



**SELECT COMMITTEE
OF
TYNWALD COURT
OFFICIAL REPORT**

**RECORTYS OIKOIL
BING ER-LHEH TINVAAL**

**PROCEEDINGS
DAALTYN**

OPERATION OF THE JURY SYSTEM

HANSARD

Douglas, Friday, 11th March 2016

PP2016/0050

JURY, No. 4

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Members Present:

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

Apologies: Mr P Karran

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 10.15 a.m
in the Legislative Council Chamber,
Legislative Buildings, Douglas*

[MR ROBERTSHAW *in the Chair*]

Procedural

The Chairman (Mr Robertshaw): Welcome to this Committee meeting. We are taking evidence today on the operation of the Jury System in the Isle of Man.

To my left is Bill Malarkey MHK; and of course you know Roger Phillips, the Clerk of Tynwald.

5 The obvious: if you could just be sure your mobile phone is switched off. And the obvious point, which I am sure you are well aware of, is because it is being recorded we must not talk over each other. And in the highly unlikely event of a fire alarm going off, either of those two doors is fine.

10 I think you are pretty familiar with the trials and tribulations of the Committee and the exchanges we have had so I think the best thing to do is, if I may, go straight into the meat of it.

Mr Cain: Yes, please do.

EVIDENCE OF Mr Simon Cain, President, Isle of Man Law Society

Q290. The Chairman: Thank you very much.

15 The first three subjects we would like to talk to you about and hear your views on, are: the potential impact of social media, the size of the jury and majority verdicts. I am quite content when we deal with these three items if you want us to slip backwards and forwards, because there is a significant degree of interrelationship between them.

Starting with the impact of social media – and then we will go on afterwards to the other items.

20 So, turning first to social media: how serious do you think the threat to the integrity of the jury system is with regard to social media, bearing in mind the significant focus it has had in a number of jurisdictions, not least of course in England and Wales, in recent years – the introduction of new laws, the comments by the Lord Chief Justice, etc?

We would be pleased to hear your thoughts on that, sir.

25 **Mr Cain:** Just before I answer, I must say that before today I have spoken to quite a lot of members of the society, and a few members have written to me as well, so I am going to give you my view, but it will be coloured very substantially by what I have been talking about with

other members – because the idea of my coming, I think, was not just to get my personal view but the view of a large part of the membership of the society.

30 So I hope that is okay?

The Chairman: We are grateful for that, thank you.

35 **Mr Cain:** I think the message I am getting, and certainly my view, is that while it is a very important issue for us to think about, I do not think there is a view that it actually *threatens* the system – I think you said is it a threat to the integrity of the jury system. I do not think it is the view that it is such a threat that it actually calls into question the whole system.

40 Clearly, the use of social media is growing and has done incredibly over the last 10 years, and there is a risk that jurors will be looking at their smartphones and reading information that they should not be doing, and they have access to so much information now, whereas in the past they would not have done. And that is a risk.

45 But the system is that the Deemster will instruct the jury on what they should and should not do, and I think we have got to give the Deemsters the benefit of the doubt and say that they are the ones who are in charge: they understand these issues; they are in control of the court; they speak to the jury; they give the jury directions – and that is the protection. I think the general view of the membership and the people I have spoken to is that it is certainly a big issue, but it is an issue that the courts are aware of and deal with in that way.

50 **Q291. The Chairman:** That is a very clear position taken with regard to the interaction of social media and jurors whilst, as it were, under the influence of the Deemster within the confines of the court. But one of the issues which came to our attention ... I think probably I have to say for the first time, when we heard from some of your colleagues last week, was the potential influence of social media immediately prior to the court case itself, and what may or may not be being said from certain quarters during that period of time.

55 Would you like to comment on that?

Mr Cain: Before the trial? **(The Chairman: Yes.)**

60 I think that is unavoidable; people do not know if they are going to be called to be on a jury and they may well hear stories. On the Isle of Man it is not just social media, it is just gossip, isn't it? And that is just as relevant on the Isle of Man, to be honest. But I would have thought that both of those issues – gossip, people talking in such a small community – *and* people looking at social media and getting information from that, which might prejudice their views of a case.

65 I would have thought that, again, has to be dealt with in the traditional way where a juror is called and they are asked, 'Do you know anybody involved? Do you have any information about this case?'

And if they say, 'Oh, yes, I have been following it on social media and I have been talking to my neighbours all about it', there may be a case for the juror to be excluded.

70 I think it is the same process, perhaps, where you say, 'Do you know any of these people?' And it is simply a conversation. And I think the Deemster has to take charge of that process – which I think is what happens now.

So, yes it is *very* serious but I do not think it threatens the whole system. I think it is just something that the courts need to be on top of; but I do not have any reason to think that they are not.

75 **Q292. Mr Malarkey:** Going back to the gossip and going back to the fact that we are a small Island, would you not agree that when a jury is sworn in and then they are sent home for the night – and at that stage they know who the accused is – **(Mr Cain: Yes.)** they only need to pick up their laptop or their iPad, or whatever, and google that name and if that person has got a record it will be bang, bang, bang right in front of them for them to read.

80 And they can make their minds up on that, 'Oh, that is a bad boy, he must be guilty' – because multimedia today on a small Island has given them that.

You probably would not get quite the same thing in England, with the population size and everything else, the odds are not knowing who somebody was, etc – but certainly on an Island where we are a tight community ... And it is one thing, a bit of gossip and knowing somebody
85 because you have talked about it down the pub, it is another thing being able to go into Google, put somebody's name in and if they have been in court in the last however many years, their names, headlines and everything else comes up. And that could influence one jury member.

Mr Cain: It could, it is a risk and that risk exists; but how do we deal with it?

90 Do we deal with it by saying we should not have juries any more? I do not think so. I think we deal with it by ... as I said, it is down to the Deemster to direct the jurors not to do this. And I do not know really know what other solution there is, other than locking them up in a hotel without any internet connection for the duration of the trial.

95 **Q293. Mr Malarkey:** But that directly leads into one member of a jury being able to influence a seven-person jury, against one member being able to influence a 12-person jury. There is a marked difference on how much influence one jury member would have, because they have this information, because they have googled it, etc.

Without majority verdicts, that one person – who is *determined* that this person is guilty
100 because of the records they found on the internet – could then be the one person that says, 'That guy is guilty', when the other six people say he is not guilty. And then it is a retrial. (**Mr Cain:** Possibly.)

But if it was a majority verdict, or a bigger jury, they would not have the same influence.

105 **Mr Cain:** Well, yes, that is true.

I think that is a different point, about the size of the jury –

Mr Malarkey: But it all goes hand in hand, I think that is why the Chairman wants us to take the three together.

110 **Mr Cain:** I take the view that this social media risk is a risk which applies all over the world, and it really has got nothing to do with the size of the jury.

We do not know what goes on in a jury room, it is a fundamental principle that the jurors talk to each other. And we do not know ... maybe if somebody did that and had looked up something
115 and found some information they thought was relevant, they might well mention it to jurors and they might all know about it. (*Interjection by Mr Malarkey*) That is an equal risk.

There is no answer to this, it is a risk that people will go home –

120 **Q294. Mr Malarkey:** Would you not agree that you reduce the risk by increasing the size of the jury, or introducing a majority view?

Mr Cain: Well, ironically, if you increase the size of the jury you increase the risk of them doing it, because there are more of them to do it. If you have got a smaller jury you can be more controlling – and the Deemster can be more explicit, because there are fewer of them to talk to.

125 **Mr Malarkey:** That is going to lead us on to more questions that are coming anyway, with small juries.

Q295. The Chairman: Do you want us to leave the word 'controlling'? (*Laughter*)

Mr Cain: At the end of the day, my view – and it is the view which has been expressed to me by members of the society – is that the core concept of a jury is that it is a group of people who are given the responsibility to make a decision, and we have to trust their intelligence.

135 I mean, if they are mentally unable to act they are not able to sit on a jury, so by definition a juror will be a normal person who will be able to listen to the case and listen to the directions of the Deemster; and we have got to give them credit for being normal, sensible people – that is the principle. At the end of the day the whole system is based around having normal people, who will behave like normal people – that is the whole point.

140 **Mr Malarkey:** But normal people can be influenced, you know that is life –

Mr Cain: Exactly. But in any jury the dynamics will be determined by the individuals.

145 **Mr Malarkey:** That again leads us on to other things that we will come to.

Mr Cain: I think that social media is a risk.

I think it would be a problem if anyone thought for one moment that it was a risk that people were not aware of; but I think the courts are *fully* aware of it.

150 **Q296. Mr Malarkey:** We had a *very* interesting comment from Dawn Jones and from the other members – and you must have heard it in the press this week – that they consider the influence of social media, and the Police, was very dangerous, and it could be very dangerous towards appeals, etc.

155 What is the society's view on that? Is that just a comment made by herself or is that something that the Law Society would agree with?

Mr Cain: I do not think that is a position that the society has a position on; that was her view, and that is all I would say on that.

160 **Q297. Mr Malarkey:** So your society is distancing itself from that comment?

Mr Cain: No, not at all. I am just saying that is a statement that she made, and it is not a statement that I would make because it is something that she felt –

165 **Q298. Mr Malarkey:** When she made it, her other two colleagues actually backed her up in here at the time, and we ended up with three of them all agreeing with what she was saying.

So I find it a little bit surprising that you are saying that the society does not really have any issue with it.

170 **Mr Cain:** I think I would say, very simply, that the reason I am here is because I am President of the society. I have taken the views of lots of members and I am hoping I will be able to express those.

175 I am not a lawyer who goes to court and I am not personally experienced in trial juries in the way that the members that you met last week are; and in the conversations I have had and the written representations I have had with many members it just was not something that was raised. But that has not in any way diminished what was said by those members – it was just not something that I had heard.

180 **Q299. The Chairman:** Mr Cain, if I can just challenge you a little bit, because you came quite strongly challenging the question that I posed about challenging the integrity of the jury.

Where I am not clear after that – and I understand what you said there – is the degree of concern that you have got about it. Can I put it in a challenging, but respectful, way that you are

giving the impression to me on behalf of your members that perhaps there might be a degree of complacency amongst your membership on this subject, insofar as *sub judice* came in for very good reasons, and professional journalists and the media generally understand and respect it. Those engaged in social media on an individual personal basis may be completely oblivious to the concept of *sub judice*, and therefore may conduct themselves in a way that is improper, but done innocently.

Now, with that background, then, I ask you to consider the difference in circumstances between us here in the Isle of Man and the UK. In the Isle of Man we have small juries, we are a very small community and when a trial comes up there is a reasonable chance that the person may be well known, and the people who are on the jury may be known. So there is a degree of knowledge there which can only be further exaggerated by social media.

You compare that to England and Wales, where a case that perhaps emanated originally in Manchester may end up being a court case in Leeds, the trial judge may be in that court for the first time in two years, the jury are drawn from goodness knows where, so there is an anonymity that we do not enjoy here. (**Mr Cain:** Yes.)

And so, for example, if there was a situation where there was a drugs trial over here and the controlling heads and minds were in Manchester or Liverpool, and they understood that all I had to do in a trial in the Isle of Man was to target one person, I would put it to you it would be a lot easier for them to do that in the Isle of Man, than it might be somewhere else.

Do you think, given those two points about the purpose and intention of *sub judice*, and the dangers that people's behaviour with regard to social media, and the localness and the immediacy and the contact that exists on the Isle of Man, when brought together create a greater degree of potential risk than the UK, or England and Wales? And yet it is England and Wales that have taken the trouble to bring new laws in.

In those circumstances, can I challenge you: do you not think your views are erring, perhaps, towards complacency?

Mr Cain: I do not think I am being complacent.

I think that with any jury there is a risk. There is a risk that one of the jurors, or all of the jurors, do not do a good job for whatever reason – maybe they are biased because of information they have got on social media; maybe one of them has got a particular reason to disrupt the proceedings, for whatever reason; maybe there is a connection with a defendant or with a party that is not disclosed. There is a risk of all that. There is a risk of a juror being influenced illegally. There are all these risks – and there always have been.

On the Isle of Man the jury system, by definition, operates within a very small community; so I think it would be complacent to ignore those risks and pretend that they are not there. But I do not think there is a magic solution to this – we *are* a small community.

Mr Malarkey: Well, that really leads on to jury size, then I think, Chairman, to a degree?

The Chairman: Yes, go ahead.

Q300. Mr Malarkey: The very fact that we are a small community and that it could be influenced because of the size: would you not agree with a larger jury there would be less chance of being influenced by these matters?

Mr Cain: Are you talking about the risk of an individual juror being influenced to act improperly?

Q301. Mr Malarkey: If I could just expand: my feelings, going back through some of the original Select Committee meetings we had, I mentioned cases where a dominant member of a jury could influence the other seven members. (**Mr Cain:** Yes.)

235 And then we spoke last week to Dawn Jones and we were discussing who should be on a jury, and at the time they said, 'We do not believe lawyers should be on, because a lawyer could influence the other six members of the jury.' (**Mr Cain:** Yes.)

But just as easily a dominant person – male or female – could also take control of the jury, especially if it is a small jury. There is less chance of that happening with a larger jury.

240 Would you agree with that?

Mr Cain: Yes.

Q302. Mr Malarkey: You would?

245 It goes a little bit further, because then the conversation goes on to jury nobbling, or nobbling one particular person in the jury.

Mr Cain: Yes, my view is the whole point about a juror system is that you select a group ... well, it is almost a random selection. But a group of people are brought together, and however many there are is not the point.

250 The point is that we get a group of individual people and we give them the authority to make this decision. And you can look at all sorts of studies on the way in which groups, and the dynamics of groups, operate and often there will be a natural leader who will emerge from any group, in any setting. And in any setting in a jury there may be one individual who is the natural spokesperson and that may be for a number of reasons.

255 I think that whether you have 12 members on a jury – or 10, or seven as we have here, or 15 as I think it is in Scotland – however many you have, the same issues are always going to be there. You could have one or a number of people inappropriately influenced by outside influences such as social media; you could have one person dominating – and if there is a dominant character they could dominate a roomful of 50 people.

260 So I think that you are talking about issues which are ... the whole point about a jury is that you have got a group of individuals and we just let them get on with it. And if it turns out that somebody is dominant, well that is the imperfection of the system because the only other way of getting to the facts ... I mean, a jury is there to decide questions of fact and the reason why we use the jury is because we cannot go back in time, sit next to the defendant at the time the alleged incident took place and see what happened. We cannot do that.

265 So we have come up with this system over *many* years of getting a group of people and saying, 'Well, hear the evidence and tell us what you think. And your decision will be treated as a fact in law.'

270 It is all about getting a group of people together and giving them the authority to go off and do that. And I think it is part and parcel of the process that you will have different characters, some will not be interested is, some may fall asleep in the proceedings, some may be absolutely determined on one particular point. It is an imperfect system, but nobody has ever come up with a better system.

275 I mean, sorry, there are other systems, there are systems where you do not have juries, where a judge makes the decision of fact. The classic example of that was in Northern Ireland with the Diplock trials where they abandoned juries because of the problems during the troubles, where they found it was just too difficult to get a jury together and give them that authority. So a judge sat and made the decision on fact, which was quite a revolutionary concept – but they did not have any choice.

280 So there are other systems, but most countries think that the best way is to get a group of people, give them the evidence and let them get on with it.

Q303. The Chairman: I just want to take you back to the point you made about being relaxed – I think that is a fair interpretation of your comments – about the jury being dominated by one person; and here I am going to link the size of the jury with the majority verdict.

And it is this: if you had a situation where you had a large jury and an awareness on the part of the jury as a whole that actually there was an opportunity to express a different view, do you not think that people would be more inclined to hold their corner and allow a jury to examine a thing more carefully than if there was a small jury and one person was dominating? Because it might be a willingness and the determination on the part of juror number 11 and/or 12 to fight the corner that ultimately might result in the jury thinking differently; rather than from – and if I have misunderstood you, forgive me – the idea that it is okay for a jury of seven that must be unanimous being dominated by an individual?

After all, if a small jury is dominated by an individual what is the point of an individual fighting their corner, because clearly they are going to lose the case – they are going to be pressured by the rest to take the line of the other six?

Mr Cain: Yes. First of all, when you described my view as ‘relaxed’, what I am saying is it is *not* okay for one person to dominate, it is better if that does not happen. The idea is that every single member has an equal say and has an equal part. I have never been in a jury room and I do not know how it works, but I can imagine that there will be situations where there are characters who are more eloquent or more forceful in the way they express their views, and maybe you could say they are dominating.

All I am saying is that the idea is you have a group of randomly-selected people and when you get a group of randomly-selected people you will have different characters – and I am saying *that* is okay. You cannot select them on the basis that there is nobody in there who was a strong character because the whole point is they are randomly selected. That is what I meant by that.

I want to just go off and make a slightly different point actually, which is that the comments I have heard from people in the Law Society have been very strongly of the view, actually, that the system works in terms of the idea of having seven members. It is a totally random number as is 12, or 15 – whatever number you come to there are going to be people saying, ‘Where did that come from?’

And there is not an answer, it is just a historic thing where the Isle of Man ended up with seven-people juries before the Second World War. So if one tries to find the perfect number, I do not think that is going to be possible.

We have had seven-member juries for many years and the message I have been given is that nobody thinks there is anything wrong with it, it seems to have worked for *many* years. However, there is not a massively strong argument I have heard that says it must be a *majority*. I think the message I am getting is that why change the system? By definition any jury system is not going to be perfect, although I think on the Isle of Man there have not ever been any serious miscarriages of justice and that is the most important thing to judge it by.

So, the general view is that the system works and, yes, seven is a bit of a random number, but –

The Chairman: When we moved originally, there was a practicality –

Mr Cain: Yes, so I understand.

Q304. The Chairman: But even then, there was a hesitation wasn’t there, that actually for something serious – like treason or murder – they would retain 12? So even when they did it, not only did they say it was a temporary emergency measure, but they retained it for what they classed as serious.

So what you are saying is in the view of your colleagues within the Law Society there is now a view that seven is adequate for really serious cases as well. Is that a fair interpretation?

Mr Cain: No, I suppose it is just a natural conservatism. I am sure that when the jury size was reduced to seven, and they kept the number 12 for treason and murder ... that was just a

conservatism. Those were very serious charges and we must keep the current system – and that is understandable.

I think the point I want to make is that there is no magic answer to this; but the question I would ask is why change something that is working fine as it is?

Q305. Mr Malarkey: That leads lovely into my argument against that, which is that was 60 years ago when it was changed, and there has been no review into the jury service that I know of for some considerable time. (**Mr Cain:** No.) And types of crimes have changed absolutely considerably.

The Island has not dealt with any *major* crimes, but in recent years there are more of those creeping in with money laundering and fraud crimes, we are getting bigger drugs busts, we are getting closer to doing trials on the actual big boys in drugs; so it is our job here in this Committee to future-proof juries, not look backwards – but to look forward.

So what we have to look at is, could a seven-person jury – and I keep going back to this nobbling bit – be influenced far more easily than with a 10 or 12, with majority verdicts? In the UK if you wanted to nobble a 12-person jury, to go for a retrial, you would have to nobble three of the jurors – you would have to take it back to nine.

And at the moment with the seven that we have, you only have to have nobble one, (**Mr Cain:** Yes.) and then you have got a retrial. Two retrials – and I know it is up to the Deemster – but with two retrials it is normally thrown out.

So I am looking forward, not backwards.

Mr Cain: No, I appreciate that.

I think, first of all, the Law Society is very pleased that Tynwald is looking at any aspect of the criminal justice system; it is very healthy to think about these and discuss the issues about juries. I just think there are so many different ways of looking at it.

I mean, first of all, if a jury cannot reach a majority verdict on a trial, normally it is because the defendant is *innocent*. The assumption that it is because something has gone wrong is missing the whole point.

In terms of the issue –

Q306. Mr Malarkey: I am sorry, are you meaning a majority verdict or a unanimous verdict?

Mr Cain: Well at the moment, in our system here, if you cannot persuade seven members of the jury to all agree that somebody should be convicted, then that is an indication that the person is innocent.

Q307. The Clerk: Sorry to interrupt, Mr Cain, but how do you *know* that?

You know that the prosecution case is not good enough, but you do not know that they are innocent. You just know that some people on the jury think he is guilty and some people do not.

Mr Cain: Yes, but the whole point about the juror system is that they come to a finding of fact, because there is no other way of doing it.

Q308. The Clerk: All I am challenging is the assumption that the failure to agree indicates really that the person did not do it; which, of course, we cannot say, can we?

Mr Cain: No, but you have got to prove something beyond all reasonable doubt, and if it is not possible to do that then they are innocent in law.

The Clerk: In law, yes, okay.

Mr Cain: That is what we are talking about!

Q309. The Clerk: Yes, okay, but it does not mean that they did not do it!

395 **Mr Cain:** That is not the point, we are talking about if somebody is convicted of an offence and that is why we have a juror system, isn't it? (**The Chairman:** Okay.)

The point about nobbling is a really serious one and I do not want to give the impression that I do not think it is very serious, of course it is; but I do not know if there is any evidence that that has ever happened on the Isle of Man.

400

Mr Malarkey: That was very much why in Northern Ireland they moved over to a judge making decisions, because they could not get jury members to actually sit on the juries, if I remember correctly, because they were frightened for their well-being after the cases.

405 **Mr Cain:** Yes, of course, but there was a war going on so that was a different situation.

Q310. The Chairman: Alright, thank you for your comments on those three items which were all linked. There are a few other issues we would like to charge through and get your thoughts, if we could?

410 Peremptory challenges?

Mr Cain: Yes, the comments I have received on this are that the current system actually seems to be working, although nobody seems to be able to explain why the prosecution have an unlimited number of challenges for which they do not need to give any reason.

415 The general consensus seems to be that probably that is a change that could certainly be justified, that any challenge to a juror by either side – the prosecution or defence – should be, obviously, perfectly allowed, but it should be with a reason.

Q311. The Chairman: A reasoned one?

420

Mr Cain: With cause.

The Chairman: Shall we move on?

425 **Mr Malarkey:** We agree on that then!

Q312. The Chairman: Well, we are deliberating on it, but we agree.
The electoral roll?

430 **Mr Cain:** I do not think anybody has any particularly strong views on this, other than you need to have a list of people and that is one which already exists, so why go to the trouble of creating a new one?

And everybody knows that if you do not fill in the form where you have to write your name and say that you are eligible to vote, well then you are not on the list – and that is an obvious way of avoiding jury service. I cannot believe many people put themselves off the electoral register to avoid jury service.

435

Mr Malarkey: You would be surprised!

440 **Mr Cain:** But maybe I am wrong!

Mr Malarkey: You would be really surprised!

Mr Cain: Well maybe I *am* wrong!

445 **The Clerk:** I think, to be fair to you, Mr Cain, we have had evidence – which you have not had the opportunity to read – which indicates that quite a substantial number of people are off the roll who ought to be on it.

450 **Mr Cain:** For that reason alone?

The Clerk: Well, who knows? But certainly the point is that there are a large number of people who should be serving on a jury and should also of course be voting, but who do not – so they are citizens who are not living up to their full obligations to play a part.

455 **Mr Cain:** Yes, I mean, if there is a better system, by all means it should be looked at.

Q313. The Chairman: We will move on to exemption from service and circumstances in which people may decline to serve.

 And I am sure you are aware that some years ago – I do not know how many years ago it was – the UK reviewed it and said, ‘No, this is far too restrictive’, and they broadened it out very significantly. (**Mr Cain:** Yes.)

 Do you have any strong views amongst your members about that?

465 **Mr Cain:** What I would say is that there seem to be two categories of people on the list at the moment who are not allowed to serve on a jury, and one category seems to be people who might get in the way of the whole system – interfere in a way, not intentionally. So with lawyers and police officers, and so on, I think I can understand why they are not on the list – and I will come back to whether that is a good thing or a bad thing.

 And then there are other people who are not on the list for a totally *different* reason which seems to be that their jobs are important. We do not want to take a surgeon out of the operating theatre to sit on a jury, because it is going to harm the healthcare system. That is a totally different reason and I do think that there is a bit of confusion there.

 And I noticed, for example, clergy are excluded and I do not know why that is the case – I would have thought having a clergyman on the jury would be a very good thing, because the whole point is you get all walks of life and I would have thought they would be very good jurors. But for some reason they are excluded and I do not know actually why that is. So I do think that list needs to be looked at again.

 In terms of the category that I would say are excluded because they might *interfere* with the system, I do think that the English system is not right on that –

480 **Q314. The Chairman:** Oh, right – could you expand on that?

Mr Cain: Yes, I am talking about lawyers actually. I know English solicitors can sit on juries and the irony is all the advocates I have spoken to would love to sit on juries – I have never sat on a jury and I would find it fascinating. And I do not consider myself *exempt*, I consider myself almost *prohibited*. It is not something I really do not want to do and I want to get out of, it is something I would quite like to do, but I am being told I cannot.

 And that is a very important point, because I think that if you had an advocate on a jury the other jurors, within a very short period of time, would all be saying, ‘That guy is an advocate!’ and they would perhaps give undue weight to what he had to say. (**Mr Malarkey:** Exactly.) And that is unfortunate, and it may be completely unintentional on the part of the advocate, he might want to do the complete opposite from influencing the others.

But if you have got somebody there who is an advocate I just think the others would be influenced – and it is unfortunate. And it is the same with a police officer, or a judge – I just think it is wrong for them to be there because they would contaminate the process.

So my view is that advocates should not be allowed to serve; and it is not because we want to get out of it, I think most of us would really enjoy the experience and find it very interesting. But I am sure it would interfere with the whole purpose of it, which is you have got a group of people who should all be treated equally and should all be allowed to get on with their decision, without giving undue influence to any individual people there.

Q315. Mr Malarkey: It comes back to the dominant member of the jury again, especially when it is the seven-person jury.

Mr Cain: I would say again, I do not think it has got anything to do with the number of jurors. I think if you have got a dominant personality it is unfortunate. I think the whole point about a jury is they are a group of individual people and you will have all sorts of characters – and that is fine, we cannot do anything about that. But what we can do is say we are not having any advocates on there because they will get in the way of people's thinking, because people will – rightly or probably wrongly – think that they know more about the process than the other members. And, as I said, police officers and people involved in the court process.

Q316. Mr Malarkey: There are obvious people who should not be on it, like prison officers because they might end up having the people in there ... (**Mr Cain:** Yes.)

But what about doctors and nurses? Why are they being – ?

Mr Cain: Well, I personally think they should all be able to sit as jurors, and then they may be exempt – not because they are on a list of people, but simply because they say, 'I can't do it because I have got to go to work, and if I do not go to work my patient might die.'

That is a totally different point though, and we have already got the system in place that if people have got a very good reason why they should not be there, then they may be able to get excused.

Q317. The Clerk: In other words, turn to another system which is not based on automatic status-based exclusion, but exclusion for *reason*?

Mr Cain: Exactly, yes, because there may be doctors who may actually be available.

Mr Malarkey: But there are many types of doctors who might not actually be practising doctors or surgeons. (**Mr Cain:** Exactly.) There are lots of other doctors.

Mr Cain: My view would be that the people who should not be allowed to sit as jurors would be advocates and people involved in the criminal justice system.

Q318. The Clerk: Do you not think that an advocate such as yourself, who is not active in the courts and therefore is not going to be *personally* embarrassed ... Mrs Jones, clearly, would be because she might well know the defendant, she might know the witnesses, she would know all the police officers –

Mr Cain: Yes, and she would know the process.

Q319. The Clerk: And she would know the process, and so therefore she would say, 'I am a criminal advocate, and it is not appropriate'. And the courts would say, 'Fine, we agree' – and, probably, defence and prosecution would challenge her for cause.

545 But you, on the other hand, being an advocate, would know the importance of the jury and actually you would not seek to dominate, would you?

Mr Cain: No, I would not at all.

550 Maybe I am an example of somebody ... I am not somebody who has experience of the criminal courts – well, not for *many* years – and I think I would be a great juror! But the trouble is, would the fact that there is an advocate there cause the other members of the jury to defer to that person?

555 And that is a risk, because you would want to do all you can to keep it equal; as I said, subject to the inevitable fact that you have got a group of different characters – some of whom will be strong characters some will be quiet, etc.

I do not have very strong feelings about it, but my sense is that putting in advocates, police officers, and people involved in the system –

560 **Mr Malarkey:** There are certain groups.

Mr Cain: There is a risk of disrupting the whole concept, which is that you have got a group of people who should all be treated equally.

565 **Q320. Mr Malarkey:** Especially on a small Island.

Could we just move you on? What is the society's view that over 65s are not allowed on a jury?

Mr Cain: I do not think there are any strong views on that; but it seems a bit out of date.

570 **Q321. Mr Malarkey:** There has been nothing coming back from the society?

Mr Cain: No, no strong feelings on that.

575 I think there is an age limit now for Deemsters, isn't there? (**The Chairman:** There is.) Which is 70 – is that right?

Mr Malarkey: Yes.

The Clerk: We are all of an age where we feel 65 is quite young, actually!

580 **Mr Cain:** Yes, absolutely.

I do not think there is a strong feeling about that; but if somebody is infirm and unable to, they would probably not be able to sit anyway – but not because of their age.

585 **Q322. The Chairman:** Was your expression of view with regard to exemptions – particularly advocates etc. – and your concern about the UK's position, based upon your assessment and that of your colleagues, or was it perhaps based on actual cases in the UK that you have observed and been concerned about?

590 **Mr Cain:** No, just my feeling ... well, maybe it is different in England, actually, on reflection. On the Isle of Man it is such a small community ... there are not that many advocates in England, there are hundreds of thousands of solicitors, and maybe it would not be such an issue there.

I think what I mean by that is it would be a mistake to follow that particular lead.

595 **Q323. The Chairman:** If you had a larger jury perhaps it would be very interesting to have two solicitors with different views on the same jury?

Mr Cain: Yes, but again it would be a problem there, because everybody else would sit back and listen to these two people debating.

600 **Q324. The Chairman:** Alright. We are running out of time and so I must push this on, although it is fascinating to hear your views.

But there are two points which I will put together – and it sort of comes out of this.

Is there a case for having specialist jurors to sit on complex fraud cases, particularly with us being a finance sector? People understanding the concept of messing about with derivatives and things like, it that can get very complicated.

605

Mr Cain: I think the views I have heard on this are that there are actually differences of opinion amongst members, and I would not pretend that there is one view on this.

Certainly, everybody agrees that it is wrong to have a mixture of specialists, or experts, *and* ordinary members, because they would feel intimidated.

610

And there is also a view that actually we do not need to worry about it because we do not have any complicated trials.

The Chairman: We hope! *(Laughter)*

615

Mr Cain: But in fact, one of our members, specifically – and it is somebody who has a lot of experience in trials – was of the view that it would be a *good* thing for highly-complex financial cases to have a specialist jury of people who are involved in the industry.

So there is not any one view on that; but, as I said, the one thing on which there is definitely a view held by virtually everybody is that it is wrong to have a mix of specialists and normal people.

620

But the only thing I would say as well on this, is that I do think that the legislation – if it is to be changed – that it could just create more flexibility. I do not think we need to be prescriptive on this – we can give the courts a lot of discretion on this. And if you have a case which is very complex, maybe you could have a procedure where one party could apply to the Deemsters, to actually ask for a specialist jury and then the courts are given entirely the discretion to decide on how to do it.

625

I think that is maybe an option, because I do not think we need to be prescriptive.

630 **Q325. The Chairman:** Thank you very much.

We will move on to payment for service. Do your members have any particular views with regard to that?

Mr Cain: Not really, other than it is a really difficult question. I think at the moment you get, is it £56 a day – is that it?

635

The Clerk: It is slightly less, I think it is forty-something. It is a trivial amount, everyone agrees.

640 **Mr Cain:** Is it? Yes.

I think that one thing to be avoided, would be where you have got people sitting around and some are being paid x and others are being paid less.

Q326. The Chairman: Why?

645

Mr Cain: Because say, for example, they are just paid what they are earning in their day job, I think that might cause difficulty.

650 **Q327. The Chairman:** Well let me put this scenario to you: suppose it became increasingly custom or practice for businesses – and particularly where you had a larger number of people available for jury service, the potential hit on any given business would be diminished *pro rata*, the risk of losing a member of staff to a jury.

655 If it became custom or practice for most businesses to recognise that they should continue to pay their staff, wouldn't that leave the system in a better position to focus more money on those who would be really stressed by being on a jury such as, for example, somebody who had recently started a business up? (**Mr Cain:** Yes.)

660 And if they were paid significantly more and the rest carried – because they would not be paid if they were not working – they are a different kettle of fish to those people who are already paid –

Mr Cain: I think there is a lot to be said for having a system which has much more flexibility where there is discretion for certain jurors to be paid discretionary amounts. It is tricky, there are lots of different views on this.

665 I think having a discretionary payment system might be a good thing because otherwise the reality is, if you have got somebody who runs their own business on their own – tradesmen for example – they are going to be distracted. They are going to be sitting there thinking, 'I shouldn't be here, I should be doing my job.' And it is not helpful to the whole system. And yet we do want to have people from all walks of life on juries.

670 So maybe we do need to look at having a much more flexible system?

The Chairman: You might be tempted to believe that that person could take the view, 'For goodness' sake, let's get to a verdict quickly here; I'll go with the majority.'

I am being unfair, but it is possible!

675 **Mr Cain:** Yes, you are right – it is a risk.

Q328. The Chairman: Right, time is ticking on.

680 Thank you very much for taking the time to talk to us this morning. Have you any closing remarks that you would like to make, before we move on?

Mr Cain: No, I think I have said everything I thought I would need to say.

The Chairman: Mr Cain, can I say thank you very much on behalf of us for being here this morning, we appreciate your time.

685 **Mr Cain:** Thank you, you're welcome.

Mr Lewin and Mrs Fletcher were called at 11.10 a.m.

EVIDENCE OF
Mr Mark Lewin, Director of Government Technology Services, and
Mrs Della Fletcher, Executive Director External Relations,
Cabinet Office

Q329. The Chairman: Good morning and thank you for attending this morning. You know Bill Malarkey and Mr Phillips.

690 So Mr Mark Lewin and Mrs Della Fletcher, thank you very much for attending. I am sorry we have kept you waiting, but we did try to get through the first session as quickly as we reasonably could.

 I tried to help as much as I could for this morning's session by sending you an email, Mark, on 5th March and perhaps what we could do is use that as a critique for you to expand on your
695 questions and thoughts that we have put before you.

 But before we do that, because we have got Della – Mrs Fletcher – here this morning, I just want to ask a couple of questions with regard to the electoral roll as you see it at the moment, Mrs Fletcher. Perhaps you would like to enlighten us about your current views?

700 **Mrs Fletcher:** Okay, first of all can I just thank the Committee for allowing Mark and I to defer from coming last week, due to my personal issue – I appreciate that, and I just wanted to start with that.

The Chairman: No, not a problem.

705

Mrs Fletcher: The electoral registration system was transferred to Cabinet Office on 9th June 2014 and it came with a lot of unusual aspects to it. And I think in summary, to answer your question, Mr Chairman, it is outdated legislation, it is not functioning as it should be, and we have been doing quite a bit of work around that. Our experience to link the electoral register to
710 the Jury Service has been that people are unwilling to register because they are trying to avoid jury service and they do not want to vote.

 We have tried to update as best we can within the existing legislative provision at this time, we have tried persuasion, encouragement, spoken to people and invited people to register. This time round we have actually been a little bit more hard in stressing the fact that you are
715 *required* to provide that information – so it is the threat of having to provide it which is eliciting quite a good response rate; but people when they call us, or they come in, they say, 'But I don't want to vote and I don't want to do jury service.'

 The most forceful factor for encouraging people to go on, up until this recent round on 1st January, has been because Experian and credit reference agencies utilise the electoral registers
720 for evidence of proof of address – so people are not being able to get mortgages, personal loans or mobile phone contracts unless they can prove that they live at that address; and one of the strongest criteria, certainly Experian and one of the other credit agencies, is the use of the electoral register.

 So from our perspective we welcome the work that the Committee is doing on jury service
725 because we do see indirectly a link through the role of the Jury Service Committee with how we could actually improve the value of the electoral register.

Q330. The Chairman: Can I explore a little bit the strength of that comment that you have just made concerning, 'I don't want to be on the electoral register because I don't want to be a
730 juror'?

 How strong is that?

Mrs Fletcher: I think it is stronger, maybe, from the younger people who do not think about it and from others who are concerned about actually having to participate. On the occasions that

735 we have spoken to people about it – and we have had conversations, press releases out, and we have talked to staff – we have explained, ‘Well it is your civic duty, it is part of the fabric of our society, as is the right to vote – and, actually, if everybody felt like that it could mean that our system of courts and justice would not operate.’

I do not know, we have no evidence, Mr Chairman, to say that people are just using that as a sop because they are being pressurised into fulfilling that information, so they push back at us sometimes with a little bit of upset when we say, ‘You *have* to provide this information; the law is quite clear that you have to provide that information.’ And first of all they will perhaps say, ‘Well, I don’t want to vote; I’m not interested in voting.’

And we talk about jury service, and then those who feel *particularly* upset with us, say, ‘Well, I don’t want to do that, either. What use would I be? I haven’t got the time for that.’

So, I am not sure how much credibility the comments should be given, but I share it with you about some of the reasons that have been given to us in the last 18 months of why people will not go on the register.

750 **Mr Malarkey:** I would certainly give it credibility, having knocked on several doors over several years.

Mrs Fletcher: But I have not got anything to back it up, so I need to share it with you and it is anecdotal, and I am not keen on anecdotes, but these are people who are calling or are coming in to see us.

Q331. The Chairman: I appreciate that.

Before we move on to the issue of data, Mrs Fletcher, is there anything else you would want to add to what you have just said there, about our work?

760 **Mrs Fletcher:** I think from the perspective of the work that we are doing on electoral registration – and we have started looking at it now – our aim is to make the register be effective; and one of the areas we have looked at is the value of having the jury service linked to the electoral register. Initially we thought about whether it should be separate and would it make sure that the register was more effective. The only way to make the jury list effective then would be to make it a requirement under law, punishable with a sanction. And I think that might sit better with juries, than forcing people to register.

But actually it opened up our discussion much more broadly – and you may have been there already – that if we were to separate the two out, we would then have yet another bureaucratic chain and lists, and a database of people who are eligible for jury service. And it took us back – and we have not done much work around this – to thinking, and looking at perhaps the Jersey model, the Citizens database address; why are we averse to having one database instead of 10 or 15 databases for 10 or 15 different topics?

775 All of us provide that data, so if we had an overarching citizens database – and I use that term loosely – then NI records would fall from it, child benefit, education ... all the provisions of Government service could fall out of it and we would have a legislative-acceptable gateway into it, so that we would know that everybody on that database lived at that address and we could just simply send polling cards out at election time.

So that is where we are ... I just share that with you.

780 **Q332. Mr Malarkey:** Yes, before we move on to solving the problem, going back to what we have, and the little boxes when people do fill these forms out and it says, ‘Are you exempt?’ – and I do know people who have ticked ‘Yes’ in the box.

Who is checking that these people are actually exempt?

Mrs Fletcher: I would not wish to mislead in any way – nobody. It is based on the honesty of the individual and the fact that they have signed that form off as true and accurate.

790 **Q333. Mr Malarkey:** Obviously, it is probably a criminal offence, just like it is not to return the form, but we never take that any further with prosecutions; so, again, the system is totally flawed.

Would you agree?

795 **Mrs Fletcher:** It may come to light because, of course, now the plan after ... the new register is due out on 1st April, it closes off on 18th March and we are working with Chambers on providing the information of people we think exist who have not returned that information.

800 So those prosecutions, Mr Malarkey, may identify some people who claim to be exempt from jury. But in broad principles there is no check, we depend on the honesty of the individual that they live there, that is their date of birth and that those people live in the house – but I suppose that is not anything different to when you sign your tax forms, or your car licence, and all of that.

It would be nice to have the time to check 50,000 households, but it is –

Mr Malarkey: It is just not possible to do –

805 **Mrs Fletcher:** It is not possible.

So if people want to put down that they are exempt, we accept that at face value.

Q334. Mr Malarkey: It is good to hear you today confirming what the Attorney General said when we had him in, that prosecutions are going to come forward.

810 So I will make a point of turning to the member of the press who is sitting here at the moment, that prosecutions *are* forthcoming for people who have not returned the form – and maybe that message needs to be getting out and about a little bit more than it is, that it is an offence not to return the form.

815 **Mrs Fletcher:** This week we are writing to people to say, ‘We are taking you off because you have not returned it and we do not think that you live there.’ So we are just checking that part, and there are about 1,300 of those.

But for the remaining several thousand, that will be sent to the Attorney General’s Chambers to deal with as a possible prosecution in accordance with how Chambers operates.

820

Mr Malarkey: Thank you.

Q335. The Chairman: Mrs Fletcher, thank you very much.

825 I have to say that the sentiment of the Committee thus far is very much in tune, and it resonates with the views you have already expressed – this thing about having so many different databases, and the cost and the bureaucracy associated with that.

With that in mind, we were most grateful to you, Mr Lewin, for submitting your first paper to us; and I hope that our response on 5th March helped you to understand where we were coming from, or trying to come from.

830 So I think what I would like to do is ask you to comment on our email to you and whether you are comfortable with our thoughts, or whether you considered them unreasonable, or inoperable, or overambitious?

The floor is yours.

835 **Mr Lewin:** Thank you, Mr Chairman.

I guess, just in starting, to echo some of what has been said before, I think the timing of the questions are really opportune. As part of the work we were doing last year asking the public,

asking stakeholders around the Digital Strategy, the idea of that we asked for the same information in lots of different places, and we often miss things in terms of connecting pieces of information, and the idea of looking at how other jurisdictions tackle some of these challenges came out as part of that; and we committed to doing a piece of work around what might a names and addresses register look like. It is very early days, so the request from the Committee came in at the right point in time over that.

In answering the original question around: is there a more appropriate source of information that could be used to base jury selection upon? We tried to look at some of the challenges with the electoral roll, which Mrs Fletcher has talked about. And whatever the reasons may be, but when you look at the stark numbers of what we believe in terms of economic estimates, or what we believe in terms of looking at GP registrations of people that are resident on the Isle of Man that would be eligible, versus what are actually on the register – there is clearly a significant disparity.

So there is something there that is causing that disconnect.

If you look, then, at other jurisdictions – and we have listed Jersey, Guernsey, with the local authority of Camden, and further afield – and all have, or are moving towards, this concept of that simple basic citizen register. And I think we have to be very alive to some of the valid concerns about a big data warehouse that has all this information in, that is available inappropriately to different areas.

A simple register of basic name, address, date of birth, date of residency that then drives other services, that looks at eligibility for other things to be included in that, that looks at citizenship and some of the mandatory functions that flow from that – of which jury service is one, and voting is another – but there are others as well. Clearly, other jurisdictions are down that route.

That is just me saying that, and again I welcome the questions; I think the timing is really appropriate and I think that whilst the Committee ... and you make the point that some of the stuff we talk about is much broader than your remit, I do think when we start looking at how we might move it forward then we should take a broader view – because jury service is not the only one that has this kind of issue, if we look at the electoral roll as being the source of information.

But then returning to your response on 5th March, Mr Chairman. What I said is that, technically, often the system is the easy bit when we know what we need to do and what are our policy outcomes and what is our scope and what are our rules around how we are going to do this, then we can look at how we technically deliver it. I guess my conclusion in the submission and to what you have now responded, is that there are some big questions to discuss about how you would construct such a register and how you would maintain it, what sits in that space and what rules apply to that.

So the question is, on your first point about eligibility we talked about ages so, for example, the electoral register today has one set of age ranges, the jury service has another set – and that is just one. We talked before about occupation and exemptions, and what rigour goes around that; and the more complexity we put at the front door for the register, I guess, the more difficult it would be to make sure that is accurate.

And one of my questions is whether that top register should be, as in other jurisdictions, a very simple record of name, address, date of birth, residency; but then the rules that other services might wish to use like occupation, or particular illness at a particular point in time, or other reasons that may exempt people from jury service, would be done at that point of test rather than sitting at the high level.

Q336. The Chairman: So, this was really what I was trying to get at, the concept of a subordinate dataset – this one might be electoral roll, this one might be jury service, and so on and so forth. That was my thinking.

Am I far removed from where you are trying to get to on that?

890 **Mr Lewin:** No, I think that is absolutely valid, that is how Jersey do it and that is how other jurisdictions do it.

Q337. The Chairman: So, when you get to things like eligibility and the like, what we are saying here is that it might be, from time to time, necessary to adjust a sub-dataset because, for example, the age has changed – one day somebody might decide that jury service should go on to 70, or it might be longer.

What one is looking for here is a system which would allow that degree of flexibility in a sub-dataset to occur.

That is not unreasonable, is it?

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Mr Lewin: Not at all, no. **(The Chairman: Okay.)**

My starting point, though, was how do you construct that? Is it something that, again, like the electoral register today requires a compulsion on the citizen to tell, to fill a form in, to reply somewhere – whether it be quarterly or a frequency to be determined. Or is it something that is constructed from existing sources and based in a clear legal framework? Some other jurisdictions take that approach.

Q338. The Chairman: I think our thinking was that the less work you had to do on all these subordinate datasets, the more efficient the system would be; and there should be a capacity within those subordinate datasets to inform other sub-datasets where it is appropriate so to do.

I could not think of another word, but I think I used the ‘primary personal codes’. I do not know what thoughts you have attached to the senior outline list. But if that changes then it would automatically adjust the sub-datasets as it went along, and nobody would have to do anything. It would occur.

915 Is that again reasonable?

Mr Lewin: I believe so, Mr Chairman, and I think as I said in the note that the idea of having a single register that contains some of that basic information that is used for important services, civic services, mandatory services like this would also be hugely valuable in policy-making, would be valuable in terms of other critical public services that Government provides.

And at the moment there is a gap there.

Q339. Mr Malarkey: Would it be possible to get the information you are looking for from a census?

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Mr Lewin: A census, in the absence of that register, is exactly the way Economic Affairs and a variety of different surveys pull together the estimates – but it is an estimate.

Q340. Mr Malarkey: But you are going to get the age, you are going to get the households, you are going to get the addresses and everything.

Mr Lewin: And historically, the accuracy on a census is believed to be very good.

Q341. Mr Malarkey: And it is a legal requirement to fill in the census, so really would you not just need a change in legislation that allows you to extract that information from the next census, basically?

Mr Lewin: That is one way and again from my perspective it is not for me to comment on the policies and the approach to how you do it, but technically –

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Q342. Mr Malarkey: I am thinking of cost, because you have got something you are doing anyway and you have got the information at the end of the day.

Mrs Fletcher: Could I perhaps pick up that point for you, Mr Malarkey?

945 The census is really good but it is only valid at a snapshot in time – and that is the problem. So, on 27th April, it is brilliant and maybe on 1st April – but by June or July, are those people still there? Who has died; who has had new births into the house; who has moved on?

I think Guernsey has constructed a census –

950 **Mr Lewin:** Guernsey has looked at their existing primary records, whether that be medical, education, welfare, infrastructure in terms of driving licences, etc., and they bring that data together on a monthly basis matching the individuals – and they have replaced the names with pseudonyms so avoiding personal data issues. But then they are able to bring these high-value datasets together and know from one month to the next the demographics of the population ...
955 this is what is happening in our society, these are the contributors, these are the consumers of different services. It is slightly different in terms of the ability to have a specific name and a register that they could drive operationally other services, but that is what they are now looking at.

Jersey went the other way round and they are a real-time basis, not every five years under the census model, but they maintain that register so when anybody has arrived in Jersey the minute they take up residency, whether it be renting a property or purchasing a property, they need to go and register in one place simply name, address, date of residency, date of birth, etc. So Jersey are moving to that driving the electoral roll, to make sure that everyone who is entitled to be on has been given the opportunity to do so.

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Q343. The Chairman: So it is a real-time exercise?

Mr Lewin: Yes, it is done at the point where the individual may change their address, or may arrive on the Island or may depart from the Island – rather than, as Mrs Fletcher said, every five years.

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It is a step forward, but it is not really –

Q344. Mr Malarkey: I was looking for starting point and I thought probably that would be a good starting point, obviously it is going to have to be real time after that, and updated.

975

Mrs Fletcher: I am not sure if you know, but did Jersey actually call theirs some sort of Citizens' Name and Address Act, where everybody was just required to do that? Or did they draw down – ?

980 **Mr Lewin:** They already have legislation from a housing perspective, when somebody becomes resident they have to register. What they have done is expand that legislation under the States Assembly to say that, 'We can use the register for health screening, so let's make sure if we are trying to do a programme of checking certain age groups, that they have been for screening, we are going back to the core register to check we have got everyone.'

985 And they are talking about, again through the parliament, making sure that they use that as the basis for the electoral roll.

Again, when we look at the questions that the Committee came with, we looked at the different sources – GP registrations, driving licences, National Insurance, etc and Economic Affairs estimates – and the gap between the electoral roll of what is *believed* to be there and what is *actually* there, is quite significant.

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So the simple answer to the Committee's first question of whether the electoral roll is a valid basis for building of the things around, you *have* to question the veracity of that.

995 **Q345. Mr Malarkey:** And I think that for the sake of *Hansard*, some of the figures you came back with were quite frightening when you estimated for ages 16 years to 65 years, there were 30% missing off that list – that was for voting purposes – and for those eligible for jury service you go up to 40% missing between the age of 18 and 65.

1000 **Mrs Fletcher:** Just to help Mr Lewin out, we provided him with those figures in order to try and assist the Committee. ‘Estimated’ is a very good word, but it may help the Committee to know that the register will be closed off on 18th March and we will have a new register on 1st April, and we would happily give what we hope will be less of an estimate and a much more accurate figure.

We can provide those for you on 1st April and try and break it down around jury exemptions and ages, if that would help?

1005 **Q346. Mr Malarkey:** That would be helpful, because this was quite frightening when we saw those figures coming through!

1010 **Mrs Fletcher:** And also, we were still in the process of amending systems and re-driving people on, so we offered it to the Committee but I wanted to caveat it for you that it was an estimate and that was our information that we asked Mr Lewin to pass on, not something that he had drawn upon.

But we will come back to you close to 1st April.

1015 **Mr Lewin:** Yes, and it will be revised, but there will be a gap.

Mrs Fletcher: There will be a gap, yes, definitely.

1020 **Mr Lewin:** That is the point to what we were trying to say.

Q347. The Chairman: In your experience of these various developments that you have been talking about – and it is fascinating to hear it – are they generally migrating towards the concept of using aggregated, anonymised information to lead policy development in a variety of areas?

Is that actually happening in both Jersey *and* Guernsey?

1025 **Mr Lewin:** In the response, we outlined four levels, just by way of example – there are *many* other different models. Guernsey anonymise the information, it is really for *policy* – so it is month to month to understand what is happening so they can plan and make evidence-based policy.

1030 In Jersey, it is a personal name and address, it is personal data and it is used for operational, but it is also used for policy – so the fact that it is there as a housing control is to help understand what is happening.

1035 If we go to local authorities in the UK – and we have listed Camden as an example – they have the complexity of the Guernsey model. So Guernsey take 10 systems together and Camden take 16 key – they leave the names and addresses in, they match them together and they look operationally. They can look at fraud, where they can see an individual is appearing in three, or four, or five places with one address, but appears somewhere else ... whether that be fraud or whether that be error, but they can look at it for that. They look at it to make sure an individual who might be eligible for certain services but currently has not applied, so they will go out and offer those services – very much wrapping services around the individual.

1040 Then we go to other jurisdictions in Europe, in particular, where Estonia is often held up as the vanguard, it is illegal for the state to ask for the same information from a citizen if it already has it; so it really forces the state to be efficient, it forces the services to be efficient and reuse and join up that information.

I think we are a long way off that today. The work we are doing in the Digital Strategy around the likes of Health, recognises that there are pockets of information in primary care and community care and acute care; and one of the key benefits of transforming Health, one of the strategic outcomes is from a patient perspective to be able to join that up, and from a clinician perspective and a care perspective to be able to join that up – that is a whole journey, that will take time.

Money in itself is a challenge in that one space, when you then look at other jurisdictions – and there have been attempts in the UK to talk about joining some of these datasets up – and there have been some real valid concerns about Health data, because it is *hugely* sensitive and it has to be very tightly controlled. I think what we are talking about here in terms of the idea of the electoral roll and that is the basic administration of public services – that understanding of who is resident on the Island, and who is consuming basic public services. It is not about Health data, it is not about criminal justice, it is not about some of these sensitive tax – but at top-level it would be a real enabler to some of those ancillary services to check that we have got the right services applied to the right people.

Q348. Mr Malarkey: Are you aware of any jurisdictions where there have been leaks or breaches, or where there has been legal action because data has leaked, or even sold on to third parties, in any other jurisdiction? This is what the public will be most concerned about, of any data that is being collected.

Mrs Fletcher: From the higher-level principle?

Mr Malarkey: Yes, from the higher level.

Mrs Fletcher: I am not sure.

Mr Lewin: I think the electoral roll is, as Mrs Fletcher said before, already owned by a number of different institutions – it is purchased, it is used in different ways, it is relatively accessible.

To extend that to include the date of residency, etc. is I think what we are talking about here. It is not, as I say, the real sensitive information around health or welfare.

But, yes, there are obviously jurisdictions and there are lots of documented cases of data breaches and information being leaked inadvertently. And whatever we do, going forward, data privacy and the rights of the citizen absolutely have to be paramount.

Q349. The Chairman: Mr Malarkey's question brings us on to this issue of ownership and transparency, and if I could just explore that with you a little bit?

If I have understood your comments so far, we are talking about unique, personalised datasets in areas which are very sensitive; in the centre we have got ... you could almost call it the skeleton, really, the outline.

How do you see – and this takes us back to your points about data protection – the transparency and ownership issues? And, by ownership, I mean the citizen owning the data and controlling it.

How do you see those things being reconciled?

Mr Lewin: One of the questions I replayed back in the response is that for jury service or for the electoral roll do we start with the presumption that it is a mandatory obligation on the citizen? Or do we start on the basis of it is an entitlement that the citizen can apply for?

I think that drives the answer to that question, because if it is mandatory – and we can already create that information from somewhere else – and we validate it with the citizen, it is a process it goes through, so it is validated and checked and confirmed. But that is a different process to the one we currently have where, whilst there is legal remedy if somebody does not

fulfil their obligation, it has been very difficult to pursue that and, as I said before, that may change going forward.

1100 But that is not necessarily the right solution, in my view, in terms of getting that accurate list if we believe it is a mandatory obligation on the citizen to be listed as eligible to vote; to be listed as eligible for jury service; to be listed as eligible for these other services – then requiring them from scratch to fill in a piece of paper and tell us information that we may already know, that then has to be translated, checked and validated. It is never going to be accurate.

1105 I think that one of the real questions around the data privacy, is the right to be forgotten. There is a lot of debate in data privacy terms about that. Do we – or does the Committee – foresee an ability to be forgotten and not participate in these services? That to me is one of the key questions.

1110 **Q350. Mr Malarkey:** Sorry, you do not have that facility for the tax office do you – the right to be forgotten? You cannot just tell them, ‘I want to be forgotten for tax’.

1115 **Mr Lewin:** No, but increasingly a number of people are being taken out of the tax process so once they have dropped out ... My understanding is that a number of years ago the tax would be a very accurate record of the whole working population, and indeed it was more broad than that; but increasingly as people are taken out of the tax system then that is again not going to be a pure source of complete record.

1120 **Q351. The Clerk:** But everybody has a National Insurance record, because whether they actually pay or it is just credited, they still have to have that, don’t they?

1125 **Mr Lewin:** My understanding is with effect from the last two years, it used to be people at 16 were automatically given one, but two years ago as people were taken out of the tax system and we no longer automatically allocate, we rely on the individual to request. So it, again, will not be fully accurate.

1130 One of the benefits of the Jersey model based on residency, is the migration in and out of population so you *have* to do it at the point of where circumstances change. National Insurance, even where they are on the system, it could be up to two years if you are moving to the UK, or coming to the Isle of Man, it is not necessarily up to date – there is that window to bring your affairs up to date.

1135 **Q352. The Chairman:** Does the Jersey system allow a prompt where a dataset becomes out of use?

In other words, nothing has happened linking to it – does it flag up a question saying is this person still here? Or is this a dead dataset?

1140 Does it do that?

Mr Lewin: I do not know, Mr Chairman.

1145 **The Chairman:** Alright, that is fine.

Mrs Fletcher: Just on those points, though, Mr Chairman, we have been doing some initial work and I cannot remember which jurisdiction – I want to say Jersey but I am not sure that is right.

1150 But there is a country – and I can come back to you on this – that actually you cannot have access to any service at all unless you are on the citizen database. So just thinking about the citizen who wants to opt out, there must be very few people who do not either have a need for education, for the health services, for a doctor, for a prescription; to work, to pay tax, to pay

rent or to pay rates. It must be very hard to find out how you can *completely* vanish out of the system, which I suppose is why we go back to this higher level of it.

1150 For every person who lived on the Isle of Man we would require your name, your address, your date of birth and the date you took up residency, because that would sit beside the 10 years' housing, for five years' benefits, for work permits – they all interplay. Quite simply, in the conversation I had, this individual said, 'So if you wanted to go along to the local library and sign up you could not, unless you were on the citizen's database.'

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Q353. The Clerk: You may be thinking of Estonia.

Mrs Fletcher: I think the conversation started with Estonia, but I do not think even theirs is as polished as that one. But I will come back to you on that because for us, we were thinking about what would the sanction be, what would the stick be, or what would the carrot be – however you want to encourage it.

1160 But who on the Isle of Man, do we feel – this is how our conversations have been going – would not in some way, shape or form have a link into a service which is provided? And, as Mr Lewin identified for policy, so we know that in 10 years' time we will have 80% of the population be over 65 and will need nursing homes and residential care. So how do we plan for that?

1165 So we could draw that data simply from date of birth, and also from the fact that we know that they were still on the Island; and for school planning, and for housing planning.

1170 But it is really going back to that sanction and we have really struggled with that with the electoral roll, and even trying to encourage people to recognise their moral obligation and their legal obligation; and even then with it being in the law there are still those people who do not come in. So it has got to be something that they really want to do.

Q354. Mr Malarkey: And I take you back to the census which is a legal requirement, and on that one given day at the end of five years that information is the starting block and it must be accurate.

1180 **Mrs Fletcher:** That is in the electoral roll, Mr Malarkey, you are required to return that form. And, again, we *trust* that the census is right – and that is about the most accurate piece of data that we have – but if you do *not* put somebody down on that, who is going to go round and check?

Q355. The Clerk: Well, the state has already decided as a matter of policy that you may not disappear.

1185 **Mrs Fletcher:** And the electoral register, that the 2006 Act passed through the Branches here, says you are required to provide that evidence. But if people do not – and on our electoral register there has been some complacency over time thinking it is around people's right to vote, and if they do not want to vote should we be chasing them?

1190 But it goes back to the other side of the electoral register which is how it impacts on jury service.

Q356. The Chairman: It has been a fascinating high-level discussion this, but coming down to the specifics for us and the responsibilities of this particular Committee, Mr Lewin, do you have any comments?

1195 You asked in your questions about the concept of households and I think we came back and we said, does it matter as long as the postcode address is the same?

How comfortable were you with the idea that in order to get to the address, the postcode prompt had to come up and thus the recognised spelling and address was very specific? Did that make sense to you?

1200 **Mr Lewin:** I think so. Again, other jurisdictions are moving to the idea of an individual-based register for electoral roll and I understand –

Mrs Fletcher: Yes. That is very clear.

1205 **Mr Lewin:** – that is very much part of our aspiration.

And I am just making the point that wherever the form may be, whether it be the census or electoral roll, if it is issued to an individual to fill in on behalf of others, you have got that disconnect – you have got abrogation of responsibility, or an opportunity for somebody not to be able to participate.

1210 So the more we can move it to an individual based ... we can always reconstruct if there is a need to construct what a household looks like for census purposes, or for planning purposes, then we can do that. We do have a very high degree of records in relation to properties and addresses.

1215 So, yes, I imagine that is a relatively easy thing to do, to ensure we do not have duplication or misspelling. But to me, it is some of those bigger questions come first. For example, if we move to the basis of a top level register, do you construct that register at the point of event where somebody arrives on the Island, or leaves, or changes address or changes details?

1220 Or is it done on a frequency like the census, which is expanded in frequency, to try and capture? Because that clearly starts with a very clear set of policy outcomes of what we are trying to do, and needs the right legislative framework, etc. But it is missing at the moment, in my view.

Mr Malarkey: But my view was that if you had a starting block like the census, then even on a daily basis if they are leaving the Island or coming to the Island, at least you have got something to start with.

Q357. The Chairman: I think when we come to report, we have got to, I am sure, acknowledge and recognise the fact that the high-level element of it is a matter for others, not for us. I think perhaps our assumption would be that we would hope you would be getting on with it, I hope is a good way to put it?

1230 So that anything that we were talking about, our specific sub-dataset in terms of the jury service; and to some extent, leaning over and looking at the sub-dataset for the electoral roll.

1235 What I would like to ask you, is that as we are looking at the machinations of whether you should or should not be on the jury list, or exempt, we would hope that ultimately that sub-dataset worked through some sort of coding allow an immediate recognition, and an automatic print off in certain areas, and I think I have touched on them there. One is age, and you migrate over a certain age and you drop out of that sub-dataset; another one is that you are exempt because of a particular employment.

1240 We also looked at the issue –and it has come out on a number of occasions during our oral sessions – the importance of having a jury balanced across ... at the moment it is referenced to sheadings, but the point came, ‘Why can’t it just be a reference to a constituency?’ That is just as non-specific but it is regionalised.

Would you have any comment about that? Do you see a sub-dataset working on those lines?

1245 **Mr Lewin:** Yes, I spend quite a lot of my time challenging and trying to simplify and question why we do stuff, by looking at the rules that we try and apply at the moment in terms of constructing the jury list and trying to build that logic up-front. So as we said before if somebody ticks the box to say they are exempt from jury service, the ability to go and validate that is very difficult.

1250 The more we go and put the rules in at the front door, the more complex it becomes, the more difficult it becomes to validate, to check and to enforce. My question would probably be

back to, based on balance, would it not be more appropriate to ... So if we have got this register, or even today based on the list, to cut a bigger number of potential jurors and then perform your qualification, your balancing, your exemptions at that point in time – because even if I have
1255 ticked as an individual ‘exempt’ on a form today, I may not be tomorrow. If I am eligible today, I may have a medical operation or be off the Island tomorrow.

So almost by doing it at the front door it is not going to be fully up-to-date, it is going to be difficult to enforce – and I guess what I am trying to say is my inclination would be to say put your logic and your rules at the point where you need it. It is much closer to the need and closer
1260 to the point and you can –

Mr Malarkey: I totally agree.

Q358. The Chairman: I think there are levels, aren’t there? And if I have understood you correctly it is choosing the level at which you want to operate the sub-dataset, and other things then become practicalities on the point at which that person is asked, requested, directed to be a jury member – ‘No, I can’t be because of ...’

They are outwith the sub-dataset altogether.

Mr Lewin: Age is a classic one that sits at the top level – whatever is at the top level, date of birth would be there. So the age would be a calculation when you come to cut it.

Other things that may change, like occupation or medical status, or availability on Island, will only be relevant at the point where the summons comes –

Mr Malarkey: The same as it is now, really.

Mrs Fletcher: Can I just pick up on that point, just out of interest, because we have started looking at that; and the exemptions, as Mr Malarkey mentioned, how do you check them?

I am not sure whether the Committee has looked at the UK system and other places, where there is no exemption unless you are called, and then you make your case. Also, in the UK you are called for jury service which is quite close to you; well, there are an awful lot of people living on the Isle of Man who would live less than 20 miles maximum away, so what is the definition of close?
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And we were interested to just hear the tail end of Mr Cain from the Law Society, but in the UK advocates are called, everybody is called – and then it is up to the legal teams of the two parties to decide who will be on that jury. We found an example recently of a case where a High Court judge sat on the jury.
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I am not sure that when you sit on a jury – and I have had the pleasure of jury service – but I do not think I could tell you exactly where the 12 good men and true, at the time, all worked or what their occupation was – unless, of course, the advocate took it upon themselves to make that known and influence it. But my experience was that the judge very much steered the committee and helped with the evidence.
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But I suppose I go back to the question of, depending on what the case is, why do we remain of the view that people should be exempt, when in other jurisdictions it has proved to be effective having advocates, doctors, nurses and police officers sitting on the juries? They can bring something to it just like your *ordinary* individual – and I do not mean that in any way disparaging – can sometimes bring a common sense and a rational thinking by asking the questions that sometimes others who are closely involved ...
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I just wanted to put that to the Committee, that if there were to be no exemptions and you were called for jury service, and you were a doctor and you were working on major operations that week, or you were a teacher and you were in the middle of A-level exams, you would have your own mitigation to offer at that point, and it would mean that the option of the exemption ... because unless we actually check out every exemption in whatever system we used and
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whatever subset, would mean that it would need to be verified – and of course, as Mr Lewin says, it is only verifiable at that point in time.

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So you may be an advocate, and then after five years you would then fall in. But are we dependent on that person then to remove their own exemption? I am just wondering about changing it the other way.

The other aspect just to also mention, at the moment in the UK it is 18 to 70, and the UK are looking to raise that age to 75 – and I am not sure if that has been put to the Committee either? So I put that in the mix just for your thinking – because that actually spreads the pool.

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There are a lot of people on the Island who are retired or semi-retired, between the ages of 60 and probably 75, who sit on a number of tribunals for us – quangos and different things – and we expect them to make a very valuable contribution, and many people do. And yet actually we are saying, ‘But you are not fit for jury service’ – and that is because our current rules which we operate under, the electoral system, are really quite outdated, I think.

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Q359. The Chairman: Some of us older ones on this Committee would be very happy to hear comments of that nature.

We were fascinated in an earlier oral hearing to hear about how the sheading assembles elements from that particular place, and it is almost like manually off a list. So you began to imagine a lot of Quirks arriving – metaphorically and literally – in a jury environment; and the question has to be that if you have this sub-dataset that was able to identify which constituency a person was in, that it became possible for an application of random allocation in a way that spread it across the Island.

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Is that an unreasonable thought?

Mr Lewin: Not at all, and I think that goes back to address.

So the minute we have the address and we know it is right, we can construct sheadings, parishes – whichever way it needs to be cut, it gives you the flexibility to cut it at that point.

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Q359. The Chairman: Okay. I am sure when the Committee reports, it will not want to be anxious to rush its fences, because it wants to sit within a bigger picture and an engagement.

Are you able to indicate to us the progress you are making towards that ‘sunny upland’ as it were? And what would you see us do, or recommend to Tynwald, in terms of moving what we are trying to do towards that?

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Would you like to comment on those thoughts?

Mr Lewin: As I said before, we did a lot of work over the summer and it is up to date on the Digital Strategy, on the individual online direct journeys, the programmes for Health, or for Education.

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We did say we would explore, so names and addresses was one of those concepts to explore and we have started the work to explore – and I would expect that to complete and a report would come back by June time.

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At the moment, that is something that I would expect the Cabinet Office to take forward for debate – but it will need debate and it will need consideration. As you said before there are lots of things that need to be carefully thought through on that.

Looking at the rights of the individual, looking at the services, looking at what other jurisdictions do, what are some of the concerns that might come. But at the moment, today, there is no capability in legislation terms, there is no capability in any entity in Government that can do this. So it does not exist at the moment, it does not have the power to exist; so there is quite a bit of work first of all to form the view of this, as something that needs to be done and wants to be done.

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I imagine it would need to go back to Tynwald for debate and discussion, and I would not wish to presume what the outcome of that would be. But that is the next step, and a report to Tynwald within the next three to four months is probably the likely outcome.

Q360. Mr Malarkey: Sorry, is there a will within Council? Is it something that they want for the future?

Mr Lewin: We have not talked about it in Council. As I said before, the timing of the questioning from the Committee was really opportune, we were just starting that analysis, just starting to look at what the possible may be, and why. We need to replay that and we need to take it through those bodies.

Q361. The Chairman: Okay, two closing questions from me.

The first one is, I presume that everything you are doing – and what you have said to us today chimes with the Information Commissioner's views – and that has constantly been engaged?

Mr Lewin: The Information Commissioner has always upheld the view that any information that needs to be processed needs to be placed on a clear legal framework, a clear legal footing. It needs to be done with real citizen knowledge of what is happening, adhering to the data protection principles.

So the idea of having an umbrella register that can be used on a very clear legal footing that is used with citizen consent, is something that would solve a number of problems and would give clarity as to how public services can be delivered – and be delivered effectively and efficiently.

So, yes, I believe without putting words in his mouth, there would be support for that. But it needs to be worked up to.

Q362. Mr Malarkey: Just extending that, then, if the recommendation came from this Committee and it was the will of Tynwald that was the direction to go, could you guesstimate a timescale – are we talking one year, two years, three years, before we get most of the legislation and the information and the system working?

How long would you foresee? I am not going to hold you to the month!

Mrs Fletcher: I think, obviously we would not want to mislead the Committee with just a knee jerk, but we could perhaps go away and think and report back.

I suppose just playing that out in my mind and hearing, it goes back to Mr Chairman's question about transparency – who owns the data.

There is the ongoing work around a single legal entity so if the Isle of Man Government became a single legal entity – and I would look to Mr Lewin here – but would then all the data be held by that single legal entity? Would that all be drawn into one ... ?

That is where I am going with the thought, but it is something that –

Mr Lewin: Yes, the question of single legal entity is an enabler, it does not necessarily allow, nor would we seek, to bring all the data together – that is not what it is intended to do. But it provides a platform that *could* make it –

Mrs Fletcher: – in the future, maybe?

The Chairman: It potentially simplifies it to some degree.

1405 **Mr Lewin:** Yes, but we can go away and look at a broad timeline. There is a process to go through but in terms of the technical ... and, as I said before, with my hat as a technologist, the construction of a very simple register that contains this level of information is not a difficult task.

That information already exists in lots of different parts of Government, so construction of it from what we already have is not a difficult task.

1410 Whether that is the right way to do it, or whether it is a process where the citizen engages and has ability to tell us something, to check it themselves, then that has other considerations; but technically it is not a major Health system – so what we are talking about here is relatively straightforward.

1415 **Mr Malarkey:** That is the answer I was wanting, really.

Mr Lewin: Jersey brought it forward in a short number of years; Guernsey, as I said before, was slightly different – but bringing data in an anonymised form together, they did that really quickly.

1420 We can look at that and say ... we have not yet got to the point where we say, 'This is the plan, and this is now going through a series of steps' – this is still a research phase. So, when the Committee asked the question, as I have said many times, it was very opportune because we are forming that up now with a view to coming back to say, 'These are the options.'

1425 **Q363. The Chairman:** Fine. Would it be unreasonable for me to ask you to summarise in a simple bullet form format, how *you* would feel comfortable with us arriving at certain conclusions?

1430 It would help us in our reporting to Tynwald in terms of making sure that what we are trying to form in our minds integrates *simply* into the bigger picture, rather than making presumptions which are going to clash with it. Is that an unreasonable request?

Mr Lewin: No, do you want me to do that now or off-line?

The Chairman: No, report after this, at some stage –

1435 **The Clerk:** If you send us a paper that would be –

The Chairman: A short paper. Please do not go into *huge* detail, just give us the clear directions as you see it from a technology point of view.

1440 **Mrs Fletcher:** Have you got a deadline report date?

The Clerk: If you could send us a paper in the next fortnight, that would be very helpful.

1445 **The Chairman:** Any further final thoughts?

Mr Malarkey: No, I think I am very happy with what I have found out.

Q364. The Chairman: Are there any closing remarks you would like to make?

1450 **Mrs Fletcher:** No, thank you for the opportunity. We are working with the Chief Executive of the Association of Electoral Register Administrators to look at how we can update electoral registration – that will come forward after the General Election.

1455 But we will be very much looking towards online registration, individual household registration – and I am hoping that some of what we will be looking at will dovetail in with what you are ...

The Chairman: With that, then, can I thank you again for coming this morning. I appreciate, very much, your time and your comments. Thank you.

The Committee adjourned at 12.07 p.m.