

2017.01.17

7 Deputy M. Tadier of the Chief Minister regarding risk-mitigation measures taken in respect of the Jersey Innovation Fund: [1(43)]

Does the Chief Minister accept the findings of the Comptroller and Auditor General in R.3/2017 regarding the Jersey Innovation Fund that provisions relating to the use of royalties were not implemented and that other risk mitigation measures that she identified were not included? Will he accept political responsibility for the weaknesses in risk management which have been identified, and explain what action, if any, he will take to address them?

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

I was naturally very disappointed to read the findings of the Comptroller and Auditor General concerning risk mitigation. The fund's operating terms of reference were clear in that it was the role of the board to recommend that royalty agreements be sought. This was a point that was raised in the Economic Affairs Scrutiny Panel's report on the fund in March 2013. In response, the Executive recognised the panel's concerns and undertook to draft templates that could be used for royalty agreements. Regrettably, neither activity occurred. It was also within the board's remit to recommend that funds be advanced in tranches and that personal guarantees be sought. As the Comptroller and Auditor General's report notes, this was considered in some cases but not applied consistently. As a consequence of the identification of these and other failings, I have directed that 2 internal investigations be undertaken: one to look at the actions of the Ministers involved, and another to examine the role of all officers connected to the fund.

3.7.1 Deputy M. Tadier:

We hear the Chief Minister, like other Ministers and Assistant Ministers, talk about disappointment, and normally one is disappointed when something happens that you do not expect; it comes as a surprise. The question has to be asked: why did the Chief Minister or the Assistant Minister and others involved in the political oversight of this fund not know what was going on under their very noses? Where was the political oversight, and if it was not there, why was it not being done properly?

Senator I.J. Gorst:

Let us go to the report and look at the evidence that the Comptroller and Auditor General presented. I know it is attractive to scapegoat individuals and to always want to do that, but the appropriate response to the report and the failings that the report highlights is to undertake the pieces of work that I have just outlined, together with, as I shall outline in a statement later in this sitting, the work that an accountant will perform, giving confidence around the issues that the Deputy of St. John rightly raised to the Minister for Treasury and Resources. It is right that those questions that the Deputy asks are answered by suitably independent persons, reviews without fear or favour, so that action can be taken once those reviews have been undertaken, together, of course, with the work that Deputy Brée might undertake with his Scrutiny Panel and the work that Deputy Andrew Lewis will undertake as part of P.A.C.

3.7.2 The Connétable of St. John:

In view of the Comptroller and Auditor General's report, in which she said there were serious failings in the governance, will the Chief Minister nail his colours to the mast and either dismiss the person responsible at a political level, or stand by him and eventually fall with him?

Senator I.J. Gorst:

Members will have seen a statement on their desk. That statement will be delivered shortly and maybe the Connétable would then like to ask me the question after that statement.

3.7.3 Deputy J.A.N. Le Fondré:

Last Friday, Senator Ozouf stated on television: "I was asked to take responsibility to sort out the issues to do with the Innovation Fund, and that is what I have done." Could the Chief Minister confirm that when given the delegated responsibility for the fund, that the Chief Minister and the Senator were already aware that there were issues of governance surrounding the fund, namely back in November or December of 2014?

Senator I.J. Gorst:

The Chief Minister's Department became responsible for the fund in January 2016. One of the first things that happened in January 2016 was an internal audit of the working of the fund, and throughout that period concerns that that report highlighted have been and continue to be addressed. Members should read the full report before jumping to conclusions and conclusions should not be jumped to until the further work has been undertaken.

3.7.4 Deputy J.A.N. Le Fondré:

A point of order. The question was about taking responsibility. The C. and A.G.'s report specifically states that Assistant Chief Minister Senator Ozouf was assigned responsibility for Innovation. The date they have was 6th November 2014. It is not about which department it was in; it was which individual had that responsibility.

Senator I.J. Gorst:

That says for Innovation, not the Innovation Fund. This Assembly ... this is exactly the point. One has to read the detail of the report and the other pieces of work to answer exactly the question which I think the Deputy is trying to drive at: who was responsible during which period for the fund, not just for the political idea of innovation. They are different things. The further work needs to be undertaken so that I can be satisfied, so that this Assembly can be satisfied, and so that the public can be satisfied about where the responsibilities lay, before the election, after the election, and once this Assembly has changed the law, to deliver the responsibility, not only for Innovation but the Innovation Fund, to the Chief Minister's Department.

3.7.5 Deputy J.A. Martin:

Just to bring the Minister back to the answer to the question about the royalties: does the Minister not agree, whether there was a template or not, under the Jersey Innovation Fund, the Finance Law needed to be changed. It was due to be changed within 6 months of the Innovation Fund being started. Who takes responsibility for this? It did not happen. It could not happen; royalties could not happen under the law. Nobody brought it back to this House within the 6 months, or the 18 months after that. Who is responsible? I ask the Chief Minister.

Senator I.J. Gorst:

It would appear, from reading the report, that the officials should have brought it forward, that they were requested to do so, and it did not happen, and that the board had it within their remit to propose that it was brought forward. I fully understand the frustration that Members of this Assembly are ventilating this morning about who was responsible for what and when. That is why I am in the process of finally instructing today or tomorrow, with the law officers and a senior independent Q.C. (Queen's Counsel) to be able to answer some of the questions that Members of this Assembly, that I have, and that the public has.

3.7.6 Deputy R. Labey of St. Helier:

I am interested to hear that from the Chief Minister because this House is not going to have any faith in his administration carrying out the investigation into its own failings, and similarly with the chief executive. The ink is not even dry on the golfing deal whitewash. The chief executive should not be investigating the failings in his own civil service.

The Bailiff:

What is the question? I think the question is in relation to the chief executive.

Senator I.J. Gorst:

I gathered that, Sir, thank you. The reality is that both of those investigations, the one into political responsibility, what the relationship was between the Minister or Assistant Minister and the official, will be undertaken, will be instructed independently; and the piece of work looking at disciplinary processes will also, likewise, be undertaken by an independent person from the United Kingdom, as I believe is appropriate, and I believe this Assembly would think is appropriate.

3.7.7 Deputy A.D. Lewis:

The Chief Minister will be aware that one of the objectives of the fund was to increase its value, to top it up so that it could be reused and recycled. How could that possibly have happened if there was no change in the law to allow equity stakes to be taken? This was a guiding principle of the fund. That was one of the objectives as laid out in P.124, so how could that possibly happen without that change in the law? Why was that change in the law not hurried through so we could have an effective fund rather than just a pot of money that was just dished out when requested? It was supposed to be a fund, it was supposed to be an administered fund; it appears not to have been. Can the Chief Minister explain why?

Senator I.J. Gorst:

I understand the frustration. I feel the frustration of not today being able to give satisfactory answers to some of the questions that I myself have, that Members of this Assembly rightly have, and that members of the public have as well. Royalty agreements are part of a risk mitigation process that it was intended that the fund would have in place, but there were other risk mitigation processes that the fund did have in place, but they were not used. For example, expecting equity to be put in by existing shareholders or directors, expecting monies to be only paid in tranches rather than in lump sum amounts, and to have appropriate ongoing monitoring, and to think about whether there should have been payment holidays or not. There were risk mitigation processes in place, but what this report says is that they were not used consistently and there were not appropriate processes in place to ensure that they were.

[11:45]

3.7.8 Deputy G.P. Southern:

The Chief Minister has just drawn a fine distinction on actions on 6th November 2014 between being given responsibility for Innovation and being given responsibility for the Innovation Fund. Could he turn himself to consider the actions only 2 months later, 12th January 2015? As noted in the Comptroller and Auditor General's report, the board was advised that the Assistant Chief Minister, with the responsibility for Innovation, would have delegated responsibility from the Minister of Economic Development to approve loans from the fund. Is it not clear that as early as the start of 2015 the Assistant Minister had responsibility for approving loans from this fund, not in 2016, as he now pretends?

Senator I.J. Gorst:

If the Deputy reads further down that timeline, he will also see another date in June 2015 where it is reported that formal delegation to approve the loans was actually issued. This is why the other pieces of work need to take place. Members of this Assembly I expect, rightly, have questions, but equally they are rightly responsible and want to have the evidence presented before them which has been independently gathered, based on the report of the Comptroller and Auditor General, in order that their questions can be satisfactorily answered.

3.7.9 Senator S.C. Ferguson:

I thought it would be interesting, since the board was in an advisory capacity and the decisions were being made by the Minister, that I would look up the Ministerial Decisions. The only Ministerial Decisions listed relating to the Innovation Fund were those by Senator Ozouf, and there is no record of the detailed decisions regarding giving of the loans. When will those be available on the Ministerial Decisions site?

Senator I.J. Gorst:

I do not know the answer to that question, but I shall certainly go and find out. The important point about the details that Members have been asking me about this morning and feeling frustrated about is: who was responsible for what, whether it was Innovation, whether it was the Innovation Fund, political responsibility, and whether there is a separation between that political responsibility and the legal responsibility of signing off loans on the Innovation Fund? All of this information will be provided to Deputy Brée and his Scrutiny Panel, together with a whole plethora of emails. This information will be provided to P.A.C. because there are questions which need to be answered in relation to all of these details. Ministers have nothing to hide; they are prepared and want to provide all of this information about where they were engaged, where responsibility lay, who signed what decision, what information they had to base that decision upon, what they were told before they made that decision, the enquiries they made before they made that decision ...

The Bailiff:

I think we have that message, Chief Minister.

Senator I.J. Gorst:

I am not sure that every Member has. These questions will be answered during the course of these further works that need to be rightly undertaken.

3.7.10 The Deputy of St. John:

Does the Chief Minister not accept that in a statement made by his Assistant Minister on 14th June, he stated that he had delegated responsibility for the fund as Assistant Minister for Economic Development before 1st January last year, and that he would take responsibility and accountability for all Ministerial Decisions, past, future and present, that are associated with the Innovation Fund? Is that clearer for the Chief Minister?

Senator I.J. Gorst:

That is recorded in Hansard. As the Assistant Minister said, that was with regard to the Ministerial Decisions that were taken, but Deputy Brée and his Scrutiny Panel, together with P.A.C., are going to have all the information upon which those decisions were based and the evidence and advice that they were provided with prior to making those decisions, so that Members of the Assembly can understand the basis of those decisions, together with the other pieces of work that I have instructed as well.

3.7.11 Deputy M. Tadier:

Does the Minister accept that we can look at the many failures that are pointed to in the report, such as the royalties not being used as a mechanism and other risk mitigation measures not being implemented, but these are all symptomatic of what the Comptroller and Auditor General identifies as a cultural deficiency? On page 28, she talks about there was a culture where good governance was not central to decision making, either at the establishment of the fund or subsequently. The question has to remain: when we talk about the Assistant Minister or somebody else saying: "I am accountable" what does that mean in real terms? Does the Chief Minister take political responsibility for the failures in this fund? We are about to hear a statement, I think, where the Assistant Minister will offer to resign and it will be pure window dressing and the Chief Minister will say: "I could not possibly accept your resignation."

Senator P.F.C. Ozouf:

May I ask a point of order, Sir? A statement is before Members, designed to enable me to answer questions. I understand that has already been tweeted. There is an unpacking of a conclusion, answering questions properly, and the Deputy, I think, is showing a discourtesy to this Assembly and to you and the rest of us in not allowing proper Parliamentary process to undertake. It may not be a ruling required, but perhaps you could give some guidance?

The Bailiff:

I think, Senator, it is a matter that the Privileges and Procedures Committee may well wish to consider as to whether or not Standing Orders should be buried or guidance given to Members, but certainly it is true that until a statement has been made it has not been made, and the fact that it is circulated is not something that, in my view, ought to be taken advantage of. At the end of the day, one must be realistic: once it has been circulated that risk is there.

The Connétable of St. John:

The Chief Minister referred to it during a response to my question.

3.7.12 Deputy M. Tadier:

The point I was making, and the question will be arrived at, is that in most jurisdictions and most Parliaments, when something of this magnitude has happened, a resignation is virtually automatic and we do not have these shenanigans, by saying: "I am politically accountable, I take responsibility" actually taking no responsibility whatsoever. Will action be taken by the Chief Minister to either tender his resignation as Chief Minister or to ask for the resignation of the Assistant Minister with political responsibility for the fund?

Senator I.J. Gorst:

Action will be taken, and when this independent review, undertaken by an independent Q.C., concludes their report, if it says that action needs to be taken it will be taken. If that review says that I should consider my position, I will do so. We serve at the pleasure of this Assembly. We consider it an honour to serve the Island that we love. **[Approbation]** We put the best interests of the Island always to the fore. We do not cling on; we do what we think is best for Jersey, and in this instance that report will say where responsibility lies, on balance, and action will be taken in light of that report. If that report points the finger at me, so be it. I will take the necessary action.