

2016.12.12

**14 Deputy G.P. Southern of the Chief Minister regarding the findings of the States of Jersey Complaints Panel in the ‘Alwitary case’: [9759]**

What response does the Chief Minister plan to make to the finding of the States of Jersey Complaints Board in the Alwitary case that the case was “one of the worst examples of a public authority disregarding fundamental principles of fairness and contract law that this board has seen in the long collective experience of 3 members”?

**Senator I.J. Gorst (The Chief Minister):**

The States Employment Board has examined this in detail, as explained in its submission to the board, including a review by the former Solicitor General. This was done to ensure that the principles of fairness and equity have been met and the conclusions were clear. Processes could have been better, as I have said, so they have been improved but the outcome would have been the same and that it was the correct one.

**3.14.1 Deputy G.P. Southern:**

Does the Minister accept the following which comes directly from the Complaints Board report: “The board remains firmly of the view that a right decision follows a fair and defined process? The process adopted by S.E.B., the hospital and H.R. (Human Resources) can never be considered acceptable, reasonable, just or fair.” Does he agree that with the board’s conclusion that the decision in terms of Article 9(2) of the Administrative Decisions Review (Jersey) Law, the decision was unjust, oppressive, improperly discriminatory, based wholly or partly on a mistaken law or fact, could not have been made by a reasonable body of persons after proper consideration of all the facts and was contrary to the generally accepted principles of natural justice? Does the Minister agree and will he ensure that such a “shabby process”, the words of the report, “shabby process”, does not occur in future?

**Senator I.J. Gorst:**

I do not necessarily accept the vocabulary used in the report. I have accepted, as the States Employment Board have accepted, in their response to date that the process could have been better and measures have been taken to ensure that the failures in process which occurred do not occur again.

**3.14.2 Deputy M.R. Higgins:**

I have just heard the Chief Minister say that processes have been put in place to stop it happening again. In the past we have had the appalling treatment of Dr. Day, who worked in the hospital, and we have had the appalling treatment of the former Chief Officer of the States of Jersey Police, both of whom, it could be argued, did not receive natural justice. So how can the Chief Minister say that processes have been put in place when they are repeating some of the same mistakes that they made in the past?

**Senator I.J. Gorst:**

I was not involved in either of those 2 cases that the Deputy is referring to but there were reports and circumstances that led to the decisions that were reached. In answer to the Deputy and in answer to the Complaints Board, we are talking about improvements to the process of recruitment of consultants.

**3.14.3 Deputy M.R. Higgins:**

Supplementary. One of the problems with the contract that was given out by the department; I was amazed at the amateurish approach by the hospital officials who entered into the contract. It was an unconditional contract. Things that they were complaining about that should have been in the contract were not there. What steps have been taken to train officers in the Civil Service to make sure that they follow contract law and do not do, as they did in this case and any other cases? In other words, what steps have been taken to retrain them and hold them to account for their failures?

**Senator I.J. Gorst:**

I am not sure who it is the Deputy is blaming. He seems to be trying to blame everybody. The changes that have been made, I have already given the undertaking to, I think, Senator Ferguson, that a note will be provided by S.E.B. to the changes to process that have been made. It was not straightforward and the Deputy has just raised one of those issues which was not straightforward and that was how the contract was issued, the circumstances of the issuance of the contract and what was in that contract or what was not.

**Deputy M.R. Higgins:**

Does the Chief Minister think ...

**The Bailiff:**

No, Deputy, you have already had a supplementary question.

**Deputy M.R. Higgins:**

Okay. I will save for question without notice.

**3.14.4 The Deputy of St. John:**

Can the Chief Minister explain how the States Employment Board hold senior management teams to account for delivering their policies so these types of situations do not occur?

**Senator I.J. Gorst:**

The Deputy will know that that is changing the way that we try and ensure that H.R. policies are delivered by departments to a process which is akin to the way that we deal with financial direction to try and improve it.

**3.14.5 The Deputy of St. John:**

Supplementary. Does it not concern the Chief Minister, being the legal responsible body for employees of the States, that it is not sufficient to hold senior management teams to account for the policies that they are expected to deliver?

**Senator I.J. Gorst:**

There have been a number of improvements that the States Employment Board has wished to deliver together with the Appointments Commission, and the way that we are going now I hope will address the concerns the Deputy rightly raised has been in the past but equally in any given case you can, from time to time, have human error. That may be from inexperience. It may be that a junior member of staff feels bullied by a more senior person and they are difficult to deal with on a day-to-day basis.

**3.14.6 Senator S.C. Ferguson:**

As part of his changing of procedures will the Chief Minister also make sure that when engaging outside experts to conduct reports that the Chief Executive of the States should not set up the terms of reference but the terms of reference should be set up by the expert who is going to do the investigation? At least one of the reports on which he is relying the terms of reference required examination of Mr. Alwitry only and not the actions of H. and S.S. (Health and Social Security) and the terms of reference were designed by the Chief Executive. Will he look very carefully at these procedures?

**Senator I.J. Gorst:**

Of course we looked carefully at those procedures but when requesting an independent investigation terms of reference have to be provided.

**3.14.7 Senator S.C. Ferguson:**

I disagree. Surely, the fact is that the situation is explained but the individual doing the investigation should go away and work up a set of terms of reference themselves.

**The Bailiff:**

I am sorry, Senator, was that a question?

**Senator S.C. Ferguson:**

Surely they should go away and work up the terms of reference themselves.

**The Bailiff:**

Well, that is a rhetorical question. What was the question for the Chief Minister?

**Senator S.C. Ferguson:**

Does he not agree?

**Senator I.J. Gorst:**

No. When instructing a review, be it internal and independent, a terms of reference have to be provided. One may take advice on what those terms of reference should be but they need to be provided in order to instruct the review.

**3.14.8 Deputy G.P. Southern:**

Does the Chief Minister refute the repeated assertion on the part of S.E.B. that because the right result was produced that the process, in and of itself, was satisfactory?

**Senator I.J. Gorst:**

I have not said, and I have been quite clear this afternoon, not to say that the process was satisfactory, but I have equally said that the Complaints Board, I think, in their own words said: "They have not considered the merits of the case" which is quite an important point in regard to States Employment Board.

**Deputy G.P. Southern:**

So you are repeating that assertion.