

4.9 Deputy T.M. Pitman of the Chief Minister regarding the Terms of Reference in the Napier Report:

Will the Chief Minister inform Members why part (b) of the terms of reference shown in R.39/2010 (re-issue) was amended in the Napier Terms of Reference published in R.132/2010, and why part (d) and part (c)(iii) are included but do not appear in the Napier terms of reference provided in R.132/2010? Would he also state why Members were not informed that these parts had been removed?

Senator P.F.C. Ozouf (Deputy Chief Minister - rapporteur):

Mr. Brian Napier Q.C. (Queens Counsel) has confirmed that he is not aware of any changes of the words in part (b) of the terms of reference between those he agreed when he was formerly engaged, and the ones that appeared in the final report. The report is therefore his and his interpretation. I am advised in respect of part (c)(iii) that this was a specific clause inserted into the original terms of reference at Mr. Napier's request when he was finalising his engagement. He has confirmed that he omitted them when he prepared his final report. The terms of reference were therefore never changed and therefore any suggestion that they were is incorrect. The issue concerning part (d) has been the subject of many questions already in the Assembly and the Chief Minister has provided detailed answers on each occasion. I will repeat what he has said, that following the former Police Chief's agreement to participate fully in the review, part (d) was no longer relevant and for that reason Mr. Napier did not reproduce it in his report. Therefore the Chief Minister has stated that it would not be necessary for the changes referred to, to be referred to him or the Deputy of St. Martin.

4.9.1 The Deputy of St. Martin:

Given the confusion over the number of terms of reference, will the Deputy Chief Minister agree to make a statement or ask the Chief Minister to make a statement as to why there have been so many discrepancies in the terms of reference, and apologise to Members for failing to carry out a full investigation of the discrepancies before giving so many different and inaccurate answers to Members over the recent months?

Senator P.F.C. Ozouf:

I perhaps have had the benefit of looking at this issue afresh having been advised that the Chief Minister was not going to be here. I have had to research these answers and come up with the explanation to the Assembly. I have to say that I am astonished having looked at this issue afresh with almost no baggage in relation to it. There is no confusion. The terms of reference as originally set out have been included in the report. There were some changes made. They are minor, they are insignificant, they are Mr. Napier's but more importantly, the issues that the Deputy continues to suggest were not covered in the terms of reference have been covered in the report. I simply over the last few hours, and I have spent a few hours over the last day looking at this... I do not understand what the issue is. I think the continued suggestion that there has somehow been a problem in this report is frankly a waste of the Chief Minister's time and it has been a waste of my time in the last few hours.

4.9.2 The Deputy of St. Mary:

I will enlighten or try to enlighten the Deputy Chief Minister about what one of the problems is, which is that part (d) was taken out on the basis that Mr. Power had said that he would co-operate with the inquiry, and in fact when Mr. Power said that he

qualified that statement heavily as anyone who read his letter would agree. That is the kind of problem we are facing; that we are told he is willing to co-operate when it is simply untrue. He is willing to co-operate on condition that 1, 2 and 3, none of which had been met at that time. So it simply does not stack-up. My question to the Deputy Chief Minister is, if (c)(iii) - which I have just learnt about now - is the recording of material relating to the primary events of the suspension process, if that term of reference was put in, inserted at Mr. Napier's request, that is all fine and good but surely the person being asked to do a review, if they start to change the terms of reference that change should come back to the 2 people who are supposed to be supervising the review, namely the Chief Minister and the Deputy of St. Martin. I ask the Deputy Chief Minister to comment on that?

Senator P.F.C. Ozouf:

Nothing that I have heard in the questions diverts me from the conclusion that I have reached. This is a complete load of nonsense. We are talking about terms of reference that there were some changes in the report, which is not the Chief Minister's report, which is not the Chief Minister's Department's report, it is Mr. Napier's report. The issues that the Deputies continue to raise in respect of whether or not the terms of reference were exactly transposed in the final report, they are almost missing the point. The point is that the report covers those issues. There are 3 references or 2 or 3 references in respect of (d) in the report, and I just do not understand why the Assembly is taking its time up in carrying on, going on about the wording of the terms of reference, where the terms of reference are a terms of reference which result in a report and the report covers these issues, and I do not think that there is any suggestion that it does not.

4.9.3 Deputy T.M. Pitman:

I would hope that the Deputy Chief Minister did not mean that "load of nonsense". Would he surely not conclude that we are talking about a gentleman's reputation - lifelong reputation - and would he not agree with me at the very least that all this could have been avoided had the other side of the story been allowed to be put, and this is where all these problems come from. I do appreciate that he may say it is not the Minister for Home Affairs' fault but natural justice, does he support it or not?

Senator P.F.C. Ozouf:

I am not going to comment on the generality of the issue. I have been asked a specific question in relation to the terms of reference, and in relation to the transposition of the terms of reference from the original one that was set out and set out in Mr. Napier's report. There is nothing that I have reviewed that gives me any indication that there is a problem. I am not going to comment on the remaining things. I remain shoulder to shoulder with the Minister for Home Affairs and the Chief Minister in relation to all the other issues, which have been debated in this Assembly. There comes a point at which an issue needs to be brought to a conclusion and this questioning about words in terms of reference, I do not think is helping the whole debate being brought to a satisfactory conclusion.

4.9.4 Deputy M. Tadier:

The Minister is doing a valiant attempt to try and deflect from the issue, saying that words are not important but it is words which were debated here, and we know as parliamentarians that words are key.

[11:45]

When certain words that are agreed by the Assembly are omitted for whatever reason then that can have a significant impact. I hope the Minister would agree with that point. Does he acknowledge that there is a difference between saying that Napier covered these issues to do with parts (d) and (c) but he covered them in spite of the fact that they were not included in the terms of reference, and if he had been given the terms of reference as had been set out by this Assembly and agreed between the Deputy of St. Martin, the Chief Minister and the whole Assembly, he may have come to different conclusions - and different or even deeper - and more words on the issues relating to parts (c) and (d)?

Senator P.F.C. Ozouf:

I cannot see that. I have to say that I do agree with the Deputy that words are important but the difference in wording in relation to (b) in respect of that is the sum total of the words, and the Deputy is a better English scholar than I am, but I certainly see that the wording of the original terms of reference and what was in the report is identical in terms of its plain English meaning and the other issues have been covered. I would just also ... the suggestion is that this is a criticism of the Chief Minister or the Chief Minister's Department, and I think the point needs to be forcefully made, that it is Mr. Napier's report, not the Chief Minister's report. That is an important issue. If Mr. Napier had a problem then he would have said so in his report. The constant debate about the wording of the terms of reference I think is missing the point, if I may say respectfully.

Deputy M. Tadier:

Sir, may I have a supplementary?

The Bailiff:

Yes a final question, Deputy.

4.9.5 Deputy M. Tadier:

Irrespective of what the consequences were in the report due to the fact that terms of reference had been missed out, will the speaker on behalf of the Chief Minister not acknowledge the fact that this House, the Deputy of St. Martin, all of us are owed an explanation and indeed I believe an apology from somebody to find out why terms of reference that were agreed in this Assembly have been somehow omitted, which have possibly and quite likely had an impact on the results of that report? We are simply asking for an acknowledgement and an apology so we can move on.

Senator P.F.C. Ozouf:

I accept that there were wording changes between the terms of reference that was in this Assembly and those that Mr. Napier put in his report. I accept that and it is Mr. Napier who asked for indeed (c)(iii) to be put in and he omitted it, but he has covered it in his report. So, I think that there almost needs to be acknowledgement on both sides that yes there were some changes in the terms of reference but the most important thing is; has that mattered in the end product of the report? I have to say that nothing that I have seen leads me to the conclusion that the report would be any different. It is quite wrong I think to cast aspersions on the Chief Minister or his department to suggest that there would be anything else. I think the matter now should be closed in relation to this issue. The Chief Minister has answered numerous

questions on this issue. There is not the issue that the Deputies are suggesting and I think that that has to be a conclusion of the matter.