

**REPORT OF PROCEEDINGS OF
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 7th May 2002
at 10.30 a.m.**

Present:

The President (the Hon N Q Cringle), The Lord Bishop (the Rt Rev Noël Debroy Jones), the Attorney-General (Mr W J H Corlett QC), Hon Mrs C M Christian, Messrs E A Crowe, D F K Delaney, J R Kniveton, E G Lowey, Dr E J Mann, Messrs J N Radcliffe and G H Waft, with Mrs M Cullen, Clerk of the Council.

The Lord Bishop took the prayers.

Crown Prosecution Service — Question by Mr Waft

The President: Well, hon. members, we have but a short order paper in front of us today. Item 1, questions for oral answer.

Question 1. The hon. member (Mr Waft) to ask HM Attorney-General:

To what extent does the Island's Crown prosecution service compare with that of the UK?

The President: I call on the hon. member, Mr Waft.

Mr Waft: Thank you, Mr President, I beg to ask the question standing in my name.

The President: I call on Her Majesty's Attorney-General to reply.

The Attorney-General: Thank you, Mr President. In answer to the question raised by the hon. member, I should make it clear at the outset that in the Isle of Man there is no Crown prosecution service comparable with that of the United Kingdom or indeed at all.

The present position relating to the prosecution of offences in the Island is as set out in a report by the Council of Ministers as long ago as December 1995 entitled 'Third Interim Report on Future Constitutional Objectives' and if I may, Mr President, I would refer to extracts from that report because I think it is important to put this question, perhaps, in some context.

As the report stated, the present position in the Island is that, whilst the Attorney-General is in overall control of prosecutions, there is a division between those offences which are triable on information - that is, by jury - and those offences which are triable summarily - that is, without a jury. In cases triable on information the Attorney-General is directly involved, and indeed prosecutions are commenced by him in the name of Her Majesty the Queen. In such cases the Attorney-General may appear himself or by the Government Advocate, legal officer (fraud) or legal officer (prosecutions). He may, of course, instruct outside persons to appear on his behalf, a useful safeguard where prosecutions with a pronounced political input are concerned.

In prosecutions in summary matters - that is, in courts of summary jurisdiction, the complainant is usually the Chief Constable. In the case of government departments, prosecutions are commenced by the Attorney-General, but usually conducted by the Government Advocate, legal officer (fraud) or legal officer (prosecutions). Local authorities may also be complainants; such cases are usually prosecuted by an advocate retained by that authority. I should add, Mr President, that nowadays it would be rare indeed for the Government Advocate to become involved in criminal matters. The Government Advocate now deals with civil matters in the courts and we have three specialist criminal lawyers in chambers to deal with prosecutions.

Under the heading 'Case for Reform' it was observed that it is the police who generally decide which, if any, charges are to be preferred, and that was at that stage a situation which

was felt to be a matter for concern. Following a consultation exercise, four options for improving the system were identified, and if I could refer to the four options because again it puts it into some context: first of all to retain the status quo, but with some refinements - for example, the introduction of a code of practice governing the relationship between the police and the Attorney-General; secondly, to vest by statute the authority for initiating and conducting all prosecutions in the Attorney-General but enable him to delegate the task to another party, perhaps the Chief Constable and/or an advocate employed for the purpose and located in the Attorney-General's Chambers in all but certain cases, control and responsibility remaining with the Attorney-General; thirdly, form a modified prosecution service by increasing the staff within the Attorney-General's Chambers for which the Attorney would be responsible. The prosecution service would initiate and conduct all prosecutions so the Police Prosecutions Department would be defunct. And fourthly, form a prosecution service independent of the Attorney-General, whose sole main responsibility would be the provision of legal advice to government.

It is, I think, appropriate to note that the committee felt that there was no general criticism of the then prosecution system and that there was no great demand for immediate radical changes to be introduced.

Insofar as the system was concerned, the committee concluded that, whilst not attracting undue criticism from those involved in its operation, it was capable of being improved and it was proposed that a code of practice be introduced to clearly define the role of the Attorney-General and the Chief Constable. It was recommended that in relation to the prosecution system the proposed code of practice should be put into operation as soon as possible. There should be a period of two years following the introduction of the code of practice before any decision was taken on whether to proceed to option 2.

The code of practice was indeed put into place following those recommendations and there the matter lay until, following the submission of a paper I had prepared for the Council of Ministers, it was agreed in October 2000 that there be a move to option 2 - in other words, that the authority for initiating and conducting all prosecution should be vested in the Attorney but with power to delegate, and we passed the Criminal Justice Act 2001, schedule 8 of which sets out the relevant provisions.

So it can be seen that we are moving slowly towards a situation where there is a separation of the investigatory function from the prosecution function, which I would regard as the core rationale of the United Kingdom Crown Prosecution Service. To that extent I would favour a closer assimilation of our present prosecution system to that in the United Kingdom, although I would emphasise that, like the committee in 1995, I do not consider that there is a general criticism of the present system in the Island.

The President: Thank you. Mr Waft.

Mr Waft: Thank you, Mr President. Thank you, Mr Attorney, for those revealing remarks on the system that we have on the Island. I just wondered whether he had any comment with regard to the new responsibilities under the Human Rights Act. It is admissible for the police to continue to not only arrest but to prosecute; where are we moving from that situation to the situation which you see forthcoming in the future?

The President: Mr Attorney.

The Attorney-General: Yes, thank you, Mr President. The hon. member, I think, has given a very good example of the danger which is inherent in our system. Although, as I say, I am not aware of any broad or general criticism, it is certainly, I think, appropriate that in the context of the Human Rights Act and the jurisprudence which is flowing from that, police officers should be involved with the gathering of evidence which is obtained in an entirely unbiased and objective way. The decision as to whether or not to prosecute and whether the evidence justifies a

prosecution should, in my view, ideally be referred to lawyers who are entirely divorced from the evidence-gathering process and indeed should be able to form a decision dispassionately as to whether or not to prosecute.

The President: Mr Lowey.

Mr Lowey: I think the Attorney has answered my first one, which was, is it right that in the 21st century the police should be both prosecutor and gathering in information? He has answered that, but can I ask the Attorney - he put a paper to the Council of Ministers in the year 2000; is that a public document and what were the results of that. I think the Attorney has said that he has intimated in the paper that it should move to the next phase. Is there a timescale or timetable to that? I may have been a co-author of the report, I do not know. It sounds awfully familiar to me. I may have been in the Council of Ministers at the time when it was discussed, but I have always thought it was wrong that the police should get the information and do the prosecution as well, because first of it takes up policemen's time in the court as prosecuting officers and the preparation work that that entails, and they could be released for fighting crime on the streets and not doing the due legal process, but really the question I am asking is, is there a timescale put in place to the results, if any, from the Council of Ministers?

The President: Mr Attorney.

The Attorney-General: Yes, thank you, Mr President. Yes, insofar as the Council of Ministers paper is concerned, of course in the usual way it is a confidential paper for the Council of Ministers, but I can certainly say that the thrust of the paper was that we ought to move towards option 2 - in other words, confer the statutory power upon the Attorney to be responsible for all prosecutions, and we are awaiting an appointed day order to bring that part of the Act into force, if that is considered to be the appropriate way forward. There has been a positive move because, as the hon. member says, it is, I think, counter-productive to have experienced police officers tied up in court, and so the Chief Constable has approached my chambers, he has approached me for my views as to whether it would be right now to recruit the services of a prosecutor - that is, a prosecuting advocate - who would be able to take over some of the functions of prosecuting summary offences before the High Bailiff, Deputy High Bailiff and magistrates. That is just the first tentative stage, Mr President, because one advocate will not be able to take over the full functions; I would suggest we probably need to have four additional advocates to take over the prosecution of summary offences. Of course there are significant financial implications of that, but it may be in due course that chambers will be expanded to accommodate that new and very important function.

Mr Lowey: So the answer is, it is desired, but not actually planned for?

The Attorney-General: One lawyer, Mr President, is being recruited. I believe that the Personnel Office in principle are very much in favour of the recommendation, so I would hope that by the end of the year we would have one advocate in place.

The President: Mr Waft.

Mr Waft: Thank you, Mr President. Mr Attorney, I understand that a white paper on the justice system is expected in July in the UK which includes a proposal that magistrates' sentencing power will be doubled with the aim of removing 6,000 cases a year from jury trial. What would be your view on the Island's needs?

The Attorney-General: Well, Mr President, I think I should say that I am very much in favour of the magistrates system; that is the first point to make. There are, of course, critics of the magistrates system. I believe that they do fulfil a very useful function to supplement the adjudication of summary offences by the High Bailiff and the Deputy High Bailiff. I know that there has been a criticism that, certainly in the United Kingdom, there is significant disparity of sentencing depending on which part of the country you happen to be arrested and charged. I am

not aware of any such criticism in the Island. So far as sentencing is concerned, I know that the magistrates are guided by a very experienced clerk and I do not have any grounds for believing that the powers of sentencing are being abused in the Island.

The President: Mr Waft.

Mr Waft: There has always been a criticism of this trial by post-coding in the UK depending on where you are resident. Have there been any similar situations with regard to a similar inspectorate operating in the Island? Who does the inspection and how often is it done?

The Attorney-General: Mr President, perhaps I could ask, is that an inspection of the police?

Mr Waft: No, inspection and analysing, an independent inspectorate which looks at the whole of the service.

The President: Looking at the judgments made?

Mr Waft: Yes.

The Attorney-General: I could be wrong, Mr President, but I am not aware of any such review of sentencing policy on the Island.

The President: Dr Mann.

Dr Mann: Yes, thank you, Mr President. Would not the Attorney agree that we should move as quickly as possible to a separation between investigation and prosecution, because in the UK, where the prosecution services are coming under criticism, it is nearly always because the amount of evidence being produced is insufficient and the sooner we get to a situation where the police have to come forward with sufficient investigation, the better.

The President: Mr Attorney.

The Attorney-General: Mr President, of course the position in the United Kingdom, the Crown Prosecution Service, is not without criticism and over the years indeed swingeing criticism was levelled against the CPS in the UK. I must say, Mr President, that I am not aware of the police falling short of their duty in adducing evidence in support of charges which are brought. Indeed, in serious matters it is quite common for expert prosecutors from the UK to assess the case to see whether it is appropriate to be brought forward. As ever, I think there is a question of balance here. It would be very nice to have a fully fledged Crown prosecution system fully resourced so that indeed government would be relieved of the significant cost of having to outsource our legal services to experts in the UK, but I entirely agree with the hon. member in principle it would be very convenient and good that we moved towards a separation of the prosecution and the evidence-gathering functions.

Mr Waft: Mr President, could I just ask one more question?

The President: Certainly.

Mr Waft: Mr Attorney, are you satisfied that the present service is adequately funded to cope with the new legislation covering domestic violence, aggravated offences, child abuse, sexual abuse and the whole spectrum of case work that is necessary at the moment and the paperwork which accompanies it?

The President: Mr Attorney.

The Attorney-General: Mr President, some of those areas fall outside my ambit, but I am quite sure that if one were to ask the investigating officers, the inspectors who are in charge of, say, the Family Protection Unit and so on, they would very much say that they would like to have greater resources. I think every department would like to have greater resources, but I do believe that they do an excellent job with the resources which are available to them.

Tourist Premises — Accessibility to the Disabled — Question by Mr Waft

Question 2. The hon. member (Mr Waft) to ask the member for Tourism and Leisure, Mr Lowey.

- (a) *What assistance is available to owners of tourist premises in respect of adaptations to make the premises more accessible to disabled persons; and*
- (b) *what information is available to owners of tourist premises to enable them to comply with future disability discrimination legislation?*

The President: I call upon the hon. member Mr Waft again.

Mr Waft: Mr President, I beg to ask the question standing in my name.

The President: This time we ask a member for Tourism and Leisure, Mr Lowey, to respond.

Mr Lowey: Thank you, Mr President. Thanking the hon. member for his question, under the provisions of the Tourism Development Fund 2000 owners of tourist premises may apply to the Department of Tourism and Leisure for grant funding up to 33 per cent in respect of projects designed to improve facilities for those with disabilities to a maximum of £50,000. The department have discretion and are prepared to consider applications seeking financial assistance in excess of this sum where a clear case of benefit to the tourist industry can be identified. I would just like to say that in cases where applications exceed £100,000 that can only happen with the concurrence of the Treasury, but up to £100,000 the department can.

The department can also arrange for assessment of tourism accommodation to be undertaken on a voluntary basis so that what is known as the 'tourism for all national accessible standard' - this standard was adopted by the hotel and holiday consortium in the UK in 1993 - these assessments can be undertaken by the inspectors engaged by the department to undertake the annual round of registration and grading of tourism accommodation.

The department accepts its responsibilities towards the disabled, and I think that can be clearly demonstrated in the award-winning NSC and the NEAC Villa Marina Project, which has very much being designed with disabled access to the fore.

Part (b) - the Department of Health and Social Security has indicated that it is hoped that the Disability Discrimination Bill will be issued for consultation this summer, and at that stage the Department of Tourism and Leisure will bring its contents to the attention of those in the tourist industry via its consultative body, which is the Tourism Marketing Partnership, which includes representatives from all the various sectors of the industry. I am also able to say that the Director of Tourism has already met with the consultant engaged by the DHSS to prepare the initial draft of the Bill to discuss its contents. The Chamber of Commerce and Tourism Committee has also met with the consultant on a separate occasion. I can confirm that there has already been some discussion of the proposed Bill's contents with the industry and that these discussions will be continued once the Bill has been published and put out in its final form for consultation.

The President: Mr Waft.

Mr Waft: Thank you, Mr President. I thank the member for his reply. Could I ask, is your department actively seeking disabled facilities for those hotels which are presently being refurbished and have just been refurbished and yet have not put in any adequate facilities for the disabled, having regard to the fact that they do not have to do so unless it is a completely new building?

The President: Mr Lowey.

Mr Lowey: The direct answer I would say is no, but we do make special provision, as I have said, by giving bigger grants for disabled conversions to those that need them. I would say that the Isle of Man at this moment in time, in providing hotel accommodation or bed spaces, is in a difficult position where we are losing accommodation, not gaining it, and I think their first priority at this moment in time is to create new bed spaces, but we do make a point of telling them of the added advantages that are available to them in the conversion for the disabled, and there is a demand for accommodation for disabled; I can speak from personal experience last year trying to get accommodation for some disabled people to come to the Isle of Man, and it was extremely difficult.

The President: Dr Mann.

Dr Mann: Yes, just following on that supplementary, could I ask the member for Tourism and Leisure, is every owner of tourist premises aware of the changes that need to be made? The impression I get is that it is voluntary. They seek the advice if they ask for it, but nobody goes round all the premises to advise them, because many of these adaptations are quite simple and not very costly and, if people just stop and think, it can be done very easily.

The President: Mr Lowey.

Mr Lowey: Could I say you are quite right: it is a voluntary thing. Nobody goes round and makes it a cardinal point, but I can assure the hon. member that the advantages of the scheme are spelt out to would-be people who are investing in refurbishing their properties, regarding the advantages of making part of their premises disabled-friendly. We also have a Disabled Discrimination Officer already in place who is very much in the active role of educating people for the needs, and the member is absolutely right - ramps instead of steps when they are being done -

Dr Mann: Or handrails.

Mr Lowey: Or even simple handrails, I accept that, and wider doors just so people can get through -

Dr Mann: On both sides of stairs.

Mr Lowey: But there is an ongoing need to educate people. When the Bill comes in, of course, I think the word will be that is uppermost in the information that I have, is in interpretation 'reasonable' and I think the emphasis will be on people making reasonable provision for access. In other words, they are not actively discriminating against disabled people, and neither should they.

The President: Mr Kniveton.

Mr Kniveton: Yes, thank you, Mr President. The hon. member Mr Lowey has said earlier that his department accepts responsibility for looking after disabled persons, particularly on holiday here on the Island. Now, throughout the question we have been talking about accessibility for disabled persons. Can I just slightly stretch it, Mr President, by talking about the buses of the department, and can I ask him, have they been, especially these new ones, adapted with wide doors, lifts, ramps and particularly anchor points for anchoring down wheelchairs? Can they take wheelchairs with persons in them? I am aware that in Europe and the UK there are certain areas that have these vehicles that just pull into the bus stop, the driver pushes the ramp down, the disabled person gets himself up on the bus, goes along and he is anchored down.

Mr Lowey: The simple answer is yes. The new buses - and this is one of the advantages of the refurbishment and the replacement of the buses - I am assured have the right height so the disabled are able to get up and down and there are certain areas where they can be put in and made safe.

The President: Right, we will go back to the question. Mrs Christian.

Mrs Christian: Mr President, could I ask the hon. member if he is satisfied that his grading officers have a clear understanding of what is required in terms of grading for registration of suitable accommodation for the disabled, and is it applied consistently by all the grading officers?

Mr Lowey: Well, the grading officers do not come under me. (**Mr Delaney:** Hear, hear.) All I can tell you is that the grading officers are from the United Kingdom. They are totally independent of the department so that they are looked at. They are actively grading premises in the UK so they are professionally qualified, but again it is like most things, it is back to that word 'interpretation'; no matter how professional they are it is about interpretation. I believe that most of the successful acceptance of the grading system by the industry on the Isle of Man is because it is at arm's length from local influence, so they know that they are being looked at independently by fresh eyes on a professional basis. So I am satisfied that that is the way it is being dealt with at the moment.

The President: Mrs Christian.

Mrs Christian: Mr President, is the hon. member aware that accommodation approved one year by a grading officer of your department as suitable was, the following year after expenditure, considered not to be suitable?

Mr Lowey: I was not, but I would be very interested in the case and I will certainly pursue it for her. But again, these isolated cases have happened even when there were local people doing the grading, so there is nothing new there. Again, it is back to interpretation, but I am satisfied that the arm's length approach is the correct one and it is people from outside that come in and actually do the grading.

The President: Mr Radcliffe.

Mr Radcliffe: Thank you, Mr President. The hon. member 'said in his opening remarks the figures were available. It would appear while the figures he mentioned are certainly for the larger establishments, there are many family-run places of four, six, eight bedrooms and if they go to amend and, as it says, put in ramps and so on, it would cost them as much as the large hotel in relation to their turnover; it is a much higher percentage. Would you be giving a slightly more advantageous form of assistance to the small hotel rather than the big ones?

Mr Lowey: Well, as I said, all the grants are up to a maximum of 33 per cent and therefore that is a top limit. I remember the grant schemes for the industry department - it is up to a maximum and therefore it did not mean automatically you would get the top whack, but the same principle applies to the small business as it does to the larger concerns: they are up to 33 per cent. Each is equally valid and valuable. We have a great shortage, I have already admitted that, of accommodation specially designed to cater for disabled people, there is no doubt about that, and therefore the schemes have been slanted to encourage people to actually do it. These are grants, these are not loans, of a third of the total cost for small premises or bigger ones, but I take the point, is it easier? But within that scheme we can give 25 per cent for, say, 10 bedrooms being done in a large establishment or 33 per cent for one bedroom, to illustrate the point. I am not saying that is the system that is worked, but it is up to a maximum of 33 per cent.

The President: Right. We have given the question a good airing. I will return to Mr Waft, I think, for a final supplementary.

Mr Waft: Thank you, Mr President. Would the department, in view of what has been said, then review the tourist facilities that are available, including the accommodation of those who do not provide disabled access, and make them aware of the grants available to them?

Mr Lowey: I can certainly undertake that and I will make sure that that is passed on to the relevant part of the department to make it sure.

Mr Waft: Thank you, Mr President.

Disabled Discrimination Bill — Introduction — Question by Mr Waft

Question 3.

The hon. member (Mr Waft) to ask the Minister for Health and Social Security:

- (a) *When do you envisage that the Disability Discrimination Bill will be introduced into the branches; and*
- (b) *what consultations have taken place with those who may be affected by the introduction of this legislation?*

The President: I call on the hon. member, Mr Waft, again.

Mr Waft: Thank you, Mr President. I beg to ask the question standing in my name.

The President: This time it is the Minister for Health and Social Security, Mrs Christian.

Mrs Christian: Thank you, Mr President. For some time a consultation process has been taking place with a variety of organisations and departments with the aim of recommending to my department the contents of a Disability Discrimination Bill which would be appropriate for the Isle of Man. The department has now approved drafting instructions on the new Bill which are in the process of being sent to the Council of Ministers for approval. Subject to Council approving the recommendations, they will be sent to the Attorney-General's Department for drafting and, following this, a formal consultation process will be undertaken on the contents of the Bill.

The following groups have already been consulted on the Disability Discrimination Bill, all of whom could be affected by the legislation: local disability groups, the Chamber of Commerce, transport, retailers, employers and tourism committees, the Trades Council, the Department of Education, the Department of Transport, the Department of Tourism and Leisure, Transport and Tourism Divisions, the Department of Local Government and the Environment, the Department of Trade and Industry, the Chronically Sick and Disabled Persons Committee, the UK Disability Rights Commission, the UK Centre for Accessible Environments and the Department of Health and Social Security.

The President: Mr Waft.

Mr Waft: Mr President, can I ask the minister how many officers she has working on this Bill at the present time?

Mrs Christian: Mr President, we have one officer working on the Bill, Mr Jim Hoskinson, who is probably well known to all involved in the disabled area and has been commissioned to undertake this consultation process on behalf of the department. He has been instrumental in putting together these drafting instructions for the Attorney-General's Chambers. We considered that that was sufficient for the purpose, Mr President.

The President: Mr Waft.

Mr Waft: Mr President, could I ask if that officer is full-time or part-time?

Mrs Christian: Mr President, he is a part-time officer; his other part-time job is as the Disabled Access Officer employed by the DHSS and DoLGE.

The President: Mr Crowe.

Mr Crowe: Thank you, Mr President. Can I just ask, will the Bill be based on UK legislation?

Mrs Christian: Mr President, the UK legislation is in a slightly different format to the Isle of Man legislation and deals with specific instances. Our legislation is more general but, we believe, stronger in relation to its approach to disability.

The President: Mr Waft.

Mr Waft: I understand your department is going to refer it to the Attorney-General or the draftsman's officers for final drafting, but one of the questions was, when do you think it will be introduced into the branches?

Mrs Christian: I should expect the Bill to be introduced during the 2002-2003 legislative programme.

Mr Waft: Thank you, Mr President.

The President: Okay, hon. members. Well, that actually draws to a conclusion our order paper this morning.

We have finished in good time and there are a couple of items of what I suppose I could deem to be housekeeping that I would like to discuss with you, so Council will now sit in private, please.

The Council sat in private.