



**STANDING COMMITTEE
OF
TYNWALD COURT
OFFICIAL REPORT**

**RECORTYS OIKOIL
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**PROCEEDINGS
DAALTYN**

**Constitutional and Legal Affairs
and Justice Committee**

Legal Services

HANSARD

Douglas, Monday, 15th October 2018

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Members Present:

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

Clerk:

Mr R I S Phillips

Assistant Clerk:

Miss F Gale

Contents

Procedural.....	39
EVIDENCE OF Ms Jane O'Rourke, Former Chief Executive of the Isle of Man Law Society	39
<i>The Committee sat in private at 12.33 p.m.</i>	57

Standing Committee of Tynwald on Constitutional and Legal Affairs and Justice

Legal Services

*The Committee sat in public at 11.15 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
5 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.

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 on the topic of legal
10 services in the Isle of Man.

This inquiry is an amalgam of our previously announced inquiry into the regulation of legal services in the Isle of Man, with reference to the role of the Law Society and the Advocates' Disciplinary Tribunal, and our more recently announced inquiry into the process of becoming a Manx advocate. This inquiry will also include consideration of the proposed Public Defenders'
15 Unit.

Before we begin, could I please ask everyone to ensure that any mobile phones are switched 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.

EVIDENCE OF Ms Jane O'Rourke, Former Chief Executive of the Isle of Man Law Society

Q128. The Chairman: Thank you for attending today. For the record, could you please state
20 your name and the capacity in which you are appearing here today.

Ms O'Rourke: My name is Jane O'Rourke. I am appearing in a personal capacity but I am a former Chief Executive Officer of the Isle of Man Law Society.

Q129. The Chairman: Thank you.

We have a number of areas that we thought it would be very useful to hear from you today. Thank you very much for your submission that you sent to us.

Without further ado, I wonder if we could start off please with the area of rights of audience and the idea ... well, we currently do have a standalone Manx Bar. I wonder whether we could
30 hear more from you about your experience of being a registered legal practitioner and some of the differences between the position of registered legal practitioners and Manx advocates.

Ms O'Rourke: Okay. A registered legal practitioner does not have rights of audience in court. The sort of work that I did was employment tribunal work. In fact, I did not go before a tribunal;
35 it was never my intention to appear in court or in a tribunal.

So I think it is probably fair to say that for most people, certainly for most consumers of legal services, there is not really even an apparent difference. I do not think most people are aware that such a thing exists as a registered legal practitioner. I think that for the most part firms would want to employ registered legal practitioners because of their foreign law expertise. So
40 when I came to the Island, the employment law of the Island was some years behind that of the UK and so some of the things that were being debated or brought into force here had already become well established law in the UK.

So that was an area where it is a good opportunity to harness the skills and expertise of a foreign lawyer who has come to the Isle of Man and can bring into play the experience that they
45 have got. Some practices do work the way the solicitors and chambers of barristers would work in the UK, so that in some Manx advocate practices, advocates never intend to go into court, they always do the role of a solicitor and other advocates within the practice would always do the role of the barrister. So even within a firm, some advocates may take the matter from the initial client interview straight through to court and others may hand over to the barrister within
50 the practice.

So it is not necessarily unusual to have a registered legal practitioner that does not go into court because there are some Manx advocates who do not go into court.

Q130. The Chairman: You say from the consumer's perspective you do not think the
55 consumer really would notice any difference or be aware of that difference.

Ms O'Rourke: Not really, no, and I am not sure that it actually matters to many consumers. I think the whole issue of regulation, of any service, not just legal service, in any professional service, is quite interesting. Why do you regulate services? Very often it is because you want to
60 protect the consumer's interests.

But I think I have heard people talk about, 'I'm going to see my lawyer', and they are going to see a conveyancing clerk. They are not a lawyer at all in the sense that you would understand, and the consumer is perfectly happy to have a house conveyed by a conveyancing lawyer or for all the work to be done by a conveyancing lawyer because if the work is done properly and in
65 time and to budget they really do not care. They just want the end result.

Do consumers care about the way in which a profession is regulated? Only really when things go wrong and they are seeking redress.

Q131. The Chairman: On that issue of when things go wrong, could you talk to us a little bit
70 more about what the differences are between the regulation of registered legal practitioners and Manx advocates on the Isle of Man?

Ms O'Rourke: So the ADT does actually have jurisdiction of registered legal practitioners, which I think is something that is not widely known. I think it is thought that because of the name, it only relates to advocates. That is quite interesting because I do not think the ADT have
75 ever heard a case against a registered legal practitioner.

The Law Society's website does state very clearly that if work is being done by a foreign lawyer there may be cause to have redress through the agencies in the foreign jurisdictions. So I know that the Isle of Man Law Society website does direct people to the SRA, which regulates

80 solicitors, and also to the BSB, the Bar Standards Board, Bar Standards council, which regulates barristers. I think there is also a reference direct through to the Legal Ombudsman, which deals with any legal services that are being provided in the UK.

So if you had a registered legal practitioner over here, it is possible, if you wanted to make a complaint against them, you could go to the home jurisdiction and use the complaints
85 procedures there. We have had instances where complaints have been made about a registered legal practitioner operating in the Isle of Man to the home jurisdiction regulator where they have thought that there was a greater level of regulation on the Isle of Man of that person's services and professional life. I think that it was felt at the time that actually there was a bit of a gap there, and I do not think that gap has now been addressed, but certainly complaints can be
90 heard by the ADT here on the Isle of Man.

Q132. The Chairman: Just in terms of gaps, in the whole area of registered legal practitioners, there seems to be some inconsistency about whether people register at all. So there seems to be a situation on the Island where you can be a qualified foreign lawyer, you can come and work
95 in a firm on the Isle of Man and there is some inconsistency to do with the language in the relevant legislation.

Ms O'Rourke: I think the language is very much ambiguous. It is not always very clear the capacity in which people are operating and whether they are providing subordinate services to an advocate who is themselves, so maybe they are sort of acting as a research assistant. They
100 may never have any client facing profile and so in that case, does it matter because the person who is liable at the end of the day, both in law in terms of negligence claim and from a regulatory a disciplinary point of view, is the advocate that is actually signing off the advice?

So it is true to say that there is a deal of ambiguity. I think there is also a bigger area over the registration provisions in terms of what are we looking at when we say somebody is fit and
105 proper to be registered? What do we mean by that? Are we looking at a certain level of professionalism or a certain level of experience? It is really pretty much an administrative process and I think that I have heard one president of the Law Society say that really when it was begun, the system was about acting as a warning to people. It was about warning people that
110 'this is a lesser legal professional – this is just a registered legal practitioner; this is not a Manx advocate'.

But now it tends to be used as a bit of a badge of honour: 'I am a registered legal practitioner.' I suppose because there is such different consumer awareness about the difference between the two, it does not really mean much to the people you might expect it to
115 mean something to.

Q133. The Clerk: Just to underline this, it seems that the legal system here is very much bolstered by people from off-Island, whether as temporary judges or as lawyers working in firms. It does call into question whether the Bar itself is fit for purpose at the moment because it
120 is not providing the services as you would expect a Bar to provide. All jurisdictions have foreign people working in them, but there seems to be quite a large number of registered legal practitioners who support the work of advocates' firms here.

Ms O'Rourke: I do not have any idea how many registered legal practitioners there are at the moment. When I was at the Law Society that was not the case. I think there were about 230
125 Manx advocates and the number of registered legal practitioners was considerably smaller than that.

Again, I do not have the figures to say whether or not your statement is true. I think it is certainly true to say that in certain areas we do rely on expertise from other jurisdictions. I do
130 not think that is at all unusual, given the way the Isle of Man economy is going and the fact that

what we are often being asked to provide is niche areas of expertise and that is not always easy to provide just if you have home-grown advocates.

135 When you think back to some of the people who are now our senior partners, there was no requirement for them to even go to university. They may never have been off-Island and their whole experience as a lawyer may have been on-Island as what we would call an apprentice now. So I think you would have to question whether that was ever going to be a right fit for an international and really very modern economic landscape.

140 **Q134. The Clerk:** So what proportions of advocates are qualified in England and Wales or elsewhere? Quite a lot of them are, aren't they?

145 **Ms O'Rourke:** They would have to be qualified to become a Manx advocate so they ought to qualify as a solicitor or a barrister. We have a few people I think who in my day were qualified in Northern Ireland and I think we have even got a couple who had their initial law degrees from Scotland; but for the most part they have all got some sort of professional qualification from England and Wales as a solicitor or barrister. That is in the rules.

Q135. The Clerk: Right, so there is nobody who qualifies any more just as an advocate here?

150 **Ms O'Rourke:** No. It is interesting because that was the way that the legal profession went, not just here, but in the UK as well. They are looking now, I think they have already started to introduce apprenticeship schemes in the UK, where they are saying that, 'Actually we don't necessarily just want university graduates; what we want is people that we can train on the job.'

155 Again, in the UK the legal landscape is changing so incredibly quickly and in so many areas, so that things like education and training, there is quite a strong movement for saying that ... and it is partly driven by I think a consumer need. You have barristers who can be directly instructed by members of the public, which was never previously the case – instructions always had to go through solicitors beforehand; and you have got solicitors who have got rights of audience in courts; you have got solicitors who are judges. I think many people are saying, is it really still right to say that we have two very distinct branches to the professions: solicitors and barristers? Why do we have all these overlapping requirements in terms of education and training? In fact, would it not be better to bring the two together and would it not be easier for consumers to understand; and for whose benefit are those distinctions?

165 So the Legal Services Board, who is responsible for the overall regulation of legal services in the UK, introduced a little while ago a consumer panel. The consumer panel is made up of some pretty formidable people who are there simply to represent the interests of consumers of legal services. They have had a massive impact on channelling into the Legal Services Board how the profession should be regulated, how training should be undertaken and so you have got all sorts of things now being put forward in the UK which are becoming pretty standard, which back in the day would have been thought to be outrageous – such as, you must be told absolutely ambiguously how much the case is going to cost you when you take it on and if they cannot tell you unambiguously, then there are going to be pinch points throughout the matter where you will be told; and there will be references online, so when you go to look for your legal provider, much in the way you would for lots of other services, you will be able to see very clearly the sort of experience of that lawyer, the indicative costs of that lawyer, in the way that doctors are being pushed to publish how many operations of a certain type they have done and success rates and that sort of thing. The whole push and thrust coming through the Legal Services Board from the consumer panel is all about saying, 'What is the purpose of your regulation? If the purpose of your regulation is to have a better qualified legal profession providing services that people actually want in a way that they actually want them, at a price that they can afford, then you need to restructure what you are doing.'

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185 **Q136. The Clerk:** So what is the point of having a Manx Bar if everybody is qualified in England and Wales and are competent lawyers and are regulated by their home jurisdiction? What is the point in having a Bar at all?

Ms O'Rourke: Well, that is a very big question in the sense of what is the point of having a Manx anything, isn't it? Certainly in my time at the Law Society, one of the things I did constantly query was what is the point in having a Manx legal services regulator?

190 I think the point in having a Manx Bar is that our laws are different. I think that is important. They are not significantly different in some areas, but they are different. I think that local consumers would want to talk to local professionals. So yes, it is true you might have, say, Liverpool solicitors setting up here, it might be easier for them to do, but I think there are various arguments to be said about independence and resilience. Should we have home-grown professionals? I am of the view that we should and I think lawyers are amongst that.

195 I think that if you look at any of the First Deemster's decisions, he would very much make the case for saying that what happens in the UK is of great persuasive authority, but you are a separate jurisdiction and the cases that are made here are peculiar to the Isle of Man. So to that extent, I think there is a very distinct identity to the Manx Bar, but whether or not we should have a separate regulator or whether all the regulatory functions need to be done here ... So for instance, I know that you have heard from the Law Society and there was much talk about conciliation. In my time, we had quite extensive discussions with the Legal Ombudsman as then was, and we signed a memorandum of understanding with the Legal Ombudsman. Our objective at the time was to try to introduce into the Isle of Man the Legal Ombudsman Services. It is a call-centre operation out of Birmingham. It would not make any difference to them, frankly, whether they were getting calls from Douglas or from Birkenhead, and we felt that there was quite a lot of synergy. The Law Society at the time felt there was quite a lot of synergy in doing that.

200 Unfortunately, there were political reasons in the UK that it was felt that it was a bit too domineering to proffer that service in the UK for a legal service which was not UK based, and it never happened. But we did have a very close working relationship with the Legal Ombudsman. One of the things that our memorandum of understanding did was to say, 'If you ever get complaints about people who are practising in the Isle of Man, it would be great to have some information about that so we can pick up on some trends.' So I think there are things that are done in the UK that could very usefully be easily applied over here.

205 We also had a very close dialogue with the Scottish Law Society. They have quite a significant executive. I was constantly looking for ways that the regulation could be more effective without having to reinvent the wheel, because we are such a small jurisdiction and the costs of administration are so high. It has to be a balance between what is realistic and what is effective and what you are trying to achieve.

Q137. The Clerk: So the obstacle to having the Ombudsman in Birmingham look at Manx advocates came from the UK, not from here?

225 **Ms O'Rourke:** From the UK, not from here. So we did execute a memorandum of understanding, in the hope that the next step would be that we would be able to offer Legal Ombudsman Services, so that we would be able to roll that out and in fact what we did at the time was we strengthened the conciliation scheme that the Law Society was running.

230 Realistically, we just could not really afford to set up a Legal Ombudsman scheme for the Isle of Man to run on its own, but we strengthened the conciliation scheme by employing somebody, who was not employed as an employee, but engaging the services of a completely independent conciliator who had a long tradition of being a conciliator on the Isle of Man, who had a very credible track record.

235 **Q138. Mr Robertshaw:** Given that it was the UK's discomfort with regard to applying the
Ombudsman to the Isle of Man, would you see any purpose or reason in trying to revisit that and
get a review of it?

240 **Ms O'Rourke:** Yes. The Legal Ombudsman has changed a lot since then. They have got a new
chief executive and they have got a new team in place. As I say, it is really difficult to understand
the pace of change in the UK, unless you are in that world, because it is every day something
new is coming forward. I know that it was always on their agenda that they would be able to
extend their range to other jurisdictions. Whether or not that is still on the agenda or it has been
245 pushed out by something else, I do not know but I think certainly for all I know that dialogue is
still maintained, I do not know.

Q139. Mr Robertshaw: Would there be any way that we could look at a summary of the pace
and activity of change, without trying to look at the whole landscape in the UK? Is there some
point of reference that we could find that would guide us and say, 'This is what's happening and
250 this is the pace of what's happening.'

Ms O'Rourke: Yes, I think if you or maybe your Clerk could sign up to any of the publications
that come out on a very regular basis. There is normally an executive summary of things that are
hitting the headlines. I think in terms of just an ongoing flavour, the professional bodies will
255 produce annual reports. They are very useful.

Q140. Mr Robertshaw: From my perspective and understanding, which might be very
limited, there seem to be significant barriers to moving into the Manx Bar as a Manx advocate,
that perhaps are perhaps artificially high. Is that interpretation or understanding unreasonable,
260 or is it fair?

Ms O'Rourke: There is certainly a barrier in the sense that it is a training programme that is
not that easy to understand. A lot of work was done by the Education Committee when I was at
the Law Society and I have no reason to doubt that that has stopped. Basically, it goes back to
265 the way in which people used to learn their law.

So the Inns of Court in the UK were established – there were four Inns of Court in the UK. If
you want to be a barrister you have to be a member of one of the Inns of Court and you have to
have dinner a certain number of times in the Inns of Court before you can be called to the bar.
The reason for having dinner was not just to eat; that was how you acquired your law. You
270 chattered about people's cases and you spent time on an unpaid basis doing pupillage with a
barrister and you would accompany him with cases. Bit by bit you would acquire your law and
much the same way here, when Manx advocates started out as apprentices, they would be
acquiring their law in an informal manner.

275 So we have very few Manx law textbooks. Thanks to Deemster Doyle we have a book about
criminal law. Putting together a tome that is 'Manx Law' has not happened. There are various bit
and pieces that have been reduced to writing.

280 So there has come into existence a system within the Law Society and it has been formalised
quite considerably, but back in the day it was a set of notes that got passed around that
contained the information that you would need to pass the Manx Bar. Over the years, this
became codified to a certain extent and that was then supported by a whole range of classes
that were done by the Law Society where existing practising advocates would do lectures. Then
past papers became available so it is possible to see what exams had looked like previously.

285 There has been, as I say, a very big push at the Law Society, or certainly in my day, to try to
make that training and that education process much more transparent – much more 'codified',
really is the word that I want to use. So that you can say if you want to pass the Manx Bar and
you want to understand Manx law, you need to read those books. We have got a very significant

body of case precedent which is now available online, which is very helpful. Anybody sitting the Manx Bar that did not read those cases would be foolish because they obviously have a lot of the information.

290 But part of the difficulty is of course that the Manx Bar is not set by the Law Society. The Manx Bar is outwith the control of the Law Society and because of what I said to you before about the pace of change in the UK, and the push in the UK to combine the training for lawyers, there was always a feeling that it would be silly to revamp the examination part of the education in the Isle of Man until it was known what was going to happen in the UK.

295 The difficulty with that is that I do not think you are ever going to get to a final point in the UK. I think the UK is always going to keep on changing and changing. So at some point somebody here has got to say, 'We're going to plunge in at this point and we're going to change the exams at this point.'

But certainly that is a barrier – there is no doubt about it.

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Q141. The Chairman: Can I just build on that, in terms of the nature of the Manx Bar and the education at the moment, and going back to what we were talking about earlier on, about the fact that there are people, there are members of the Manx Bar who never go into court because they choose not to, they choose to practise in a different way, and then there are registered legal practitioners who never pass the Manx Bar, who are in the Isle of Man providing legal advice on Manx law.

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So I am interested in your view on whether the Manx Bar as it exists or that education programme and those hurdles are fit for purpose for a modern economy with the range of legal services that are on offer or whether you would suggest developments and changes that would better fit a modern legal economy.

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Ms O'Rourke: Well, I think it is two things really. I think the registration of legal practitioners is something that does need to be addressed and has been raised for a considerable number of years. I am trying to think of the date of my registration. I am guessing it must have been over 20 years ago when I was a registered legal practitioner, and I remember having the discussion with the Registrar about whether or not I should register. I felt I absolutely should register because I did not want to be caught out, but it was far from clear at the time that I should register. I remember arguing the toss about why I should register and having a discussion about it and there was a real lack of certainty on both of our parts about whether or not it was really necessary or was I just doing a belt-and-braces job?

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I think there has been some development since then. I think there has been some clarity since then, not least because, at the Law Society, they have been quite keen to try and get some clarity about it. I think that the regulation of foreign lawyers in this jurisdiction is an important matter but I am not sure it is one that is necessarily linked up with the education of Manx advocates. Although, if you had a clearer education programme, what you might find is that RLPs would convert to Manx advocates more readily because it is an easier, more obvious thing to do.

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So if I come across, say, as an experienced solicitor and I have been a partner maybe in a firm, the last thing I want to do is really to start scrabbling around and relying on student notes, and do I really want to put my credibility on the line to take an exam that I am not so sure about? Supposing I have only ever done commercial law, but to be a Manx advocate I have got to do family law and suppose I am not very good at family law.

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So those issues are quite interesting and I know that you have talked to the Law Society about practice certificates, which again is another issue that is not a new issue. It has been around for a long time and one of the issues that we had discussed at the Law Society was whether or not you should have a limited practice certificate. If you know you only ever want to do commercial law, and particularly in the context of a converting RLP – I come across as a commercial partner, I am only ever going to do commercial law. There is no way I am ever going

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340 to want to step into a family court. Should I not be able to get a Manx advocate's practising certificate which confines me to just doing commercial law – much as the way, I think you had explained by Mrs Unsworth, that if you are in the AG's Chambers you can have a certain restriction on how you practise. So you can become a Manx advocate, you can only ever do that prosecution work, you cannot do anything else. So it is kind of a precedent that has been set.

345 I think that is an area that would reap further work, but hand on heart the Law Society have not only put a lot of time but they put a lot of money into this. They have commissioned a consultant who works in the UK doing legal exams and a programme was really ready to fly, but as I say the education programme is not, in terms of examinations, within the control of the Law Society. So to set up an education programme without having any control over how that would meet an examination would be foolhardy.

350 So it really does need either the exams to be brought in-house to the Law Society, but you know straight away what is going to happen then: the allegations are going to come thick and fast that 'Well, of course you want to examine your own people!'

355 So then you say, 'Okay, so it has to stay out of the Law Society.' Do you actually need a more independent Law Society or an independent regulator or do you need an education programme to be devised by the people who were devising the examination – their academics in the UK and the First Deemster here? It is a big programme of work. A lot of the groundwork has been done. It is just a question of getting things over the final hurdle, I think.

360 **Q142. The Clerk:** Is it such a necessary thing to have exams at all, given that they are all qualified lawyers already?

365 **Ms O'Rourke:** Well, I think certainly there is an argument you could make to say, do they need to be examined on anything other than the Manx differences? (**The Clerk:** Yes.) (**Mr Robertshaw:** Exactly.) I would be a very strong advocate, no pun intended, for having very clear advocacy ... not necessarily exams in a sense, but assessments. Again, this is a very big bone of contention in the UK, where they are introducing advocacy assessments for people at the bar and it is kind of just accepted now that if you want to deliver legal services, you will have to have some sort of advocacy training, you will have to demonstrate that you can do it. It is fairly obvious.

370 Again, back in the day, when you did your pupillage as a barrister at the end of the first six months, you were allowed to go to court and you were a guinea pig for somebody, some poor person, and you were usually given some relatively minor, to you or your chambers, offence but for a person maybe something quite serious. But that was how you found your feet and certainly the benefits of being in court, in a real court situation with a real client and real consequences, are very important. I know that the Law Society did introduce a shadowing system for legal aid work, to get on the legal aid panel.

380 So yes, the actual practice of standing on your feet is really important, but I think also some academic assessment of that. Again, I think credit has to be given where it is due: a lot of work has been put in to bringing across barristers from the UK to do specific training sessions and there have been moots. The judiciary have been very co-operative in presiding over moots, which are mock trials basically. I know that a huge amount of work has been done on a completely voluntary basis for that by members of the Education Committee – really staggering amounts of work.

385 But I agree with you that maybe a full set of exams covering all of the legal education that might already have been done are not so necessary, but something really focused on what we want as a Manx market. So for instance, I have always felt there should be a very strong paper on regulation, as regulation and compliance is a big element of what we do in the Isle of Man. We have a significant e-gaming sector, we have got e-businesses and regulation of data protection and that sort of thing, to me, is really ... If I was setting an education programme now, 390 regulation and compliance would be very much to the fore of what we did.

Q143. Mrs Poole-Wilson: Can I ask about that idea of regulation and education? It seems to me there is a hurdle to become a member of the Manx Bar, which is your right to practise, and then that is it. If you are in another jurisdiction, your qualification is in another jurisdiction, quite often you are required to submit and renew your practising certificate and so on. So I suppose
395 there is the question of what do we want in the Manx legal economy, in terms of admission to even start practising. I think what I am hearing you say is we might not need a full set of Manx Bar educational exams for everybody, because it is perfectly possible that somebody is qualified and very experienced in another jurisdiction and in moving to the Isle of Man wants to only practise in certain restricted areas and therefore they should be able to access that; and the
400 other benefits of being in this market, such as being able to own a firm or be a director or partner, provided they demonstrate competence in the area they are going to practise.

The secondary element is: for all of our practitioners, what do you think we should see in terms of ongoing standards, education, regulation? How much do you think that should be prescribed, regulated, more done about that?

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Ms O'Rourke: I am a fan of regulation if it is effective and I am a fan of regulation if there is a clear purpose and objective, which you can then measure as to whether or not it has been met.

I know that one of the difficulties in the UK, with their enforced CPD programme, is you might have a certain number of units to make up. You might be a commercial practitioner, but because
410 you have got x many units still to make up, you do book yourself on to a family conference or something that is not really related to your area of work. You have got your CPD units, but it is not really effective, it is not making you a better lawyer, in the sense that your commercial clients are going to benefit from. Although, there is the bigger argument to say that actually all of those training courses will bring particular benefits and skills and understanding of clients.

So I think I am against the traditional and you must do x many hours. I think the Law Society really tried to say that you must do appropriate CPD and you will know what the appropriate CPD is, and there was always an argument about saying that we should make this compulsory; but then it is how you police it and how you enforce it. Training opportunities are not as widespread here on the Island as they are elsewhere, but lots of people do travel across and
415 there isn't any reason why you could not use Skype or any of the webinars that are available.

So I think probably we do need to do more here, but what would be quite interesting and obviously I have been away from the Law Society for some time, most professionals now see the need to be current for their own sake and for the sake of their practices, not because they are trying to tick a box and it may well be that an audit of CPD would demonstrate that actually
420 sufficient is being done, or maybe it is something that actually would bear scrutiny in an ADT report. If they were able to demonstrate trends and things maybe they could say something like, 'It's become apparent to us that really regardless of the sort of work you do, there's an issue here that people will benefit from ongoing training,' whether that is communication or timely correspondence or clarity of expression, whatever. And that might be something that could
425 inform the CPD programme, possibly.

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Q144. The Clerk: Rather than have everybody having to go through this particular hoop, whatever they do, would it be possible to organise CPDs that were occasional, on the basis of legislative change?

So, if you have the Equalities Act a certain range of practitioners would be expected to do CPD on that Act (**Ms O'Rourke:** Yes.) because you have rewritten employment law, and you have written a lot of other things. So instead of focusing on hours, which is a box-ticking exercise, you would actually have the Law Society or an authority say, 'If you wish to continue to practise you must demonstrate familiarity with this change.' (**Ms O'Rourke:** Yes.) Is that possible to organise?

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Ms O'Rourke: Yes, I think it is not only possible, I think it is done to a certain extent and I do not know how widespread it is now, but certainly when I was at the Law Society, there were

regular sessions which were called 'Lunch and Learns'. Basically, if there had been any significant changes in any particular areas, speakers would be invited in to talk about them. If there were particular projects – I remember when we were talking, before the Equality Act was even really significantly on the books, we started to talk about how people access justice and how you would access support if you were in a police station, if you had been detained in a police station and we would bring mental health experts in to talk about that, experts in autism. There is regular training in mediation, there is regular training in family law, there is regular training in the courts' procedures.

So there is already a programme of regular training and I agree that, as I say, I am not up to speed with what the current programme looks like, but I am sure that it is on the Education Committee's agenda that they would look at what training was needed.

On the legal aid side of things, I know that there is a regular dialogue between the certifying officer. But yes, I agree that more useful ways of CPD than simply hours could be done and that could just be an extension of the existing education programme.

Q145. Mr Hooper: The challenge you have at the moment, though, is that that CPD, that education programme is not enforceable. So if I am a Manx advocate and I choose not to attend regular updates and training, there is no sanction; I can still be out there giving legal advice and practising in a way that may not be current and the Law Society itself has no way of enforcing that. (*Ms O'Rourke:* No.)

Even less so, if that is possible, over the registered legal practitioner approach, because they are not even regulated over here. I know you have mentioned that the ADT covers both sides, but my understanding is that the ADT is restricted only to professional misconduct; it cannot deal with service quality, for example. When you are talking about the conciliation service the Law Society offers, again that will be focused, I suspect, more toward member firms and members of the Law Society – Manx advocates – rather than registered legal practitioners, because again you cannot I know you cannot force someone to access that programme but it is probably more difficult to force or to encourage someone who is not even registered here, who is regulated by the SRA across, to participate in local regulation, if that makes sense.

Something you said right at the start really interested me, when you talked about confusion in the mind of the consumer; about actually when you are trying to consume legal services you do not really know whether your lawyer is an advocate, a legal practitioner, a clerk and actually at the end of the day it makes very little difference to you as the consumer, provided everything works. In your experience, did you find that people were often surprised to find that their legal practitioner, their lawyer was not regulated by the Law Society? So if they came up against a hurdle or had a complaint or an issue and they were told, 'Actually, they are not regulated locally; please refer your complaint to the UK Solicitors' Regulation Authority or in Scotland ...' Did that happen regularly?

Ms O'Rourke: It did not happen regularly, as far as I was aware. There was just one instance that I can think of that was a fairly serious matter: it related to client monies going missing and there was a very clear belief in the UK that there would be a regulator here looking at that and obviously there was not.

I think, when you say 'when people found out', generally they did not, and I think that is also quite interesting. People would normally say 'my lawyers are ...' and then they would name a firm. Some criminal practitioners would say that they had a specific client list and they would be asked for in particular, not their firm. But I think that for most people they would say that it was a firm and I think the thing that was a bit confusing there was that if you wanted to then take the firm to the ADT, you could not. I think that was a bit surprising for some people.

I think that, given that the way regulation really is pushing out, it is a little bit odd really that we're saying that we are regulating individuals rather than firms, when so many practices now have compliance departments which are not advocates, but advocates will be held responsible

495 for the work of other people within the organisation that it is perhaps unreasonable ... You
would expect the firm, you would expect decisions to be made at board level or partnership
level and that the firm would be held accountable, the practice would be held accountable.

I think that, personally, would be a stronger way to go. I think it would be a stronger
regulatory model. I think it would really push home the fact that everybody in the practice is at
500 risk, as opposed to an individual being at risk. It takes away the danger of operating in silos – ‘It’s
not me that’s going to go to the ADT; it’s you.’ I think that you have that shared sense of moving
forward, and I think that probably most practices would operate like that in any event, and so
therefore it is quite difficult then that someone has got to fall on their sword when it comes to
the ADT that it is one person.

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Q146. Mr Hooper: So do you think there is a case for expanding or splitting the regulation to
say we regulate firms in this way to cover these risks and we regulate individuals in this way to
cover slightly different risks?

510 **Ms O’Rourke:** Yes, again you have got to look at the whole business model really for the way
in which legal services are delivered. In the UK, you do not have to be a lawyer to be in a firm
that is delivering legal services and there is a very strong sense that that one-stop shop is quite
important in a commercial sense – there is the consumer sense as well, but in a commercial
sense it is quite important. So if you look at how business comes to the Isle of Man, I think
515 accountants and lawyers are recognised to be important gateways to business and one-stop
shopping is quite attractive to some people.

If you look at the financial crisis some years ago in Iceland, they decided that the absence of
women on a board meant that boards were actually quite keen on taking risk that was
inappropriate and they introduced quota elements for women on boards. What they discovered
520 was that the risk appetite in banks changed quite considerably and that better lending decisions
were being made. I think there is a lot to be said actually for having people who are not lawyers
in a legal firm and people who are lawyers in, say, an accountancy firm. I think that there is a
real robustness that comes and a resilience that comes from having a mix of disciplines making
business decisions. Not giving the legal advice but making the business decisions and so looking
525 at things like, ‘What is it the consumer needs; what are our future training needs; where do we
see our positioning in the economy?’ I think that we are really missing a trick in not having that
ability to bring those strengths together at the moment.

Q147. Mr Hooper: One last question on this then: do you see that the regulation of the
530 firms – not the individual lawyers, but the firm as a whole – could possibly be undertaken in the
same way that regulation of other financial services firms is undertaken by the FSA, for
example? It does not necessarily have to be lawyers.

Ms O’Rourke: I think that is a possibility.

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Q148. The Clerk: So would you favour all people delivering legal services to have the same
regulatory supervision? It would not matter what your qualification was; you are actually
delivering a service. So if you are somebody in a firm delivering legal services, then regulation
should apply to you, with the same standards.

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Ms O’Rourke: You take that one step further. As I said before, although I have been a
regulator in various roles, I have always felt that regulation only had a purpose if you were clear
about what your objective is and you were effective in doing that, and that if you were not really
sure why you were regulating, then it was pretty pointless and it was a hindrance to a
545 commercial endeavour.

I have always thought that with an island like the Isle of Man, it is a really difficult case to sustain that we have many regulators, when for me the purpose of regulation is two- or maybe threefold.

550 One of the primary purposes in regulating is to make sure that the person that is doing whatever the service is, or business they are providing, is fit and proper. What do we mean by fit and proper? Really we mean they are honest. Why do we want people to be honest? It is because we do not want them to be a risk to the reputation of the Isle of Man, and because we want them to treat consumers fairly.

555 Now, that is a very simple regulatory framework, but really everything else to my mind hangs off those things. If you have somebody who is fit and proper then they are going to make sure that client monies are properly accounted for. They are going to make sure that people are treated fairly. They are going to make sure they have got an appropriate complaints procedure. If we want the reputation of the Isle of Man to be protected they are going to do all they need to do in terms of due diligence of clients. They are going to make sure that all their money-
560 laundering procedures are going to be in place and if they are really concerned about consumers, then they are going to make sure that they do the CPD that their clients need them to do to make sure they understand the issues, to make sure that they write and speak clearly, to make sure that any complaints that come through, maybe about perception not about reality but they are as valid as though they were reality. So to me, those very simple regulatory
565 principles could easily be applied to all professions by one regulator.

Now, you may need some expertise within the administration, so that if you were going into an accountants' firm, you would need to have somebody who had specific financial services experience. But we have already seen that there has been an amalgamation of regulators with regard to pensions and financial services and we have already seen that with regard to the non-
570 designated businesses. The FSA have assumed responsibility for some other professions, and indeed advocates were offered the choice whether they want to be regulated in that regard by the FSA or the Law Society, and I am not sure, but I think some people did opt to be regulated by the FSA.

575 So again, in terms of precedent we already have a couple of examples where a single regulator has proven itself able to regulate across a range of professional services.

Q149. Mr Robertshaw: Just expanding Lawrie's questioning just a little bit further, with regard to outcomes. If it was that the practice as a whole was responsible, rather than the individual practitioner, would that result in further specialisation and firms migrating away from
580 areas they were uncomfortable to deal with or is that specialisation happening anyway?

Ms O'Rourke: I think there is an element of specialisation. I think there are still some very general practitioners. Again, if you look at the history the Manx Bar, we did not need specialist advocates when we were looking at setting up the Law Society, because we did not have
585 international business. We did not have niche markets of commerce. It was people that just had regular legal problems that needed dealing with. So it might have been that today you go to see your lawyer about buying a house and tomorrow you go to see a lawyer about a will, and then the next day you go to see a lawyer about getting divorced, or maybe you have set up a small business and you want some help in setting up a partnership agreement, something like that. I
590 think they tended to be much more domestic, so that the reason that you had this general, if you like, GP-type status for Manx advocates was because it reflected what consumers needed at the time.

I think that as our economy has become more sophisticated, so the response from legal practitioners – *some* legal practitioners – has been that they operate in those niche markets.

595 Whether or not setting up a regime where you regulated the firm, in fact I think is quite interesting actually, because I suspect lots of practices believe they are regulated as firms, and of

course you do have incorporated practices and there are specific rules about incorporated practices where they do operate as legal entities.

600 And so I suppose it is the word 'regulation', really. Are you talking about day-to-day how-you-do-your-business regulation or are you talking about disciplinary enforcement? If it is the latter, then maybe it is always going to be appropriate to retain an element of personal responsibility, so that if one person goes rogue in the firm and steals all the client money, is it ever going to be appropriate to say that *he* or *she* should not be on the hook, that it is the firm that is on the board because the process allowed that to happen? I think people would generally say no, you
605 would want some way of really getting that person out of the profession.

Q150. Mr Hooper: But then comparing that to say the way that CSPs are regulated or accountancy – I am regulated on accounts myself. I am regulated as an individual and if I was in a firm they would be regulated, so if there was a breakdown in client money procedures there the
610 firm would be taken to task over any failings on the firm's part and I would be taken to task over any failings on my individual part. So that model works elsewhere. (*Ms O'Rourke:* Yes.) It should work for lawyers as well.

Ms O'Rourke: Yes, I agree.
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Q151. Mr Hooper: One other question I was going to pick up on actually was you said that when the Law Society was set up, obviously it was a different age, a different world back then. As we have seen the legal profession evolve, we have not really seen the Law Society itself evolve. It is still run by volunteer members. It still acts both as a regulator and as a trade body.
620 Do you say that now then, because ... I don't want to say the world has moved on, but essentially that is where we are at, that it is time now that really the Law Society itself needs to look at the way it is structured and say, 'Right, there are some inherent problems with the model that we currently have'?

And if there are some inherent problems, what would you say the key ones are that we
625 probably need to be teasing and trying to address?

Ms O'Rourke: Well again, I would say that they *did* look at that and they did say they wanted change. So I think that my appointment back in 2010 was really very radical, and for many in the profession that was a very difficult pill to swallow – the fact that somebody who was not a Manx
630 advocate was effectively in a position of some authority in respect to the Society. That, I think, should not be underestimated: that that was the Law Society of itself deciding on a change agenda.

One of the difficulties is that change agendas are very useful if they are sustainable, and because the president changes every two years in the Law Society then it is very difficult to have
635 a long-term strategy that necessarily will get buy-in from all subsequent councils and presidents. So I think, I would not underestimate how radical a step that was when it was taken.

I think very clear areas were identified for making changes, but of course the ability to actually deliver the change lies outwith the Society. One of the jobs that I had was to really consult regularly with politicians and regulators in other jurisdictions. I went to the European
640 regulators conferences every year. I visited Scotland probably twice a year; Northern Ireland; the UK. I was regularly in the UK talking to regulators. That was all being paid for by the profession who were keen to see what was happening in other jurisdictions and to take those changes on board.

So we just take the one we have talked about, education for instance, and that I think feeds
645 into your questions about how you become a Manx advocate: education sometimes is dismissed but actually education is a gateway here – the training programme and the exams. As I say, a lot of time and money was expended there, and I think that the Law Society went as far as it could go and was powerless really to do any more. I know that I myself made many representations

650 about the way in which the ADT operated and the transparency with which it operated and how
unhelpful it was for us as a regulator not to have information that would help us regulate more
effectively. We were limited in our ability to do anything other than make those representations
to try to have the discussions. It was not always very successful to try and have the discussions.
So, I think that there really is a genuine understanding in the Society that change needs to
happen. But I think that maybe appetite became less strong when the time and effort that had
655 been put in did not really yield any results. So that ability to be self-determining to a certain
extent hit a brick wall really.

Q152. The Chairman: Just to build on that, obviously we are looking at is this whole process
now and your evidence is part of that. What do you see are the things that would help the Law
660 Society? Can you give us some specific pointers as to what would enable the sorts of changes
that you think would be helpful?

Ms O'Rourke: I do not feel very confident about talking to that, because I suspect there has
been a lot of change since I was there and there may be conversations that are ongoing that
665 were begun a long time ago. But I think certainly an exercise like this is very useful, because it
makes plain to people, or to some people, just the limit of the Law Society's powers.

So yes, there are things that they could do internally differently, but actually the big things
that people want them to do are not things that they have power over. So I think just that, first
of all, it is opening up the discussion about what they can and cannot do, before you get to what
670 they should do, and I think a more open dialogue, a more open understanding based on the
facts, with Tynwald, the guys in charge. The legislation is you, and it is the legislation that really
controls what happens.

But I think maybe there also needs to be a clearer understanding of what is required of the
legal profession. What is it that people want the legal profession to be? There could be a great
675 deal of thought and effort goes into RLP regulation, but does that matter? I am not sure as a
consumer ... Well, I am fairly sure that actually it does *not* matter. It does not matter, as a
consumer of legal services, whether somebody is qualified here or somewhere else, as long as
they are competent to deliver to me, honestly, at a fair price, the service that I need within a
reasonable timescale that will help me resolve my difficulties, and I do not really care what they
680 are called.

So is that the conversation that needs to be had and is it an organisation like the OFT, for
instance, who already has a role in legal profession in that it nominates two people to sit on
ADT? Should the OFT become the consumers' champion? Should we have a consumer panel of
685 the sort that they have got in the United Kingdom? Should there be some sort of committee or
forum set up to have a look at, 'Well, actually, what do people need in the Isle of Man in the way
of legal service?' I suspect you will find that there are some very disparate groups.

So you will find that there are some international businesses that may need some very niche
services and there will be domestic needs, which are never going to be met by those niche
services and need to be met by your home-grown Manx advocates.

690 But really trying to formulate what changes are needed and what new regulation is needed is
impossible until we say, first of all as a Society, 'Tynwald, this is what we think our community
needs.' How will you find that information out? You are going to have to discover that from the
consumers. And how do we best protect those consumers? Regulation is really about consumer
protection at the end of the day – how we best protect those consumers in line with other
695 regulatory principles that we have got going in the Isle of Man.

Q153. Mr Hooper: Just to pick up on that, you reference 'the guys in charge' as being
Tynwald. Tynwald obviously sets the policy direction, but it is the executive that deals with the
day-to-day operational.

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Ms O'Rourke: It was really the legislation I was thinking of.

Mr Hooper: Yes, but my question really is who within the executive do you see as being responsible for actually delivering that change? So from the Law Society, when you were lobbying, who was it within Government, not within Tynwald necessarily, were you liaising with?

Ms O'Rourke: Anybody who would listen to me! *(Laughter)*

Q154. Mr Hooper: There was not one overriding ... in charge?

Ms O'Rourke: No, I regularly spoke to the Chief Ministers; and Treasury obviously were very important because of the legal aid implications; the Cabinet Office. We regularly did round-robins to all MHKs and MLCs. We would invite them to any events that we had going, just really to enable them to understand. We would have a regular speaking slot at the State of the Nation. It really was about trying to get the message across.

It is not a very easy message to understand, because if you have a constituency where maybe the only issue you know about the legal profession is somebody who feels they have been ill-served by a legal aid case, then that is your focus and so understanding the barriers to becoming a Manx advocate really is not going to hit your headline. But if you have got somebody who says, 'I'm finding it very difficult – I have got my businesses in America and in Germany and in the Isle of Man, and I'm having to go all over the place. Wouldn't it be great if I could just have one internationally recognised lawyer?' – that is a very different issue.

So yes, I spoke to many.

Q155. Mr Robertshaw: You have eloquently expressed your frustration with us, and we were listening very carefully. But you did say one thing which I would like to pick up on, in terms of being frustrated about change, in the sense that during your term of office you were trying to engender accelerated change, but then you said there was a change of president. *(Ms O'Rourke: Yes.)* Is the process of the elections within the organisation something that should be looked at and is that completely within the remit of the Society itself?

Ms O'Rourke: Yes, and again, it was being looked at and so what happens is that the vice-president generally becomes the president and Council agreed that they would try and have a rolling agenda that was not set in stone, but the direction of travel was agreed – I do not know whether that is still the case or not – so we felt that we could, whilst somebody was on Council and not in the position of president, agree the direction of travel.

A lot of change was made and I think that the primary change when I was there was to try to ... My job, I used to explain to Council, was to keep them clean so that I would deal with the stuff that would otherwise make them conflicted in any situation, and we were trying to establish processes and procedures that would really keep them clean so they can make decisions in principle and decisions on policy, and that I would be involved in the decisions relating to individuals, to try to get around some of the conflict. It was not always possible but it was an understanding that that was the way.

So I am answering your question in a round-about way – I think it is possible to do something about it, and I think the internal constitution of the Society is up for review. There is no doubt that that is the case, and maybe you could do that in a way where you said, 'Okay, you can carry on having a two-year elected president to do, I think ... somebody described it as a trade union-type activity, so that your term as the president but there would be another mechanism whereby you would have the regulatory function maybe split out, either within the Society or externally.

Q156. The Chairman: We have mentioned the Advocates' Disciplinary Tribunal a couple of times and I suppose, just focusing on that for a minute, what changes do you think would be helpful to the Advocates' Disciplinary Tribunal?

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Ms O'Rourke: I used to say the success of the conciliation scheme could be measured by the fact that in my day nobody who had been through conciliation went to the ADT. I think people go to the ADT generally as a last resort, because they are so frustrated. They cannot go for financial gain because there is no ability to award compensation, and it is a very scary process to go to, because you are complaining about an experience you have found difficult and unpleasant and you are being forced to revisit it sometime after the event – sometimes quite a long time after the event – and in the intervening time, you cannot forget about it. It has got to be with you, ever present.

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There have been attempts made by the ADT to make their process more transparent and more easily understood. I think the difficulty is that it may be capable of being understood easily by a lawyer but not so capable of being understood by a person who is not only not familiar with legal terms, but also in a state of some distress about the legal services, so they will be having preconceptions about the legal service that they have had delivered to them and that will colour the way in which they absorb information.

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So I think I was looking at the Guidance Notes, which refer to their rules of 2012 but in fact the rules were updated in 2017. Now, that might not matter – the change might be quite small, but if you are talking about not only trusting this legal profession and then I do that and then I get in and suddenly refer to the rules of 2017, and I thought, 'Well, where are those rules? Well, I don't know about those rules. I am confused,' and I think that it is very important, whenever you're dealing with consumers, to make things very plain and very transparent, so that you know what you are getting into.

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When I was at the Law Society, we involved the conciliation service so that at one point it was done by Council members and then I said I would do the conciliation service, because it removed it from the ambit of a Manx advocate, it made it more impartial. But people still identified me with advocates, so then we moved it on again. But when I was doing the conciliation service, people were very confused about where they went about what, and I know you had some discussion when you were talking to the Law Society about negligence and poor service and professional misconduct, and even in the answers you were given it was very plain that this is not an easy distinction to make, so it could arguably be poor service but actually could fall into the category of negligence, which could be professional misconduct as well.

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I always wanted to be able to say to them, 'Go and have a look at the decisions and see whether you feel your sort of complaint falls within the categories that they would regard as professional misconduct.' I could not really point to any rules, because there is such an ambiguity about which professional rules apply. The UK rules have changed very substantially since our practice rules were brought into place. Which practice rules would apply? So that always sounded like it was a little bit of a fudge, really, saying to somebody, 'Yes, you could look at the practice rules – I'm not quite sure which ones would apply. Yes, you can go and look at the cases' – except actually, you can't because I think at the time They have only recently gone online, and when I was trying to find, I was trying to build up a catalogue of the previous decisions so I could say to people in the conciliation, 'This is the information that I could make available to you', because any information of the Law Society was provided by the ADT was provided in confidence; it was not to be distributed. And then I discovered that the IOM Newspapers where these decisions were published did not keep a record of them, they treated them as adverts and so they were disposed of when they had been in for a week or whatever it was. So there was no body of information that I could give to anybody and that sounded like a bit of a fudge as well: 'I can't really tell you what the decisions are. I can't really tell you what the penalties are. I can't tell you how long it's going to take.'

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805 So getting it online was quite useful – except not because when you actually see there was a breach of the rules, you obviously want to know, which rule was it? And then if you compare it to what you can get online in the United Kingdom, where there are very clear judgements, basically, which outline exactly what had happened, who did what, when they did it, why this was breached, which rule was breached, the extent to which it was breached, why this was a bad thing, how this might impact on the trust that somebody might put in the profession – a very clear exposition so that anybody getting into a complaint like that would say, ‘Well, that’s on all fours with my case, I’m probably going to win or there’s a good chance I’ll win. I’ll put myself through all that pain, but there’s a good chance I’ll win.’ Whereas here it was really not possible to do that.

810 So that transparency was, I felt, not very helpful to consumers and it certainly was not very helpful to the profession either. As the Law Society, we could not get any learning trends from it. We could not say to people, ‘This is something that keeps cropping up.’ I knew because I was receiving the information but it was being received in confidence.

820 So transparency and greater openness: I am delighted to hear that the ADT were resounding in saying that they were themselves very keen to have public hearings. I think that is a wonderful thing.

I think better reporting of the cases. I completely understand that some cases may be sensitive and where cases themselves cannot be reported because of the content relating to children or families, I think that some sort of executive-type summary – there are lots of family law cases that are reported without disclosing their identities, so that the principles that are applied are really important.

825 And just consistency really: how do you appeal, if you do not know what you are appealing about. ‘You say that I can’t demonstrate that I’ve got a case but how do I know that that’s consistent with what you said in the past?’

830 Standard of proof is a big one that is being looked at in the UK. The Bar has already reduced its standard of proof. There is a big consultation out amongst solicitors at the moment where it looks, if the press is right, that it is pretty likely to be brought down to the same standard as the civil standard that is employed for barristers.

835 There is an argument that for somebody to lose their profession, to lose their livelihood, it should be a criminal standard; but equally the ADT cannot actually take away somebody’s ability to practice. So maybe their standards should be of the lower standard and the higher court have the higher standard. So I think that is something else I would look at.

I think if I was Government, I would want to know from the point of view of value for money, were cases taking about the right length of time; were they costing about the right amount of time?

840 I think I would want to understand how daunting it was to be a lay person going into that room and seeing that you have got two lawyers on the panel. You are facing the lawyer that you have complained about and their lawyer, and lawyers’ representation is covered under the master policy so they are almost invariably represented. I do not have a sense of how often consumers are represented or not. Although legal aid is available, to the best of my knowledge it has not been taken up.

845 So it can be a very daunting place. It is a very legalistic tribunal – some would say because of the severity of some of the consequences, that is right. There is no indication of how often the regulator is bringing a case, as opposed to a consumer. That might be quite important in informing whether the regulator is doing enough to bring cases. If a regulator does not bring a case for a year, does that say to you that the regulator is not doing their job or does it say to you that the profession has learnt lessons and does not need to be reported to the ADT? It would be quite useful to have that information to inform an inquiry along those lines.

850 I think the appointment – I know that you discussed with them whether appointments should be limited. I think the ADT’s feeling was that the appointment should be unlimited in time. I think that is a mistake. I agree that some cases take a long time and I agree that it can be a

855 difficult tribunal. But I am against the idea that it is more difficult than other tribunals, the
employment tribunal or any of the other tribunals which are dealing with difficult matters.

860 Frankly, if the practice rules and the legislation are so difficult to decipher then that tells you
more about the practice rules and the legislation than it does about the composition of the
tribunal. In a service that is primarily – well, exclusively – consumer-focused, if consumers
cannot understand the basis for delivery of those services, then I think you have to question.

Q157. Mr Robertshaw: You have touched on the matter that I am focused on for the
moment in your commentary there, but the 2000-01 Commission was very robust indeed in its
analysis of the position and condition of the ADT. It was very specific about the membership and
865 I think the barrister referred to the chairman being a lay person. I wonder whether you could
just expand on how you think the ADT should be constructed in its membership, rather than you
mentioned earlier it was legalistic, it was facing a group of legally trained people. But how would
you see the ADT put together?

870 **Ms O'Rourke:** I am sure better minds than mine have thought about this and I think that it
really depends on the outcome you are trying to achieve. Maybe you could have a lay person
who is a chair but you would be assisted by a clerk who is familiar with the legal nuances of
practice rules and the legislation. It really depends on whether or not you are trying to convince
875 people that this is an impartial and fair body that they are going before, that both parties – both
the advocate and the complainant – feel that the result that will be delivered is fair and it will
not be necessarily skewed.

As soon as the credibility of the tribunal is undermined, there is really little point in having it
because neither side will feel well served by it. I think having a legally qualified clerk might be
one way of giving it credibility in terms of 'This is an organisation that understands we're dealing
880 with professional rules', but it would also give the consumer, the complainant, the confidence
that their needs were being understood, I think.

Mr Robertshaw: Thank you.

885 **Q158. The Chairman:** Okay, I am conscious of time and appreciate your time being here this
morning. Before we finish, I wondered if we could just touch on one other area, which is that of
the idea of a public defender unit in the Isle of Man. I just wondered if you would be prepared to
share your views of proposals for a public defender unit.

890 **Ms O'Rourke:** I think as you know I am a member of the Legal Aid Committee. The Legal Aid
Committee started to look at the possibility of a public defender unit some time ago. That idea,
that concept was looked at by the Attorney General's Chambers, and I understand that they are
doing further work on that and have appointed somebody to look more closely at those
proposals.

895 I think it is inappropriate for me to speak on behalf of the Legal Aid Committee whilst I am
here today, but I think what I can say is that for my part it was never intended that the public
defender unit be set up to have a *cheaper* service for those who would otherwise be eligible for
legal aid, but for it to be set up so that they have a *better* service. Our quest was to understand
whether or not it would improve access to legal services. That was our initiative in setting our
900 programme running.

As regards the Attorney General's agenda, in terms of looking at this project, I know it was
submitted as part of the SAVE initiative. We have made representations at the Legal Aid
Committee – and I am personally very keen that this voice be heard, and I believe it has been
heard – that it was not our intention to have a cheaper service, if it was going to be a worse
905 service. I think that work is going to be ongoing and we have been assured that the Legal Aid

Committee is an important stakeholder, as have the Law Society, I think, been assured that they are an important stakeholder and we wait to be consulted further.

910 **Q159. The Chairman:** Can I ask a follow-on question to that, which is the current system, the legal aid system, what is your view on challenges with that? Particularly you were talking about access to justice and that the public defender unit might have some merit, potentially, in enabling better access to justice. So could you talk for a minute about what you see as the problems with the current set-up?

915 **Ms O'Rourke:** Yes. That is a bit like 'When did you stop beating your wife?' It is assuming there are problems.

I think you can always improve things, that is for sure, and one of the problems that was identified many years ago was that when Legal Aid was first established, it was available to a much larger group of people than it is now available to, and it was regarded much in the way that education and health services would be regarded – that nobody says you cannot send your child to school unless you are very, very poor; nobody says you are not able to go to a GP unless you are very, very poor, you have to pay for it yourself. And yet legal services, which in some areas of people's lives are just as important as education and health, they are not able to access it and the squeezed middle people I think for whom getting legal advice is terrifying, because of the potential costs which they are not able to ascertain. I think that there are many people who would previously have been entitled to it who are no longer entitled to it.

925 But we live in a world where resources are scarce and part of the Legal Aid Committee's remit is to ensure that we are financially responsible. I think our aim is to make sure that we provide the most efficient service possible and it may be that by reducing funds in one area we can provide services in other areas.

930 So part of the Legal Aid Committee's remit is to look at reform across the piece, not just at a public defence unit. They are looking at other things too. I think that is our challenge in an environment of limited resources, where legal services like many other professional services are increasingly prohibitively expensive for the average person: how do you make sure that people do have fair access to justice?

The Chairman: Okay, thank you.

940 **Mr Robertshaw:** I am just pleased that your voice has held out – well done!

Ms O'Rourke: So am I!

The Chairman: Any other questions? (**Mr Robertshaw:** No.) No?
Can we thank you very much indeed for your time today. (**Ms O'Rourke:** Definitely.)
945 The Committee will now sit in private.

The Committee sat in private at 12.33 p.m.