

2017.03.28

### **3.6 Deputy M.R. Higgins of the Chief Minister regarding the means available to the public to address excesses or misdemeanours of the Island's public servants and public bodies: [1(195)]**

What is the Chief Minister's assessment of the means and equality of arms available to the public when trying to address any excesses or misdemeanours of the Island's public servants and public bodies; if they are assessed to be adequate, will the Chief Minister explain why and, if not, what steps will he take to address the situation?

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

Jersey has a range of internal appeals, regulatory and judicial processes and robust political oversight of course, not least in this Chamber. We have a mature and well-respected legal system which is human rights compliant and legal aid is available to those without resources in a variety of cases, particularly of course criminal matters. Decisions of public bodies can be challenged by way of judicial review which is an internationally-validated appeal process available to members of the public.

#### **Deputy M.R. Higgins:**

Can I say, what a load of rubbish? Sorry, I do believe that, Sir.

#### **The Deputy Bailiff:**

Well whether you believe it or not, it is not a parliamentary statement with regard to the statement of another Member.

#### **3.6.1 Deputy M.R. Higgins:**

Very well, if that is the case, I will take away "rubbish" and say it is totally inadequate. The Minister has just mentioned that we have got all these things. There are Members in this House who have been battling for years to try and get justice for members of the public because, one, the legal system is totally inadequate in terms of costs of going to court, some lawyers charging £400 an hour, that is, about 125 hours of legal assistance would render every States Member their whole salary gone. That is how bad it is. People cannot afford to go to court and ...

#### **The Deputy Bailiff:**

Deputy, this does have to be a question.

#### **Deputy M.R. Higgins:**

It is a question, I know. I am just putting it ...

#### **The Deputy Bailiff:**

Well, it is not coming anywhere near a question at the moment.

#### **Deputy M.R. Higgins:**

Yes, I am putting it in context. With lawyers' fees going up to £400 an hour, most people of ordinary wages would not be able to afford to employ a lawyer. The legal aid system is inadequate, very few people are getting assistance through that and therefore they are having to be litigants in person. Will the Chief Minister tell us what he is going to do to assist litigants in person? Because if you cannot afford a lawyer and you cannot get legal aid, you have got to do it yourself, what assistance can the Government provide to individuals to get redress and justice?

[10:30]

**Senator I.J. Gorst:**

My answer was neither rubbish nor inaccurate and the Deputy knows it. He just did not like it and I think they are 2 very different things. If a member of the public decides to be a litigant in person that is their choice and if it presents a problem, of course it can be difficult to be a litigant in person, that is why there is the legal profession to support people through those complex legal processes and to navigate the judicial process. We know that for some members of our community access to justice is not what we would wish it to be from a cost perspective but I do not accept the broad-brush accusation that the Deputy has made. That is why as a Government we have set up the Access to Justice Review. That is why the Access to Justice Review is working with the Law Society on changes to the legal aid system. That is why the Jersey Law Commission is undertaking a piece of work about administrative redress and when those pieces of work have been completed, we will see what recommendations are made.

**3.6.2 Deputy M. Tadier:**

Is the Chief Minister committed to delivering a public sector ombudsman during this term of office?

**Senator I.J. Gorst:**

That is an under active consideration, as I understand it, by P.P.C., which I do not think the Deputy is on any longer. Contrary to what Members may think - that I may think - about the Administrative Board of Appeals considering some of their recent reports, I think that that system could, with a number of changes, be improved considerably and deliver greater access to their adjudication and their findings. I hope that that is a course of action that P.P.C. are taking in order to improve that existing process without needing to move to a public sector ombudsman.

**3.6.3 Deputy M. Tadier:**

His former Assistant Minister who, like a stopped watch, sometimes gets things right a couple of times a day came out in support of a public sector ombudsman once he was freed from the shackles of collective responsibility. Will the Chief Minister seriously look into bringing forward a public sector ombudsman which has I think been recommended in recent reports, the name of which I do not necessarily remember, and also get on to P.P.C. to find out exactly where they are in delivering this key service to the public?

**Senator I.J. Gorst:**

It is news to me that there is collective responsibility around P.P.C.'s table. I did not believe there was such a thing and that it is not fair for the Deputy to suggest anything other than that. Of course, there is not, I know, but the Deputy was trying to suggest that there was. P.P.C. is considering these matters. That is right, that is the responsibility that we in this Assembly give them to do. I have given my personal opinion; of course, there may be other opinions held by any Member of this Assembly and they will argue for their opinions.

**3.6.4 Senator S.C. Ferguson:**

Given the recent business with bills being reduced by something in the order of 80 or 90 per cent, does the Chief Minister not think that it is urgent that some things should be done with regard to access to law?

**Senator I.J. Gorst:**

There is an Access to Justice Review being undertaken and, as I say, they are working with the Law Society in regard to legal aid. I have said in this Assembly before, and I will say it again, just because a professional services firm, be that a firm of accountants, be that a firm of lawyers, have a certain time on the clock and charge at a certain rate, every client of those organisations should challenge that time on the clock, should challenge those rates and should not necessarily accept 100 per cent recovery or 80 per cent recovery. People do, I accept, need to feel empowered to challenge the rates and the time that professional service firms might put on to a billing system. Of course, we know in the judicial process there is the process of taxation which will reduce bills as well. There are other professions who will work with clients to help mitigate and reduce professional service fees, so there are already in place a number of mechanisms to help reduce those costs.

### **3.6.5 Senator S.C. Ferguson:**

But in that particular case, the Law Society reviewed the results and said: "Nothing wrong with them", so does he not think there is a little more work to do?

### **Senator I.J. Gorst:**

I would take from the Senator's question that our approach of working with the Law Society around legal aid and access to justice is the right approach to take because she is verifying the approach that they took in that particular instance.

### **3.6.6 Deputy J.M. Maçon of St. Saviour:**

Considering what the Chief Minister has just said, when people are pursuing legal aspects in those situations at those times, some people can be under incredibly emotional and stressful circumstances. Given that point, does the Chief Minister really think it is reasonable then to expect these people to be able to then challenge the people that they are seeking for support and help in their cases? I do not think that is the case. Therefore, as Senator Ferguson has said, does not more thinking need to occur on this point?

### **Senator I.J. Gorst:**

Let us be clear, as I said, there are a number of redresses and options available to clients right now as we stand this morning in this Assembly. But that does not mean that we are not continuing with a piece of work around access to justice, the cost thereof, the functioning of the legal aid system and we are doing that in conjunction with the Jersey Law Society. We have just heard from Senator Ferguson how she has supported in a particular case the action taken by the Law Society. So, I think that the Access for Justice work, the view of the Law Society, we can work together to deliver improvements but be in no doubt there are currently remedies in place.

### **Deputy M.R. Higgins:**

If I could ask for a point of clarification of the previous speaker first? Could he tell us when the Access for Justice Review is scheduled to report or to finalise its deliberations?

### **The Deputy Bailiff:**

Well do you want to ask your supplementary question on top of that and the Chief Minister can deal ...

### **Deputy M.R. Higgins:**

Yes, and then the question will follow the answer.

### **The Deputy Bailiff:**

I was rather thinking that you would ask for the point of clarification as part of the supplementary question than ask for it again.

**3.6.7 Deputy M.R. Higgins:**

Okay, I shall. It has been mentioned about taxation. I am aware of one recent case where the 2 lawyers got paid £100,000 and the person who was contesting the figures got a very low fraction of that. The system is not working. The Law Commission also put forward the idea of a public ombudsman scheme and I know that P.P.C. and others were talking about whether it could be afforded. I am sorry, the lawyers are getting more than enough to fund that system for a year. So, will the Minister bring forward proposals himself for an ombudsman scheme because it is quite obvious the system is not working? He knows, because Members have come to him with members of the public who are getting no justice and no redress whatsoever.

**Senator I.J. Gorst:**

The answer to the Deputy's first question is July. It is not within my remit to tread roughshod over P.P.C. when they are already considering that particular matter. He is right, the Law Commission have made a recommendation about a public sector ombudsman. I have also had representation from the chairman of the Administrative Board of Appeals who has got some suggestions, which I am sure he is relaying to P.P.C., about changes that could be made to the existing system which would make it more accessible and be able to deliver in a more timely and efficient manner. I think that some of those arguments being made by the chairman are good arguments that could in effect improve the situation that the Deputy is concerned about but it is rightly for P.P.C. to take these matters forward.