



**SELECT COMMITTEE
OF
TYNWALD COURT
OFFICIAL REPORT**

**RECORTYS OIKOIL
BING ER-LHEH TINVAAL**

**PROCEEDINGS
DAALTYN**

OPERATION OF THE JURY SYSTEM

HANSARD

Douglas, Friday, 4th March 2016

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JURY, No. 3

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Members Present:

Chairman: Mr C R Robertshaw MHK
Mr P Karran MHK
Mr W M Malarkey MHK

Clerk:

Mr R I S Phillips

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Select Committee of Tynwald on the Operation of the Jury System

*The Committee sat in public at 11.30 a.m.
in the Legislative Council Chamber,
Legislative Buildings, Douglas*

[MR ROBERTSHAW *in the Chair*]

Procedural

The Chairman (Mr Robertshaw): Good morning.

Welcome to this oral hearing of the Select Committee on the Operation of the Jury System. Can I welcome you, Ms Vicki Unsworth, Mr Jason Stanley, Ms Dawn Jones. Thank you very much for coming this morning. We very much appreciate it.

5 A bit of housekeeping before we get going: mobile phones, obviously, off. In the unlikely event of the fire alarm going off, please leave the building either the way you came or through that exit there.

Could I also please remind everyone that because this is being recorded, I would be very grateful if we did not try to talk over each other during the exchange of views.

EVIDENCE OF Ms V Unsworth, Advocate, Mr J Stanley, Advocate, Ms D Jones, Advocate

10 **Q187. The Chairman:** Thank you again for coming this morning. I think you are already aware of the areas that we are exploring, so I will not rehearse those again. We will just go straight into it, if you would allow me to do so.

The first area we will just cover are a few general points. The jury is essentially unchanged from a century ago, other than allowing women in 1980, I think – somewhere like that – and
15 then the adjustments to the size of the jury in October 1939 in anticipation of the expectation of the war.

So what we are looking at here: is the jury still fit for purpose, having not been examined for such a long period? I think, during our various enquiries so far we have noticed that most jurisdictions in the British area have now examined the jury system, the latest being the Republic
20 of Ireland in 2013. We found their conclusions fascinating and interesting.

The first point we would most welcome your thoughts on: in some jurisdictions the defendant can elect to be tried not by a jury but by a judge. Would you think that that concept would be something we should be looking at in any circumstances?

25 **Ms Jones:** Do you want me to go first?

The Chairman: Anybody!

Ms Jones: I think we need to go back and acknowledge that the Isle of Man was very adventurous in 1989 and, under the Summary Jurisdiction Act, did away with the right, automatically, of election by jury trial in either-way offences. If you want me to explain what any of this is as I go along, let me know.

In England, it is still your absolute right, for example, if you are charged with theft, that you can elect trial by jury. In the Isle of Man, you cannot. The decision always lies with the Magistrates' Court, Deputy High Bailiff or High Bailiff. They will make a decision based on things like the amount involved, and they will take the prosecution's case at its highest and they will decide whether or not their jurisdiction is sufficient. If it is, then your right to jury trial is expunged. You do not have an automatic right in Isle of Man, for either-way offences, to say, 'I want a jury trial.'

So if we are looking at it from this jurisdiction, I think that looking at different methods of trial is something that needs to be looked at in that context. I personally feel that it is something that should be looked into. I think that there are certain cases where it may be advantageous for a defendant to have the option to look at a different mode of trial. But I would always be on the side that it is the defendant's choice. It should not be something that is foisted upon them. For example, at the moment – and this is perhaps something that I can be attacked on but it is something that I very much feel at the moment – the social perception of historical sex abuse cases has very much gone the way of the victim.

The Chairman: The pendulum has swung, hasn't it?

Ms Jones: It has. It has swung completely that way. There is a perception that because of Yewtree, 'I am not going to be' – as in the jury – 'the one to say that she is not telling the truth.' They are particularly difficult cases because they are so historic and they are a type of case that could merit a different type of way of dealing with them, particularly in the current climate in relation to it.

So it is something that I think we could be brave about and that we could look at a different alternative, providing that it was always the defendant's choice, because I do not think you can ever get away from the principle that we as a society say that the fairest way to deal with any enquiry into criminal culpability is to be tried by your peers. Whether it be seven or 12 people, who know nothing about the case, who come to it with just their own human experiences, who can assess the evidence and make a decision, I personally believe is the best system. But I can see that there might be cases whereby – very limited – a defendant could have the opportunity to be tried by a different form of trial process. And it is something that I think should be looked into.

That is just one example I can think of. I can think of other examples, but it is something I think should be on our minds, discussed and thought about.

The Chairman: Thank you.

Q188. Mr Karran: Can I just ask, Chairman? Could we have a hit list of the things that you would think that should be – with your experience ... Not now, but I will let you think about it. If you would circulate that to Members, I would be very pleased if you would Ms Jones.

Ms Jones: Yes, I would be happy to do that as to what I think are particularly out with the norm, that would be helpful to look at it.

Mr Karran: I can see the situation, as I say, particularly with these sex offence things ... It is highly emotional, highly –

Ms Jones: Yes.

80 **Mr Karran:** So maybe it does need to have that choice.

Ms Jones: Okay.

85 **Q189. The Chairman:** I hope you are like me, that whenever you are in some sort of meeting, you are exchanging views and you leave, there is always something you wish you had said. Now, could I just make the point that if there is anything, as we go through this morning's discussions that you feel, 'I wish I had said that' or 'I want to contribute' – as Peter said – 'some further evidence', we would be delighted to hear from you after this meeting – if I can just make that general point.

90 Does anyone want to add anything onto Ms Jones' comments there or do they represent a ...?

Mr Stanley: Well, I would agree with Mrs Jones. I think there are some areas where the subject matter is so emotive that it is very difficult for jury members to act in a dispassionate way and just look at the evidence as evidence. So certainly, in terms of some of the sexual offences, in particular, it is very difficult for jury members to do that exercise.

The Chairman: Thank you.

100 **Q190. The Clerk:** In your experience, has it occurred that it has been difficult to empanel a jury – in a noteworthy case – because everybody has been reading the papers and people know about it? Is that a problem?

Mr Stanley: There are always ... Sorry, after you, Dawn.

105 **Ms Jones:** There was a perception, I think, back in the 1990s that this was a major issue and it was looked into in relation to it. I think that the problem is very much reduced in this day and age; there is less publicity about a trial when it starts. We get very few cases now where the press are in from day one, constantly reporting. There are some obvious exceptions to that. What tended to happen was that there was a perception in those cases where, if something went wrong in the jury process and we had to empanel another jury, doing that immediately would be difficult because it had only just been in the press.

110 But I think that we have to trust the juries that are picked and sworn in to be good to their oath and to declare if they know anything about the case, and more importantly to stick to the judge's ruling that anything they have heard about the case previously should be expunged from their minds, and that they only deal with it on the basis of the evidence. So whilst it was a problem in the 1990s, I do not have any experience of it in the last 15 years: that press coverage has caused a difficulty in then empanelling a jury.

120 **Q191. The Chairman:** Okay.

If we can turn our thoughts for a few minutes to the concept of complex frauds and commercial trials. Have you any thoughts that you would like to share with us on that with regard to a make-up of a jury; the length of that trial – because it might very well end up being a long one – and the capacity and ability of a randomly selected jury to deal with such complex issues? Would you share your thoughts with us on that, if you have any?

Ms Jones: Everyone keeps looking at me!

Mr Stanley: I will go first, if you like, Dawn. I do not mind.

130 **Ms Jones:** You go first this time and I will step in.

The Chairman: Are you the first to jump in?

Mr Stanley: Absolutely.

135 In terms of the question that was raised about complex criminal offences or charges and lengthy trials, to my mind it is the function of the judge and the advocates to try and take the complexity out of those matters, so that in the vast majority of cases you can probably distil what might be viewed as a complex matter overall into probably some fairly straightforward issues. Usually most trials revolve around a key issue, such as dishonesty or intent or knowledge.
140 Those are things which juries are good at deciding. So although you might look at a particular offence on the statute book and think, 'Oh, this is a horrendously complex area of law', in reality, I think most of those cases come down to a fairly simple issue: was a person aware of a particular fact; did they have the necessarily dishonest intention when the circumstances arose.

145 So I am not sure that it is necessary that, although you look at a complex offence on the statute books, it necessarily translates into a complex trial that jury members could not understand.

Q192. The Chairman: Does anyone want to add anything to that?

150 **Ms Jones:** I think Mr Stanley is absolutely right there. I think that in a lot of cases, you look at the amount of paperwork and you think, 'We are never going to get through this. How are we going to distil it all?' But we are trained as advocates to do that, and the judge is very much on our toes to make sure we do that and that we make the case as jury-friendly as possible.

155 I think that there have not been that many trials that have gone horrendously long – and to me horrendously long is in excess of two months. That would be the sort of case where you might be thinking, 'Well, this is unfair to the jury members. They have been at this for so long.' But those are not the experience in the Isle of Man.

160 I think that there might be a possibility, potentially, in the future where such a trial may happen, but they are going to be very, very few and far between, and they will mostly result, I think, in multiple defendants appearing before the same jury, as opposed to two or three.

165 So whilst on the face of it, to allow the ability for complex fraud trials to be dealt with in another way is attractive, I think that it is probably going to be on my hit list that I have been asked to think about anyway: the defendant having the right to say, 'Because of x, y and z, I actually reject my right to jury trial and I am happy to be heard by another form of constitution.' But as I say, I want to make it very clear: always the defendant's choice with no fettering from the prosecution or the judge – completely the defendant's choice.

The Chairman: Thank you, very much.

170 **Mr Stanley:** One thing, perhaps, if I could just add on that ... There was a trial by jury working group back in about 2009, which I sat on together with Mr Earnshaw, MHK, Mr Braidwood, MHK, Mrs Christian, obviously, President of Tynwald and Mr Mark Solly, which looked in particular at the issue of whether or not juries might be dispensed with in certain types of trial such as long or complex financial offences, financial crimes. I think that – from recollection,
175 casting my mind back – we reported to the Council of Ministers on that. So that might be a matter that the Committee might wish to look into.

The Chairman: Thank you, very much. We have not read it so far, but we will most certainly do so before we complete our duties.

180 **Ms Unsworth:** If I can just clarify, I am here because I produced the data that you have, and that data was produced for the Criminal Justice Modernisation Project. I am not a criminal lawyer; however, I do do complex commercial litigation. So I echo the views of my colleagues in

respect of what they have said. Some commercial cases can be fraught with paper, but even in a civil context, when we are before the commercial court, it is our job – and we are specifically trained – to make that information easily understood, not just for the judge, but also in the criminal context for a jury.

So even though we might have hundreds of thousands of pieces of paper and many, many transactions to go through – and particularly in the Isle of Man you may have complex structures that you have to work your way through, so people can follow the trail of where the money has gone or what has happened – we are very well trained to do that. Although you need a licence to bring in counsel from England to assist – and clearly there are very specialist barristers in England who work in these areas, you would need a licence from the court to bring one in to appear. Quite often in a case like that it is my experience that – both on the civil side and the criminal side – that guidance would be taken by the advocates in assisting with that process.

So I agree with Mrs Jones that perhaps there are certain cases where a defendant might wish to elect not to be heard by a jury in a case that is complex or overly-emotional ... It is not beyond the capabilities of the advocate or the judge to make that understandable by a jury.

Q193. The Chairman: That is very clear. Thank you very much – and unanimous.

Moving on, one feature of the current system is the secrecy surrounding the deliberation of juries, obviously. What would be the problems with allowing controlled research into actual cases on the basis that any results were anonymised? This has been tentatively looked at by a number of jurisdictions trying to examine this. I do not want to dwell too much on the Irish experience but they looked at it and shied away a little bit from it for perhaps obvious reasons, but we would be very pleased to hear your thoughts on that.

Ms Jones: I have already stated that I am a great admirer of the jury system and one of the principles of it is that it all happens behind closed doors. We trust these people to go into that room, having taken the oath or affirmed, to do their job properly.

My gut reaction is that, if jury members were aware that they might be under scrutiny at a later point, even covertly, even without being specifically directed, that that may play on their mind when they are deliberating.

I just feel that it is something that would be an extra burden for them and might influence how they react when they think, 'Oh, somebody might come and challenge me at a later point as to why we gave this verdict or why we gave that verdict.'

It is a hard enough thing for a jury to walk back into that courtroom. For people who do not practice criminal law, I do not think they understand that when a jury walk back into it, they have either got to disappoint the complainant or disappoint the defendant. You can see in every single trial that that burden is very heavy on their shoulders. They find it difficult to engage in eye contact with anybody, even though you may have been with that jury for two or three weeks and built a rapport. I do not mean in a talking way, a distance and a rapport within the courtroom. You can see that heavy burden. I think that it is just another burden to place upon them, because they would have to be told that, 'Well, you might be scrutinised as to why you made this decision.' Imagine the thought that they have to say, 'Well, actually we just did not like the complainant. We thought that she was not telling the truth' or 'We thought that the police had done an awful enquiry' or that 'We could not find a motive and that influenced us.' All of those questions, and the answers to them, should be kept in the confines of that secure and locked jury room, as far as I am concerned.

Q194. The Chairman: Thank you.

If we now could move on to the next section, which is the potential impact of social media.

I was much amused, when I was reading the other day the Irish Commission's investigation on juries, that they referred to – I suppose they would, being Irish – an English court case, *Queen v Young* where there was a hullabaloo because – it was a murder case – the jury used a Ouija

board to try to contact – have you heard about this? – (**Mrs Jones:** Yes.) the dead victim. I had to read it twice, because I thought it was windup, but it actually did happen.

Excluding Ouija boards from our discussions, how serious is the threat to the integrity of the jury process with regard to social media, as it is expanding and exploding?
Please feel free to cast your eyes wide on this one. Please, your views will be welcome.

Ms Jones: Go on; you go first this time.

Mr Stanley: Well, my personal view is that social media is quite a serious threat, if you like, to the process of justice. Juries are given a warning at the end of each day when they go home that they must not carry out any research, not to go to social media and look up about it or talk about it with other people. But, of course, there is just naturally a temptation for people to do that. So I think juries ought to be given very clear guidance certainly not to be looking at social media overnight while they are taking part in a trial.

Ms Jones: The judge's directions in relation to this have developed over the last three years and I am sure you have had evidence of how they have developed, particularly because of this issue, because of social media. And I think that the committee that looks at judge's directions and recommendations, that the directions given by the judges are looked at on a constant basis.

I again agree in principle: I think that it is one of the potentially most dangerous areas that could impact on the right – or the fairness – of trials. But I suppose, as a society, we have to say that we trust the Manx public; that when they take that oath and they say that they will decide the case only on what they hear, and they are told on numerous occasions by the judge, 'Do not speculate; do not go on and do your own research; do not look at social media; do not talk to your family; tell your family you cannot talk about it; if you are going out tonight and somebody asks you what you have been doing, just tell them, "I cannot tell you; the man in the blue chair tells me I cannot talk about it"', we have to trust the members of the public.

But I think that it does need to be constantly under review and every night, every lunch break, 'Remind you again: do not go on the internet; do not do your own research.'

Q195. The Chairman: I suppose some of the concerns we must consider is the insular nature and small population that we have and therefore the immediacy of social media and its ability to recognise and identify people much more easily than, for example, if we were in a court case in the middle of England, we may know nobody in the court. It just seems to us a bit more immediate and of a greater degree of concern (**Ms Jones:** It is.) linked with – sorry, if I can just say this – having smaller juries that have to be unanimous. And this is something that other jurisdictions have become really concerned about.

But we have small juries, unanimous verdicts and a greater ability – subject to opinion – to more quickly identify a juror, and all we would have to do or somebody would have to do would be to nobble one juror and you can affect an outcome.

Ms Jones: I think that I would like to go a step further back from that and say that one of the dangers, in my view, is the way the police use the social media. I think that the way that they use the social media, pre-trial, is something that should not be encouraged in any way, shape or form.

They comment on cases; they seem to pat themselves on the back on a regular occasion, prior to any decision being made in relation to a person's guilt or innocence. They seem to encourage comment from the public and they allow discussion on their forum which *could* be perceived as more authoritative than just the general postings on anybody else's own social site.

I think that we have all experienced cases where the social media discussion prior to trial could potentially affect the outcome of the trial, if somebody has read all that before they go

into trial. I think that is the danger, not necessarily what is said whilst the trial process is going on. And that is something that I am very, very concerned about.

290 I do not believe that it is the police's job to do anything of that nature. They disagree with me. They think it is a public ... They describe it as it is, 'just a new neighbourhood in our Island and we need to police it.' That is fine; I get that. But should you really be putting something on about why somebody is charged; what they have been charged with and then allowing comment on it from the general public? To me, that is totally and utterly inappropriate.

295 **The Chairman:** Well, this is the first time we have heard this so far in all the hearings and we are very interested to examine that.

Bill, did you want to ...?

300 **Q196. Mr Malarkey:** You have brought in the nobbling of the jury. It is my favourite subject at the moment, so I was going to come in on that one, but certainly what you have just said is quite interesting and something that I think we should take further note of.

305 **Ms Jones:** Some of ... Most of it is very mundane and most of it is okay, but the occasional thing, you literally – well I do ... I accept I am a defence lawyer, therefore, I am biased; therefore, I see things in a way that the general public do not see it, perhaps, because of my job, but I do find some it very ...

I find some of the social media reporting after conviction as well to be offensive – very offensive –

310 **Q197. The Chairman:** By whom?

315 **Ms Jones:** By the police on their forums. I could even go as far as their media coverage. But that, again, I accept is my personal view of a process which to me should be sacrosanct. It should not be trivialised. It is a very important figure stone of our society.

The Clerk: After the verdict and sentence is a very different matter from beforehand, obviously.

320 **Ms Jones:** Oh, absolutely; I accept that.

The Clerk: The police are entitled, (**Ms Jones:** Yes.) once someone has been convicted, to –

Mr Karran: But there is an appeals system and that is the problem.

325 **Ms Jones:** Absolutely, and we have to protect the appeal system as well. (**The Clerk:** Yes.)

It is not as bad as it used to be, but police officers slapping themselves on the back outside the courtroom and saying what a brilliant job they have done is not necessarily, I believe, how we as a society should behave on a conviction. I believe in decorum and that there is an appeal process to go through – even if there is no appeal.

330 But what we are talking about – and I am slightly side-tracked on a pet thing of mine. I go back to what we were talking about and it is the lead up to the trial and what goes on in the social media in the lead up to that trial which, of course, is then always accessible if a jury member chooses to do so, and that is the difficulty.

335 I do not believe there is any evidence at all of trying to get at a jury member once they are sworn in, because I come back to what I say: the jury are told, 'Anybody try and get in touch with you; anybody make any approach to you, you tell the judge now, because I might be able to put it right. I might not be able to put it right at a later date.' And I have seen that happen time and time again with jury members, taking that oath very seriously and reporting it and saying,

340 'Somebody tried to talk to me.' 'Somebody tried to do this.' And nine times out of 10, it is nothing, but they take that oath extremely seriously. They do.

There is no evidence that I can see – or even a hint ... The Manx people, when they are sworn in as juries, totally and utterly take it seriously and would report anything.

345 **Q198. Mr Karran:** Can you just clarify the point about the issue of the appeals? How long is the appeals process? A month, is it?

Ms Jones: We have 28 days to lodge an appeal. Then the Staff of Government will try and hear that appeal within three months; normally sooner than that.

350 If that appeal fails, then there is a much more lengthy process to go through to try and get leave to go to the Privy Council. But if you take it on the Island, if no appeal has been lodged in 28 days, the conviction has been accepted or the sentence has been accepted and matters can move on. But normally if an appeal is lodged, I would have expected it to be heard within two months of lodgement, three at the outside.

355 **Mr Stanley:** Is it 28 days from the sentence as well – not necessarily conviction – or has that changed?

Ms Jones: I am still a great believer in I would rather be safe than sorry and I do it 28 days from conviction. But there is a very strong argument it is 28 days from sentence, but I would not want to be the one who was told by the Staff of Government I had got it wrong.

Q199. The Chairman: Twenty eight days from conviction or sentencing?

365 **Mr Stanley:** You could be convicted by the jury on one day and then –

Ms Jones: And not sentenced for three or four weeks.

370 **Mr Stanley:** The judge will want to have pre-sentence reports and advanced notification of what the mitigating factors are, so the matter would be adjourned for a number of weeks and would then come back before the judge for a sentencing.

The Chairman: So it is 28 days from the sentencing point then, isn't it? Because –

375 **Mr Stanley:** I believe so, but I usually bow to Mrs Jones in terms of her superior knowledge in jury trials.

Ms Jones: I think I would get away with it, but I like to be absolutely certain and I would normally try and lodge it within 28 days of conviction.

380 **Ms Unsworth:** On this point that we are discussing, can I bring to your attention a speech given by the Attorney General's Office in England together with the Rt Hon. Dominic Grieve, QC in December 2013. That speech looked at the challenges for the jury, in particular the effects of social media and the advent of more information being available online.

385 There are two issues realistically that you need to consider. You are looking at, specifically, the jury and what the jury are able to view, what they are able to see and how that impacts on their decision-making process.

There is then the secondary issue, which is the prejudice generally in the community to information going on social media and information being published elsewhere.

390 If we look at the challenges just for the jury – so those seven good men and women of the Isle of Man who have taken their civic duty seriously, they have sworn an oath and they are sat

before the court – they are given a very stark warning, continuously throughout the trial, not just to not read the local press or look on social media, but it goes beyond that. They are not to do their own research into the offences; they are not to do their own digging around to see what is going on and what other cases have been around and what juries have found.

395 This speech that was given in December 2013 – which I can provide a copy to you – is very instructive and it looks at this in particular. There was a trial in the Crown Court in Luton in 2011 where a jury member actually did go about doing her own research. She was actually convicted for doing that. There are powers – and the Lord Chief Justice made some very hard-hitting comments – to deal with jurors who go beyond the scope of sitting in court, listening to the evidence and making a finding purely on what they have heard. It is a role for other jury members to report if somebody comes in and says, ‘Well, I found on Facebook last night ...’ or ‘I saw on Twitter somebody said this about them’. The other jury members have to report that. That is their duty. They must report it to the court.

405 And, realistically, is it a bigger a problem in terms of social media, or is the bigger problem the reporting issue and what people are saying? I echo my learned friend’s comments in respect of the police’s use of social media, in particular. There were a lot of prejudicial comments surrounding – on social media and various forums – when there was a big trial against Jenny Holt on the Island. There were lots of prejudicial media and commentary made on that. Now that did not impact on the jury so far as we are aware – because that has not been reported – but it did prejudice Miss Holt’s reputation in the Isle of Man.

So when you are looking at the advent of social media, it has got a much wider, harder-hitting implication than just what the jury ... And the jury are controlled by the judge, whereas the population are not. So perhaps the bigger area is what is reported generally as opposed to the fear of somebody making a comment on a Facebook page.

415 Going on from that, if a jury member were to put something on Facebook or if they were to be nobbled by a comment on Facebook or Twitter, in fact, it would be far easier for a prosecution to be brought, because there is evidence of that. If we go back to the 1950s, when there was not social media around and if we look at in particular some of the cases of the Kray Brothers, they were renowned for going around trying to nobble juries – and that was all hearsay: ‘He said ... She said ...’, it was much harder, potentially, to convict somebody for trying to interfere with the jury service then than it is now because you can pull that data. Even once it has been deleted, experts can pull that data back on Facebook and Twitter.

So the issue – which I do not believe is there in the Isle of Man – around nobbling juries, in particular, I do not believe it is there via social media.

425 If I can just bring you to the data that we have collated: between 2009 and 2013, there were only four cases in the Isle of Man where there was a hung jury. That means where the jury did not come back with a unanimous verdict.

Q200. The Clerk: Are you counting the Attorney General's case twice?

430

Ms Unsworth: Yes, twice, because it happened twice in his case.

So in those four cases, between 2009 and 2013 – two of which were the same case – we have to look at, is there a problem of nobbling the jury? So if we are saying that only one jury member needs to be nobbled in order to get an acquittal, that is wrong. You would get a hung jury and then it can go back for a retrial. They are not acquitted: it is a unanimous acquittal or it is a unanimous guilty. One person, if they come back and say, ‘We cannot reach a verdict’, there is no verdict.

440 So if we are looking at the raw data available in the Isle of Man, is there a problem of nobbling the jury? No, there is not because we have only had four cases. If we look – I have got the General Gaol cases’ statistics for three years, because that is all I could get hold of... So between 2011, 2012, 2013, there were 245 jury trials. In that period of those three years, there were two hung juries. Both of those hung juries happened to be the Attorney General’s case.

That is 0.03% of all cases tried by jury where a unanimous verdict, whether a not guilty or a guilty was delivered. Therefore, the raw data shows there actually does not appear to be a problem in terms of juries not being able to reach a unanimous verdict or this perceived problem of jury nobbling.

Ms Jones: Can I just ask, Vicki, presumably those include those that pleaded out?

Ms Unsworth: No, these are the ones that actually went to trial.

Ms Jones: Actually went to trial?

Ms Unsworth: Yes.

Mr Malarkey: Well, we are straying in here, aren't we?

The Chairman: Let us just hold the social media thing for a little bit longer because you have taken us into an area that we have not examined.

Mr Stanley: Could I just make a little comment on what Mrs Unsworth was just saying there. You can use the statistics of hung juries to suggest that in any of those cases there was jury nobbling. I do not think that is what Mrs Unsworth was at all suggesting. I think she was indicating – and this is just to make it clear – that the fact that if you did have a case where one jury member was nobbled, so to speak, that does not get you an acquittal. It gets you a hung jury and then you get a retrial with a different jury.

Q201. Mr Malarkey: So two retrials and you are probably going to get the case thrown out, which seems to be the par, from what I am hearing anyway.

Ms Jones: That is the prosecutor's decision. The prosecutor, technically, can go on and on and on and on, but in practical principles, two and they take the view that, 'I have tried twice to convince the jury. If I cannot convince a jury after two attempts, I am not carrying on.'

Q202. Mr Malarkey: Sticking with the media bit at the moment, I understand – and we have had the Deemsters in here – that they are told time and time again not to look at it; not to be influenced. But if one person in that jury decided that they could not decide whether this person was guilty or not, and decides to go online and Google and comes up with the fact he is a bit of a bad boy or girl and there is a bit of a history there so that, 'They must be guilty', and comes back with that conclusion, that is one member of seven – right – who could, because of that bit of Googling ... Keeps their mouth shut; does not mention it to other jurors, because they know they are going to get into a lot of trouble, that could then make that a hung jury. It would be a six/one. It would be thrown back out again and there would be a retrial.

What we have to look at as the Committee here – this is the first Committee that has looked into this for many, many years – we have got to future-proof this. Now, we know how fast social media is progressing, and going forward how more intense some of the crimes are becoming; how some of the stuff is being hidden through the Internet, etc. Going forward, are going to be more and more big-money crimes on this Island, as far as I am concerned.

I have got a quote here – it is not from the Island but it was something that came through, a letter from Mr Montgomerie ... It was a quote from the Criminal Justice Act.

In an age of highly organised crime, there is evidence of bribery, intimidation, nobbling of jurors, importing cases involving criminals...

– big fish. This is going to creep to the Isle of Man eventually.

Ms Unsworth: That quote that Deemster Montgomerie sent you though is from the *Hansard* of the Criminal Justice Bill (**Mr Malarkey:** That is right.) from May 1967. It is not a recent quote.

Mr Malarkey: But the point being is they were worrying about it then – right? Here we are in 2016 and technology and everything else has moved much further. We are talking really big money people in crimes now.

Ms Jones: But can I just ask – not a question – make a statement, which I struggle with? I struggle with majority verdicts for exactly that reason: that there is an ability to get two members of the jury – just two – and you can have a definitive verdict, whether that be guilty or not guilty; whereas when you have unanimous verdicts all you are able to achieve, if that is ...

Okay. If we accept the premise that there are a group of criminals on the Isle of Man – or perhaps more importantly a group of criminals who are charged with offences in the Isle of Man who are a high-end Manchester gang – right? They are high-end and they are charged over here, whether it be money laundering, drugs, whatever. Therefore, if we accept the possibility that they have the manpower and the wherewithal to get at jury members, then if all they have to do is get at two to then get a majority verdict, that is a lot easier for them isn't it, than trying to get a hung jury?

Q203. The Clerk: I think there is a misunderstanding, with respect, because certainly in the English system, if you have got 10 people who say you are guilty and two are hanging out because they – for whatever reason: pressure or otherwise or genuine – you are still going to get guilty.

Ms Jones: Yes, that is what I am saying.

The Clerk: So I am not quite sure if you have understood quite the point –

Ms Jones: I am looking at it from the other point of view. I am doing it on the basis that these people are guilty and they are going to try and convince ... get at a jury –

The Clerk: But they need three people, not two.

Ms Jones: Yes, three, in England, whereas here they would have to get at all seven.

Mr Malarkey: No.

The Clerk: No, one.

Ms Jones: But that would be a hung jury and they would have to repeat it again in another trial.

Q204. The Clerk: You can kick for goal or you can try and score and try. Sometimes you can win a match by kicking a drop goal, if you see what I mean. You can go for a retrial and another retrial on the confident expectation that instead of getting a conviction you get another chance at being acquitted, and because the prosecution has to convict you at least the second time or they will go away and drop it – as a practical assumption, that is a safe one, isn't it?

Ms Jones: But I am failing to understand the increase or decrease in risk, whether you have majority or unanimous. That is what I am understanding: the decrease or increase in risk.

545 **Q205. The Clerk:** Because the reason for introduction of the majority verdicts in England was largely to deal with organised crime in the 1950s and 1960s, of people who were fiddling with juries for this reason, and it was a defence against that. It was something that may have worked, may not have worked, but it certainly was introduced in large part – or possibly even totally – because of the perceived threat of organised crime.

550 **Ms Jones:** But do you not think it was also introduced because of the fact that the right to trial in England is still so extensive? If I am accused of stealing a £2.50 magazine from the Co-op, I can elect trial, whereas over here I cannot. Our jury trials are much more restrictive after the 1989 Act.

555 **Q206. The Clerk:** I have not read anything to indicate that is the case. I have to say, I am not sure. You cannot prove a negative (**Ms Jones:** No, you cannot.) but what I have read has largely been that it was a response to a perceived – a very definite threat – from organised crime, largely in London, but not exclusively.

560 **Ms Unsworth:** But it was a response to a perceived threat of organised crime. In the Isle of Man, we have got the data that suggests that in fact there is no such threat. We have evidence for a period between 2009 and today that there have been four hung juries. Therefore, do we not have the evidence that in the Isle of Man certainly it is not an issue, because if it was an issue there would be a greater number of hung juries?

565 **Q207. The Clerk:** I think the thought is, perhaps, that it has not happened yet, but it might. Should you legislate for it –

570 **Ms Unsworth:** But do we not then put our trust in the Manx public to abide by their oath and report the fact that they have been approached or nobbled?

Mr Malarkey: Well, you do not know that.

575 **Ms Unsworth:** Because we are relying upon the Manx public to do a civic duty and thus far we have not had a problem which would indicate that maybe the Manx public should be given a little bit more credit for being able to stand on their own two feet and report these problems.

580 **Q208. The Clerk:** Could you perhaps address the question a different way and say is there a rooted objection to majority verdicts being introduced on the Isle of Man, as in England, if you had a 12-man jury system?

Ms Unsworth: Personally, I think the unanimous verdict is sacrosanct to our judicial system. It is my personal view. I have no bias. I am not a criminal practitioner. If I was put on trial tomorrow – which, heaven forbid, it will not happen; I can assure you I have not done anything naughty – I would want to know that there has to be a unanimous verdict to convict me.

585 I think the Isle of Man is unique in its approach and I think it is the right approach, because for a criminal conviction you have to find *beyond all reasonable doubt* that the person is guilty. Now my personal view is, if you have a jury of 12 men and 10 of them say you are guilty and two of them say you are not guilty, that is not beyond all reasonable doubt, because two people are doubtful of the fact that you have committed the crime.

590 **Q209. The Chairman:** But the corollary of that, surely, is that – and we are straying, because I do want to come back to social media before we leave it – in our current system, you have got seven people who say you are guilty and if you had a larger jury, you have got 10 people saying you are guilty. How is that, in any way, weaker?

595 **Ms Jones:** Can I?

I think that, again – as I always do go back to my principles – my principles are that a criminal justice system is fair to both the prosecution and the defence. You can either start any discussion on criminal law this way – which is my way: I do not want to see an innocent man go to prison. (**Mr Karran:** Hear, hear.) Or you can start it on another basis: that I want people who
600 have committed criminal offences to go to prison. My belief is the first is the correct one: that I do not want to see an innocent person go to prison. So if you start every discussion with that at the back of your mind, then that affects your views, in my view.

I agree with Ms Unsworth that unanimous verdicts give clarity to both the convicted and the acquitted in that they have had seven people good and true say, ‘You are not guilty’ or ‘You are
605 guilty’. There was no doubt; that they heard the evidence and they have convicted.

Once you start bringing in majority verdicts, you are taking away from that. You are taking away from this certainty and absoluteness of the jury system. Whether you decide to have juries of 12 or seven – I think seven, personally, is a good number – but ultimately unanimous verdicts work, I think.

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Q210. Mr Malarkey: Can I just take you back on some of things that have been said, especially Miss Unsworth saying that there has only been four in the last three years where they have not been able to make a decision –

615 **Ms Unsworth:** Four since 2009.

Q211. Mr Malarkey: 2009.

You have got absolutely no proof that any of them was not because one member of the jury was nobbled, just as much as I do not have the evidence –

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Ms Unsworth: Nor should we.

Ms Jones: Nor should we.

625 **Mr Malarkey:** – in the other direction. No.

Ms Jones: What I can tell you is –

Q212. Mr Malarkey: So the point being, we do not know, and if somebody was being
630 nobbled – again, reading an article – it is highly unlikely that somebody is going to come up and say afterwards, ‘Well, I was nobbled’, because they are still going to fear for their family afterwards. (**Ms Jones:** Absolutely.) That is a very strong possibility. So from an evidence point of view, just like you cannot prove one way, we cannot prove the other way.

Can I also go back to the 12 versus seven and the majority verdicts. I go back to nobbling again. It is quite clear, if you want to get a trial thrown out, you nobble one person in a seven
635 person jury – right – and it comes as a six/one; the trial goes to retrial. In a 12-person jury, where you can have a 10/2 majority, you would actually have to nobble three. So it would be, on an Island like this, extremely difficult to nobble three members of the jury and them all keep their mouth shut and fear going forward. Once again, trying to future-proof what could happen
640 in high-net-worth, big trials where if there were only seven people on the jury, one person could very simply be nobbled on two separate trials, and the trial would end up going out of the window.

Ms Jones: Can I just say that in the 30 years I have practiced criminal law in the Isle of Man, I
645 have had two hung juries, both of which have gone to retrial, both of which have been acquitted. So you need to be aware ...

The difficulty we have is that data has not been kept in the 1980s and 1990s and the early 2000s, so we do not have that raw data. We have to go on people's recollections and reminiscence. I cannot even remember what they were other than to tell you, in nearly 30 years of being a qualified advocate, principally dealing with criminal law, two hung juries followed by retrials and acquittals is a very small percentage of what trials I have done over those years.

The Chairman: Peter, did you have a point you wanted to make?

Q213. Mr Karran: Yes, I just wanted to ask ... Obviously being around for the last 35 years plus in politics, one of the things we have been very keen on is we had a policy of not prosecuting departments of Government who broke the law because they were part of Government – it is to try and make sure we depoliticise stuff.

Are there any criteria for any sort of change, as far as if there was a terrorist offence? Would a terrorist offence be classed on the same basis as far as jury selection is concerned?

And could I just ask whether you would consider – especially with your experience – where you have got two hung juries – whilst I do not want us lot having any control over the judicial system, which is quite famously remembered in the Home Affairs Department before my demise in the early 1990s – do we need some sort of criteria where, if you have got two hung juries, that right to a third jury court service could be done by a judge? I am deeply concerned about this, but I maybe if you can think about that.

Ms Jones: It is so difficult because it is not actually the law that there are only two trials and then the stumps are pulled up. It is a matter of practice that that is what those who prosecute do. But they have the right, should they choose to, to say, 'Well, I think something went a bit wrong here and we are going to start from scratch and I am going to ask for a third trial.' That could occur.

Q214. Mr Karran: So, consequently the prosecution, if they felt there could have been some collusion on that basis, (**Ms Jones:** Yes.) they could go for that.

There is organised crime. It used to one of the problems with a certain society on the Island. With the distress sign, things would be affected.

Ms Jones: But those decisions are made on economic decisions. I am not a prosecutor – although I trained at the Prosecutions, I have not been in the Prosecution Department since 1987. So from that point of view, I can only go and cast my mind back and what I know about decisions that have been made to not go for a third trial is that it is on a cost basis and also, 'Well we have given our best shot and our best shot, twice, was not good enough.' Then they decide not to prosecute again which is a very well-known principle in relation to making decisions about prosecution.

Terrorism is another area completely, as to how you would deal with any prosecution under the Terrorism Act.

Q215. Mr Karran: Are there different criteria for terrorism?

Ms Jones: You are asking me to scratch my memory on something that I was not asked to come and talk about.

Mr Karran: So there will be no difference between ordinary crime –

Ms Jones: I know there are terrorism acts that can be put into place and provisions that can be put into place. I think – but I am not the expert on this area – that there is a provision in relation to a serious terrorist attack whereby the normal rules are modified, but whether or not

that is to a full trial, I cannot honestly tell you, and I would not want to say anything on a Select Committee at this stage.

The Chairman: Thanks, Peter –

Q216. Mr Karran: Just further on that ... So the issue is that we have got to try and find a way of not interfering in the judicial system. That is something that some of us have fought for for the last 30 years.

But are there any criteria that you feel – with your experience – where you have got two hung juries, as far as an issue, where there is a perception – a very good perception – that somebody is being nobbled, (**Ms Jones:** No.) that we should change that criteria, under any circumstances?

Ms Jones: I can only say to you that my experience of dealing with juries – I cannot tell you how many over the years – is just how seriously they take it and how engaged they are and how it is an important thing for them to make sure they get it as right as they can. They take that burden very seriously. And it is a burden. It is not a joyous thing to do, is it: to decide somebody's fate? From that point of view, I can give you no thought – even a glimmer – of any case I have ever dealt where I have been worried that the jury came up with a verdict because somebody has been got at in any way, shape or form.

Q217. Mr Malarkey: Moving on from that slightly – again some information that came along – changes to the Criminal Procedure and Investigation Act 1996 provided that where a person had been acquitted of an offence, and someone else was later convicted of interference or intimidation of a jury or a witness, then an acquittal can be set aside by a High Court Judge and a retrial ordered. Do we have the same on the Isle of Man?

Ms Jones: Ooh! It was in a Bill not long ago – whether it ever got through. That is obviously the Lawrence case, the classic case of what we are looking at to remedy a misjustice. Can I get back to you on that?

Mr Malarkey: That is quite an important one. We should be self-satisfied, a little bit.

Ms Jones: In principle, I think everybody would agree that we should have legislation that, if it turned out that an acquittal was as a result of a criminal activity, then it should be quashed and a retrial ordered. And of course we have the provision now where, even if there has been an acquittal, but there is very strong evidence that was not available at the time, we can bring that man or person back for trial. So if it is not, then it should be. But can I get back to you?

Q218. Mr Karran: Is it not the case that the AG has got a right to review not just sentencing, but also if something comes up, that he has a right to come back?

Ms Jones: Again, I will come back to you with the i's dotted and the t's crossed, in relation to that. The Attorney General has a right to appeal on sentence but not on acquittal. He does not have any right on acquittal.

The Chairman: We have been on a fascinating journey.

Ms Jones: Sorry – I know – but we need to get back to where we were.

Q219. The Chairman: But we have got to go back to social media, for a minute. Because I had concentrated, personally, on the issue of the potential – real or imaginary – impact on jury

members from social media, once they got past their oath. But you open this issue up quite clearly about what could or may or is happening beforehand. I would just like to examine that a little bit more, because – I will be frank – I had not focused on it.

755 But you talked about the police – and while the conversation has been going on, I have been mulling this over. Should we be asking a jury member, at the point of oath or before, had they actually enquired about somebody prior to the case on social media?

Ms Jones: We do –

760 **The Chairman:** Because it had not crossed my mind, that.

Ms Jones: We do in a certain way. We ask whether or not they know anything about the case or any of the people involved in the case. But, yes, I think that it is an area where, perhaps, the directions need to be looked at.

765 It is so difficult, isn't it? We live in this modern age, whether we like it or not – I personally do not like it, as far as social media is concerned. I am having a whale of a time otherwise, but ... *(Laughter)* But is it any different than the 1950s where everybody went to the football, or drank at the same pubs or everybody met up together? Is it really any different? 'Ooh! Did you hear that Johnny was charged?' 'Ooh! He has always been a bad one, him.' Is it really any different
770 than that sort of exchange of communal, social chat?

The Chairman: Yes, I think it is.

Ms Jones: I think it is, because it is always there and can always be gone back to and can be ...
775 The thing I do not like about it is you can be nasty to somebody on social media; you do not have to face them and you can say whatever you think without ever the consequences arising. I think that is the danger of social media isn't it? That you can just put anything out. Yes, I do think that it is important but if we say, 'Have you read anything about this case?' then that includes, 'He was arrested', 'He was charged', 'He was committed', 'He got bail last week'. And that would
780 then be ... We would have to be quite specific wouldn't we? We would have to say, 'Other than what is allowed.' Well, what is allowed? And that is why I think the responsibility perhaps needs to be on those who run the justice system, to try and ensure that this type of commentary is not taking place before trial.

785 And it is difficult, because we do not want to rule out people sitting on juries – which we will come to later, about the need to expand the people who are able to sit on juries, rather than contract. So it would need to be very, very carefully worded and I do not know how you would do that.

Q220. The Chairman: It was a, sort of, rhetorical question: is it any different? I am personally
790 of the view that it is very, very different, because the ability to ... Completely unknown to you, you can focus in on something in a way that was unimaginable 10, 15, 20 years ago.

Ms Jones: It is not like Johnny saying, after a few pints down the rugby club, 'I heard that so and so was arrested', is it? Then we all know, by Friday it is all around Port Erin.
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Q221. Mr Malarkey: There is a considerable difference. **(Ms Jones: Yes.)** If somebody says, 'Johnny has been into trouble', then you obviously know Johnny so you should not be sitting on the jury. But the difference being, if that gentleman sitting over there, who I have never known, has suddenly got a name –
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Ms Jones: Yes, has been on the police forum.

Mr Malarkey: I could probably give him his history by lunchtime just by going on Google. (*Ms Jones:* Yes.) And that is the frightening part of it.

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Ms Jones: If you wanted to you could – having been summonsed to go to the jury on 13th November this year – at some point you can go on the Isle of Man forum or Manx forums and you could probably work out whose trial it was and you could probably look at all the comments that the police have made – and various members of the public – about this case and that case and what they think, if you chose to do so.

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Mr Malarkey: Yes, you do not need to go on the forums because you can go onto the courts; find out what trials are coming up; what day you are going in and just Google who the defendant is.

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Ms Jones: I would come back to what –

Mr Malarkey: That is how quick and easy it can be done and within half an hour you could know a lot about his history and everything before you get to trial.

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Q222. The Chairman: Okay. Well, let us close it – this section of social medial – with one final question and that is that a number of jurisdictions have, by their actions, brought Acts in specifically targeting this. Do you think we should deliberate on that or are you –

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Ms Jones: Absolutely, 100%.

The Chairman: Yes, thank you. Fine.

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Ms Jones: In more context than the jury. We do not have sufficient legislation to monitor trolls. We do not have sufficient legislation to deal with people who habitually make comments on social media which are upsetting. We are trying to adapt legislation to fit it whereas if we were brave and we said, ‘Let us get together; let us sit down and let us create a Criminal Act which makes these offences specifically criminal’.

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We are trying to use the Harassment Act; we are trying to use the Telecommunication Act, which are not fit for purpose in relation to the type of bullying that is going on on social media. We need to sit and do it, and we need to sit and do it urgently, because there are people being bullied, upset, mental health issues, all centring around something that the police do not have the power to legislate properly and we need to get on with it quickly.

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Q223. The Chairman: Well, I am glad I asked you that question. (*Laughter*) Thank you.

So we have toyed with the issue about size of jury. And I think because we have touched on it already, we will link size of jury and majority verdicts together.

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Your response in this area has been quite passionate and determined, but we are flying in the face, if you like, of a whole range of other jurisdictions who are quite comfortable with majority verdicts and bigger and bigger juries. Why this passion for where we are now? Scotland lives with 15 jurors and a crude majority.

Ms Jones: But Scotland, I admire for the ‘not proven’. I like a not proven verdict. I would love to have that. I would be quite happy with that.

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But each jurisdiction is different isn’t it? And it is uniquely Manx, almost, now, isn’t it?

The Chairman: Yes, but it is Manx by accident, because it was just something that happened in 1939 to get around the fact that there were no lads here – because it was male in those days –

855 **Ms Jones:** But if you go back to – I am really, *really* now scratching my head, but my understanding was that we had a seven person jury: it was the Deemster and the six sheadings. We started off from ... The juries in the Isle of Man were the Deemster and six members of the public and they were the six sheadings. They sat and decided the fate of anybody who was charged with a criminal offence in this jurisdiction.

860 Why do we fence the court? We fence the court, because many, many hundreds of years ago at Tynwald you fenced the court – was it with a blown pig's bladder on a stick? Do not quote me on that, but that is my recollection of my history lessons in relation to Manx constitutional law. So there is the fact that there is this connection. I appreciate that then we became very English, very anglicised, as we progressed through. But the actually nature and the origin of the jury trial stems from that: the six sheadings and the Deemster.

Q224. The Clerk: And yet there is scope for 12 people on a jury (**Ms Jones:** Yes.) in murder and serious cases. Is there any reason, do you think, to expand the scope of serious cases to include 12 people? And, if seven people – I am sorry to give you more than one question at a time, whereas that is not a good idea – are so good, why do you have the safeguard of 12 in murder and serious cases?

Ms Jones: I do not know the answer, historically, to that question –

875 **Q225. The Clerk:** Well, we live now. What is the practical reason now?

Ms Jones: The practical reason is because it is perceived as so serious that the only sentence is life. Therefore, from that point of view, if you are going to be taking somebody's life away ...

880 You have to remember that it is not that long ago we did away with the death penalty, and we have never really modernised our law much in the last 30 years, to be honest with you – and I will hopefully be able to touch on that as a way forward in other areas of the criminal law before I leave. I have seen somebody sentenced to death in my career – and that is not a thing I am proud to say: that we did do that within my professional career; that somebody was sentenced to death in this jurisdiction. So we never really caught up with the fact that we abolished the death penalty, so for murder you would be sentenced to death. Hence the fact that my belief was that is why we had 12 people.

If you are asking me should that be extended, it is so difficult. Personally, anything that involves a loss of life, whether or not that is charged with an offence capable of life or not ... I think, where there is a case where loss of life is part of the factual matrix, then potentially.

890 **Q226. The Clerk:** Should it be extended to all crimes that carry the maximum sentence of life imprisonment, since it is not just murder, is it?

895 **Ms Jones:** No. I have thought long and hard about rape. I thought very long and hard about whether or not rape cases – I would hate to say, it is one of my specialities. But again, the vast majority of rape cases are issues off consent: boyfriend/girlfriend or acquaintances meeting up, alcohol normally involved. Did she or didn't she consent?

900 Now, do they need juries of 12? With all the cost implications that brings – and it is a massive cost implication. In my 30 years, I have represented one person who I would describe as what most members of the public would perceive as a rape, which is a violent dragging down a lane, and gagged and viciously raped. I have dealt with one in 30 years. The vast majority are issues of consent.

905 **The Clerk:** But if convicted, they will go to prison. If convicted they will be on a list for life. Their lives are blighted.

Ms Jones: Yes, I agree. If I – no I will not say that.

910 Rape is a serious allegation. Then you look at GBH with intent and should all cases of GBH with intent be 12-people juries? Because, again you are potentially looking at very lengthy sentences if you are convicted of grievous bodily harm with intent. There is such a wide spectrum that is dealt with in each of these types of offences, you cannot say, for example, if you are likely to receive more than five years. I do not know until I have had trial! I do not know what is going to come out; how the evidence is going to pan out. But it is a tricky, tricky, tricky area.

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The Clerk: Sorry, to interrupt. You do know, on the basis of what the prosecution's case will be. If they prove everything –

Ms Jones: Worst case scenario.

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The Clerk: – the worst case, from your point of view is, 'We are going to get more than five ...' You know what the tariff will be (**Ms Jones:** Yes.) and the judge will know too. So you can actually say, this is a very, very serious case, potentially – whatever it pans out as.

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Ms Jones: And historical abuse cases, the sentences there are getting very high indeed now.

Q227. The Clerk: One of the strange things here is that we still have the 12 in serious cases and yet you are very clear that seven is good enough.

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Ms Jones: I can only go on my experience. I can only say to you how I feel. I cannot say to you how I would have felt if I had always had a 12 person jury. I suppose, from a defence point of view, you would say, 'Well it is more people to convince' but it is more people to convince both ways, isn't it?

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Q228. The Clerk: Which would you ...? Say you were advising somebody who is facing life in prison. Would they be better off – this is kind of an impossible question in one way, but really this is what we are talking about – with seven people, unanimous or 12 people, ten of whom after the usual safeguards of delay, might convict them? Which is better for them?

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Ms Jones: I would go for seven, if I had the choice. Seven unanimous; unanimous all the way along down the line. All the time. If I had the choice to try and – not influence but – to advise a client and they had the choice: either a 12-man jury but the prosecution can get a majority or a seven person jury and unanimous, I would go for seven and unanimous.

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Q229. The Clerk: Would you get rid of the 12-man jury? I know it is unanimous, but would you get rid of it?

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Ms Jones: I have not really thought about it, because it has happened so rarely. I have tried to argue a 12-man jury for serious offences because those are my client's instructions – because there is the ability to do it in the law. But I suppose from a point of view it is marking that murder is the most serious offence – we have obviously never had a treason trial. But murder is the most serious thing that you can be charged with and therefore 12 men or 12 persons should sit. I suppose it gives it some gravitas. Whether or not you extend that gravitas to other very serious allegations is another matter.

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Q230. Mr Malarkey: We are having all these discussions about seven persons or 12 persons, there are lots of numbers in between. Is there anything that would be ... like 10 with a nine/one

majority? We keep discussing this: seven or 12? Lots of other jurisdictions ... Some use 10; some use 12; some use 15.

Ms Jones: Just do not make it 13! *(Laughter)*

Q231. Mr Malarkey: But the majority issue is something ... I think we are getting the feedback that you do not like majority verdicts. But something like a 10-person jury where a nine/one would be acceptable, (a) I think would overcome the nobbling side of it, because you would have to nobble two, not just one member of the jury, and you are reducing down your size from 12 to 10.

Ms Jones: In principle, there is no difficulty with that. How you arrive at the figure of your numbers of juries is –

Mr Malarkey: Seven is very low.

Ms Jones: I can only go on my understanding as to how it came about.

The Chairman: Okay. Well, time is moving on.

Ms Jones: It is.

Mr Stanley: Could I just make a couple of comments? I have tried to interject but without talking over, and unsuccessfully. *(Laughter)* So perhaps if I could make a couple of comments.

I personally would have great concerns about having majority verdicts on juries on a principle, because the burden of proof is – as Miss Unsworth said – to prove the case ‘beyond reasonable doubt’. That is the burden for the prosecution. The way that it is explained to a jury is that they are told that they must be ‘sure’. That is what it is really about. Are they sure that the person is guilty? Now, if you have a majority verdict, what you are saying is, ‘Well some of you cannot be sure about it. That is okay.’ And that causes me great concerns, because then we are at the position of saying, ‘Well what percentage of sure is acceptable in order to convict a person of an offence?’ If it is ten out of 12, okay, about 83% sure. I have great concerns about that. If a person is guilty and the test is to make sure that, to satisfy a jury that they are sure that the person is guilty, then they should *all* be sure. If they are not all sure then, to my mind, it shows an element of doubt.

Now, if the ability to have majority verdicts was brought in in England to cover the possibility of attempts to nobble a jury, I am not sure that we have the same issues over here. The type of people who are likely to try to nobble a jury must be a minuscule fraction, I would suggest, of the population as a whole. Now, in England, that will equate to a reasonable number of actual people who might try and nobble a jury. In a small jurisdiction such as the Isle of Man, I would be very surprised if we had any – and if we did, *many* – of the type of people that would in fact try to nobble a jury. So I do not think that we have the same issues that they have in England. In England you may have 0.001% of the population who might be inclined to do that. Over here, that translates to zero. I think looking at England and looking at the Isle of Man, you are looking at chalk and cheese. We do not have the same problems that they have in England.

Now, I think in my career I have had one hung jury, and my experience on that one was that it did not then go onto a second trial because the prosecution looked at the evidence as it had actually come out at the trial and they decided that, ‘Well, actually, having seen the witnesses; having heard all the evidence, it looks a little bit different to how it looked on paper at the start of the case.’ They then decided, ‘What is in the best interests of the public? Is it in the best interests of the public to go ahead with a second trial or is it in the best interests to make the decision not to go ahead with the further trial?’

1010 Now, if you had a situation where there was a nobbling of a jury, so that you got a hung jury, the prosecutor would look at that and say, 'Right, we have had the benefit now of seeing all these witnesses; we have heard the evidence; we have seen how it has all come out. We cannot understand how we got a hung jury on this.' If they suspected that there was nobbling of the jury, no doubt the prosecution would then look to have a further trial. If there were a second
1015 hung jury, they would do the same process again, because they look at it and decide what is in the public interest: to go ahead with a further trial or not.

My view is that, if there were a feeling at that stage that yes there is jury nobbling going on here, then rather than look to get rid of the protection that we have by having unanimous juries, the better way to address that would be to have ways in which you can protect the jury
1020 members. So sequestering of juries: they cannot go home at the end of the trial; they go to a hotel; they are kept away from social media; their identities are protected. Things such as that would be a far better way, in my view, of protecting against the potential of nobbling of juries.

Mr Malarkey: I think protecting the jury is one thing, but protecting the juror's family is
1025 something totally different.

Mr Stanley: But if you protect the identity of the jury members, then that assists to protect their family. It is to prevent the jury members being nobbled. So if they are kept incommunicado, if you had a ... If it is a terrorist offence or something involving, perhaps, the
1030 worst drug gang in the UK or something of that sort, I am sure it must be possible to put in place provisions that would protect the jury and that is a much better way of –

The Clerk: Well, okay, but their names are announced to the court.

1035 **Mr Stanley:** They are, but we could change that system.

The Clerk: Okay.

Q232. The Chairman: That is fine.
1040 I would be interested to hear how you guys feel about peremptory challenges.

Ms Jones: It seems to work.

The Chairman: Seems to work? Ooh! You will have to explain that. *(Laughter)*
1045

The Clerk: What are they for? What is the purpose of them?

Ms Jones: I get three challenges as the defence, without any reason whatsoever. So I can look at somebody who has been called – number seven – and decide, for no reason at all, I do not like
1050 the look of him or her and say 'challenged' and I am never, ever questioned on it.

I tend to use them extremely rarely. The way that I deal with it – and most practising advocates for the defence do – is that we get the jury list on the morning of the trial, about half an hour before we are due in. So unless you have got a corrupt member of the court who is willing to give it to a defendant ahead of your trial, your potential nobbling has got to result of
1055 me and him or her going through the list at 9.30 a.m. on Monday morning ahead of trial starting at 10.15 a.m.

I will go through that list with my client and if there is, for example, a matrimonial client of mine or an old school friend or a next-door neighbour of mine, I will declare them to the prosecution and they will use their challenges to get rid of ... Similarly, if my client says, 'Actually,
1060 I went to school with them' or 'They lived down the road from me' or 'We play on the same football team –

Q233. The Chairman: Excuse me, can I just stop you? That is reasoned challenges. We are talking about without reason.

1065 **Ms Jones:** Yes, but the way that I am telling, on a practical point, how we deal with jury exemptions at this stage is that there is a discussion between the defence and prosecution, which results in the prosecution using their unlimited challenges to get rid of anybody that I have declared to have an interest in, or my client has.

1070 My three non-reasons are there if I just do not feel that they are the right sort of person to sit on this trial. I have learned over the years that you cannot judge a book by its cover.

The Chairman: Okay, well let us turn it the other way –

1075 **Ms Jones:** That is why I personally do not use them very often. But if I saw somebody who – and I hate to say it – looked a bit dodderly, I might just think, ‘Oh, I will just use one of my challenges.’

Q234. The Chairman: Okay. I am sorry I interrupted you there.
But how do you feel about peremptory challenges, unlimited, on the prosecution side?

1080 **Ms Jones:** I do not particularly like it.

The Chairman: Fine. Thank you.
Any other comment?

1085 **Ms Jones:** I feel that it can be abused, but –

Q235. The Chairman: Mr Stanley, we do not want to miss you out this time.

1090 **Mr Stanley:** Thank you very much.

I agree pretty much with what Mrs Jones has said. It is a practice that the defence advocate will identify people that they know or the defendant knows and will mention this to the prosecutor, and the prosecutor will use some of their unlimited challenges to take those people out of the equation.

1095 From my perspective, the defence’s three challenges without having to give cause to the Deemster enable me as a defence advocate ... and I have to say, I have stopped doing criminal work now, so it is 2013 was my last trial. The way that I always dealt with that was to try making sure that a jury was balanced. So I would not want to see a jury which was entirely male or a jury which was entirely female or one that was entirely people at retirement age, or entirely people that were just out of school. I would like to see a balanced jury. Because we only choose seven,
1100 sometimes you can get five or six people who are all of a similar description, if you like.

The Chairman: You are not talking against small juries there are you, by any chance?

1105 **Mr Stanley:** No. Well the right to challenge somebody without having to explain, ‘Your Honour, I just felt we were getting too many men on the jury’ or ‘I thought we were getting too many old people on the jury’, it is an important thing to try and get a balance.

1110 **Q236. Mr Malarkey:** Couldn’t you work that to your advantage? Because you might want an all-male jury for some particular reason, because the males are going to be more sympathetic towards your client.

Mr Stanley: And the prosecutor would be thinking, 'This is an all-male jury. I do not want an all-male jury, so I am going to challenge some of the males until we end up with some females.'

1115

The Clerk: Except, as Mrs Jones has just said, you cannot judge a book by its cover.

Mr Stanley: No, absolutely.

1120

The Clerk: There is no science behind this at all, is there?

Ms Jones: No, there is not. It is gut reaction.

1125

Q237. The Clerk: Is it not the case, really, that if you did not have it, you would not want it, because you would not even think of it? You would have your challenges for cause: 'I happen to know this person' but it would not occur to you just to not like the look of one person and challenge them.

1130

Mr Stanley: Well actually, not quite. One of the things that I would look for is the person being called up as a potential jury member giving dirty looks at the defendant in the dock or dirty looks at the prosecutor. Do they look as though they are going to be fair-minded and balanced or do they look as though they have come in with preconceived ideas about things? It is very much a personal feeling.

1135

Ms Jones: The difficulty in trying to do that with a jury, to be brutally honest, is that of course you have to do your challenge before they have then read out the names of the people and whether or not they have got a conflict, so you find that you have used your challenges. But two of the first-selected jury have been excused and then you end up with somebody that you *really* do not want on the jury. So that is the downside of it, which is why I use it very sparingly, because if you have used your challenges and then there is really somebody who, you know ... This is theft of war medals, and the gentlemen has got his blazer on, with his buttons brightly shining and his war medals on, he might not be quite the sort of person I want on a jury of this particular theft.

1140

Okay, all I am saying is it is not going to be a cornerstone of my life, whichever way jury challenges go. There are fors and againsts on both sides.

1145

Q238. The Chairman: Regardless of the various thoughts on this though, are you willing to defend the idea of this imbalance between peremptory challenges? Are any of you volunteering a defence on that one?

1150

Mr Stanley: No. I think it is useful that the defence can identify to the prosecutor, prior to the jury selection process, people who are likely to have some sort of connection and therefore – because the defence have limited peremptory challenges; we do not necessarily want to use those up – they would use those. But for the prosecution to have unlimited challenges, does seem a little bit unbalanced. There could be a middle ground.

1155

Q239. The Clerk: Agreed challenges?

Mr Stanley: Yes, agreed challenges and then each have three.

1160

Ms Jones: And then argue with the judge whether it is reasonable or not, and whether you have got grounds to – is, I think, personally, a better way. If there are grounds to challenge then we leave it to the judge to decide. I am a great believer in judge's discretion.

1165 **Q240. Mr Malarkey:** You would be happy, then, if you were doing a challenge that you had to give a reason why that challenge was there, not because, 'I do not like the look of that ...'

Q241. Mr Karran: Would you have to do it in front of the individual juror or not?

1170 **Ms Jones:** No.

Mr Stanley: I think it would better outside the –

Ms Jones: There would be a mechanism to do it.

1175

The Clerk: Yes, if it was by agreement, you could do it very discreetly. You might know somebody was too deaf or whatever.

1180 **Ms Jones:** We should not be excluding people for disability, but that is because we do not have court houses that are fit for purpose. But there you go; that is another issue.

Q242. The Chairman: You mentioned there, a couple of minute ago, something which interested me and that is that you find out – I think you said – at nine o'clock ...?

1185 **Ms Jones:** I can collect the list at 9 a.m. on the Monday morning, if my trial is starting at 10.15 a.m. on Monday. The day of my trial, I go up and I arrive at reception and that is the first time I will see the jury list.

1190 **Q243. The Chairman:** But your work is mainly – if we have understood you correctly – been more on the defence side, so do the prosecution and the defence see it at the same time?

Ms Jones: No, the prosecution has had it for at least a week if not two weeks before. So the prosecution has it for an unlimited period of time.

1195 So what I am saying to you, from a practical point of view, if a defendant wants to nobble the jury ahead of panel, they would have to have a corrupt police officer, because the court gives it to the AG's, the AG's give it to the police, the police carry out their criminal checks to see if anybody on the jury has convictions. So the only way you are going to get that jury list ahead of the day of the trial is a corrupt court official, corrupt official in AG's or a corrupt policeman.

1200 **Q244. The Clerk:** Can I just ask, is the only purpose of giving the prosecution the list in advance to check that people are in fact eligible to serve?

Ms Jones: That is my understanding.

1205 **Q245. The Clerk:** So if you had a system – I do not wish to anticipate the line of questioning that the Chairman is keen on – whereby automatically you had, not the voting list, but a separate list of people who ... And the list would tell you whether they were eligible or not, then the prosecution would not need to have the list that far in advance.

1210 **Ms Jones:** The difficulty with that – and I am playing devil's advocate here – is that our criminal conviction list is not the speediest at being kept up to date. They do make horrendous mistakes in the way that they record previous conviction, sometimes. I have had cases of that.

1215 The argument that has been given to me by the Attorney General's Chambers as to why they get it ahead of me – which seems unfair – is that they need the police to treble check at the very last moment, whether anybody who is empanelled to come to that jury trial has a conviction.

Q246. The Clerk: But were you to have – in an ideal world – a move to a list which you could trust, then that objection would go?

1220 **Ms Jones:** Yes.

The Clerk: Okay.

1225 **Ms Jones:** But that is what they have said to me.

Q247. Mr Karran: Can you just clarify the point about there being the Rehabilitation of Offenders Bill? If you have got spent convictions, will there still be and will you still be –

1230 **Ms Jones:** I do not see them. It is only the prosecution. If you are asking me whether I suspect that the prosecution object to potential members of juries when they have a shoplifting offence when they were 15 as a juvenile, I would suspect they do. But I cannot give you any evidence of that. That has to come from a question to a prosecutor as to what they use this information for in relation to somebody's convictions.

1235 **Q248. Mr Karran:** So the situation is the prosecution can see stuff that would be classed as spent, as far as ...? But you would not?

1240 **Ms Jones:** I will not see any potential juror's convictions at all. I will have no idea whether or not Mr Smith has a conviction for attempting to pervert the course of justice.

Q249. The Chairman: So you are blind to those peremptory challenges? (**Ms Jones:** Yes.) Is the prosecution partially blind to the advice they are receiving from the police, in terms of the whys and the wherefores as to that person or this person should not –

1245 **Mr Stanley:** I do not believe it is the police who decide if somebody is exempt or not. They just give the previous convictions for the people who are on the jury list. I have done prosecuting on behalf of the Attorney General's in the past, so I have seen the previous convictions lists that come with the jury list to the prosecutors.

1250 There are a number of factors that might be taken into account. Not every criminal conviction prevents you from sitting on a jury but there may well be particular convictions that may make it undesirable for that particular juror or that particular person to sit as a juror on a particular case.

1255 So it is not a case where the AG's could simply be given a list of exemptions based upon previous convictions, because there is an element of considering things which do not exclude you from a jury service, but which might be relevant to whether you should be on that particular jury.

Q250. The Chairman: That is clear. Thank you.

1260 So we will move on, if we may, to the electoral roll. We have an electoral roll at the moment which is something like 20,000 short of the potential number of people who could be on it. Have you got any views that you would like to share with us on this?

1265 **Mr Stanley:** The benefit of choosing the jury by using the electoral register is that they are people who are chosen at random from the majority of the population, and it is a list simply because you are living in the Isle of Man and you are eligible to vote in the Isle of Man. If you chose to have some other sort of list, then the question would arise as to who decides who goes on that list. The important thing about having the electoral register as the list is that it can be

anybody; as long as you are registered to vote in the Isle of Man, then subject to the exemptions from jury service, you are up for being a member of a jury.

1270

The Chairman: Well, no, because if you choose to opt out of the electoral roll, you choose to opt out of jury service.

Mr Stanley: Well, I think you are supposed to fill out the forms to go on the electoral register.

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Q251. The Chairman: Well, we are 20,000 short, aren't we?

The Clerk: The estimate we have received is that there are about 20,000 who should be on the register who are not.

1280

Mr Stanley: Well if people do not wish to be on the electoral register, are they the people that you would particularly want to have on your jury?

Q252. Mr Malarkey: Well, is that fair?

1285

Mr Stanley: Well, the question is, what would the other options be? And the other options would be some other type of list and then you have the question as to ... Well somebody has to decide who goes on that list, so that brings into question, is the Government body who decides what the list is or who goes on it, are they going to do it randomly or are they going to put a selection process in?

1290

Mr Malarkey: It must be fairer to have a list where you opt out rather than what we have at the moment is a list where you are opting in, because if you do not go on the voters' list – and people do not go on the voters' list because they do not want to sit on juries. I hear that so often when I am putting forms out for the electoral roll, 'Oh, no. I do not want to sit on the jury. I do not want to sit on the jury.'

1295

Ms Unsworth: But it is a criminal offence not to fill out your electoral card and register –

Q253. Mr Malarkey: And when was the last prosecution for that?

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Ms Unsworth: But that is Government's problem. Government need to prosecute people who do not fill out their electoral card. You must fill it out. That is what the law says. So if people are not doing it, then that is a separate issue, isn't it?

1305

Q254. The Clerk: But if it were possible to create a list of citizens from other sources: Income Tax being a primary one, of course, but other ... So that you could get closer to a list of all the residents on the Island and, from that, you would know how to populate the list with details of those who are eligible to serve. So it would be still a random list; there is no group of people gathering and making a choice, it is just an automatic operation of law. That, I think, is what the Committee is looking at. It is a list modernised. It is the same idea, but it is actually one that is a bit more effective, because it is a bit 19th century, perhaps, to use the electoral roll.

1310

Mr Stanley: I suppose you might still have the problem, though. If people are prepared to give up their right to vote in the Isle of Man for fear of being called up to do jury service, are they going to not want to fill in their Income Tax forms correctly for fear of the same thing? Given that people probably do not want to pay Income Tax in the first place.

1315

1320 **Q255. The Clerk:** Most people are PAYE. Most people do want to be able to go and see the doctor. Most people have things from the state that they want to be able to claim. So if you are on a doctor's list and you pay tax, that is most people, isn't it?

1325 **Mr Stanley:** I think, from my perspective, the key thing would be to ensure that it was a list that was entirely random. So that there was not a selection process or ineligibility criteria that somebody in Government was deciding.

The Clerk: There is no suggestion –

1330 **Ms Jones:** Can I just ask, just one point on that – I am again with Mr Stanley that I am not married to the electoral roll, if you can come up with a system that gives the ability for a list to be produced to the coroner to then summons. I do not have an issue with that.

1335 I think one of the good things about the way that it is done is the fact that it is split into six sheadings, so that we ensure that we get a certain amount of people from each area of the Island. I quite like that idea. I quite like the fact that I know that I am not going to be all Middle. I am going to have some from Ayre; some from Garff; some from Lezayre; some from here and it is done specifically number-wise at the moment. I think I would like to retain that ability to not cherry-pick but to ensure, throughout the Island, there was a wide spread of where people come from.

1340 **Q256. Mr Malarkey:** Just wondering: a lottery, basically, of everybody would be a much fairer way forward?

1345 **Ms Jones:** Well, no. What I am saying is the fact that we know that we get some from the north; some from the south; some from the east; some from the west; some from the middle, I quite like. That is all I am saying.

1350 **Q257. The Chairman:** Is it not the case, at the moment, it is not random enough; that actually there is a tendency to march through the alphabetical list and we end up with a whole load of Quines or Kellys or something?

Ms Jones: Yes. It is better than it was but –

Q258. The Chairman: That is a bit daft, isn't it?

1355 **Ms Jones:** You used to, when you got to the Ks – especially, if you hit Middle and Glenfaba and you were both in the Ks, then it was a little bit confusing.

1360 **Q259. The Clerk:** How does that work? Because not all the sheadings are equally well-populated.

1365 **Ms Jones:** They do not all get equal amounts of numbers; Middle is the main one. But the problem you have – and I do not mean to be disrespectful but – a lot of my crime is based on particular estates. Therefore, we hit the problem of, 'Yes, well, you know, they used to live in the road next to us.' So, if you have that spread across the Island that is built in, I think it is quite useful. That is all I am saying.

Q260. The Chairman: Would you not think – I am being a little bit mischievous here, again – that it gives you a greater spread with 12 rather than seven?

1370 **Ms Jones:** Depends ...

The Chairman: Let us move on, shall we? (*Interjections*)

1375 **Ms Jones:** You would be summoning more people from Garff and from Lezayre and Glenfaba and the Middle, wouldn't you? I am just pointing that out: that if you are looking at a different way of doing the list, make sure that it is the even spread along the Island, I think is important.

The Chairman: Forgive me, I was being mischievous.

1380 **Mr Stanley:** Avoiding the alphabetical production of lists as well, because that does produce problems if you have 10 people from the same extended family all summonsed for one jury service, that entire family might be not suitable. They might be known to one of the defendants or something, and that is a big chunk of your potential jury taken out automatically.

1385 **The Clerk:** A modern list can be ... There are algorithms for having rank and selection in there.

Q261. The Chairman: Okay. Moving onto exemption from service. We have a colossal amount of exemptions from jury service compared to most jurisdictions and we are mindful to look at this and examine it carefully. We would welcome your thoughts on the current exemptions, which are significant. Are you comfortable with them?

Ms Jones: I know it is a separate question, but I am going to deal with legally trained people, because I think that is important.

1395 I looked at this question from the point of view of myself sitting on a jury. I think that if I were the prosecutor, I would be very uncomfortable with Mrs Jones sitting on a jury. I think that I would be thinking to myself, 'Well, the potential is that juries are going to say to Mrs Jones, "What do you think?" and when Mrs Jones expresses her views, that those views are going to take priority over and above the rest of the six.'

1400 Then I looked at it from the point of view of myself. This is a very small jurisdiction and as much as we try to be professional, I might have an OIC – an officer in charge – who is the OIC in this case who I thought, on previous occasions, had not been particularly honest with me, who had tried to pull the wool over my eyes. Would I be capable, absolutely, categorically, of ensuring that that particular personal bias did not go into the jury room? I might have a prosecutor who I cannot stand. Would I be capable of making sure that did not go into the jury room? I do not think I could. I think it is because it is such a small jurisdiction and we all know each other so intimately, professionally, that I think that is our difficulty in allowing the legal profession to come in.

1410 **Q262. The Clerk:** Those are all reasoned grounds. (**Ms Jones:** Yes.) You are saying to the selection, 'I am Dawn Jones. I probably know the defendant; I certainly know the police, all the police in the case. Please excuse me.' And they would say, 'Yes, of course.' But when Mrs Unsworth, who is sitting next to you, who does civil claims, says the same thing, they would say, 'But you do not do crime. Why would you be in difficulty?'

1415 **Ms Jones:** But you have not got the first issue, which is the difficulty of the jury, the other six or 11, saying, 'The lawyer must know best.'

1420 **Q263. The Clerk:** But then you could say they would say the same thing about a doctor or anybody who has got a university degree. You could say that about anybody. If you have got a random selection and you actually move to trying to get the community represented as it actually is and have few exemptions, that there will be this split in the jury. It is the same, isn't it? They might not necessarily –

Mr Stanley: In my view on that: it is not quite the same to say that a jury might be particularly swayed if one of the members was a doctor. Whilst obviously there is an issue that certain professions might hold higher regard for people – and hopefully doctors do – if you have somebody who is legally qualified, such as an advocate, or even worse a judge, sitting as a member of a jury, the perception is not only going to be, ‘Well, is that particular profession held in high regard – and I am not quite sure advocates necessarily are these days so much – but more that people are going to think, ‘Well, they know what they are doing’ in terms of what our job is. So whilst a jury member might say, ‘Oh, yes, Doctor So and So, yes, he is a nice chap, I respect his opinion’ they are not going to say, ‘Oh, yes, Advocate So and So is legally qualified. He must know what the correct result is going to be, because he is a lawyer.’ How many times have I heard people saying, ‘Oh well, you are the lawyer’ in response to any sort of question. People do assume that lawyers know every single bit about every single law regardless of what type of law they do.

Q264. Mr Malarkey: That really nicely leads me into what I have been saying on most of the enquiries we have had here about one dominant member of a seven-person jury. It is very easy, in my opinion, for one dominant member to – and you are backing it up here – to sway that jury. If it was a 12-person or a 10-person jury, it would be much harder for that one dominant person to sway. So another argument as to why the jury is too small: because it can be swayed by – it may not necessarily be a lawyer, it could just be a very clever businessman who has been put on there, who is an up and coming politician, who knows how to manipulate people, if you like, and he can manipulate the whole jury, because there are only six members to do that to. Not quite the same if there were 10 or 12 there, for him to manipulate. So you have just really backed my case up for a bigger jury.

Mr Stanley: I do not have a great issue with an increase in the number of jurors, I would have a great issue if it was a majority verdict of that increased number.

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Mr Malarkey: That is interesting.

The Chairman: Okay, I must commend you as excellent advocates for arguing so strongly as to why you should not be on the –

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Mr Stanley: If you would also like me to argue that spouses should not be on it. *(Laughter)*

Q265. The Chairman: You have not disappointed.

But before we move on, can we go beyond you guys just a little bit. Are there any other areas?

1460

Ms Jones: Judges: definitely not. Police officers: definitely not. With the greatest respect, their training, from day one, is to get a conviction if they possibly can. I am sure that they ... But I think that any defendant who had a police officer on the jury would feel aggrieved. They investigate. It is this idea that, ‘Yes, we want everybody to serve on a jury’ but from the point of view of a defendant – I know what you are going to say: that is reasonable cause to object to – but it is the profession that they are in. Those people, the defendants have been in a police station; subject to interrogation by the police officers; nine times out of 10, they have had a horrific experience in that police station and I just think that we should keep police officers exempt.

1470

Q266. The Clerk: I was going to ask, does it extend to retired officers?

Ms Jones: I still think that once a police officer, always a police officer.

1475 **Mr Stanley:** One of my concerns is public perceptions –

Ms Jones: With some exceptions, Mr Russell.

The Chairman: Noted.

1480

Mr Stanley: One of my great concerns is public perception, because the justice system needs not only to be fair in practice, but it also needs to be seen to be fair. (**Mr Karran:** Hear, hear.) It has to be demonstrably fair, so that people will have confidence in that system. If you have anything which might undermine the confidence and the independence of the judicial system, then that is certainly a no-no, from my perspective.

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Q267. Mr Malarkey: Can we, then, rephrase this? Are there any occupations that are on the list at the moment that you think are totally unnecessary? It might be a better way round, because –

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Ms Unsworth: I think, realistically, you are looking at Group E of the Act. You have got medical practitioners, dentists, nurses, midwives. We all understand why they are on the list, because they might be required to deal with emergencies or health problems that are going on. There are, however, people on this list that I personally do not understand why they are the list. So, for example, pharmaceutical chemists. Are they really needed to be on the list? The Chief Financial Officer of the Treasury; the Chief Executive of the Department of Health and Social Care. Why is he exempt? What has he got to do with it? If you go through the list, there are people on here who I do not understand why they are exempt. All others groups of the Act, I understand, there are people on this list, I do not understand.

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The Clerk: Even the Clerk of Tynwald!

Q268. Mr Karran: Can I ask that you have the reflection and maybe we do a list of people that you think should be exempt and people that should not, as you are on the coalface. I think asking just on the top, you need the time to think about that, especially as you are representing the Law Society.

1505

Ms Jones: Right.

Q269. Mr Malarkey: Can we take that one further, do you think age is a discrimination? Sixty-five, the cut off, does that mean that everybody, when we get to 65, we are not capable of making a decision?

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The Chairman: I am 60-odd, so be careful.

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Ms Jones: Tricky one! I am 54 and I struggle – not struggle ... I know the difference between 54 and 44, as to how much a jury takes out of me. I think that you have to recognise that sitting on a jury, even though the vast majority of the time you appear to just be sitting on your bottom listening, is actually extremely tough-going.

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Mr Malarkey: You want to try sitting in Tynwald! (*Laughter*)

Ms Jones: I am sure it is.

We then add into that the fact that our courtrooms are not ideal. I suffer from old age and as a result of that I cannot sit in the chairs any more in the court; they cripple me. They have no ability for anybody who is hard of hearing to hear what is going on. We have no ability within

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our courtrooms to have anybody who is disabled sitting on a jury – which I think is a travesty, an absolute travesty; to alienate that part of our community in this day and age is unacceptable. So you need to look at it in that context. I do not believe in any way that people of 65 cannot make reasoned decisions and bring their –

The Chairman: That is a relief.

Ms Jones: – expertise and their life knowledge. This life knowledge is vital in many respects to the jury system. That is what we want of people: your different aspects of life; your experiences, to give a balanced decision. But it is difficult because when do you get to the point of saying, ‘Right, well now, 75 is fine, but you are going to have to produce a medical note that you can hear okay, that you are not dodderly, that you are not going to fall asleep, you are not going to need 15 loo breaks this afternoon’? Sorry to be that blunt, but those are the issues that we have got to look at.

But in principle, no – although I would not encourage an extension for judges until 75. I think that is about right now. But in principle, I have no objection to it, but we need to look at the wider context of it and maybe concentrate on a few more areas to increase our numbers at this point. Why should somebody who is hard of hearing, who is perfectly fit and able, not sit on a jury if they want to?

Q270. Mr Karran: Could I ask: maybe the facility of people being able to exempt themselves if they feel they are over 65 and they are hard of hearing or whatever, to be able to give them that unilateral ability to exempt themselves. Sometimes you do not want to look at reality that you are getting older, but that would be one way of maybe giving some flexibility, if we were to raise the age to 70, say.

Ms Jones: But if we make a decision, if we as a society make a decision that people up to the age of 75 can sit on a jury, we have to alter the system to fit them, not to then say, ‘But we will only take a few of you.’ That is discrimination, isn’t it? That is the one thing we do not want to be is discriminating. ‘You can sit if you are 75, but only if you are not hard of hearing, you have not got incontinence problems, you are not a bit dodderly on your feet and you are unlikely to fall asleep half way through the afternoon session.’ That is not right.

Q271. The Chairman: Yes, but what you have done is, with respect ... We have an arbitrary age of 65 and you have chosen 75. There are lots of other ways to cut the cake.

Ms Jones: Absolutely, and I started this discussion by saying, ‘In principle, I do not have any difficulty with it.’ But I am just saying you need to look at the practicalities of the situation of doing that. If you are looking to increase your numbers of availability, there are other areas you can look at as well.

Q272. Mr Malarkey: I think it would be quite easy for a doctor’s note to be sent in that (**Ms Jones:** Yes, absolutely.) ‘This gentleman is not capable of sitting there.’

Ms Jones: But that is relying on the potential jury to do it. You might have somebody who is that age who is determined to do it and will not have a medical note. And you have taken away my peremptory exemptions, so I cannot do anything about that. (*Laughter*)

The Chairman: We are enjoying ourselves immensely, but it is 1.20 p.m. and we have got to keep pushing on.

1580 **Ms Unsworth:** Just on the age factor, I think we do need to bear in mind that people in the Isle of Man are given the responsibility of voting at the age 16. They cannot sit on a jury until they are 18; they are not tried in a criminal court when they are 16. So we have potentially got two years of voters there who could sit on a jury because they are between the age of 16 and 18, but they are not tried as adults and they are not able to sit on a jury. So, perhaps, another way of looking at expanding the pool of jurors is to look at that anomaly within our legislation. I am not saying I am in favour of 16 years olds sitting on a jury; I am not saying that I am not in
1585 favour of 16 years olds sitting on a jury, but Tynwald have given them the responsibility that they can vote on what happens on this Island –

Mr Malarkey: I think that is a much bigger debate, for another day. They are not allowed to buy cigarettes; they are not allowed to drink alcohol, so I think that is a much wider issue.

1590 **Q273. The Chairman:** The impact a 16-year-old – one voter – can have on the future wellbeing of a parliament does not really compare to the incredible impact a 16-year-old could have on a small jury of seven. But we will leave it there.

We must go on. Payment for service: any thoughts on that for us? Are you comfortable with
1595 the way it works at the moment? Do you think there are any adjustments of changes we might want to deliberate on?

Ms Jones: I meant to look up – and forgot – when there was last an increase in payments. No doubt Miss Unsworth is always good on these things. I think it was some time ago. There has not
1600 been any significant increase in relation to the allowances given to jury members for some time. That is a Treasury decision.

Q274. The Clerk: It is probably fairly common ground among everyone in the room, it is extremely low.

1605 **Ms Jones:** It is pathetically low.

The Clerk: Nobody is going to advance any idea that it is not.

1610 **Ms Jones:** But that is a Treasury matter; that those matters are capable of being increased in relation to the fees they do get, but they are derisory really.

The difficulty I have with the way that you are questioning it is: my understanding is that if you are in employment, you carry on getting your wage anyway. You are not deducted. The difficulty you have is self-employed, housewives, people who are reliant on other types of
1615 income who are not able to claim it because they are on jury service. So if you are employed with the Isle of Man Bank – I do not mean that; just any bank – then you will continue to get your wages.

Q275. Mr Malarkey: But there is no obligation under law for them to do that and we are
1620 looking at possibly making it compulsory for larger companies, that they do have to pay and then not pay them any money because they are being paid by work which would then leave us a pool of money to pay the self-employed or the ones ... a little bit more.

Ms Jones: But that is the difficulty you have, isn't it? If you do not have it by way of a fixed
1625 reasonable fee, then how do you assess what their loss of income is? You are getting into very difficult means-tested assessments.

Mr Malarkey: We were not thinking about getting that complicated, I do not think, really.

1630 **The Clerk:** There is not going to be a perfect solution.

Ms Jones: No there is not, but if you said – maybe to switch it on its head – that every jury member will receive this amount of money, but that you make it that, if you are in employment, then you expect your employers to pay you and they then rebate the payment for the jury service. It is almost like how the sick pay works.

There is no ideal solution, but if you are asking me what I think about them, they are derisory.

1640 **The Chairman:** Any other –

Ms Unsworth: The remuneration was last – according to the Act – updated in 2003, which is quite a long time ago.

1645 **Q276. The Chairman:** The amount?

Ms Unsworth: Yes. According to the Act anyway ... I have only printed this this morning. It is 2003, so it is somewhat out of date.

My concern is, if you are saying that larger employers have to pay people sitting on a jury, how do you define what a larger employer is? Are we doing it by way of number of employees? Are we doing it by way of turnover? Because you might have somebody who has a lot of employees (*Interjection by Mr Karran*) who actually is not very profitable, you are taking a key member of their staff away from them; they are going to have to replace that member of staff if they are sitting on jury for two months. There are many, many issues there that cause difficulty.

1655 **Q277. Mr Malarkey:** Again, it is easier to opt out than to opt in, so if you made it across the board that all employers had to pay but if, as the employer, you felt that your company could not do that, you could not afford to that, you could write to the court and say, 'I cannot afford to do it, end of.' But the majority of companies, especially if a trial is only going on for two days or three days, it is no more than in the –

1660 **Ms Unsworth:** There is one aspect that I disagree with wholeheartedly in here, which is that jury members have to pay for their own refreshments. I think that if they are sitting on a jury they should be at least be given hospitality where tea, coffee, water are provided to them. They are given a subsistence allowance for lunch, but it is not a lot of money. It would buy a sandwich a bottle of pop or whatever. But whilst they are in the jury room deliberating, they are having to pay their 50p each time they want a cup of coffee (**Mr Karran:** That is ridiculous.) and pay for that, and realistically I think that needs to change.

1670 **The Chairman:** You disappoint me because I was recalling something I read about many years ago where judges used to refuse to feed or give juries water until they –

Ms Unsworth: They did – until they reached a decision.

1675 **The Chairman:** Can't we go back to that? (*Laughter*)

Ms Jones: The difficulty most jury members will have is the Deemster does not give them long enough to get the 50p in the coffee machine anyway. (*Laughter*)

1680 **Q278. The Chairman:** Right.

So if we could then just conclude – apart from any closing remarks that you may have, which we would be very pleased to hear, two areas which I think we will get a fairly strong reaction on,

and that is – and I have put them together because time is going on. It is jury training and support for jury by way of advice. Are we pretty well in the right place at the moment on those two things?

Ms Jones: I think so. I think that, as I stated, the idea that the jury – whatever number you decide – is in that room bringing their experiences with no fear of anything interfering with their decision-making is where we should be.

I think the video the jury is shown before they come in for balloting is quite good and balanced. I think that the directions and the opening from the Deemster are quite good. It seems to put them at ease and that they seem to understand what is required of them.

I am afraid I do not understand what potential secretarial service they may need. The whole idea is that they do not take their phones in; they are switched off. They are isolated from the world while they deliberate and that they should not be influenced by anything or anybody at all. I just cannot see how that would help. I think any defendant would find it very difficult to understand why somebody else was going into that room, who was not under oath, who was not part of the jury, who may have heard other things go on in the trial. You have to understand that a lot of things happen that the jury do not know about and, for every good reason. They only hear the evidence. They do not hear the legal arguments; they do not hear the spats between advocates and that is the sacrosanct of the jury. They have only heard the evidence when they go in.

Q279. The Chairman: Do you think that it should be compulsory for a judge to provide in writing to the jury before they retire, a specific list of the clear points that the prosecution make, a specific list of the points that, say, in this case the defence make and also the points of law that the judge has identified as crucial to any decision making process?

Ms Jones: Pathways? Hmm, I am not a great lover of them. I have used them; we have used them in this jurisdiction: the pathways or whatever this month's phrase that I am supposed to refer to them as. We used them in the recent murder trial and the difficulty with those, in all honesty, is that you can then criticise the decisions made in relation to the wording, because the fear is that they take priority to what was said; they become their bible; their absolute. 'This is what we have got to do and we have got to follow this very rigidly' and you are doing away with all the other side of it which is, 'You might reject what I say; you might find other things important. I might not refer to evidence that you think is important.' You are restricting them.

They can be a useful tool, but I think to make them used in every case would be dangerous. The vast majority of trials should go as they are.

There are exceptions. We used them as well in the death in custody for the jury in the Inquest and they found those very useful to have the clear pathways. 'These are the steps that you have to take.'

Q280. The Chairman: Sorry, can I just explore that? Why would it be appropriate in that particular instance – because Miss Unsworth was nodding vigorously there. Why that particular one?

Ms Jones: The jury, first of all, had to decide whether or not the defendant committed the acts. They then had to go on and consider whether or not there was any lack of intent which would defeat a murder charge. They then had to go on and decide whether or not there was any element of self-defence, which would defeat a murder charge. They then had to go on and decide whether or not there was any element of provocation and what the elements of provocation were, which would reduce it to manslaughter. Then, if they still had not reached a not guilty, they had to go on and decide whether or not diminished responsibility was a potential defence to murder to reduce it to manslaughter.

1735 So the difficulty – and it is something I am very passionate about: the fact that we are still prosecuting under an 1872 code. We have not modernised, really. The options available to that jury were so complex and were not clear on the face of the information they just had: was he guilty of murder, yes or no. But the reality of that case was that there were multiple steps: lack of intent; self-defence; all of these things took it to a different type of area where there were different considerations. There were so many directions the jury had to be given.

1740 Similarly with the death in custody: so many interested parties who may nor may not be contributory to the death.

The Chairman: Thank you.

1745 **Mr Stanley:** In terms of the suggestion of having a legally qualified secretary or somebody similar in the jury room to assist and advise juries, again I think that is an important issue in terms of perception and justice being seen to be fair and independent. If you have somebody who is a government employee and who is effectively an extra government member of the jury – which is what they would be become if they are giving advice to a jury – then you take away the independence altogether.

1750 So I think, from a perception point of view – even with the best will in the world and the best person doing it in the world – perception-wise, it would not be acceptable. And practically, as well, because the whole concept of the jury is that they listen to the evidence which takes place in the courtroom and, unless you are going to have this legally qualified secretary sitting with the jury in the courtroom and coming in and out with the jury in the courtroom as effectively a *de facto* extra jury member, that person is not going to have the full picture or they may have a wider picture that they should not have.

1760 **Ms Unsworth:** It is dangerous because it goes back to what Mr Malarkey was saying before: you have got a legally qualified secretary, they could potentially – they are not on the jury; they have no decision making power – foist their views upon the jury. They could potentially be nobbled from the outside and then be used as a mechanism to get the jury to go one way or the other. That is far more dangerous than the system that we have the moment.

1765 **Q281. Mr Malarkey:** Moving on slightly, do you think or have you had experience with regard to, after a jury has finished, whether they should be offered counselling after very serious cases? Some of the evidence they might have seen that might stay with them for years ... We have learned that there is absolutely nothing there. It is like, 'Thank you, much and off you go and there are your pennies.'

1770 **Ms Jones:** We do it in a more subtle way in that we have learned over the years to monitor the way that we deliver evidence to the jury. For example, in the murder case, they did not see any actual photographs. They were all on a mannequin and they were done in a way which is less ... manageable. They are told that, 'Unfortunately, you are going to have to look at these things.' But you are right, in the bad old days, we just used to say, 'There is a dead body – deal with it' and nothing.

Q282. Mr Malarkey: What about rape cases?

1780 **The Chairman:** Child molestation or abuse issues –

Ms Jones: Sorry?

The Chairman: Child abuse issues must be very –

Ms Jones: Yes. They are obviously told that, We are all going to be very professional; we are just going to deal with it as it is; we are going to leave our emotions aside; we have to get through this; that we have to deal with it; you are going to hear things that are not very happy.' It is an area that – how do you deal with it, other than ...?

1790 I remember there was a period when the police became very aware of it and at the end of a 14-hour interview with my client on very serious sexual offences, I had this very young junior officer come and offer me counselling because I had gone through a terrifying experience. I did tell him where to go! (*Laughter*)

1795 How do you deal with it? Each jury member is different, but all I can assure you is that those who deal with criminal law are very aware of the need to present very difficult evidence in a way that is as less shocking as possible, but still being fair to both sides.

I suppose there is a way of doing it, but how you do it, I cannot think of.

1800 **The Chairman:** Is there anything, as we close, you are bursting to – ?

Mr Karran: I am sorry, I just have one or two questions, please.

The Chairman: Sorry, go ahead.

1805 **Q283. Mr Karran:** The issue about mental health: when you are selecting a jury, if people have a long-term mental health issue – obviously you do not want to embarrass people – but if there is somebody who gets on a jury that has a mental health issue, is there anything that is done as far as people are given that exemption if they feel they have got a mental health issue that they want –

1810 **Ms Jones:** That will mostly be done with the Chief Registrar before we even get to the day of the trial. That will be done through medical certificates and representations. There are the odd few who will get through, who do not tell their doctor that they have been summonsed, who, because of their own mental health issues, will actually want to be on the jury. That has occurred. We have, between the court staff, the lawyers, the judge, spotted that quite early, in fact, before empanelment took place and we dealt with it by way of, if that number came out, the prosecution were going to just object without reason.

1820 **Q284. Mr Karran:** Right, so have they got to say they have got a mental health issue?

Ms Jones: Yes and that is the problem: a lot of people with mental health issues will not admit that they have mental health issues. If that happens then we have to trust our experience to spot it, and we would never, ever embarrass a potential jury member by saying, 'You have got mental health issues.' We deal with it in a different way.

1825 Are you asking me whether there is a potential that somebody with mental health issues could be balloted: yes, if they were good at secreting it and knew how to hide it, then of course, but you would hope that the other jury members would say, 'There is something not quite right here' and would report it to the Coroner. But potentially it can happen, yes, but –

1830 **Q285. Mr Karran:** The other issue is of course – which was not brought up; it was brought up by one of my colleagues: a poor understanding of English either by written or by oral.

The Chairman: Reading – oral or written.

1835 **Ms Jones:** We rely on the jury members themselves to say that, either beforehand to the Coroner or when they are picked out to write a note, because they are told, 'Any other reason.'

And I have had at least half a dozen potential jurors passing a note saying, 'I cannot really understand English,' 'I cannot write English.' And they give that as a reason not to sit on the jury.

1840 **Q286. Mr Karran:** I was quite surprised to hear you have got to pay for your own coffee, which the jurors have, which is crazy in my opinion.
About car parking: are there any facilities?

1845 **Ms Unsworth:** They get rebated for car parking charges or bus fare or taxis, depending on how far outside of the area they live. It is rebated.

Ms Jones: They have to find their own parking and that is it.

1850 **Q287. The Chairman:** Right, well, any closing remarks that you are bursting to say?

1855 **Ms Unsworth:** Just on Mr Karran's mental health issue: of course it should not be forgotten there are many people who have mental health difficulties who are more than capable of sitting on a jury. Mental health encompasses a whole vast array of different illnesses. So somebody who may have a mental health difficulty, there is not necessarily a reason why they should not be on a jury unless it is something that will prevent them from being on a jury. So we cannot say that everybody with mental health illnesses should not be –

Mr Karran: Absolutely! I have spent years fighting for people with mental health issues.

1860 **The Chairman:** Okay.

Q288. Mr Karran: The other thing that I was going to ask you about, but I do not know where I have put it now.

1865 The resounding issue as far as the independence of the jury and the court system away from political influence: how do we deal with that – where we see lots of small jurisdictions end up in the situation where the criminality has taken over the state? How do we manage to deal with the issue when you deal with ... Take the likes of Dutch Antilles and many small jurisdictions. What sort of action can be taken to make sure that the judicial, the legal system stays independent from other aspects as far as the Isle of Man state is concerned?

1870 **The Chairman:** Well, that is actually beyond the remit –

Ms Unsworth: I could probably talk for hours on that.

1875 **The Chairman:** It is beyond the remit of this Committee.

1880 **Q289. Mr Karran:** No, but the point is – it might be, Chairman, what you think – making sure, like we have heard that we want to change the selection of the voters' list to more proper persons, as far as that. We have heard Mr Stanley talk about keeping that independence of people. It is very relevant, as far this is concerned, allowing for the fact that often the judicial system is the only thing that is independent, because the executive and parliament have basically stuck together.

1885 **Ms Unsworth:** Our entire system is built on the separation of powers (**The Chairman:** Absolutely.) and from those parts of *Hansard* that I have read, from my experience sitting in court, everybody in the Isle of Man is fully aware of the separation of powers. Personally, as a practitioner, do I feel that we have an issue? No, I do not. If an advocate was before the court and they felt that there had been a blurring of the separation of powers and perhaps a judge

1890 had overstepped the mark and was speaking for parliament – which I hasten to add, I have never
seen – we are the gatekeepers of justice too. We are officers of the court and it is for us to speak
up about that.

1895 **Ms Jones:** Which is why what you can do is ensure the independence of the Manx Bar: (**Mr
Karran:** Absolutely.) retain it; do not be pressurised in making rash decisions on a monetary
basis to weaken down the independence of the Manx Bar. Whilst you have a robust and
independent Manx Bar who are not being paid by Government to defend, then you have a
better chance of ensuring that independence and transparency.

So, I know I am blowing our own trumpet, but please protect us.

1900 **The Chairman:** Thank you.

With that – a delightful point to close.

On behalf of the Committee, can I thank you enormously for the contribution that you have
given us today. It is a lot of food for thought. We shall go away and deliberate further.

1905 Finally, if there are any other thoughts that you have for us, do please write; we would be
delighted to hear from you.

Once again, thank you so much.

The Committee adjourned at 1.46 p.m.