



Economic and International Affairs Scrutiny Panel

Family Friendly Employment Rights

Witness: Employment Forum

Monday, 8th April 2019

Panel:

Deputy K.F. Morel of St. Lawrence (Chairman)
Deputy D. Johnson of St. Mary (Vice-Chairman)
Deputy S.M. Wickenden of St. Helier
Senator K.L. Moore

Witnesses:

Ms. H. Ruelle, Chair, Employment Forum
Mr. M. Ferey, Deputy Chair, Employment Forum
Ms. K. Morel, Secretary, Employment Forum

[13:33]

Deputy K.F. Morel of St. Lawrence (Chairman):

Thank you so much for coming in, and welcome. As you are know, we are undertaking a Scrutiny review of P.17, which is the 11th amendment to the employment legislation, otherwise known as family-friendly legislation; that is how we will refer to it today. Before we start, if you could just make sure you have read that, which is about engagement. We will just start by stating our names for the record. We will just go around the table stating our names.

Deputy S.M. Wickenden of St. Helier.

Deputy Scott Wickenden. I am a panel member and I am Deputy of St. Helier District 1.

Deputy K.F. Morel of St. Lawrence

Deputy Kirsten Morel, Chairman of the panel.

Senator K.L. Moore:

I am Senator Kristina Moore and I am a member of the panel.

Deputy D. Johnson of St. Mary:

David Johnson, Vice-Chairman of the panel, Deputy of St. Mary.

Deputy Chairman, Employment Forum:

Malcolm Ferey, I am the deputy chairman of the Forum, and an independent member.

Chair, Employment Forum

Helen Ruelle, chair of the Employment Forum.

Secretary, Employment Forum:

Kate Morel, I am the Forum secretary.

Deputy K.F. Morel:

Excellent, thank you. What we are looking at today is really to try and understand the consultation process and the work that was done there as well as to understand the Employment Forum's thinking and views on the laws that have come through, as is proposed. We will just get started. First of all, would you mind explaining the overall role of the Employment Forum? So in general, not related to this.

Chair, Employment Forum:

The Forum is made up of 9 members. So there are 3 independent members, 3 employer members and 3 employee members at any one time. Our role is to consult and make recommendations in respect of matters that are referred to the Forum by the Minister for Social Security. The Forum has no independent remit. We cannot choose what we might like to consider. We can only consider that which the Minister refers to us directly. So how that will generally work is we would receive a letter from the Minister directing us under the law, so that is under the Employment Law, to consider whatever he or she might wish us to consider. We look annually at the minimum wage. At the moment that is an annual review, so that will be something that will come to us on an annual basis. Then other matters are referred to us on an ad hoc basis, as and when something might be considered as part of the States plan or however that might come forward. Obviously, that is not something that the Forum has any say in. We have no particular notice of that until it is directed to us. Once that is then directed to us, we would consider obviously the letter, as presented, and the Forum would then decide how it goes about consulting in relation to that. So the law requires us to consult. So the first job that we would undertake as a group would be to sit down and decide how

we would do that. We look at basically what is required in terms of the specifics. Yes, we would decide how we would best consult. How we would need to ask questions. Who we might need to consult with. How we reach the right people. All of the usual things that one would expect. We would draw up a consultation paper. That would then go out to consultation usually with a press release. We would then look at, as part of that, how we reach the various people we need to, so in addition to our standard database we look at how we get that out there. As part of our consultation, we are always very much looking to reach as many people as we can. How do we reach those people? Who are the relevant stakeholders? So that is very much part of our discussions around the consultation with every consultation. It is not with any particular one but always how, particularly with this one, are there particular groups, are there particular different groups, depending on the nature of the consultation. Then obviously the consultation would be open for the determined period. During that time we would perhaps look at other evidence that we might need to receive. So we might look to have experts come and talk to us about something. We might invite people to come in to talk to us. We might gather our own evidence through research. For example, in the minimum wage we might have the statisticians and people come to talk to us. We would undertake stakeholder meetings. So that would be done during most consultation periods. Then obviously once the consultation period is closed, we would then review all of the evidence that has been put before us. Sometimes that might mean then we need to look at certain other things, research and things, if particular issues have come up. The Forum then sits to deliberate the various information that has been presented to us. That can take a short period of time or it can take a very long period of time.

Senator K.L. Moore:

Can I just ask a few questions about the particular consultation in relation to family-friendly? Do you follow consultation guidelines; are any provided to you by the States of Jersey, in the first instance?

Chair, Employment Forum:

No, we do not have consultation guidelines. I am not aware of any particularly but we have our own in terms of ... you mean time periods or specifics?

Senator K.L. Moore:

The States of Jersey, and I presume this is relatively recently, have produced guidelines for their own work entitled *Planning and Consultation* and it runs through steps in terms of what are effective ways of consulting with the public.

Chair, Employment Forum:

Obviously we do look, for example, to time periods and things like that. So we would be guided by ... certainly one of the things we look at is when we are going out to consultation, we would think

about how long do, for example, the States normally consult with when they are putting papers out. So, yes, we are aware of things like that, generally best practice, but I have to say, no, I am not aware of those. I have not seen those guidelines myself.

Senator K.L. Moore:

This consultation opened in January 2017 and the recommendations were lodged at the end of December of that year. Could you just talk us through the process, particularly with relation to the consultation process and how they do it?

Chair, Employment Forum:

In terms of the timeline?

Senator K.L. Moore:

Yes.

Chair, Employment Forum:

During the course of that year you will have to remember obviously that we also did the minimum wage review during that time period. So I cannot tell you off the top of my head week to week, month to month, what exactly - and I am sure you do not want to know either - which week we were talking about that but what we would normally do when we are doing 2 consultations is we try and plan our time. That particular year we were very conscious that the family-friendly review was an enormous piece of work. As you will have seen from the recommendation, the subject matters, the amount of topics to be covered, was very significant. So we had quite a detailed plan of how were we going to manage our time over from getting the Minister's direction, which I think was during the course of 2016, so we had some time to think about how we were going to plan that. So it was quite carefully planned with the minimum wage. The minimum wage review is very ... because we have done that now, we do it on an annual basis, we are very clear about how that works. So we can slot that quite neatly into another review. From recollection, for example, we would have gone out to consultation. We would have managed the public hearings and things as part of that, then gone into the minimum wage review, managed part of that, then picked the recommendation back up for the family-friendly. We spend an awful lot of time debating and discussing the family-friendly results, once they came back in. It was an enormous piece of work for us. Usually we meet sort of for a couple of hours a day on the days that we meet to debate our recommendations. We had a number of quite elongated meetings for this particular review because the subject was quite complex in a number of places and it needed a bit more detail. So we had some longer meetings and things like that, particularly towards the end of the year, just to try and get through the amount of things that needed to be managed.

Senator K.L. Moore:

Did you hear from any experts on this subject?

Chair, Employment Forum:

Yes, so before we started the consultation, we had some training from a U.K. (United Kingdom) employment lawyer about family-friendly law generally. Most members of the Forum, as you would expect, would not be experts in this particular area of law. Some of it can be quite complex. That said, I think what you do need to remember is that most of the ... the Forum is not here to draft the law. They are here to understand what comes back to us in consultation to take a common-sense approach to that and to look at making recommendations in respect of the principles. Clearly, there are some complexities around it. There was an awful lot of time and effort spent on it. But it is not for the Forum to get into the minutiae of how does that work in terms of techy-legal drafting. That is not for the Forum.

Deputy K.F. Morel:

Are you aware in fact, and the Minister said it in a public hearing the other day, that she is not aware that any recommendations have really ever been knocked back by the Minister? So recommendations from the Employment Forum have all pretty much been accepted; over the years this is. So in that sense, and when you certainly look at your recommendations and you look at the law, they are incredibly similar. I have only spotted 2 differences.

[13:45]

Are you aware during your consultation process, and when providing recommendations, that while you are not drafting the law, it is being taken wholesale?

Chair, Employment Forum:

No, I would definitely ... absolutely the Forum never takes for granted, absolutely not, that the recommendations that have been put forward will be accepted in whole or in part by the States or by the Minister. That is not something we take for granted. We make recommendations on the basis of the evidence before us. That is the Forum's role. We take that incredibly seriously and we are very cognisant of that fact. That is what we do. Yes, we are fortunate that those recommendations have then been accepted but I would say that that is because the work that has been done has been good work. I think the Forum works really hard, has done good work. Generally, the work is based on sound, good evidence. We spend a lot of time, we take our roles and responsibilities incredibly seriously.

Deputy K.F. Morel:

I do not doubt that. It never occurred to us.

Chair, Employment Forum:

I am not suggesting otherwise. But I would say that that is the reason why generally the recommendations are ... they are certainly not always unanimously favourable in parts of whatever that recommendation might be. So, for example, the minimum wage is very often not popular. But that is just the way it is. That is a very good example of an extremely challenging piece of work that the Forum does every single year.

Deputy S.M. Wickenden:

I think it has always been amended by someone or other as well, has it not?

Chair, Employment Forum:

Almost every year. I think we have had some sort of ... I can only speak obviously for my tenure as chair and as a member but I think almost every year there has been some challenge.

Senator K.L. Moore:

Getting back to this, could you just tell us how many responses you had for the consultation?

Chair, Employment Forum:

In terms of total responses ... sorry, I will just have to go back to the recommendation, because off the top of my head, it will not surprise you to know, I cannot remember. So total individual respondents, I am just looking at the recommendation, so these are people that submitted an individual response, were 331. They submitted a paper response to the consultation. That does not obviously include people who came along to a meeting but may well also not have submitted a written response.

Senator K.L. Moore:

You mentioned also that stakeholder meetings were the important parts of your work. How many of those were held and how many people or groups would have attended?

Chair, Employment Forum:

In terms of the number of meetings, I cannot remember off the top of my head exactly how many. There were a number. So not all Forum members would necessarily attend each and every meeting. It would depend on availability. So we try and perhaps manage those between us. Also so we do not look completely mob-handed.

Deputy K.F. Morel:

Do you run the meetings yourselves or do you get an outside firm to run them?

Chair, Employment Forum:

Yes, we run those ourselves. So we would attend those ourselves. It depends. I mean generally speaking when we are running stakeholder meetings sometimes we would do them with an individual group. So, for example, some attendees like to attend on their own. Then others like to come as part of a wider group where there would be a discursive meeting around the topic. People have individual preferences. So I think again, from just looking at the consultation document, I think around 25 individuals attended. But obviously some of those would be as representatives of a group rather than an individual.

Senator K.L. Moore:

Were you, as a Forum, content that you achieved a wide range of different views and had covered the various views that existed in the Island because obviously you are accustomed to running consultations and so would have a sense of whether the responses to this consultation had been particularly ...

Chair, Employment Forum:

Yes, absolutely. I have to say I think we all felt that this was probably one of the strongest responses to consultation that we have had. I think it is fair to say one of the things that is really important for us as a Forum, is we do not judge the quality of the consultation by the number of responses. We judge it by the quality of the responses. There are a number of reasons for that. For example, we have had things like people who tick the first box and then do not say anything else for the rest of the response. Now that is not really a response but it would show as a response.

Deputy S.M. Wickenden:

Somebody has responded, yes.

Chair, Employment Forum:

Yes. In this consultation, and you will see it referred to a number of times in our recommendation, we all felt that the time and effort that people have put into responding was really significant. So a lot of our ... we have tick boxes but we feel that we get the best response when people comment on why they have given a particular response. Why do you think 52 weeks' leave might be the appropriate or what is your experience around? Those sorts of questions. People took quite a lot of time and effort to do that. Some people do not respond by the online survey at all. Some people respond by letter. Again, the quality of those responses was quite significant, we felt, in this consultation.

Deputy K.F. Morel:

Can I just take it back to talking about how you prepare to go into consultation? Once you have received the directions from the Minister, what is your immediate next step? Do you try to understand who you need to speak to? How do you go through that process of understanding where you need to take this consultation?

Chair, Employment Forum:

We would do both. So we would sit down and think about who do we want to hear from. Who is it important to hear from? Also what questions do we need to ask. There are 2 prongs to that. The questions that we want to ask are open questions, not leading questions. The Forum never has a view. We do not have preconceived views about where anything is going. The Forum does not have a view about anything until we have seen the evidence and we have come to a conclusion. At that stage, people when I ... one of the things that we would often do when we are publicising consultation is Malcolm and I will do T.V. (television) interviews, we do radio interviews, we do interviews with the *J.E.P. (Jersey Evening Post)*, which we did as part of this consultation. People often ask us: "What is the Forum's view on this? Where is the Forum going on this?" The Forum does not have a view. The Forum is not going anywhere. All we do is gather the information and come to a recommendation. So in that initial meeting that is all we are trying to do. How do we ask the right questions to get as much information as we possibly can to make a recommendation?

Senator K.L. Moore:

As a voluntary body, working on behalf of the Minister, or at the request of the Minister, are you given any resources to enable this work to happen?

Chair, Employment Forum:

Yes, so we have a budget. We have certainly never felt that if we needed something that we have not got that available.

Deputy K.F. Morel:

What was the budget?

Chair, Employment Forum:

Our budget I think annually is about £6,000.

Deputy K.F. Morel:

For this consultation?

Chair, Employment Forum:

Yes, I think it was around £5,000 or £6,000. I cannot remember the exact figure. But we have never ... it has never been an issue for us. If we have needed budget to do something it has been ...

Deputy S.M. Wickenden:

You could go and ask for it?

Chair, Employment Forum:

Yes. I do not have a doubt that if I felt that the Forum needed something ... the law is very clear. The Minister has an obligation to make available to the Forum the resources that it needs so if I felt, as the chair of the Forum, that we needed additional resources to do the job that we are required to do, I would go and ask for it. I have never felt the need to do that but you can rest assured that if I did I would.

The Deputy of St. Mary:

More of the same, in a way, but before I say anything else, it is perhaps worth nothing that this proposition lodged by the Minister for Social Security, we are an Economic Affairs Panel, we do not normally get involved in these propositions so we were prompted to do so in part by feedback from the public, in particular, and small businesses maybe even more so. That prompted us to ask a number of questions. The people you contact, some are contacted as a result of your own database on people; I appreciate you cannot give too much detailed information, but are you able to give a general flavour of what sort of organisations, et cetera, you have on your database?

Chair, Employment Forum:

I cannot do that, only because I have to put my hand on my heart and say I do not see that database. It is not something I have looked at. I could not tell you a single name of a person on there because I do not look at it. But in terms of the responses and things, I know that people respond to us. I do not even know ... when members receive responses I do not know whether those responses have necessarily come from the database, whether they have been contacted via the database, whether they have come because they heard me on the radio, whether they saw a piece in the *J.E.P.*, whether their lawyer sent it to them, whether they got it through the J.A.C.S. (Jersey Advisory Conciliation Service), whether they got it from Citizens Advice; that information is not something that I can give you. I just do not know, is the answer.

The Deputy of St. Mary:

On the database. What about from the actual responses? You must have an idea of the sort of businesses that respond generally, do you not? Do you put them in categories?

Chair, Employment Forum:

Sometimes. We only ask questions about sizes and breakdown of business where that is pertinent to the consultation.

The Deputy of St. Mary:

Was it pertinent to the consultation this time?

Chair, Employment Forum:

No, I do not think it was pertinent in terms of does it necessarily matter, for example, how big an employer is. Employers are very clear in their responses generally about the impact of a particular piece of legislation. So businesses in this express their concerns, or support, lots of businesses expressed a huge amount of support for this legislation and a lot of aspects of it, lots of employees expressed concerns and did not have support for some aspects. So it is not always binary. In the same way that people do not always vote in accordance with how you might expect them to. So employers do not always say: "I do not want employment law and you need to keep costs as low as possible." Employees do not always say: "We want more employment law." It is not how it works. It is far more nuanced than that.

Deputy S.M. Wickenden:

Of course it was under consultation so this was a principle idea, so we are talking to businesses early on about the principles of what it was before it has been drafted in any way, shape or form, and they can see the actual tangible part of what is going to happen.

Chair, Employment Forum:

That is true. Although the consultation paper was sufficiently detailed for them to know obviously. We do not just ask questions that are so wide that they do not have a feel for ... they are quite specific issues because then it would be a meaningless consultation. We need to gather enough information to be able to make pertinent and relevant recommendations. Yes, absolutely.

The Deputy of St. Mary:

Again, I am not in any way challenging what you have just said.

Chair, Employment Forum:

Of course, not. I am not taking it as such.

The Deputy of St. Mary:

The point is that since this proposition was lodged there have come out of the woodwork, or wherever, quite a number of small businesses so I am going back to that aspect. I am slightly surprised enough did not write in at the time saying they have concerns on certain bases.

Chair, Employment Forum:

It is often the case, I suppose, that perhaps when people see the detail of things that they are more concerned than they were when they saw a general consultation perhaps.

The Deputy of St. Mary:

It is a general Jersey thing, I am afraid.

Deputy K.F.Morel

It is a general thing.

Chair, Employment Forum:

I can honestly say, and I have given this quite a lot of thought, as you would probably expect, I do not feel that the Forum could have done any more in respect of going out to consultation on this paper. I think it was the most publicised piece of consultation that we have ever done. It was all over social media. It was all over the general media. It was front page of the *J.E.P.*, this is as the consultation, more than once. There was 2-page spread in the *J.E.P.*, it went out through J.A.C.S, it went out through the Citizens Advice. It was absolutely everywhere and everybody was talking about it. I do genuinely ask the question, and this is a genuine question, the Forum is absolutely ... if anybody has got any other suggestions about how we can reach more stakeholders because it is something we always ask. I would ask all of these people who think that they have not been included or want to be included then make sure they let us know.

[14:00]

But I would ask the question genuinely: what more could the Forum have done?

The Deputy of St. Mary:

Again, no way are we challenging that aspect.

Chair, Employment Forum:

Absolutely. I put that out as a ... I would genuinely be fascinated. For example, if you compare the consultation that the Forum does to a consultation that the States may do on a piece of legislation, I think the Forum does a lot more.

Deputy K.F.Morel

It most certainly does.

Deputy S.M. Wickenden:

When we had the Minister for Social Security we did challenge and find out if their database, because of course they have got a database of every employer and every employee in the Social Security Department, and whether they could use their database to more reflect to be able to get the news of consultation out to a wider audience. It was something that we definitely raised up.

Deputy K.F. Morel:

And they had not thought of.

Chair, Employment Forum:

As I say, what we have to be mindful of, of course, is using people's data in an appropriate way but anybody who wants to receive Forum information, all they have to do is let us know.

The Deputy of St. Mary:

My final point of this area is the use of experts; you have referred to that. Again, since it has gone public, we have received again expert opinion elsewhere, which does not necessarily dovetail with what you have. Did you take legal advice at the same time as the ... perhaps indication of drafting although you may well say that was not your area.

Chair, Employment Forum:

It is not. That is not the Forum's role to take advice on drafting. We are not responsible for drafting the law. We make a recommendation, it goes to the Minister, the Minister then does with it ... she either accepts the recommendation, takes it forward for drafting or does not. Obviously, any drafting is then for the Minister.

The Deputy of St. Mary:

Perhaps not drafting that the concern is but we have had representation made that the law is not particularly clear on this aspect or that aspect.

Chair, Employment Forum:

Again, the Forum does not draft the law. All we do is make recommendations on the specific points that the Minister has asked us to.

The Deputy of St. Mary:

You did say you had had some legal experts involved?

Chair, Employment Forum:

Only in relation to giving the Forum members some background about the topic generally so that we can then make sure that we are aware of some of the wider issues, for example. So this was somebody who practises in the U.K., who is an expert in that area. Some of the issues that might have been encountered in the U.K. when we are considering our recommendation; not, for example, for law drafting because it is not our role.

Deputy S.M. Wickenden:

You need to know what the law says now so you do not make a recommendation for something that is already in place, those kinds of areas, where you only need to understand where we are today to be able to make recommendations to move forward.

Chair, Employment Forum:

Yes, absolutely. I am a lawyer; it is what I do. Obviously, I am not there to give legal advice to the Forum. That is not my role but we do have that expertise on the Forum and it is something obviously we talk about. As I say, I am not there to give legal advice but we have that capability as well.

Deputy Chair, Employment Forum:

If you look at the composition of the Employment Forum, so there are employer representatives, employee representatives and independents, and part of that training, if you like, was that general understanding of what family-friendly legislation looks like, was to get all of those different factions up to speed with exactly what we needed to be looking at and what we needed to be consulting on. So it was just to give us a good general background of how it works in the U.K., across other jurisdictions, and obviously that background paper does the same thing, it does a jurisdictional comparison, so that is the starting point of how we can start to formulate our consultation.

The Deputy of St. Mary:

Okay, thank you. That clarifies that thing.

Deputy S.M. Wickenden:

I am just going to ask some questions about the recommendations and how you got to certain points of it. In the recommendation, it does state that: "The Forum is conscious that the recommendation must be sensitive to the financial impact on businesses, particularly on the large proportion of small businesses in Jersey." Can you just go through what you did to ensure the Forum was sensitive to how the recommendation would affect in a financial manner?

Chair, Employment Forum:

I think I probably already, to some extent, alluded to this. The Forum is a body that has been in place for 20 years. It is a pretty sophisticated body in that sense. So in everything we do, it is

already ... in its makeup it has 3 employee reps, 3 employer reps and 3 independents so there is a balance within the Forum. But also, we have our statutory obligations to take into account. All of those things are at the forefront of the Forum's mind. To an extent, if we had no responses from employers or no responses from employees or a particularly category, that would be obviously very unsatisfactory and we would not like that to be the case. But if that happened, the thoughts of business around ... for example, if we were going to ask a business to outlay more money for a particular issue the Forum is aware of the implications of that because we have done lots of consultations where small businesses ... businesses generally say to us: "These are challenging times for us." The Forum knows that. The Forum is very well aware of that. It is there; it is part of what we do. We understand that. It is there in our makeup, it is there already, we hear it in all of our consultations.

Deputy K.F. Morel:

The 3 employer representatives on the Forum, who are they?

Chair, Employment Forum:

Who are they?

Deputy K.F. Morel:

Which employers do they represent?

Chair, Employment Forum:

They do not represent any single employer. That is not how it works. The Forum terms of reference are very clear. No individual member is there to represent an organisation or indeed their own personal views. They are there to bring their knowledge and experience from a particular background to the Forum. So they do not represent one organisation. It is their knowledge of a particular sector.

Deputy K.F. Morel:

Who are they?

Chair, Employment Forum:

The individuals at the moment ...

Secretary, Employment Forum:

I was just going to say obviously the current members are not ...

Chair, Employment Forum:

They are not the same members that were ...

Deputy K.F. Morel:

Who were they?

Chair, Employment Forum:

Who were they? That is a good question. I have that in front of me, so the employers at the time were Jeralie Pallot, Julie Fairclough and Thomas Quinlan were the 3 employers.

Deputy K.F. Morel:

Can I ask how you go about recruiting them?

Chair, Employment Forum:

Yes. We have open recruitment in accordance with the J.A.C. (Jersey Appointments Commission) guidelines. So that is all done openly. We place an advert. Then we would go through a short-listing process. We have criteria. People are shortlisted against the criteria, then they are interviewed and I have interview questions. Then they are selected. It has to go through ministerial appointment. Sorry, I had to look to Kate because I can never remember whether it is just some posts that have to go through ministerial appointment or whether they all do.

Deputy K.F. Morel:

Were any of these 3 selected because of particular expertise in smaller businesses, working in smaller businesses?

Chair, Employment Forum:

I cannot remember because I did not ... I cannot remember whether I was involved in their recruitment. I think they have all been longer standing.

Secretary, Employment Forum:

I think they had been appointed at the same time as you or predated you, I think.

Deputy K.F. Morel:

So you do not know. That is fine.

Chair, Employment Forum:

I can say that one of the individuals comes from a sector that has a very significant number of small businesses in it. I can certainly tell you that. Actually 2 of those members come from sectors that

have significant numbers of small businesses in them. Sorry, I am trying to work out. One of those members is no longer a member but 2 of them come from sectors with small businesses in.

Deputy S.M. Wickenden:

Just looking again at the financial impacts because the Forum has been going 20 years, it kind of knows what it is doing.

Chair, Employment Forum:

Not me personally.

Deputy S.M. Wickenden:

Is there a model for looking at things? So do you keep a model of financial impacts so when something changes for employer they have to pay more, long-term care comes in, or we get the health charge, do you keep up to date with the models so you can keep an eye on what is going forward?

Chair, Employment Forum:

We certainly are very well aware of the bigger impact of what is going on because that is something that, particularly organisations like the Chamber and those sorts of organisations, speak to us about a lot. But, yes, again the members are members who are very much part of business here. We are very aware, and those are things, the Chamber, the Farmers Union, a number of these organisations speak to us routinely about the wider implications of. We also, every year, have the Stats Unit, and people like that come to talk to us, the Economic Adviser speaks to us every year about the outlook for Jersey, what is happening in the wider economy in Jersey. So, yes, we are very cognisant of this. We are not just looking at this as, what is employment law. We are very aware that businesses have wider challenges, absolutely.

Senator K.L. Moore:

I imagine you look nationally as well at the picture. Did the Forum look at any other countries where family-friendly legislation has been implemented at an earlier point to Jersey and perhaps how that has affected that particular country?

Chair, Employment Forum:

Again, with every recommendation we always have an eye to. So, yes, we did with this one. But with every recommendation we always look at what have other countries done, what has worked well, what has not worked so well, what might we be able to do better. I think that is something the Forum is very conscious of. Just because it worked well in the U.K. or Guernsey or wherever, do we think it will work for Jersey? Do the responses to the consultation think it will work well for Jersey?

We are incredibly mindful of that. As you know, one of the things we have to think about is the nature of the competitive ... how Jersey will remain competitive, how industry will remain competitive. We look at that in the wider sense. If a particular law comes in or we make this recommendation, how will Jersey then be competitive, for example, with our close neighbours? Will more people go to Guernsey to work or the U.K. to work instead of coming to Jersey? How does that work? We are very aware of those things.

Deputy S.M. Wickenden:

Once you have done the recommendations, and now we have got P.17 as it is drafted, do you get to go and see her to give your views because a number of the recommendations that we saw that you gave have been taken in part. So if we take recommendation 9, you put forward a recommendation for a possible 12 weeks' leave, 6 being paid by the employer and 6 being paid by the States. Now, the fact that the Minister chose to not take the 6 weeks paid by the States, do you get to comment on how you think that affects the overall recommendations that you have made?

Chair, Employment Forum:

No, once we have made our recommendations and they are ... so as part of the process, I should have said this to you, once we have made our recommendation that is formally presented to the Minister. That is the first time that the Minister sees that recommendation. Once it has been signed off and agreed by the members, the first time the Minister sees it is when it is presented to him or her formally. So once we have formally presented that to the Minister that is it. The Forum's job is then done.

The Deputy of St. Mary:

That surprises me. I would have thought there might be areas where the Minister might want clarification: "Why do you come to this conclusion?" Is there any further dialogue on aspects?

Chair, Employment Forum:

I mean sometimes in that meeting the Minister may very well ask us ... I mean at the presentation that could be quite a long meeting where the Minister might say: "Tell me about why that recommendation" and certainly if the Minister then came back and said: "I would like to understand a bit more about why you came to that recommendation" of course the Forum would engage with that. We are not saying: "Do not ever come and speak to us about this again. We never want to hear about this ever again." No, clearly that would be inappropriate, but generally speaking we do not then get into ... the Forum's view is, and I think this is entirely the right view, we have made our recommendation, that is the end of the role of the Forum. It is then for the Minister and the States to then ... the Minister decides whether she accepts the recommendation. It is then for the politicians to decide how they wish to take that forward. That is an entirely proper and appropriate way forward.

We take the view that there is a distinction between a recommendation based upon the evidence before us in consultation and a political decision.

The Deputy of St. Mary:

We understand that.

Chair, Employment Forum:

Absolutely. We are also very cognisant of that. We are clear about that.

Deputy S.M. Wickenden:

If you have made certain recommendations, they might link up with other recommendations you have made, and if you do not take part of that then it could skew what your recommendation, if it is taken in full later on, does in the whole.

Chair, Employment Forum:

I can see the point. There might be circumstances, I suppose, where that might be the case.

[14:15]

Deputy S.M. Wickenden:

We are changing the law to allow qualifying relationships but the Discrimination Law talks about “her” and “she” and it does not talk about the men that are now involved in this. So there is no alignment. Your recommendation does say that there needs to be changes to make sure that it is not cheaper to sack somebody and then they will get 4 weeks’ pay rather than get the 6 weeks for going through the whole process of childbirth. But the discrimination side of it also is not aligned very well and I did not know whether you would look at that and say: “Maybe this has not done what we were trying to achieve.”

Chair, Employment Forum:

As I said earlier, the Forum has no ability to call things in of its own accord obviously. We can only do what the Minister directs us to do.

Deputy K.F. Morel:

Can I just ask - as a personal view, not necessarily the Forum’s view - what do you think of the Minister’s decision not to pay for an extra 6 weeks’ unpaid leave?

Chair, Employment Forum:

I can only give the view of the Forum here. My personal views are irrelevant. The Forum does not have a view in terms of ... the Forum has made its recommendations, as I say. The Forum was very clear on the pay. Just on that, the Forum's view was it felt that overall the pay should be 12 weeks' pay; that people should receive 12 weeks pay in full. The reason why it only recommends 6 weeks to be paid by the employer was to meet the concerns of smaller businesses. That is very clear. The recommendation is very clear about that. That was very clear. That was the Forum's absolutely. The reason the Forum came to the recommendation it did was to try and move forward some way in relation to coming to 12 weeks' pay.

Senator K.L. Moore:

Was the Forum able to gain any evidence or figures to suggest how much that might cost the States of Jersey the 6 weeks' full pay?

Chair, Employment Forum:

The States of Jersey?

Senator K.L. Moore:

Yes.

Chair, Employment Forum:

No, we did not have those. But for the States of Jersey, in terms of ... are you talking about that extra 6 weeks?

Senator K.L. Moore:

Yes.

Chair, Employment Forum:

No. I mean it is very hard to look at that. I remember at the time we did look at some data but honestly, off the top of my head, we did look at figures around the time but it was very much ...

Senator K.L. Moore:

It is a bit more.

Deputy S.M. Wickenden:

Because it was full pay ... everyone gets paid different amounts I guess.

Chair, Employment Forum:

Yes, and when we were looking at all of these recommendations we were very mindful of the fact that we are talking about a relatively small proportion of the working population that are potentially affected. But, yes, we did at the time talk about all of these things in terms of; what are the implications, what are the potential costs, who is affected.

Deputy K.F. Morel:

So what do you mean by potentially small?

Chair, Employment Forum:

Well, there is only so many births a year, for example.

Deputy K.F. Morel:

I see. That side of it. I thought you meant the number of people in small businesses.

Chair, Employment Forum:

No. For example, it is a very different piece of legislation to, for example, a piece of redundancy legislation which could affect every single working person in work. When you are talking about 1,000 births a year you are talking about 2 parents of 1,000 people who are potentially affected by this. So we were very conscious of things like that. We were very conscious about exactly how much do we think this is going to cost but have I got those figures in front of me, no.

Senator K.L. Moore:

But the recommendation is therefore made having, (a) taken regard to the evidence received and proposing a view that helped to bridge the differing comments that you heard.

Chair, Employment Forum:

We hoped so. Absolutely. Yes, very clear. On the pay, without any shadow of a doubt, the cost implications and particularly small businesses were absolutely at the forefront of the Forum's mind without any doubt.

Deputy K.F. Morel:

Can I also ask, did you think about in terms of the aspects, the labour market implications of your ...

Chair, Employment Forum:

In terms of?

Deputy K.F. Morel:

We will get to it. Scott is going to ask you about it.

Deputy S.M. Wickenden:

The recommendation is for 52 weeks of unpaid leave to both parents so, of course, not everyone can take unpaid leave, that is going to be a choice, but in that way there will need to be cover for those times. Did you take consideration about the levels of unemployment in the Island or the challenges people might have about finding resources, especially in specialist areas?

Chair, Employment Forum:

Yes, we did. We certainly spoke about that at length. So we talked about, for example, temps and agency workers and all of those things. Yes, we certainly did.

Deputy K.F. Morel:

Some of the concerns we have had are from skilled businesses, the small businesses, so where do you find an electrician at short notice or when I say short notice but for 13 weeks? Were these the sorts of conversations you had?

Chair, Employment Forum:

Yes, we did but it might not be 13 weeks. There is definitely a fixation on it being blocks of 13 weeks.

Deputy K.F. Morel:

That is because it could be like that.

Chair, Employment Forum:

It could but the chances are it might not be as well.

Deputy K.F. Morel:

Yes, but if it lands on a small employer's lap that someone comes in and says: "I am going to take 4 blocks each of 13 weeks over the next 3 years. Here you are. You are notified." Then that is what the employer has got to deal with so that is a possibility through your recommendations so what conversations did you have on that?

Chair, Employment Forum:

Yes, and we did talk about that. One of the members has expertise in the agency workers and temps and things that so, yes, we talked about that definitely.

The Deputy of St. Mary:

You talked about it but I mean it is not just employer and the one employee we are talking about. That has a knock on effect to other employees. Was that considered? I mean I am thinking that the

requirements of the person who is able to claim parental leave here might trump other arrangements that any members of staff had. Was that aspect discussed?

Chair, Employment Forum:

Yes. Certainly when we talked about the blocks of leave we did talk about all of the potential issues around it and can I remember, frankly, every debate that we had around every recommendation? Honestly, no, I cannot, but, yes, all of these recommendations were debated at length and none of them were drawn up or made lightly or without thought to as many of the potential implications as we could think about. The thing about the blocks of leave ... firstly, remember obviously that the blocks of leave are already in the law. It is already in force now. The only change from September will be adding one more block of leave. So this is already in force so what is proposed from September this year is not going to be a big change on where we are now. But I think the thing about the blocks was in order to make it meaningful you have got to balance that. If you say to a partner or a father of a child or the partner of the birth mother: "You have to take your 52 weeks immediately" is it really meaningful? That was one of the debates that we had.

Deputy S.M. Wickenden:

So to split it up over 3 years what was the reasoning for the 3 year? Was that the 1001 Days? Was it ...

Chair, Employment Forum:

Off the top of my head I cannot remember why particularly 3 years. Certainly when we originally talked about it a lot of it was around flexibility for both parties, to try and give the employer some ability as well to manage it over a longer period of time. The discussions were around flexibility for everybody to try not to be burdensome.

Deputy K.F. Morel:

That is really interesting. I cannot remember how the recommendation - if it differs from the law as proposed or not here - but as the proposed law has come through it is very much about the employee notifying the employer about the times of the blocks of leave they want to take.

Chair, Employment Forum:

That is in the existing law.

Deputy K.F. Morel:

From a flexibility perspective how do you see that interacting with flexibility?

Chair, Employment Forum:

It is the flexibility ... I meant more around being over a longer period of time rather than it all happening very close together. That was really to the 3-year point. Because we had recommended the sort of interim stage at September 2018 and then going to September 2019. Obviously we have made the recommendation for the blocks for September 2018 and then an extension of the rights to September 2019. It was the extra year I think then to take it to 3 for the enhanced.

Deputy S.M. Wickenden:

Can I say it is in the law now but it was put in the law as part of the part of first part of this, was it not? So it was not in there before this ...

Chair, Employment Forum:

Yes, it was. Yes, that is absolutely right. Yes, it was put in at 2018.

Deputy Chairman, Employment Forum:

But, of course, all of these things came into consideration taking on balance what is good for employers, what is good for employees but what is good for the child, which is the most important factor in all of this.

Chair, Employment Forum:

Yes, absolutely and all of these discussions were had around the table and looking at all the feedback, looking at what was it when you looked at the reasons ... going back to my comment previously around we do not do how many people said 'yes': "You win", how many people said 'no': "You win." That is not how the Forum works.

Deputy K.F. Morel:

Saying that though at the same time anyone reading the report cannot really get a sense of how the number of the responses on this bit fit into the number of responses because you select the responses you put in your report. The reader does not necessarily have a sense of how that does figure in ...

Chair, Employment Forum:

In terms of the quotes, you mean?

Deputy K.F. Morel:

Yes.

Chair, Employment Forum:

Our hands are tied to some extent on that because a lot of people do not want to be quoted. They do not give permission for us to use their responses so we can only include the responses that we have permission to include and then we are very scrupulous in ensuring that the responses that we include are reflective of all of the views. So we do not pick out the responses that we think support our view.

Senator K.L. Moore:

Is that why ... I would imagine, that say, for example, in section 7.1 time off work, the Forum states: "87 per cent of those who responded to the survey said yes, 91 per cent of employees and 81 per cent of employers." So at each point there is some sense of opinion.

Chair, Employment Forum:

Absolutely. We always try and say with each question: "These are the percentages of what the responses were", absolutely, and each question should say that: "This was the question. This is how people responded." Then we try and reason through it but this is a significant recommendation. We debated this for nearly a year. This could have been an awful lot longer. We have to try and keep it readable and sensible.

Deputy K.F. Morel:

Yes, I appreciate that.

The Deputy of St. Mary:

So in what way? You mentioned the word "flexible" earlier on, the Employment (Jersey) Law 2003 has provisions for flexible working et cetera. Did it come in in the conversation when you are thinking that something like that might be borrowed for this law so that when considering leave automatically these considerations will come into play, i.e. the size of business, effect on other staff? Is that something which was considered?

Chair, Employment Forum:

No. I think it is fair to say we did not consider that and I think probably the reason we did not is I think a very different issue. When you are looking at the right to have time off to look after your children is quite different ...

The Deputy of St. Mary:

Which could affect other people's time off with their children. That is what I am getting at really.

Chair, Employment Forum:

Yes, but that is a flexible working request. You already have that right. Everybody has the same right. I think the issues there are quite significantly different. It is either, can you have the time off or can you not? Is it fair for one employer to be treating somebody fundamentally different in what is a basic right to have the time off to look after your baby? I am just looking out the window. New Look says: "Yes, you can have 26 weeks off or 52 weeks off to look after your child ...". I should perhaps pick another because I am going to say: "No, you cannot." Woolworths, thank you very much. Woolworths says: "No, you cannot for these reasons." We are talking here about potential societal rights. Would that feel right on such a basic fundamental right? We did not consider that and I think if you had asked us to I think that probably ... and that is probably why because they just feel like very different rights to me.

[14:30]

Senator K.L. Moore:

The Forum was very clear in its recommendations in prescribing a route to be taken in the first year and then subsequent year for the rights to be enhanced. What was the reasoning and the process behind that recommendation?

Chair, Employment Forum:

Thinking about it we had some advice about potential timings for the law and I think ... was it not around election time as well? Yes. There were all sorts of things politically happening as well so there was issues around when laws could come in. So it was not around anything other than timings of laws and how things could be done but predominantly the issues were ... as we always do is ... so with that advice we were thinking about how much notice do businesses need. There are some potentially quite significant changes here if these recommendations are accepted. If we suddenly said in September 2018 for example, which I think was when we had had advice, we had asked the question about when would the earliest these laws could come into effect and with the elections and all the other things that were happening; that was the advice. We thought, if these recommendations are accepted that is going to be a very short period of time for businesses to come to terms with, for example, 52 weeks of this. There was a lot in here. So we looked at, would it be appropriate, therefore - as we often do - to recommend to phase things in, how would we split that, and that was really how we decided. Also taking into account obviously employees expressing the view that the law needed to change and also mindful of the fact that it had always been the case that there had been a commitment stated that family-friendly rights would be reviewed, they needed to be reviewed, and should change. So there were a number of things there playing on the timing. In terms of magic as to, how did we come to the conclusion that it should be that one and not that one? It was really just what felt equitable at the time.

Senator K.L. Moore:

Was consideration given to making that implementation period longer, say a 2-year period, rather than one year?

Chair, Employment Forum:

Yes, and shorter.

Deputy K.F. Morel:

What were the reasons for not making it longer or shorter?

Chair, Employment Forum:

For all the reasons I have just stated really. There was a real view that the law needed to change and that it had already been a while since the commitment had been made to change, which had always been clear that that was a starting point and nothing more than that and that that commitment had been made but also the feedback was that Jersey was lagging behind other jurisdictions very significantly. All of those reasons, but the reason why we felt it should not be ... that business needed a period of time to adjust as well.

Deputy S.M. Wickenden:

When you read through the report I could not - I may have missed it - see anything that said that the States should review the impact of the first part of the legislation to see the next stage just to see if there ...

Chair, Employment Forum:

No, that is not in there.

Deputy S.M. Wickenden:

No, it is not in there all at.

Chair, Employment Forum:

It was not intended to be in there. 2019 was always the target. The 2019 recommendations were always the Forum's recommended targets and there was no "We think the recommendation is that you review in 2018". That was not the Forum's recommendation.

Deputy K.F. Morel:

So if businesses were currently struggling - and I have no evidence to say they are - but if they were currently struggling at the moment with the 2018 legislation your recommendation is that we should march on regardless?

Chair, Employment Forum:

We have not made a recommendation as to that.

Deputy K.F. Morel:

No, because you are saying 2019. The law comes in now.

Chair, Employment Forum:

We made our recommendations at the time based on the evidence we had at the time and there was no evidence given to us at that time that suggested that businesses were struggling or finding ...

Deputy K.F. Morel:

No, but if it were to be found because for that ... I just find it very interesting that if something is broken into 2 parts and yet there is nothing in your recommendation to say: "Hey, let us try and understand what happens following the first part. As we have decided to break it in 2 there is no suggestion ..." and I find it interesting that we want to understand the effects of that first before then bringing in ...

Chair, Employment Forum:

2018 and 2019 were inextricably linked. I think you will see from the recommendation it was only because it was such a short period of time and there happened to be an ability to ... we could have just said: "Let us just go straight to 2019."

Deputy K.F. Morel:

I am beginning to wonder why you did not.

Chair, Employment Forum:

One might ask the question. Maybe the Forum might take that into account in future.

Senator K.L. Moore:

In one sense a fundamental part of the Forum's recommendations has been avoided in terms of the 6 weeks' pay and that is one of the fundamental failings. Somebody locks that into employers.

Deputy K.F. Morel:

It is interesting, is it not, the cost to Government is the bit that gets left out? That is interesting but anyway it is not Helen's place to discuss that. Before wrapping up, if you do not mind, we are going to go back over some things just basically to get them on record to clarify because they may not

have been clear from the first one. How many small businesses did you speak to in this consultation?

Chair, Employment Forum:

I do not know.

Deputy K.F. Morel:

You do not know; that is fine. Did you target any particular spread or sizes of businesses in this consultation period?

Chair, Employment Forum:

No, we did not target. We targeted all respondents as widely as possible from every business sector, from every sector for employees and employers.

Deputy K.F. Morel:

Did you at any time try to calculate the costs of your recommendations to businesses or to Government?

Chair, Employment Forum:

In terms of specific costs ... that is hard. We were mindful of the costs, yes, and we did some calculations, yes, but if you asked me to produce those calculations I would not be able to do so.

Deputy K.F. Morel:

Mindful is a tough word for our side to try and understand what you mean by mindful. I appreciate you are being as open as you can be.

Chair, Employment Forum:

I am. I am being perfectly honest, I am, and I also cannot remember every meeting that we ever had when we talked about all of the issues.

Deputy K.F. Morel:

Yes. No, if it just a tough word for us from an evidence perspective. Mindful is a tough word to understand.

Chair, Employment Forum:

But in terms of what I can honestly say to you is that we are absolutely and were absolutely mindful ... no, it is more than that. We had at the forefront of our minds the impact that these recommendations had on businesses, large and small.

Deputy K.F. Morel:

The difficulty I have and to be fair this is from the very first time this law proposal was presented to me was without being able to provide any evidence as to the businesses or the size, scope, scale type of business ... in fact not even just businesses, just stakeholders ... the spread of the types of stakeholders that you have spoken to. It is really difficult to understand, therefore, the quality of the consultation that has taken place because we genuinely do not know who you have spoken to. I mean in here it says 27 employers were spoken to. Now, that is 0.8 per cent of all employers in the Island. That is not a lot of employers and that is discounting. It would be even smaller if I included the sole traders in there but I am not so it is taking away sole traders and it is 0.8 per cent. So it is a tiny amount.

Chair, Employment Forum:

Yes, but we know, do we not, as well that that is an unfair representation of the number of employers who were spoken to in terms of who responded ...

Deputy K.F. Morel:

How do I know this? Like you, we have got to work on evidence ...

Chair, Employment Forum:

Yes. No, I get that but even on the evidence ...

Deputy K.F. Morel:

... and I am trying to get the evidence here.

Chair, Employment Forum:

... we know that 27 is not the right number because we also know that all of the associations responded on behalf of their members - as they always do - and we know that ... I have been to Chamber meetings where I have specifically asked the president of the Chamber to stand up in a Chamber meeting and say: "Please will you ask your members to respond individually" and they do not and that is not a criticism of Chamber members. It is just people ... where they think that their views are being representing by their association they may well not respond individually. They may feel that they do not need to do that. So I am not trying to brush that under the carpet. We know those people are representing their views of their members. We also know ...

Deputy K.F. Morel:

We know that Chamber are representing the views of 14 per cent of their members because that is what they told us they got from there. Again, it is not the Employment Forum's fault in any way but

it is just ... we have moved on for a year since you did the consultation period so now we are looking back to see the quality of that consultation period and what we are seeing is that the numbers involved are tiny in respect of the whole of the kind of sector that is being looked.

Chair, Employment Forum:

But what do we do? Do we say we can never make a recommendation, we can never implement a law until 95 per cent of any particular sector responded because if that happens Jersey is never going to implement any law ever again?

Deputy K.F. Morel:

No, but what is interesting ... and this is why I asked earlier about when you sit down to undertake a consultation if you sit down and think: "Hold on, do we need to speak to particular types of people?" because what I find interesting about ... but is that it seems to be, from the information that we have been given from the Employment Forum, from Social Security Department, from elsewhere, is that it is very much a kind of advertise the consultation and let them come to us, which is why we have suggested to Social Security: "Why do you not use the bills that you send every single employer in the Island to write on there: 'Do get in touch with us about the consultation, et cetera.'" Because a headline in the *J.E.P.* is only as effective as a headline in *J.E.P.* and they are not that effective sadly and the *J.E.P.* will not be happy I said that. Social media is only as effective as the people who follow that particular social media page and so it seems to be very much a: "Let them to come to us. If they do not; well, that is just their bad luck."

Chair, Employment Forum:

I am not sure ... I think you are putting words into my mouth because I certainly have not said that.

Deputy K.F. Morel:

No, I did not say you said that. I said that is my impression of it.

Chair, Employment Forum:

The Forum would be, as I say, delighted to engage further but short of standing on the street with a clipboard and a sandwich board on, which I think might be a step too far but I do struggle ...

Deputy K.F. Morel:

No, but writing to particular types of employers. We need 10 small, 10 medium, 10 large.

Chair, Employment Forum:

But who?

Deputy K.F. Morel:

The Social Security Department have ...

Chair, Employment Forum:

The law does not allow. The Data Protection Law does not allow me to harvest other people's databases.

Deputy K.F. Morel:

No, the Data Protection law allows you to ask Social Security to do it on your behalf.

Chair, Employment Forum:

I am not sure the Data Protection law ... anyway that is ...

Deputy K.F. Morel:

The Data Protection law is irrelevant if you ask them to write a letter on your behalf to somebody who is on their database.

Chair, Employment Forum:

Yes, potentially we could look ... but I think the point is as well, are they going to respond anyway? Would they, if they are not responding voluntarily, us going out to them is that going to make a difference? I do not know.

Deputy K.F. Morel:

That is fair enough.

Deputy S.M. Wickenden:

As Chamber said to us in the hearing the other day, it is when the law gets closer is when people start paying attention.

Chair, Employment Forum:

Of course they do and that is completely understandable. Of course it is. That always happens, does it not? I mean that is natural human nature, completely understandable. When people see the implications of it of course.

Deputy K.F. Morel:

We asked at the very beginning about whether you are up ... the consultation guidelines that the States of Jersey have; do you have your own consultation guidelines? I am quite keen to understand

whether you have a particular set of, as we do, X, Y, Z and I know you have described what you do but whether you have a particular ...

Chair, Employment Forum:

No, it is not set out formally but that is how we do this. That has grown up certainly under my tenure and I inherited that from the previous chair. It is how we do it. No, it is not written down but ...

Deputy K.F. Morel:

Thank you. Any other questions? Is there anything else that you would like to say about the consultation process or your recommendations?

Chair, Employment Forum:

I think all I would just like to say finally is I think the Forum is of the view that the recommendation was a really strong recommendation, very robust. I think I said it before, the response to the consultation was one of the best quality responses that we have had to consultation. So I think in terms of the recommendation that we were, therefore, able to make it put the Forum in a really strong place. The members of the Forum work extremely hard on a voluntary basis and they take this very seriously and I know that you know that and I know that that nobody is suggesting otherwise. So I just hope that that has come across and that that is very clear.

[14:45]

Deputy K.F. Morel:

It is and I think on behalf of all the panel members we would like you to thank your members on the Forum as well for the work they have done. Irrespective of what we do or do not say this is an impressive piece of work in anybody's department and, as you say, the 20 years the Employment Forum has been doing this work for Jersey without any recompense to the members so thank you very much indeed for that. Thank you for coming along today and thank you, Malcolm, as well. It has been fascinating and really worthwhile so thank you for taking the time. Thank you for putting up with us.

[14:46]