

4.10 Deputy J.H. Young of the Attorney General regarding the circumstances under which suspected infractions should or should not be referred for prosecution:

Will the Attorney General advise the Assembly whether he ensures that States departments with delegated regulatory authority, such as Planning and Harbours, comply with his guidance issued in January 2008 regarding the circumstances under which suspected infractions should or should not be referred for prosecution, whether the departmental referrals are monitored for compliance and what action, if any, is taken if it is considered there is non-compliance or lack of consistency?

Mr. T.J. Le Cocq Q.C., H.M. Attorney General:

I receive a detailed quarterly report from Environment Protection on all investigations into States departments but do not otherwise formally monitor compliance with the Guidance Notes of January 2008 or indeed whether other investigative bodies, such as the States of Jersey Police, apply an appropriate threshold to each matter before referring it to me for a prosecution decision. It would be impractical to examine each file and to do so would make any guidance unnecessary, as all matters would then, in effect, be examined by my department and any discretion removed from the investigatory authority. I presume, unless informed to the contrary, that every investigatory body discharges its functions under the law and applies the guidance which provides expressly that any doubt should be referred to me. When a matter is referred to the Law Officers, it is considered by a lawyer within our department to decide whether or not a prosecution should be brought. Such matters are therefore automatically reviewed and supervised. As for matters not referred to my department, it is open to a person to complain to me if, in that person's opinion, the matter should have been referred. In those circumstances, I would call for a report from the regulatory authority and would then review it to determine whether the correct tests had been applied at each stage.

4.10.1 Deputy J.H. Young:

I thank the Attorney General for a very comprehensive answer. The last point that the Attorney General made there, that there is an opportunity for a person to complain, to have the Attorney General review the file for compliance, could he elaborate on that to say whether that is open for a person to go direct to him or is there some procedure where they have to go through the department first?

The Attorney General:

There is no formal procedure but, of course, prosecution decisions are taken exclusively, ultimately, by those within my department. It would therefore be open to someone, for example, who has made a complaint to a regulatory authority, where that complaint has been investigated and nothing has happened, if that individual feels that this is a matter that should have been referred to the Law Officers, there is no reason why that individual cannot come directly to the Law Officers and say: "There is such a matter and it should have been referred to you." In those circumstances I would be alerted as to an issue and I would call for the report that I have mentioned.

4.10.2 Deputy M.R. Higgins:

I think the Attorney General is going to get a number of people coming to him in the near future with concerns about the prosecution process and in fact I will be coming to him with some myself. I do not know if the Law Officers' Department are the fall guy and are being accused of making the decisions or the decisions are being made by others, but there is

serious concern in a number of areas about prosecution decisions and whether cases have been brought against the right people or for the right reasons.

The Bailiff:

What is the question, Deputy?

Deputy M.R. Higgins:

Will the Attorney General see me as soon as possible and I will tell him my concerns?

The Attorney General:

I would be entirely delighted to see the Deputy at a mutually convenient time.

The Bailiff:

Senator Ferguson, I trust you have a question. [Laughter]

4.10.3 Senator S.C. Ferguson:

Yes. I suppose I am reflecting the comments made by other Members of this Assembly and just to confirm: should the delegated authority to these regulatory personnel be exerting their authority in a rather unseemly and totally obnoxious manner, can we come and complain to the Attorney General?

The Attorney General:

No. The point that I was making was that ultimately a prosecution decision rests within my department and within no other department. If it is felt that a prosecution decision should not have been made, that is a matter for my department because, ultimately, it will be taken through the courts by my department and that file would have been reviewed by officers within my department. If it is that something should not have happened or should have happened that did not happen then that can be brought to my attention in the context of my obligation to supervise the prosecution process for criminal infractions. General complaints about behaviour, however, seem to me to fall outside of that process and general complaints about behaviour should be made in the normal way, I suspect, under the Civil Service Code.

4.10.4 Senator S.C. Ferguson:

Yes, but if it is in the course of their duty, performing those duties which have been delegated by the Law Officers to these particular individuals if they are dressed with a little brief authority, would that not be a case for taking away that little brief authority?

The Attorney General:

If the actions of any officials charged with investigations under the law impinge upon the investigatory process to the extent that it is prejudicial to any decision that my department might ultimately make, clearly that would be a matter for me and to take up with me. If it is simply a behavioural matter, I have no more supervision over people within the investigatory departments than I do over officers in the States of Jersey Police.

4.10.5 Deputy J.H. Young:

I thank the Attorney General for giving us an insight into the subject. I think he is likely to be very busy with people complaining. Does the Attorney General, on reflection, not think that there is merit in considering some sort of monitoring process systematically across those departments that have these very strong powers and are referring cases to him regularly to ensure that the guidelines, which are very important, are properly adhered to and departments do not overstep the line into practices which are very questionable at least?

The Attorney General:

I am very happy to consider the possibility of an enhanced supervisory process to deal with those kinds of matters, but I prefer to do so on the basis of matters that are raised with me and evidence that is put before me. If people come along and explain what difficulties they have then I will obviously consider whether the process should be changed in order to address those difficulties, but without that information I do not see any basis for doing so at the moment.