



**STANDING COMMITTEE  
OF  
TYNWALD COURT  
OFFICIAL REPORT**

**RECORTYS OIKOIL  
BING VEAYN TINVAAL**

**PROCEEDINGS  
DAALTYN**

**Constitutional and Legal Affairs  
and Justice Committee**

**HM ATTORNEY GENERAL**

**HANSARD**

**Douglas, Monday, 11th November 2019**

**PP2019/0154**

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**Members Present:**

*Chairman:* Mrs J P Poole-Wilson MLC  
Mr L L Hooper  
Mr C C Robertshaw

*Clerk:*  
Mr R I S Phillips

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Standing Committee of Tynwald on  
Constitutional and Legal Affairs  
and Justice  
HM Attorney General

*The Committee sat in public at 10.30 a.m.  
in the Legislative Council Chamber,  
Legislative Buildings, Douglas*

[MRS POOLE-WILSON *in the Chair*]

**Procedural**

**The Chairman (Mrs Poole-Wilson):** Good morning and welcome to this public meeting of the Constitutional and Legal Affairs and Justice Committee. I am Jane Poole-Wilson MLC and I Chair this Committee. With me are the other members of the Committee, Mr Lawrie Hooper MHK and Mr Chris Robertshaw MHK.

5 The Constitutional and Legal Affairs and Justice Committee is a Standing Committee of Tynwald with a wide scrutiny remit. Today, we will be hearing evidence with regard to the role of Her Majesty's Attorney General in the Isle of Man. Our witness is Mr John Quinn QC, Her Majesty's Attorney General for the Isle of Man.

10 Before we begin, could I please ask everyone to ensure that any mobile phones are off or on silent so that we do not have any interruptions? For the purposes of *Hansard* I will also be ensuring that we do not have two people speaking at once. We will also pause at 11 a.m. to observe the two minutes' silence.

**EVIDENCE OF  
HM Attorney General, Mr John Quinn QC MLC**

**Q1. The Chairman:** Thank you for attending today.

15 I do not know: did you have a prepared statement, Mr Attorney? If not, we will go straight into our questions.

**The Attorney General:** Madam Chair, I have a short – shortish – prepared statement, if I could possibly read it?

20 **The Chairman:** Right, yes.

**The Attorney General:** Madam Chair and members of the Committee, I would first like to thank you for the invitation to appear before you this morning. I also thank you for the courtesy, through your Clerk, of providing me with what was quite a long list of various issues which the Committee may wish to consider with me today in relation to the role of Her Majesty's Attorney General.

25

I am also grateful for your further courtesy in allowing me some little time to enable me to gather my thoughts in advance of today's meeting.

30 Ordinarily, to answer the Committee, I would have prepared a detailed memorandum addressing each of the issues identified by your Clerk but, frankly, and with apologies, I have not had the time to do that. But I am happy to do so in the future if you would wish me to do so.

I have, however, prepared this brief memorandum from which I am reading and which I will leave with you, in which I address briefly my role as Her Majesty's Attorney General of the Isle of Man. It does not address whether the Attorney General should be a Member of Tynwald or  
35 issues concerning the manner in which I perform my duties, which are perhaps best dealt with in questions which you might want to put to me concerning such matters.

It may be helpful for the record if I make my position clear with reference to any reform of the role of Her Majesty's Attorney General. Although it is not in my gift to change my role, I should welcome changes considered necessary to improve things and I think it is entirely  
40 appropriate that this Committee considers and perhaps makes recommendations as to what, if any, reforms may be considered necessary.

My reading in preparation for today has reminded me that the role of Attorney General is a topic which has been consulted upon and considered in other jurisdictions over recent years. I make mention that in the United Kingdom by its House of Commons Constitutional Affairs Select  
45 Committee Report, HC 306 was published on 19th July 2007; and that in Jersey they carried out a Review of the Role of Crown Officers which was issued in December 2010.

I expect the Committee may have had or will have regard to those publications and I do not propose to dwell on them, but simply note that they are perhaps valuable in identifying some of the issues common in our own and in those jurisdictions. Obviously in the United Kingdom the  
50 role of Attorney General is markedly different and presents distinct challenges which we do not face here on the Isle of Man, because the United Kingdom's Attorney is very much a political appointment.

I was attracted to the preamble to the published Jersey Report and its quote of Thomas Jefferson, who seems to be popular even in our House of Keys as a source of wisdom. As the  
55 Jersey report remarks, Jefferson said:

I am not an advocate for frequent changes in laws and Constitutions. But laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered and manners and opinions change, with the change of circumstances, institutions must advance also to keep pace with the times.

We live in fast-changing times and, although perhaps a throwaway comment, the role of the Attorney General must keep pace to remain fit for purpose.

Aspects of the role of the Attorney General were, I understand, last considered in any detail by Tynwald Court at its sitting in June 2005 when it debated the report by the Council of  
60 Ministers of May 2005 entitled 'Appointment of Her Majesty's Attorney General'. Rather than delving into that debate or the history of the role of the Attorney General in the Island – which can make for interesting reading – I invite the Committee to consider that 2005 Report which I suggest succinctly sets out what was then, and very much still is, a realistic description of the role of the Attorney General.

To assist the members of the public who may be listening today, it might be helpful if I read briefly from that report – and I am referring to page 2, chapter 2 'Present Appointment  
65 Procedure and duties of HM Attorney General'.

It reads:

The position of HM Attorney General of the Isle of Man has traditionally been a Crown appointment, with His/Her Majesty acting on the advice of the Secretary of State after consultation with the Island's Lieutenant Governor who will, in turn, have consulted as he thought fit within the Island. The present Attorney General was appointed in this way and on that occasion the Lieutenant Governor consulted the Chief Minister, Mr President and Mr Speaker amongst others.

The Letters Patent appointing the Attorney General traditionally provided for the Secretary of State to have the power to make Regulations governing the role.

In 1979 the Home Office wrote to the then Lieutenant Governor in the following terms:

‘ ... we have been looking again recently at the very long-standing problem of the Regulations made by the Secretary of State for your Attorney General, with a view to up-dating or removing them altogether when the occupant of the post next changes. We find that we are inclined to think that they may have outlived their usefulness.

Provision for Regulations has been made in the letters Patent appointing the Attorney General since 1866. Regulations were first made in 1898, when the post was a part-time one, and they have been twice revised since, in 1921 and 1945. The Attorney General has of course been a full-time Crown Officer for well over 50 years now, and there does not seem to be, or to have ever been, any doubt over his role.

The Isle of Man suggested to the Commission on the Constitution that the Attorney General should be appointed by the Lieutenant Governor, but the Commission did not endorse this. There can ... be no real dispute that as a Crown Officer, the Attorney General is subject to the instructions of the Secretary of State and the Lieutenant Governor and owes his first allegiance the Crown.’

It was agreed at that time that the Regulations should be dispensed with. There was however no question that the post would continue to be a Crown appointment, and the Letters Patent with henceforth state:

‘ ... said Office shall be held by the said [name of new Attorney General] upon such terms and conditions as the said Office was held by the said [name of retiring Attorney General] and in accordance with any instructions which may be given from time to time by one of Our Principal Secretaries of State’.

The Letters Patent however only provide a very limited definition of the duties and terms of appointment of the Attorney General and the Isle of Man Government therefore prepared, in consultation with the Secretary of State, a document which provided a fuller description. A copy of the document as provided to the present Attorney General upon his appointment is attached for information at annex 1.

And I will come back to that in a moment.

In November 1998 the Committee, in its Report on ‘The Constitutional Status and Responsibilities of HM Attorney General, the Chief Secretary and the Chief Financial Officer’, noted that in 1996 the United Kingdom Government had rejected the suggestion that the Attorney should be appointed by the Council of Ministers with the consent of the Crown on the grounds that the proposal would be inconsistent with the existing constitutional relationship. The Committee did not consider that it would be appropriate to re-open the discussions on the appointment of the Attorney General at that time. The Report did however contain the following recommendation:

‘That it should continue to be the aim that the right and responsibility to appoint the Attorney General of the Isle of Man be transferred from the Crown to the Council of Ministers’.

In May 1999 His Honour Deemster Cain drafted a ‘Memorandum on the Appointment of the Deemsters and the Attorney General’ ... Following consultation with the Lieutenant Governor, the Chief Minister, the Second Deemster and the Chief Secretary a further draft of the Memorandum was produced in October 1999. Paragraph 2.10 ... sets out the Memorandum’s proposals in respect of the appointment of HM Attorney General.

70 I do not think I need to add anything more as reference to that report at this stage, but it is worth a read, Madam Chair.

The fuller description of my role which I have referred to, which is as an Annex to that report, has been slightly modified since 2005 and what I propose to do is to hand in, for the Committee, the details of my role with the amended Memorandum attached which sets out specifically the role which I take on appointment.

75 The procedure is that following that recommendation made and following the appointment by Her Majesty of myself as the Attorney General I was obliged under the terms of my engagement to accept what are the main terms and conditions of appointment as applies to the Attorney General of the Isle of Man, and it is all set out there in full which I can leave with you.

80 The report also in paragraphs 5 and 6 sets out the position relating to their Crown Officers of Guernsey and Jersey. The position outlined there remains the same today as in 2005 and notwithstanding the review of the Role of the Law Officers in Jersey in 2010, to which I have

made brief mention, the Attorneys General in both Jersey and Guernsey remain as Crown Officers.

85 The question of who appoints the Attorney General has been the subject of previous Select Committee and Standing Committee reports on the Island over the years. I do not need to go into the detail of how the proposition of who appoints the Attorney has developed over the years, as conveniently the matter currently rests, as is outlined in the Report, and that Report was approved by the June 2005 in the statement which I have read out:

‘That it should continue to be the aim that the right and responsibility to appoint the Attorney General of the Isle of Man be transferred from the Crown to the Council of Ministers’.

90 Paragraph 4 of the May 2005 Report sets out the view of the Department of Constitutional Affairs in the United Kingdom, which is now the Ministry of Justice, explaining that if the Attorney General were to be appointed by someone other than Her Majesty the role would necessarily cease to be a Crown appointment and thus would cease to be a Crown Officer.

The Department of Constitutional Affairs, now the Ministry of Justice, identified the following  
95 aspects of the Attorney General’s role which raise particular issues in relation to the Crown: firstly, the giving of advice to the Crown and that is of course to Her Majesty, as Lord of Man; secondly, exercising functions under UK legislation, such as initiating proceedings in the courts here, and the example I have here is under the Immigration Act which are applied to the Island by Order in Council; and then finally, and importantly, prosecuting on behalf of the Crown.

100 They also raised a concern that the Attorney General’s independence could be potentially undermined if he was not appointed by the Crown. I point out, and I would make this as an example – albeit I am sure we would all agree it would never apply here – and that is if appointed by politicians a Crown Officer could be removed by politicians, which in a few overseas territories has resulted in the Crown having to exercise reserved powers to secure and  
105 maintain good government. And I emphasise that I cannot imagine that circumstance ever arising here! But it is perhaps understandable that the UK raised that as a concern.

The Review of the Law Officers in Jersey, to which I have referred you, whilst preserving the role as Crown Officers did, however, interestingly make recommendations concerning the membership of the recommending panel for the appointment of Law Officers – in our case  
110 Crown Officers – in that they considered the panel ought to be augmented by the addition of two members appointed by the States. I consider the addition of a member or two of Tynwald, appointed by Tynwald to join the Chief Minister on the recommending panel alongside the First Deemster and the President, would be a useful step adding to the transparency of the process of recommendation and helping to ensure that the Crown Officer appointed was acceptable to the  
115 Island’s elected representatives.

So, in brief, what is the practical impact of the status of being a Crown Officer?

In summary, and leaving aside the interesting history of the role, the essential characteristic of the role of the Attorney General as Crown Officer – which includes now the Solicitor General – is the ability for Her Majesty to appear before her own courts, to support her before the Court;  
120 and her interest is clearly that of maintaining the rule of law in the Island. Her Majesty is represented by her Crown Officers. Having two Crown Officers each with the same powers enables, for example, Her Majesty’s Solicitor General to represent the Crown where distinct interests require the Crown to be separately represented, for example, where the Attorney General may have advised an arm of Government, the Solicitor General may need to represent  
125 the Crown’s interest if distinct.

I am asked what I might personally suggest by way of reform to the role of the Attorney General. The Report by Stephen Wooler in 2012 on the functioning of the Attorney General’s Chambers, which I would invite the Committee to consider, in paragraph 20 recommended a change in the relationship between the Director of Prosecutions and the Attorney General to  
130 emphasise the separation of the prosecution function from the executive.

As you are aware all prosecutions are presently brought in the name of Her Majesty's Attorney General as Crown Officer, and although in the Isle of Man the Attorney General is neither a politician nor a political appointee and he or she is not a part of Government, he or she is nevertheless also responsible as the legal adviser to the Council of Ministers and Tynwald which Wooler considered – and I agree – creates the perception of a very close relationship.

In the world where perception of independence and impartiality is of increasing importance, which I acknowledge, I consider and agree with Wooler's recommendation that the time has come, to use his words:

to underline the fact of appropriate separation in the Isle of Man by requiring prosecutions to be brought in the name of the Director of Prosecutions. The Government would of course retain its responsibility for criminal justice policy and the infrastructure of the criminal justice system including prosecution arrangements. The relationship between the Attorney General and the Director of Prosecutions should become [*as in the United Kingdom*] one of superintendence.

The important change would be that responsibility for individual prosecution decisions would rest with the Director of Prosecutions, who would be accountable to the Attorney General and through the Attorney General to Tynwald, for delivering an efficient and effective prosecution service which commanded public confidence.

The recommendations of Wooler in his Report were accepted by Council of Ministers and I can say that in February 2016 I approached and received the approval in principle to such a change from the then Minister of the Department of Home Affairs to that proposal, but the Department has not as yet progressed this matter.

That, Madam Chair, I hope is of some help by way of an introduction. I have notes prepared on the other questions which the Clerk very kindly submitted, but I think that might be best dealt with by questions if that is appropriate.

**Q2. The Chairman:** Thank you very much.

I think in your opening statement you have covered some of our initial questions around the rationale for having the office of Attorney General as a Crown appointment, a Crown Officer.

Perhaps if I could pick up on the last piece of your statement about the separation of the decision-making around prosecutions from the Attorney General? (*The Attorney General:* Yes.) I note that you say this was taken to the Council of Ministers in order to progress, but has not been progressed so far –

*The Attorney General:* Sorry, Madam Chair, it was the Department of Home Affairs Minister who agreed. It has not gone to the Council of Ministers but they approved the Wooler Report (*The Chairman:* The Wooler Report.) and its recommendations.

**Q3. The Chairman:** How do you see the idea of a Minister for Justice, once appointed, being relevant to not only the issue of how the Prosecutions function sits but perhaps other aspects of the Attorney General's role?

*The Attorney General:* Madam Chair, as I am sure you appreciate, the Attorney General has many statutory functions. All of those functions are as a result of statutory provision having been made. I have not actually given thought to which of those could conveniently be transferred to a Minister of Justice, simply because that is a matter for Tynwald to decide.

The principle which no doubt Tynwald had in mind when prescribing functions to the Attorney – and I am leaving aside the Prosecution function for the moment – is clear that it must have considered, perhaps because of the independence of the Attorney, perhaps because his function is very much to look to the public interest, that the decision-making with reference to each of those specific items were matters which ought to be appropriately dealt with by someone independent from the politicians, if we put it that way.

180 Many of the functions do not actually involve any judicial function, save perhaps in relation to the Attorney's role with reference to charities, where he essentially has got to make decisions with reference to matters which are charitable; he is responsible in law for the regulation of charities and clearly then has to form a view. But apart from that, it is clearly a matter for Tynwald to decide which functions could conveniently be dealt with by the Minister; and I do not come here with anything in my mind where I would say to you that public interest demands that it ought *not* to be transferred.

185 **Q4. The Chairman:** Just if I could come back to specifically the prosecutions issue, because in the current Prosecution Code at paragraph 26, is set out the power of the Attorney General to overrule a prosecutor's decision. So exploring that particular power for a minute, if measures are taken to make sure that prosecutions are brought in the name of the Director of Prosecutions and not the Attorney General, how would you see the power of the Attorney General to  
190 overrule a Prosecutor's decision playing out?

How would that fit with the Attorney General perhaps having a superintendence role over the effectiveness of the Prosecution Division?

In other words, is that an area where it would be more appropriate for perhaps a Minister of Justice to look at the effectiveness and efficiency of the Prosecution Division if there is still to be  
195 a power of the Attorney General to overrule the Director of Prosecutions' decision to prosecute or not prosecute?

**The Attorney General:** Madam Chair, I have not looked at the actual provisions in the UK as to what responsibilities or duties the Attorney has in the context of his superintendence of the  
200 Prosecution Service. I cannot imagine that he would necessarily have any role other than to advise the Director of Prosecutions that perhaps in the public interest he ought to think again with reference to a prosecution which is being taken.

Now, whether or not that is the provision in the UK I must say, Madam Chair, I do not know but I cannot imagine that there would be any political interference with the Director of  
205 Prosecutions, if we take that as the analogy, as to whether or not a specific prosecution should be withdrawn.

**Q5. The Chairman:** I suppose that comes back to the express point that Wooler was making though, wasn't it, about not whether there is actual interference but it is a *perception* of  
210 interference? (**The Attorney General:** Yes.) So this is back to while the Attorney General sits as the legal adviser to the Council of Ministers, what are the boundaries or what should the boundaries be for the Attorney General's role when it comes to supervision of the Prosecution Division, or indeed the power to overrule an individual decision of the Director of Prosecutions?

**The Attorney General:** Yes, I have not given consideration to that. I have not got to the happy  
215 space yet where I have had to.

**Q6. Mr Hooper:** So if I can ask then just on that point? It is the Director of Prosecutions that makes the decision on every single prosecution as to whether or not to proceed. Whilst you do  
220 have the power to overrule those decisions should you choose, how often do you tend to exercise that power?

How involved are you in that operational function, I think is what I am asking?

**The Attorney General:** Right, how often? Well certainly I can say I have overruled decisions to  
225 prosecute – I think that is the first point to make – where I have considered that the public interest so dictated that that should happen. That is more often or not by reference to the evidence which is put before me, because I think you will appreciate there are two prosecution

elements which have got to be considered first – the evidential test and then the public interest test.

230 In the public interest test clearly matters such as the cost of prosecution is a factor; and if I am not very happy with reference to the evidence and it has been sent back perhaps at my behest for further evidence and I have not been able to produce it to a satisfactory state, then there have been cases where I have instructed the Director not to prosecute. But they are few and far between, I should say.

235 **The Chairman:** Right, we set an alarm so we are mindful of the time, so we pause at 11.00 a.m.

Did you want to ...?

240 **Mr Hooper:** Yes, I do have some more questions on that point but I do not know whether you wanted to take a short stop now for 11 o'clock and then come back?

**The Chairman:** I think we will stop, because it rather disturbs the flow if we start on the next ...

245 **The Clerk:** Yes, there are only 30 seconds for go for it – the magic moment ...  
It is now 11 o'clock.

*The Committee observed two minutes' silence for Armistice Day.*

**The Clerk:** The two minutes are complete.

250 **The Chairman:** Thank you.

**Q7. Mr Hooper:** Just picking up on that point a little bit more. When you do exercise this power, is it predominantly that you disagree with the Director of Prosecutions on an evidential basis or is it more often or not the public interest test that you have a different perspective on than he does?

**The Attorney General:** The majority of cases are evidence but there have been occasions in the public interest where I have stepped in. *(Interjection by Mr Hooper)*

260 And can I just say, I am just trying to call to mind the last time I did it was basically because I was looking and considering a very vulnerable defendant, and I did not consider it was in the public interest for that defendant to be prosecuted.

**Q8. Mr Hooper:** Okay.

265 What is the process that you go through with this, because obviously it is quite a subjective decision – assessing the evidence, assessing the public interest? What is the accountability route on this?

What is it to make sure that an Attorney General is not acting capriciously or unreasonably when they are deciding on whether or not to exercise this prerogative?

270 **The Attorney General:** The prosecution decision can be reviewed by a complainant. He can write in and ask for an independent review of the prosecution decision which has been taken. And clearly if I had had a hand in that, I would not be carrying out that review; that would ordinarily be passed to the Solicitor General to undertake a separate review of the matter.

275 **Q9. Mr Hooper:** Has that happened?

**The Attorney General:** Can I just say, we have at times disagreed. Yes. I am thinking of a very recent case where we did disagree.

280 **Q10. Mr Hooper:** What happens in those instances then if you have made a decision and it has been reviewed by an independent, say by the Solicitor General? Is it still the Attorney General's final decision as to whether to accept that review, or not? Or is it: if it has been reviewed, that is the decision that stands?

How does it work?

285

**The Attorney General:** We have fortunately never reached that position.

There are two cases which I have in mind where we formed a different view and I think one, eventually, we negotiated between ourselves – he found in my favour; and in the other, I found in his favour.

290 We have not got to the point where the Attorney's decision is final on a review. We would then have to decide together what the outcome should be. And we have managed to do that so far.

**Q11. Mr Hooper:** But as a matter of law, essentially, it is still the Attorney General's decision that is final?

295

**The Attorney General:** A very interesting point, Mr Hooper. We have not tested that yet. I think we are looking forward to it. *(Laughter)*

300 **Q12. The Clerk:** How would that point be tested, Mr Attorney?

**The Attorney General:** A good question. I do not have the information here, but I do remember in discussion with the Attorney in Guernsey that they did have a case where their Attorney General and the Solicitor General disagreed and it went to the Court to determine.

305 I do not know what point there was there, but there was certainly a disagreement between the two Crown Officers there and the Court was asked to make a decision.

I can possibly try and find reference to that, but I can think of no other way to go.

**Q13. The Chairman:** Mr Attorney, your Division helpfully provided information to this Committee a little earlier this year on trials and the outcomes of different trials and so on; and I think really to Mr Hooper's point about how these things are monitored and reviewed, how decisions are taken.

310

I think one of the things that came out from the information you provided was that the information at the moment has to be interrogated manually, that the data systems do not exist to be able to track prosecutions, why the decision is made to progress or not to progress, then what happens – whether the trial is effective or ineffective; if it cracks, why it cracks?

315

I wondered whether you could make some comment on what is being done to improve the data collection of all prosecution matters, particularly ... Because I think that was a matter that Wooler raised as well – **(The Attorney General:** Yes.) the importance of strong data.

320

**The Attorney General:** Since the Wooler Report I have introduced into Chambers a data management system throughout the whole of Chambers, not just in the Prosecutions area. We have not actually got to a stage where it is perfect but that is developing all the time.

I receive statistics weekly with reference to all of the Prosecution function. It identifies cracked trials; it identifies delays; it identifies the time that it has taken to respond to advice files. I review that every Wednesday morning and then I call in the Director of Prosecutions, if appropriate, for explanation.

325

330 So we have gone a long way down the line but it is not just Prosecution, it is in the whole of Chambers we have a very effective data management system and it even deals with time recording. So everything that happens within a Prosecution case is noted on that system.

**Q14. The Chairman:** In the note that was helpfully provided a little earlier this year, I think the definition of a 'cracked trial' was that the defendant offers acceptable pleas or the prosecution offers no evidence.

335 Does your data now clearly distinguish between those two types of cracked trial?

**The Attorney General:** It is not perfect, but that is something which my new acting director is currently working on, to improve the data that is there. It certainly identifies the headline of a cracked trial; it does not from the work report I get each week at the moment identify the reason. But, if you can imagine, fortunately there are not that many, so each week I take a view as to whether or not I require the Director of Prosecutions to find an explanation and occasionally I call for the file to review myself.

So it is a start but it certainly needs to be improved. But we are working on that.

345 **Q15. The Clerk:** Are you able, impressionistically, to say what proportion of cracked trials involved the defendant not being found guilty of anything, as opposed to those where there is a plea that is acceptable?

**The Attorney General:** I am hoping that my Annual Report would have identified that.

350 The answer to that question is: I am. I hope I have published it and that is part of the purpose of the Annual Report which I actually publish, which is to show publicly the outcomes from the Prosecution Division and throughout Chambers as well.

So do you want me to try and find that? I will try to find it.

355 **Q16. The Clerk:** If you were able to give a – I do not want to delay people but – just a 'back-of-the-envelope' kind of answer to the question. Is it 50% of acquittals, or 25% of cracked trials, or what?

360 **The Attorney General:** Well, let's have a look if we can – I do not want to delay you, but I would not even like to accept that because it might be misleading you. To save our time, could I come back to you on that?

**The Clerk:** Yes, absolutely. Yes, of course.

365 **Q17. Mr Hooper:** Talking about the Annual Report and this idea of publishing data to give people a better insight into the work of the Attorney General's Chambers: when you have got your case management, your data management systems up to a level where they could be made public, is it your intention to make public some of the high-level data about successful prosecutions, the number of prosecutions, time recording and all that kind of stuff that would be, I think, quite useful to Tynwald Committees, for example? (**The Attorney General:** Yes.) Not the details, obviously, about individual prosecutions but that high-level monitoring data, the management information that really would give us a picture of the efficiency and effectiveness of Chambers as a whole?

375 **The Attorney General:** To answer that, yes.

The Annual Report is a work in progress. I hope that if the Committee have looked at the previous reports that you will see, hopefully, an improvement – it is improving all the time. And of course that is very much driven by the source data – coming back to you, Madam Chair – and that is improving all the time as well.

380 It is a question of focus and what I can assure the Committee is that that is part of the focus  
of the acting director at the moment, which is to tidy this up. More information will be given and  
there is no difficulty with that.

**Q18. Mr Robertshaw:** Is there anything inhibiting you from speeding up the improvement of  
385 data? Is it external to yourself? Is it GTS? Is it internal difficulties?  
Could you just describe to us where you are up to with that?

**The Attorney General:** Right, if anything can be done?

It is very easy for me, Mr Robertshaw, to blame others. Clearly, and I think quite common  
390 across the whole of Government, we are dependent on GTS to progress the development of our  
management system and they have clearly other priorities at times. We are not hampered, but it  
could be improved. (**Mr Robertshaw:** Thank you.)

I am trying to be very careful with that because I do not want them to turn round and say  
'We are not going to help you any more!'

395 **Mr Robertshaw:** I concur with your point that GTS is under pressure right across the piece. So  
I recognise that. Thank you.

**The Attorney General:** But I have got to stress we are making great strides; and clearly I  
400 would hope that if Mr Wooler was to look at us again he would be able to say, 'Right, we have  
an effective management tool in place ...' – which we have certainly developed and continue to  
develop and we are rolling out updates and changes all the time.

**Q19. The Chairman:** Just while we are on the Annual Report, actually, I am looking at the  
405 report for the year ending 31st March 2019 and it clearly shows at paragraph 2.2 an uptick, I  
think, in pretty much all the categories of General Gaol trial cases. I wondered whether part of  
what you are going to try and capture in terms of your data, as you are looking to improve, is not  
just the volume of cases but to try and offer some analysis of the complexity and therefore the  
demands that flow from the complexity of trials, because I think that feeds into other issues. So,  
410 for example, if we were to look at the whole management of cases from start to finish it might  
go to the duration before any charges are pressed, it might go to the whole duration of the trial,  
to the issue of cracked trials that we have already touched upon.

And another issue, which I do not want us to start on immediately without just asking you a  
bit more about this, is the whole issue of the Public Defenders' Unit. If you have an increased  
415 volume of cases and complexity of cases, that obviously puts a demand on the Prosecutions  
Division but, by analogy, it would put demand on any potential Public Defender Unit. So I would  
just be interested in what you see as the hoped-for future of data that you will be able to  
capture and analyse to look at the effectiveness of the Prosecutions Division?

420 **The Attorney General:** Yes. Could I just turn that on its head if I may, Madam Chair, and really  
try and address the issue where the delays occur at the moment?

From Chambers' point of view, the clock starts to tick as soon as the advice file comes in from  
the Police, usually, or some other regulatory authority. We have got to turn that advice file  
425 round and we have set ourselves a KPI in that regard that we must do that within 14 days. And  
as you will appreciate that is only the start of the journey.

So if we go back with a clear advice as to prosecution after 14 days – and quite often it is  
much sooner than that, but sometimes later because we may have to go back and call for  
further evidence ... What we are aware of is that before the advice file comes to us there is a  
delay; and that is with the investigating authority.

430 What we are trying to do there is to work closely with the Police to improve that part of the  
process and what I have decided to do is actually to put one of my prosecuting lawyers in the

police station. So I am going to actually put a prosecuting lawyer in there to work full time, and I will possibly put them there for six months or so to speed that process up.

435 Both the prosecution lawyers and the investigating authorities, I will acknowledge, required further training. So that is another aspect which we are dealing with to try and help with the delays which are occurring there.

440 Taking it forward, then, so we can focus on that, whether the management system will improve things there is outwith my control then, it is with the investigating authority. But I can say that certainly I am aware – and I am going to focus on the Police again – they have rolled out a new system which we are connected to, so we are closer to them there. So there is an opportunity across Chambers, and I will use the Police as the example – but there are obviously other investigative authorities – where we can find possible situations where the management system is showing us a delay that is already building up.

445 So we are focusing on that. The management system will help us there. The work which we are doing at the moment to improve the link with the Police in the transfer of data is under way.

Then we get to the situation where the advice has been given, the charge is made and we have then got further delays in getting them before the court. For Summary matters, no difficulty; General Gaol matters, getting those to trial – and I will be quite frank, even on the record – the delay is unconscionable.

450 We could be looking now at setting a trial and unless they bring in an Acting Deemster quickly, and unless there is court availability we could be looking at a year's time before we come to trial. And that is not right. So that certainly needs looking at – a bit outside my control, but we are represented on the Criminal Working Group, and we make our representations there. Hopefully, new systems can be brought in to try and speed up that aspect. But again, 455 outwith the management system.

**Q20. Mr Robertshaw:** I am sorry to return to this point about efficient data control, but to what degree do you see it possible to buy software programmes *in* to help speed things up? And to what extent do you see them having to be written specifically for the Isle of Man?

460

**The Attorney General:** Our own management tool, I would describe as bespoke. We bought the software package but we are tailoring that and it has been tailored to meet our requirements. The important thing I am sure – and I am not a techie – but we have got to make sure that what we do can talk to, for example, the Police computer system. So all of that is being 465 addressed. We were certainly part of the discussions with the Constabulary over the system that they brought in to make sure that the chains, the links are there which we can all use.

470 Do we need anything bespoke? I think the Police, if they were here, would say that theirs is bespoke and that they have tailored it to the needs of the Isle of Man and it is something that has happened and will continue to happen. So we are adding on to ours as we identify a gap and we are getting the software writers to actually tailor it. That is not GTS, but we have got to make sure that it works for GTS.

**Q21. Mr Hooper:** Can I just touch on that 14-day KPI that you mentioned? (**The Attorney General:** Yes.) I do not recall seeing any indicators actually published in the Annual Report, so 475 would it be your intention to publish how successful you are with your internal indicators as part of that ongoing work?

**The Attorney General:** Did we not say that?

If it is not published, it will be published; I can assure you of that.

480

**Q22. Mr Hooper:** That is good to hear.

The other question I was going to ask is, that sounded very much like an internal decision that you had made. (**The Attorney General:** Sorry?)

485 That sounded very much like an internal decision that you had made yourselves which has  
me a little bit concerned that we are not looking at the Criminal Justice Strategy in a more  
joined-up way. So for my mind there should be a KPI that starts the moment someone is  
arrested by the Police, through to the charging decision, through to getting into court, through  
to having the trial – rather than every individual aspect of that having their own little  
independent KPIs.

490 It may be that the Attorney General's Chambers is very efficient with their 14 days but, like  
you have already indicated, there could then be a significant wait before someone gets into  
court. And unless we are looking at the picture as a whole I think we are still going to be getting  
not a very joined-up image.

I am just wondering if you would comment on that.

495 **The Attorney General:** I entirely agree. But certainly to answer your question, the 14 days is  
something that I negotiated, if we put it that way, with my Prosecutions Division. That is the  
rule, but the frequent exception is that we are turning things around much quicker because  
there is an urgency. So it is all considered on a case-by-case basis by the Director in making the  
500 allocation of the advice file to one of the law offices in Chambers.

I have got to have a measure and certainly from my point of view where I sit I want to be  
satisfied that we are turning them around efficiently. I would be very concerned that if the  
Police were to come to me and say that we had a very, very urgent matter, and they sat on this  
for 14 days – that, hopefully, will not happen.

505 But we are part of the discussions for the overall Criminal Justice Strategy and all of the  
component parts are considered. I think it would be fair to say that that group, that board, is  
conscious of the fact that the process has got too many delays built into it. So they are  
addressing it from the point of view of software. They are addressing it from the point of view of  
training, which I have mentioned. I have got to do my bit, my prosecutors have got to do their  
510 bit and in turn we have then got to find space for the courts and the Deemsters and all the rest  
of it, so we can get these matters to trial.

It would be wrong give the impression that we are just simply looking at ourselves in  
isolation.

515 **Q23. The Chairman:** I touched on it before, the Public Defender proposals. Perhaps you could  
at this point give us an update on what progress has been made?

**The Attorney General:** Madam Chair, what I have really got to explain to you is that it is  
wrong to focus simply on a public defender scheme. It started its life out of the SAVE Sub-  
520 Committee of the Council of Ministers, focusing on that as a proposition which was put forward.

But if I could remind you, Madam Chair, of the Treasury Minister's statement made at the  
January Tynwald sitting where, following requests from the Legal Aid Committee, the SAVE Sub-  
Committee of the Council agreed that the scope of the project should be extended firstly to  
include civil legal aid and also to extend the review with reference to criminal legal aid.

525 So what the aim of the review at the moment is:

... to develop policy options for the sustainable provision of Legal Aid in the Isle of Man, which:

- maintain or improve access to justice
- support the delivery of quality services
- provide value for money

That is the underlying aim.

The issue of a possible public defenders' scheme is only one aspect of it and clearly that is an  
option which the review will consider in the context of the work which has been carried out.

530 I now focus on criminal legal aid. That is out for public consultation. It was launched on  
23rd September and closes on 21st November. As I speak, there have been 160 responses. A

reminder has just gone out to all stakeholders with reference to the impending closing date. That is looking at all aspects of criminal legal aid, the green form, the Police Station Duty Advocate Scheme, the Court Duty Advocate Scheme; and also the full criminal legal aid issue.

535 So, whether or not the review might recommend now, because the scope of the review has  
be broadened, that a public defenders' scheme would be the solution or part of a solution, it is  
early days to say. So that is where we are at the moment. But there will be delays now because  
of course the scope has been extended and, following the closure of the Criminal Legal Aid  
Consultation we then have to embark on the Civil Legal Aid Consultation which will commence  
at the end of this month and will run into December.

540 That is where we are at the moment.

**Q24. The Chairman:** Thank you.

545 So is it your intention then that you will not move forward with the outputs of the Criminal  
Legal Aid Consultation without also seeing what the outputs of the Civil Legal Aid Consultation  
are?

**The Attorney General:** Yes.

550 **Q25. The Chairman:** And, without wishing to jump ahead – and I understand that you are  
going to wait and analyse the outputs of the Criminal Legal Aid Consultation, but an area that we  
will move on to, I am sure, this morning is the multiplicity of hats that go with the Attorney  
General's role. (**The Attorney General:** Yes.)

I would be interested in whether there has been any thought thus far about how a further  
hat, that might be worn in the direction of a public defender scheme, would be managed?

555 We have talked about separating the Attorney General's role from the role of the Director of  
Prosecutions because of at least the perception of the Attorney General's role being in the  
Council of Ministers and therefore not being seen to be involved in prosecution decisions.

How might the Attorney General's role connect at all with a public defenders' scheme?

560 **The Attorney General:** Madam Chair, I do not see it as connecting in any way, shape or form.  
There are far too many conflicts there. If the Attorney maintains his position as being  
responsible for all criminal prosecutions then he could not be prosecutor and defender. So that  
is where we sit at the moment and I made that quite clear when accepting the responsibility, if  
we can call it that, to undertake this review.

565

**The Chairman:** Okay. Thank you.

570 **Q26. Mr Hooper:** Can I ask why it is that the Attorney-General's Chambers is leading on the  
review? You have already touched on the Attorney General wears many hats, but legal aid is not  
one of them – the statutory duty to determine legal aid policy sits with the Legal Aid Committee.  
(**The Attorney General:** Yes.)

So it seems quite unusual that it was Treasury that asked the Attorney General's Chambers to  
lead on a review of legal aid when actually that function is the statutory duty and responsibility  
of another organisation entirely.

575

580 **The Attorney General:** Madam Chair, in a sense Mr Hooper, you have answered the question  
insofar as I was asked by the Treasury to undertake the review, being perceived as someone  
who hopefully would look at this independently. And it is not being run by Chambers, it is a  
personal position by which I have to lead the review, and an officer from the Cabinet Office has  
been appointed into Chambers to run the review on my behalf. So it is not a Chambers' review.

**Q27. Mr Hooper:** Okay, how do you see the Legal Aid Committee being involved in this review? Because, obviously, at the end of the day they will be the ones with the statutory data to accept or reject changes and to lay any regulations that may be needed as a result?

585 **The Attorney General:** The Legal Aid Committee *are* involved in the review; they are the ones who are working with the officer who has been seconded into Chambers to work alongside me. So they will meet on a regular basis and they will be attending, and have attended, all the workshops which have been carried out; and I go along as well to answer any questions that people want to put to me.

590

**Q28. Mr Hooper:** I think the question I am getting at really is: when the review is finished will it be a review that is presented to the Legal Aid Committee for their decision? Or will it be a review that is presented to Treasury before it goes on to the Legal Aid Committee? I am just a little bit nervous about the accountants controlling the budget, and also the end result of policy. That is where I am coming from.

595

**The Attorney General:** It will be the Legal Aid Committee who will have to decide and take forward any proposals. And I must add: not me!

600 **Q29. The Chairman:** That is a helpful clarification actually because I was going to ask you – and again it is back to this difficulty of conflicts. But, in conducting this particular review, how have you found squaring the situation of also your position as head of the Manx Bar?

605 **The Attorney General:** That is a matter which the Society did raise with me in July of 2018 because they were concerned about comments that I had made in a Tynwald debate on 19th June. In that debate I did make mention of the fact that I was leader of the Manx Bar and the Society raised with me whether or not the position of Attorney General in ‘overseeing and scoping the work’ – this is what they said, I am reading their letter there – and any implementation of the Public Defenders’ Scheme would conflict with my position as the head of the Manx Bar. They asked me to consider whether in the circumstances it might be better to have the President of the Society as the leader of the Manx Bar.

610

Now, I can if you wish, Madam Chair, refer you to what I said to Tynwald Court on 19th June 2018, but in summary I made it clear that in accepting the invitation, if we can call it that, from the Treasury Minister to undertake this review on behalf of Treasury, I did so very much having in mind the fact that I was the leader of the Manx Bar, and that I did not see any conflict. I wanted to ensure that the review clearly took into account *appropriately* the interests of the Bar as well as the interests of Treasury, if you put it that way, in the context of reviewing this matter with the Legal Aid Committee so as to ensure that there was no impact on the public interest as far as the issue of access to legal aid was concerned.

615

620 Do you want me to read what I have said or will you just simply make reference to that? It does set the position out very, very clearly. I am not going to say I accepted the role – well, I did accept the role – in the knowledge that the Society may take issue, but I believed then and I believe now that it was, and I can act in the interests of the society to make sure that their views are appropriately taken into account. That is what I have made clear to them and that is what I will do.

625

630 So as far as the leader of the Manx Bar is concerned, what I have said to them – and I wrote to them in response, to which they have not responded – it is simply a convention. The fact that I am leader of the Manx Bar is by convention, it gives me no powers, no duties, no responsibilities; but I must say in our small place here it is useful. I am approached by members of the society and I would say more with personal-type issues, that they perhaps do not want to take to the society as yet – and I have in mind a particular situation which is live at the moment

where, consulted by a member of the Law Society, I sent them hotfoot to the society to make a formal complaint.

635 So there is a role there, being able to step back and be independent of the society itself. But whether or not the convention needs to be changed, what I did point out to them when invited, that it was really a matter not for the society but for Government to consider. I will just read this and what the Chief Minister said in debate on 15th January 2013, was:

By convention, in common law jurisdictions the Attorney General is the leader of the relevant local Bar – that is the case here. If the convention is to change, that ought to be done after proper discussion with all parties ... who have legitimate interest in relation to the point ...

640 So, whether he is right or wrong, that is what the Chief Minister said. But certainly it is a matter of convention and I do treat it seriously as being an opportunity for members of the Bar to come to me outwith the society if they consider it appropriate, and I am there to help them.

**The Chairman:** Thank you.

645 **Q30. Mr Hooper:** Just one very quick point on that. You say that it is by convention, there are no rights, responsibilities or powers associated with it; and it seems like, from what you have just said, that primarily it is the members of the Bar that benefit from having that independent perspective. So when you know what stakeholders there are, I suspect you are probably referring to members of the Bar? (*The Attorney General:* Yes.) If they generally want to change the situation it should be up to them to decide that.

650 The question I have got for you is: in the job description for the Attorney General's role actually there is no mention of the role as head of the Manx Bar.

*The Attorney General:* It is titular.

655 **Q31. The Chairman:** Perhaps if we could move on now to look at your role as a Member of Tynwald? And I suppose to begin with: what is your view on how useful it is for the Attorney General to be a Member of Tynwald?

660 *The Attorney General:* I have got to make the point that clearly that is a matter for Tynwald, as to whether I sit there or not.

Do I find it of value? Yes – you might be surprised to hear!

665 Yes – and I will say this – I think changes could be made actually. If Tynwald consider that it is of value to them to have the Attorney General as a Member – and we will come back to that in a moment and what follows from that. Back to what I said with reference to change and moving with the times, the mere fact that the Attorney is a Member does not necessarily mean he has got to attend. And I think that is my view – and I see Mr Phillips looking at me and thinking: why should he get away with it? (*Laughter*)

670 Technology is such that the Attorney could be required to attend throughout a Tynwald sitting, or alternatively 'on demand'. I think that is something that could be considered by Tynwald – so whether or not it is the Attorney's *attendance* that is required or his *availability* during a Tynwald sitting. I do not know if I have expressed that very well but it could be, and I say this clearly, that he has got to be available to answer questions if he is there as a Member. So it could be that the solution, if we call it that, was that he attends Question Time or when questions are being asked. But apart from that, with reference to the Agenda, Members would have the right perhaps through Mr President to require that the Attorney attends for a specific Item.

675 That is not just because I do not find any value in sitting there because, I will be quite frank, I do. If nothing else, it helps me with an understanding of situations which might then help me in the context of legal advice which I am then asked to give at another time. So it is not a wasted

680 exercise. But I could as usefully, I suppose, listen to the live Tynwald debate and listen to what is being said. So there is a value.

With the advent, thankfully, of having a legally qualified Clerk and Deputy Clerk there are very few occasions where the Attorney is required – and I do not think necessarily perhaps the convention is changing – to advise Mr Speaker or alternatively the President on procedural matters; it is just simply any legal aspects that may crop up which could be – I am not saying  
685 necessarily that it should be – referred to the Attorney.

I do not know if that helps, but that is my sense of it. There is a value, but is more for Tynwald to decide whether it is a value that they want to maintain.

690 **Q32. The Chairman:** Perhaps if I could ask further about the value, because having sat in various Tynwald sittings now and heard an occasional request for legal advice – (*The Attorney General*: Very occasional.) a very occasional request for legal advice – I would just be interested in your view about how useful you think it is to be asked to give legal advice in the moment, and the realities of being able to give full legal advice on a question in the moment; or whether you  
695 think there are alternative ways to provide advice if it is asked for?

**The Attorney General:** Madam Chair, thank you for that.

It is clearly very, very difficult to provide legal advice in the moment. And I often think to myself of somebody asking me what the legal definition of ‘reasonable’ was and apart from  
700 glibly saying, ‘Look at the dictionary’ – which, I should say, I did *not* say – what am I supposed to do? I do not have in my mind all of the various cases of where the courts have made an attempt to help people with the definition of the word ‘reasonable’.

What is clearly of advantage, and it does happen, is where Members – and I will say – would have the courtesy of telling me in advance the question that they want to pose, which gives me  
705 the opportunity to give a considered response. But you are very right, Madam Chair, that to give advice off the hoof is very, very difficult.

**Q33. Mr Hooper:** I would like to ask a little bit about the context of your role as a Member of Tynwald.

710 So, reading through the job description, it is very clear that you are a Crown appointee: the Attorney General acts as a legal adviser first to the Lieutenant Governor, then to the Council of Ministers and Departments and Statutory Boards that form the Isle of Man Government.

There is no actual reference in there to providing advice to Tynwald, or Tynwald Members, the only reference is simply that you must attend Tynwald and that is the only reference in the  
715 job description.

So when you are sitting, when the Attorney General is sitting there as a Member of Tynwald, his obligation is still to provide advice to the Lieutenant Governor and to the Council of Ministers, not actually to Tynwald.

Is my understanding of that correct?

720

**The Attorney General:** Well, my view is I am available to advise the Members of Tynwald.

I am just trying to quickly ... But you are clearly right with reference to the job description, it does not mention that.

725 **Q34. Mr Hooper:** The reason I am asking is because this speaks slightly to the conflict risk here, which is that if you have already provided advice to a Government Department about an issue, obviously then the Attorney General’s Chambers would find it difficult to provide advice on the same issue to a Member of Tynwald. And if the Attorney General is sat in that Tynwald Chamber the advice that will be provided will be essentially the advice that has already been  
730 provided to Government – it is unlikely that you would be able to provide a truly independent view if you were the individual that had already provided that Government advice.

**The Attorney General:** That sort of goes to the issue of what are the Chambers? Or, alternatively, what is the Attorney being asked to advise on? If the question is an advice on the law there ought not to be a conflict. It is as simple as that, because the law is the law.

735

**Q35. Mr Robertshaw:** But you have already said that there have been occasions – and you found the process healthy and right – that yourself and the Solicitor General have differed on something. (**The Attorney General:** Yes.) On one occasion your view achieved, as it were, the agreed way going forward, and on the other occasion it was the Solicitor General. So that argues that there can be interpretations.

740

Would you, for example, consider – I do not know, just a thought – that the Solicitor General would sit in Tynwald as opposed to yourself?

**The Attorney General:** Mr Robertshaw, the example I gave where we disagreed was not on the law, it was on a prosecution decision ... I mean, the law was there, settled, we knew what the offence was, we looked at the evidence with reference to the decisions we made and we both then separately considered the public interest. (**Mr Robertshaw:** Right, okay.) So the law was settled. This was the point I was making through you, Madam Chair, to Mr Hooper.

745

The advice which is given or comes out of Chambers with reference to what the *law* is on a specific matter ought to be consistent.

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**Q36. Mr Hooper:** I think the reality, though, is this is exactly why we have courts because very often the law is open to interpretation, especially in the Court of Tynwald where we are in the business of writing new laws, quite often. (**The Attorney General:** Yes.)

755

And so I think to say that the instances of interpretation of a point of law will always be consistent, and every lawyer on the planet will always agree with the same interpretation of that law, I think is possibly not very true.

**The Attorney General:** Well, I have not found a situation in my experience so far where we have not been able to settle Chambers, or the Attorney's, or the Solicitor General's view of the law.

760

I am aware – it would be naïve of me to say otherwise – where law officers have taken a different view and that has been brought to my attention, and we have looked at it and we together, representing the Chamber's view, if we call it that, have then settled the issue. That is clearly going to arise because, as you quite rightly say, lawyers take a different view.

765

But there has got to be, in my role, providing a shared legal service, Government's position on the law. And that would be the advice, be it to Tynwald –

**Q37. Mr Hooper:** Yes, and that is kind of the point that I am trying to get at here, which is that it is your job to provide Government's position on the law as opposed an independent –

770

**The Attorney General:** Yes, and it should not differ to the advice which is then given to an individual Tynwald Member.

**Q38. The Clerk:** Although, sorry, mainly legal advice is very closely kept to your chest for normal reasons and it is confidential. And the reason why it is confidential is it is not as clear cut always as it might be about what the law is and what the circumstances are of what might happen.

775

So, in reality the advice that is given to the Government is often advice that you would not wish to share in its entirety.

780

**The Attorney General:** You are clearly right but, if nothing else but by convention, they are not supposed to either firstly say that the advice of the Attorney has been taken and, secondly,

785 they are not supposed to say what advice has been given – that is to the Departments and to Government.

However, when the issue does arise – when, for example, a Tynwald Member individually wants to get that advice – I do not think I have found the situation as yet where, one way or the other, the matter has not been resolved.

790 **Q39. The Clerk:** You did say something very interesting there where you said that the Government by convention does not say whether they have taken your advice or not.

Did I hear that right?

795 **The Attorney General:** That is the provision, isn't it?

**Q40. The Clerk:** Well, it is not one that I am aware of (**The Attorney General:** Okay.) in the sense that if the Government is the client they own the advice. (**The Attorney General:** Of course.) And they can –

800 **The Attorney General:** They can do with it as they wish.

**The Clerk:** Absolutely. Yes.

805 **Q41. Mr Hooper:** I was just going to say this kind of speaks a little bit to what you were talking about before about requiring attendance. I think, from my perspective at least, if the Attorney General was not required to attend every sitting and someone, for example, puts in a request saying 'Actually, I would very much like the Attorney General to attend to discuss Item 16 on the Order Paper', it might be that you say 'Actually, I've provided a piece of advice to Government on this Item already, so to make sure there's no perception of conflict and to make  
810 sure that whoever it is providing that advice to Tynwald can be perceived as entirely independent, I'll send the Solicitor General instead'.

At least it would give you the ability to make that decision, if that makes sense?

815 **The Attorney General:** I entirely agree. And there is the ability for the Solicitor General to attend, with the permission of the President.

**Q42. Mr Robertshaw:** Perhaps this question is naïve on my part, but if Tynwald is trying to deal with an issue related to a Department to whom you have given legal advice that may then conflict with the another Department's position on the same item, where do we sit there?  
820

**The Attorney General:** That ought not to. If it is legal advice it ought not to – the advice should be the same.

825 **Q43. Mr Robertshaw:** But yes, your 'not to' and 'might be' are two different things, are they not? I mean, it could be, surely?

**The Attorney General:** No, I think I have said there have been situations where a law officer has given advice which I had questioned and we then resolved the issue, so that we do have a settled position.  
830

835 **Q44. Mr Hooper:** If I can expand that point a little bit further: imagine an instance where a Department has been found to act unlawfully – and that does happen from time to time, they do something which perhaps they do not have the powers to do or they act beyond the remit of those powers. As Attorney General, it is your job to make sure that Government *is* acting lawfully within that broad context.

It is not very likely that you are going to publish a piece of advice that says, 'Oh, by the way, yes, my client the Government has been acting unlawfully'. And so that is the point that is being made here I think: if Government is doing something or has a position on something, as the Attorney General it is your job to look out for them first and foremost, in the broader context.

840

**The Attorney General:** No, my job as Attorney General is to bring to the attention of Government that they *are* acting unlawfully. (**Mr Hooper:** Okay.) Not to say, 'And the advice I give you in that regard, do not publish'.

845

There are situations where I have had to warn Government that a proposed course of action could be in breach of an international convention or it could be in breach of the law – and I would expect them to take my advice.

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**Q45. The Chairman:** Just going back to this issue of potential conflict even within Government: I think this was something that Wooler touched on as well in his review. He talked about the Attorney General's Chambers, or the Attorney General's role, perhaps moving more towards the Westminster model and having a small division – a law officers' division. I think he envisaged that there can be situations, because the other way to think of the way in which advice may be given is where a Department comes along and asks for specific advice about whether they can do x. (**The Attorney General:** Yes.) And it is conceivable that they could be advised in isolation that, yes, they can do x.

855

But another Department pops up and says, 'Well, actually, we are unhappy about that because it conflicts with our situation over there'. So they take a different view and it could even be a different view on the law.

860

So the question then is: how do you resolve a situation where you have two Departments moving in divergent directions, because they each want to be advised on their own legal position and what they can and cannot do, and they are in conflict with each other?

**The Attorney General:** Yes. My function then is to resolve the conflict, which I do.

865

So, clearly, there are situations where Departments do take a different view and I have stepped in – so far, touching wood here – and resolved the issue between those Departments.

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And if I could just touch on, following on from Wooler, one of the questions which was asked with reference to the division of responsibilities in Chambers: I am changing, and continuously changing, the structure of Chambers to try and reflect the Wooler solution; and I have also got to do that in the context of what are seemingly endless new areas of law which we are expected to advise upon. So I am going to hand in a revised organogram which will show you how I have divided it up.

875

But the focus of that is a Crown Division, where I sit with the Solicitor General and an Executive Director of Legal Services. We sit above the advice given to the various Departments in the other divisions of Chambers, so matters are then referred to us separately. So that is in place.

**Q46. Mr Hooper:** Would it be fair to say that often the advice that you can provide is limited by the quality of the question you have been asked in the first instance?

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**The Attorney General:** Every lawyer would say that, Mr Hooper.

**Q47. Mr Hooper:** And I suppose that the question I would like to ask is: what sort of support and training do you provide to Government Departments to make sure they are asking you the right questions?

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**The Attorney General:** What training do I provide?

**Q48. Mr Hooper:** Well, your Chambers, I mean, as an institution. Or do you simply leave Government to get on with it and ...

890 My worry is that if you have been asked a very specific question by Government you give a very specific response; whereas actually the issue they are trying to get to the bottom of is broader than that. And if you had been given the full context, the advice or the answer may have been different.

895 So I am just curious as to how you resolve that. How deep do you delve into Government questions and queries to find out what they are really trying to ask you? And what sort of advice and guidance do you provide to Government Departments when they are seeking advice from you?

**The Attorney General:** This is going to be a very generalised response, Mr Hooper.

900 I would expect *all* my law officers to probe the facts which are given upon which they base the advice. I can only speak for myself; I always question what I am being told. Now, whether that is because of life's experiences or whatever, but I would certainly expect ...

I do not know what your view is, Madam Chair, but you would think that it is second nature for a lawyer, when giving advice, to try and probe the instructions which you are given to make sure that the advice or the solution which you give is correct.

905 So I think with them it is quite apparent that sometimes when I am asked to review a matter it clearly might be because they had not actually probed sufficiently. So that is just the way of it, really.

**Q49. Mr Robertshaw:** Can we just take you back to the answer you have given there about yourself and the Solicitor General sitting above? (**The Attorney General:** Yes.) Do you see that as a custom and practice emerging? Or do you think it needs to be much more formally recognised in a proper structure?

915 **The Attorney General:** But it is properly recognised in my Chambers as a proper structure.

**Q50. Mr Robertshaw:** No, beyond that, I mean.

**The Attorney General:** Beyond that?

920 There are lots of parts of my role, Mr Robertshaw, which could perhaps do with a proper structure. I mean, as Mr Hooper said, when you start to read the catalogue of the various hats I actually have, how does that sit in relation from advising the Governor one day to advising the Council of Ministers on a weekly basis, to advising Sub-Committees of Council of Ministers? There are lots of things.

925 Now, I decide with the Solicitor General the matters that I want him to cover off and we agree that. So he is very much focused on the international co-operation side and the recovery of assets on the criminal side. So we were sorting that out ourselves.

Should that be in a formal structure? It might be helpful from a public perception to know precisely which areas we deal with, but I have covered it off in my Annual Report as to how we divide up our work.

930 **Q51. Mr Hooper:** Yes, sort of. I think the question that comes to me from that is about the lines of accountability and responsibility, really. (**The Attorney General:** Yes.) So I suppose it feels like from everything you are telling us that the final port of call, the final decision always rests with the Attorney General, the office holder.

935 **The Attorney General:** Would you say the Crown Officers, both of us?

**Q52. Mr Hooper:** Right, okay. But they are not on an equal footing.

**The Attorney General:** But we are on an equal footing!

940

**Q53. Mr Hooper:** Right, okay.

So it can be that the Solicitor General or the Attorney General are both at the top of the tree, essentially? (**The Attorney General:** Yes.)

945

So, a few times you have made reference to being accountable to Tynwald through the Attorney General, but actually the Attorney General is not really accountable to Tynwald. There are a lot of questions that Tynwald cannot put; there is a lot of stuff that you do that really should not be within the realm of politics.

950

So I suppose my question is: how are the role of the Attorney General and the role of the Solicitor General held accountable for decisions and operations and everything that goes on within Chambers?

955

**The Attorney General:** Well, technically at the end of the day both myself and the Solicitor General are appointed under Letters Patent or warrant from Her Majesty, at her will. So, at the end of the day at the stroke of a pen, or a telephone call, or whatever, we could be removed from office.

960

My role is scrutinised to the extent that Tynwald can ask me questions, which is very helpful. That is an element of scrutiny. I meet with the Governor monthly, there is no formality to that, save that he is a conduit in a sense to the Ministry of Justice, so if there are any issues that he sees he can pick up the phone to the Ministry of Justice and it can be brought to the attention of the powers that be there, that Her Majesty ought to be concerned that either the Solicitor General or the Attorney General are not behaving themselves, or not performing appropriately.

965

I then, clearly, face the Council of Ministers weekly where problems that the Departments may have with reference to performance are put to me. And clearly, then, I attend the likes of the Legislative Sub-Committee where the outcome of legislation is put to me. So there is a measure of accountability but it is by reference to outcomes, isn't it, to the performance?

970

There are occasions when members of the public may write with a concern. There are questions where, through elected representatives, they may write with a concern – usually with reference to prosecution matters. As I have said, they can call for a review of the decisions that are made. So there is an element of accountability.

975

The only area of difficulty, of course, is explaining – if you take prosecutions, which is the simple example – the decision that is made. At the end of the day somebody has *got* to make the decision. And Her Majesty, on the recommendation of the interview panel, etc. has confidence in your Crown Officers to be responsible on her behalf to make that decision in the public interest.

So it is there; the scrutiny is there. And I am here today.

980

**Q54. The Chairman:** I think, in part, it might go back to what we were talking about earlier on, which is the data. So when you can actually see published the number of decisions that are made, where there is a decision not to prosecute and whether that is the evidence threshold or the public interest test, and so on. (**The Attorney General:** Yes.) So some of it may well be data.

985

I suppose my question is: if, as you have referenced earlier, one of the Attorney General's roles is to advise the Government when they may be acting unlawfully or at risk of acting unlawfully, and that advice is not taken on board perhaps in the way the Attorney General would wish, what is the mechanism then for that scrutiny of how advice is received or not received?

**The Attorney General:** It is few and far between, but you will be aware that an arm of Government can be prosecuted and that has happened in my time. And if a Department works or does not accept the advice given, they run that risk. So that is the ultimate outcome of that.

990 The scrutiny, I do not know how to answer that, Madam Chair. I mean I will not balk at  
telling Government or any Department of Government my view. Now, what they do with that is  
not really a matter for me until they break the law. And they do so at their peril.

995 **Q55. The Clerk:** Could I ask – it is a slightly embarrassing question – but I think it is well  
known that your predecessor did not have a happy time. (*The Attorney General:* Yes.) Who  
owned the management of that problem as a staff issue?

*The Attorney General:* His Excellency.

1000 **Q56. The Clerk:** And him alone?

1005 *The Attorney General:* His Excellency owned the problem because, on appointment as  
Attorney we have to comply or we are subject to the Civil Service disciplinary process. So His  
Excellency then takes the role of, I think it is – not the Chief Secretary – the manager of the  
process. So he was the complainant in the disciplinary process against the Attorney General  
then.

He obviously took advice; and I can say he did take advice from me. But I had to be very  
conscious of the fact that that advice could be self-serving, or be perceived as self-serving. So  
you will not be surprised to hear that I took advice elsewhere to support the Governor.

1010 So, on legal advice, the Governor managed that process.

**Q57. The Clerk:** It did take quite a long time.

1015 *The Attorney General:* It took a terribly long time.

**Q58. The Clerk:** And I do not think anybody involved would say it was actually a really good  
outcome in the sense of the whole product. (*The Attorney General:* Yes.) Would you  
recommend any changes to that system on the basis of the experience?

1020 *The Attorney General:* If we look at the Civil Service disciplinary process, the difficulty that  
was faced there, and is faced in other cases, is that once any criminal investigation or criminal  
prosecution is taken the process is stayed. And in that particular case that is what happened.

1025 So the disciplinary process had to be put on hold pending the outcome of the criminal  
process. And without going into detail you know, members of the Committee, how long that  
took. So that is the problem.

Now, whether the Civil Service regulations need to be looked at as to how that could be dealt  
with in a different way, I have not given any thought to that. However, of course, we have  
always got to be conscious of the fact that somebody is innocent until proven guilty.

1030 So it is getting that balancing act correct, because I am aware of other situations where a  
disciplinary process is on foot where it had to be stayed pending the outcome of the criminal  
prosecution, and then we come back to the delays in that process again. So we are going to  
meet this time and time again if we are not careful.

1035 **Q59. The Chairman:** Can I, just changing tack, pick up on the conflict issue again: one of your  
many roles is obviously sitting in the Legislative Council and moving legislation (*The Attorney  
General:* Yes.) in the Legislative Council. Again, how do you find the potential issue or perception  
of conflict where actually it is part of your Chambers that is drafting, or has drafted, the  
legislation that is being scrutinised; and there may be questions raised – or indeed sometimes  
you may be asked for advice – on the legislation that is being moved?

1040 How do you manage that?

**The Attorney General:** Firstly, I have not faced any difficulties as yet. I think that is fair to say. Unless, Madam Chair, you can point me in the direction of any difficulty that I ought to have felt I faced.

1045 I see my role there as again clearly a matter for Tynwald as to whether they consider it of any value. But I see it as supporting the legislative process and I do see – and clearly this is a matter which Legislative Council will be discussing – that it is important that I am able to introduce legislation there. It can be dealt with in a different way, but as an expediency perhaps for Tynwald and for Legislative Council that is *very* helpful in progressing urgent legislation.

1050 But when I am sitting there I see no problem again, if I am questioned on a point of law, providing the answer. And I say that very glibly because the answer should be the same as what they have already been given before we get to that stage; and that is part of the scrutiny, and I am more than happy to cope with that.

1055 If Legislative Council do find that there is a chink in the armour as far as bringing this legislation is concerned, well so be it; we are all there to improve the legislative outcome. I feel no embarrassment in going back and saying ‘We need to look at this again’, if that is in fact the case.

But, again, I feel that that helps the process as opposed to impedes it.

1060 **Q60. Mr Hooper:** So you see your role, then, as providing that legal perspective on the legislation?

1065 **The Attorney General:** Yes, and the mere fact that I am close to the drafting team who do come along when required, gives us all an opportunity that I can go hotfoot back there and we can make whatever adjustments may be appropriate. It would be a false world that we live in to expect that *every* piece of legislation that comes into there is going to be perfect.

So we welcome the scrutiny and I see no difficulty, even if it came to it, being persuaded of the errors of our ways and saying, ‘Right, we have got to go back and think about this again. We could perhaps have approached this in a different way’.

1070 **Q61. Mr Hooper:** The question I have got for you really concerns policy rather than the detail of the legislation. Obviously a lot of stuff that is built into the legislation does come straight from policy decisions that have been made. (**The Attorney General:** Yes.) So in Legislative Council when you are putting forward a Bill, if you are moving a Bill, it is your job to promote the policy content of that Bill on behalf of Government. (**The Attorney General:** Yes.)

1075 Now, as a non-elected Member actually policy is not really the Attorney General’s role at all: so how do you manage that conflict when you are sitting there being required to promote policy on behalf of Government? Policy that you have probably had no hand in making? Policy you may even personally disagree with?

How does that get managed?

1080 **The Attorney General:** Mr Hooper, I ought not to be there promoting the Government policy. There was one example which I am sure you may have in mind where, although I was assured that it was uncontroversial, it certainly became controversial. Which is, I find, very embarrassing because I do have a hand in preparing what I say, and I always make it clear that I am there at the behest of the Council of Ministers. So it is not *me*.

So it is back to that expediency point and, so far, I can only think of one occasion in my short career where I have been caught out because I ought not, and will not, speak on policy. I can come along and say, ‘It is the policy of ...’ – but I am not going to argue it.

1090 **Q62. Mr Hooper:** So do you think from Government’s perspective, then, it would actually make more sense for them to have Bills promoted in the Legislative Council by a Member who can argue forcefully for their policy ... ?

1095 **The Attorney General:** If it is appropriate, yes. I will speak in Legislative Council on this but if you take an example of some of the Bills I have moved like the Criminal Evidence Bill, there was no policy there. But you could have an overarching policy in that, 'Yes, we have got to keep pace with our fight against crime so this is an urgent step that needs to be taken ...' I did not see that as controversial. And then the Charities Registration and Regulation Bill where the policy is with me in any event, but that it is a statutory function; but it did raise interesting issues of policy which will go off elsewhere because it is not for me to comment on.

1100 **Q63. The Chairman:** So, just to build on that, is what you are saying – because you are aware of not wanting to be in the position of speaking on or promoting policy – that your approach before you accept legislation to move in Legislative Council is to test whether a piece of legislation is, in your view, something that is appropriate (**The Attorney General:** Yes.) to be moved – by you?

**The Attorney General:** By me, yes.  
And I can say where it has been mooted on occasion – very few occasions – that I might introduce a Bill there, I have declined. Appropriately, in my view.

1110 **Q64. Mr Hooper:** I just want to check: Council of Ministers does not have the power to issue you with a direction, I think, of the Department – they cannot compel you? Say they find no Legislative Council Member willing to take the Bill forward, they could not leave it on your desk and say, 'Sorry, Mr Attorney – ?'

1115 **The Attorney General:** We have not met that challenge yet.

**Mr Hooper:** Okay.

1120 **Q65. Mr Robertshaw:** Just a general point.  
In your opening remarks you talked about – and I thought you used it in the plural – a number of reforms which you would encourage or be comfortable with. We then quite quickly went on to the issues surrounding your relationship with the Director of Public Prosecutions.

1125 But are there any other areas that you would be happy to draw our attention to in terms of areas which you would like to see considered?

1130 **The Attorney General:** There is an overarching issue which perhaps creates issues at times, and that is the actual role of Chambers. Is it to provide an all-embracing – we call it that – shared legal service across the whole of Government? Because if that is the case, there are pressure points where I do not have available to me the expertise in Chambers to answer some of the requirements of us. I am thinking in particular of employment issues and I am thinking, and I have been worrying about for some time now, the advent of January 2020 where – and I will use the expression glibly – 'Government' will need to have available to it specialist advice.

1135 So I feel challenged by things like that where I see gaps if we are trying to roll out a shared legal service across the whole of Government and those gaps are not filled. And that is a challenge which I have.

So I suppose it then comes down to resource. But I think it comes back to the overarching principle: is this what you want Chambers to do? And that is a bigger question.

1140 **Q66. The Chairman:** I actually think there is an interesting question building on that which is: as well as a full legal service, is it important for Chambers to actually help Government do its work as well as possible?

So if you look at your Annual Reports, and we look at other information about the volume of cases that are coming through and the types of cases that are coming through, whether it is

1145 issues around procurement policy and managing all of that, or issues with the Prosecution  
Division or just need for general advice? And, yes, employment and equality-related advice, the  
need is going up.

1150 So to what extent would you say it is important for Chambers to be part of a more proactive  
support to Government, that they have highlighted back to Government *why* there are problems  
in certain areas and what might be done from a legal perspective to remedy those problems?

1155 **The Attorney General:** I entirely agree. And we are in fact, just looking at my organogram  
which I will show you in a moment – and I will leave with you – the move of the Procurement  
Service into Chambers really made my mind focus on that, because if there was one area where  
training was necessary that jumped off the page, it was there. And we have spent a lot of time  
going across Departments giving training and identifying, even now, the gaps that are there.

1160 So we do need to be more proactive, but to do that we need to be – I am sure this will be an  
argument for Treasury – adequately resourced to create the opportunity for us in Chambers to  
go out and do that, rather than just simply be the pen pushers producing the work.

1160 But I can entirely agree there are so many areas where training would be helpful and it works  
both ways – for us as well as to the Departments.

1165 **Q67. Mr Robertshaw:** Would you be willing to write to us to identify those areas where you  
see that gaps, in terms of procurement training in the Departments, exist?

**The Attorney General:** Yes.

**Mr Robertshaw:** Thank you.

1170 **The Attorney General:** I think, again, that is a bigger question because of course I think it is  
not just in the Chambers. The issue then from the point of view of making available resources,  
be it to Chambers or to other areas of Government for training, is something that needs to be  
considered.

1175 I am sure if the Police were sitting here they would say they need more of a budget for  
training. I am sure most of the Departments would say ‘We need more of a budget for training’.  
It is getting the buy-in as to the value that training will give to improve quality and outcomes.  
And I think that is what needs to be picked up.

1180 **Q68. Mr Robertshaw:** Would that degree of necessary training, Department by Department,  
change if the structure of Government was adjusted?

**The Attorney General:** Possibly.

1185 **Q69. Mr Robertshaw:** Possibly? Could you expand on that please, Mr Attorney?

**Mr Hooper:** It has only taken you an hour and 45 minutes, Mr Robertshaw!

**The Attorney General:** Could I expand on that?

1190 **Q70. Mr Robertshaw:** Grateful for any contributions you could make, I assure you.

1195 **The Attorney General:** I am aware, Madam Chair, of the differing views as to the way forward  
as far as that is concerned, but clearly from the Chambers’ point of view it would dispense with  
the problems we continuously face with reference to *vires* – and I am talking off-piste here. If we  
could box that off we can then focus our training on outcome. We can move away from that and  
we will not have that many legal issues as to, ‘Is it legal to do this?’

Well, yes, it is because we are all part of a single entity, and we can then start to focus appropriately more on the outcome of what we do.

1200 I do not know if that helps? I am talking in riddles here because I cannot get drawn in to specifics on that –

**Q71. Mr Robertshaw:** There is a view that –

1205 **The Attorney General:** A single legal entity would make it much easier. And actually in my reading looking at how, not perhaps simple, but the approach of Guernsey seems to be an example as to how it is working appropriately. And I have looked at that from the point of view of their Chambers as opposed to their government.

1210 **Mr Robertshaw:** Thank you for that. It was interesting.

**Q72. The Chairman:** Can I thank you very much, Mr Attorney, for your attendance today.

You have referenced a number of documents and the Committee would be grateful to receive copies of all those documents that you have referenced.

1215 **The Attorney General:** The reports – ?

**The Chairman:** Well, I am sure perhaps what we could do, with the Clerk's agreement, is we could gather our own extra pieces of research and if there is anything outstanding that you have referenced we could perhaps write to you for them to be sent on to us?

1220

**Q73. Mr Hooper:** If I could, before you disappear, Mr Attorney?

You mentioned the Wooler Report a number of times and some of the paragraphs you referred to I believe were redacted from the version that was provided to the Committee. I am just curious if you could provide an unredacted version, confidentially?

1225

**The Attorney General:** I understood, Madam Chair, that had been provided to you?

**The Chairman:** No, we have a redacted version but we would be grateful for the full Wooler Report, please.

1230

**The Attorney General:** Yes, I will take that back. My understanding was that that had been provided to you.

**The Chairman:** Not yet.

1235

Thank you very much. The Committee will now sit in private.

*The Committee sat in private at 12.18 p.m.*