the police remaining independent; the prosecution service must retain its independence.

Deputy M. Tadier:

How can it remain independent if we have an Attorney General who gives advice to the States and the legislature and then is also involved in prosecution?

Senator B.I. Le Marquand:

You are talking about a specific area. Again, we are actually straying outside my area. It is a more constitutional area but you are talking about the difficulty of one moment advising and the next minute having to prosecute. Yes, there are difficulties. But that is not within my area.

Deputy R.G. Le Hérisser:

Constable Butcher, you set this ball rolling, did you not?

Constable G. Butcher:

No, thank you very much.

Deputy R.G. Le Hérisier:

It is a very interesting area and I rather suspect the story will run and run, so to speak, in this area.

Deputy M. Tadier:

Again, it may not be one that is your area either, but it is something ... when you were talking earlier about speeding fines, it was something I wanted to come back in on. Is it true that there is an area of nepotism, if I can call it that, whereby - and I do not want to go into any specific cases - let us say that a young person gets arrested for speeding and if that person pleads mitigation and says: "My client would never normally have done this and he is about to join the Armed Services or become a lawyer" for example, then often that is considered a sufficient ground on behalf of the magistrate to give them a lighter sentence so that it does not affect their career prospects?

Senator B.I. Le Marquand:

Well, you are asking me to stray into an area that is not mine, namely the judicial area. You are asking me to talk about general principles of mitigation. Obviously this is an area very well known to me. The categories of matters which could be considered mitigating circumstances are actually quite wide and this is why the whole sentencing process is much more complicated than lay people understand because first of all you have the seriousness of the offence and so on. You have to categorise that, but secondly you have the circumstances of the individual, and we have talked already about people in psychological or psychiatric or on drugs assessments and specific needs for an individualised sentence as opposed to a tariff sentence, but then other factors in terms of what a particular magistrate might take to be a mitigating factor are quite open. I mean, there was, for instance, a previous magistrate who was very well known that he favoured anybody who had been in the forces and everybody put forward their forces link because they knew the magistrate viewed that as stronger mitigation than others. I mean, when I started as a magistrate, people knowing that I am a Christian, you would be amazed by the amount of conversions which were taking place and the religious views which were being expressed. This had no effect whatsoever upon me because these were not matters that I should properly consider,

but I was quite amused by the attempts of people to get me to change my views in relation to that. The difficulty is that the factors are complex and numerous and sentencing can only be described as an art, part science, part art, but it is more complex.

Deputy M. Tadier:

But in your role as Minister for Home Affairs what would you be doing to try and stamp out any kind of nepotism? I call it nepotism in the sense that I will explain what I mean.

Deputy R.G. Le Hérisser:

Very quickly, I think, as we have to get moving.

Deputy M. Tadier:

Okay, well, we will leave it there, I think. Perhaps it is something we can talk about.

Senator B.I. Le Marquand:

I mean, it is not within my role. I have no oversight over judges, I hasten to add. It is simply not my responsibility.

Deputy R.G. Le Hérisser:

Well, very, very interesting, but I am afraid we have to put a line under that. So, I would like to thank you, Mr. Minister and Mr. Chief Officer, for coming. No doubt we will meet on our regular meeting again. Thank you for covering such a broad range of issues.

Senator B.I. Le Marquand:

I hope you will give us some clear timescales on the next occasion.

Deputy R.G. Le Hérisser:

Well, sometimes somebody has to tell me why so many major laws or proposals have gone through with

so many apparent defects. Why have they gone through? It takes someone obviously of your expertise, it appears, to have spotted that. Where are the checks and balances earlier in the system in order to have brought these issues up?

Senator B.I. Le Marquand:

I do not know. There are problems that sometimes occur. Draftsmen will do what they are told to do and sometimes the raft of instructions are not as clear as they might be, or whatever. You can get a strange situation in which the draftsman thinks a policy decision has been made and the person who has made the policy decision just thinks it is a piece of clever drafting and the 2 do not meet.

Deputy R.G. Le Hérisier:

Yes, some real issues. Anyway, thank you very much.