

**5.13 Deputy M.R. Higgins of H.M. Attorney General regarding the recourse available to an individual in circumstances where the delayed provision of information by a States Department led to the individual's claims against that Department being 'time-barred'.**

What recourse, if any, does an individual have in circumstances when a States department has delayed the provision of information to an individual to the extent that any legal claim by the individual against the department is "time-barred"?

**The Solicitor General (Rapporteur):**

The question assumes that the claim became time-barred as a result of a delay in the provision of information. However, there may not have been a causal connection between the delay and the provision of the information and the claim becoming time-barred. It is difficult to answer the question in detail without knowing more about the nature of the claim which is in issue. The law prescribes time periods for various claims to be brought as there is a public interest in litigation being brought to an end. If an attempt is made to bring a claim that is time-barred, then it is liable to be struck out by the court on the application of the person against whom it is brought. A claim might not be time-barred if a reasonable person in the particular circumstances in which the complainant was placed would have been subject to a practical impossibility from bringing a claim. This is known in Jersey law as *empêchement*. If a court finds that there was an *empêchement*, then time would be deemed only to run from when that practical impossibility was eventually lifted. If the court finds that the delay in the provision of certain information to a claimant constituted *empêchement*, then time will not run against the claimant while they are under the *empêchement*. In those circumstances, the claimant's claim can proceed.

**5.13.1 Deputy M.R. Higgins:**

I welcome the answer from the Solicitor General. It has been my experience, there are a number of cases I have been helping people with where we are receiving absolute obstruction from departments, whether it be on subject access requests or whether it is the provision of information or documents relating to their files which are needed to bring an action against the department concerned. To what degree of information do we have to show the obstruction of the departments to be able to claim the *empêchement*?

**The Solicitor General:**

Well again those cases will turn on their own facts but if the information is not in the possession of the individual, if it is only in the possession of the department, and if that information is vital to bringing the claim and without that information the claim is *empêchement* or is under a practical impossibility of bringing the claim, then time might not run against that claimant. But it is a case of looking at each case on its facts because the court might find the claimant is assisted by a lawyer, for example, they were having legal advice, and in those circumstances the claimant could bring a claim anyway against the particular department concerned. So, in those cases, there is a possibility that the claim might become time-barred. I do emphasise that each claim does turn on its own facts.

**5.13.2 Deputy M.R. Higgins:**

What assistance can departments expect to have or the courts expect litigants in person to have? Obviously the cost of going to court these days is so expensive that ordinary people cannot afford it and more and more people are acting as litigants in person and they are, in particular, experiencing lots and lots of delays by States departments. Is there any advice you can give them about tackling States departments who are obstructing them? This is a quite common occurrence, I might add.

### **The Solicitor General:**

In terms of access to justice, that is an issue that is being looked at by a working party but currently we do have a legal aid scheme in which, if individuals comply with financial criteria, they will get assistance from a lawyer in bringing a claim. In certain circumstances, individuals can club together if they have got a common interest in bringing a claim, then they can share the expenses of bringing that claim. But access to justice is something that courts are inevitably concerned with and if a court finds in a particular case that the individual has been prevented from bringing a claim because of lack of access to information, then the court might find that individual is *empêchement* but it is a practical impossibility of bringing the claim which is quite a high test. I do not think I can assist further at the moment.