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5 Deputy S.M. Ahier of St. Helier of the Chief Minister regarding the establishment of a Public Service Ombudsman: (OQ.126/2019)

Will the Chief Minister update the Assembly on the establishment of a Public Services Ombudsman to deal with complaints of maladministration by Government departments?

Senator J.A.N. Le Fondré (The Chief Minister):

The Deputy will recall that the States Assembly agreed, in principle, that a Public Services Ombudsman should be established, subject to findings of further research. The Jersey Law Commission has undertaken that research, it has published proposals and the Legislation Advisory Panel, I believe, have also considered the matter. As a result, later this week, the Council of Ministers will be considering a draft public consultation document, which builds on those proposals. Pending decisions of the Council, which will include considerations around the budget allocation, I would envisage that consultation will be launched before the summer recess.

4.5.1 Deputy S.M. Ahier:

In the Clothier report of 2000, chapter 9(4) states: "We recommend the institution of a proper ombudsman. This would be a matter of little difficulty and no great expense." Why is the Chief Minister taking so long to bring legislation to this Assembly?

Senator J.A.N. Le Fondré:

I was not around. Although I contributed to Clothier at the time, I was not in the States. In fact, I do recall, on the machinery of government thing, we made a similar recommendation about the Public Sector Ombudsman. There are 2 difficulties we have, which we need to grapple with. Number one is the financial implications. For example, in the proposition that was approved by the Assembly, it suggested £200,000 to £250,000. I am being advised, at the moment, it will likely be double that amount. In other words, up to £500,000. What we then have to consider, which is the bit the Council of Ministers will need to consider, is how do we make sure that the ombudsman has appropriate teeth, more than the Complaints Board presently has? The issue then comes down to - bearing in mind the Complaint Boards, obviously, act in a very honorary tradition and in terms of cash terms, it costs us around £5,000 a year because, obviously, you are getting some very experienced members of the public, who give their time for free - is there a way to essentially continue to tap into that honorary tradition and, most importantly, expertise? Because there are some very highly qualified members on that board, which we should welcome input into public life. Is there a way to achieve that same thing and avoid the £500,000 cost? Let us be clear, I am of the view that the complaints process that we have does need addressing. We have some very minor measures which we take at the Council of Ministers, in other words, the Complaints Board reports do come up to the Council of Ministers now, which did not use to be the case. But we do need to go a lot further. But the issue will be, there is no point, in my view, in having a Public Sector Ombudsman in place, if they do not have the teeth to ensure that their findings are carried through. The consequences of that, I believe - and that is a discussion we need to have - would mean that, therefore, a body is in place to override this Assembly technically. I am not too sure what the position is there.

4.5.2 Deputy M.R. Higgins:

I hope that the Chief Minister will take into account the cost of maladministration by States departments on the individuals concerned. In the years that I have been in the States, I have seen

people, who have been financially ruined by States decisions. I have seen people suffer mental health problems and family breakdowns because of States decisions. So, it is not just a question of money. Just one other point on the Complaints Board: the previous Council of Ministers and possibly this one, have rejected Complaints Board findings and are still appealing against decisions elsewhere. This is totally unacceptable. So, in the round, in terms of costs, will the Chief Minister take everything into account, not just the £500,000?

Senator J.A.N. Le Fondré:

I think the Deputy has a very valid point there. As I said earlier, I am personally not convinced that our complaints process, that we have at the moment, is robust enough. I think that is the issue around the ombudsman. What I was trying to say is, what we have got to make sure is whatever replaces the present system has sufficient teeth and please be under no illusions that the present Council of Ministers is very cognisant of these types of issues. But we have got to then look into play where we are in 10 years' time, or wherever, in other words when none of us are here, as to what the structures are in place and are they robust enough to achieve the desired outcomes that we are talking about. This is one of a number of challenges we continue to face.

4.5.3 Deputy M. Tadier:

Will the Chief Minister bear in mind that the Committee of Inquiry into child abuse did focus on the issue that this Assembly, in the past, has been very good at expediting financial related policy and legislation, but when it comes to social policy that they have historically been slow and hopefully that has changed? Does he not agree that while we have a Financial Ombudsman in place and that seems to have been prioritised, it is woeful that we do not have a general ombudsman for other areas, which has been promised for a long time and which would be certainly of value, not just for us, but to the wider public?

Senator J.A.N. Le Fondré:

OK, I think some various contexts around that. The Public Sector Ombudsman side has been promised for a long time, is the quote. I am not too sure that it has. It is a decision of the previous Assembly, literally in its last days. As I said, I have recognised the issues that we face around how we have a robust complaints process. In terms of clarification, in terms of the Care Inquiry, because I did remind myself yesterday and interestingly enough the ombudsman in relation to children, for example, which some people have referred to in the past, it has been interchangeable with the Children's Commissioner and a Minister for Children, if one does a search through the document. Obviously, we now have a Minister for Children. That was one of the first things we did and, obviously, we also have a Children's Commissioner. In terms of addressing those particular issues, they have been addressed, but obviously we know there is more improvement to go. In terms of the overall, so the ombudsman is a methodology about dealing with an issue and in this instance what we are talking about is a general complaint side. I think I have already addressed, through Deputy Higgins; we know we have more to deal with in terms of how we address complaints and how members of the public are dealt with by departments. We know, sometimes, members of the public do not feel well dealt with. Sometimes, because the nature of the complaint is not correct, or sometimes it can be the department itself is at fault. Generally, without going into certain territories, the departments, or the Ministers, are acting on advice in terms of how those are dealt with.

4.5.4 Deputy M. Tadier:

The Chief Minister talked earlier about the cost of the Public Services Ombudsman being set up. Does he also acknowledge that there would be a saving related to that, because we know that, notwithstanding the good work that the honorary members put into that board, it is very much a long, drawn-out process often and that justice delayed is justice denied. So, there is a cost, not just in terms of time to the individuals involved, but more importantly, perhaps, for us now to the States department during a protracted period of time there is a cost to the public service for their employment. So, is there a saving which can be taken into account in this?

Senator J.A.N. Le Fondré:

I think that is one of the discussions that we are presently having. I suspect that whatever structure is in place - although I do understand for the Financial Services Ombudsman, because that structure is now there, that does speed up the process - but whatever structure is in place I suspect there will still be calls on departmental time. The question is: is it possible to build on existing systems, to achieve the desired outcome? That is the question. The other question is: what teeth will the ombudsman have that will achieve a different outcome to where we are at present?

4.5.5 Deputy D. Johnson of St. Mary:

As the Chief Minister is aware, the Legislation Advisory Panel has approved the form of consultation document to go out and that mirrors, very much, the recommendation by the Law Commission to establish a Public Ombudsman in substitution for the Complaints Panel. Given the text of the proposition lodged by Senator Ozouf, P.32/2018 and approved by the Assembly, which includes: "To request the Chief Minister to bring forward primary legislation to establish the office of a Public Services Ombudsman, to replace the States of Jersey Complaints Board, as soon as is practicable." Will the Chief Minister advise whether, if the result of the consultation is to endorse the recommendation of the Law Commission, he will feel able to bring forward that primary legislation, without the need to bring it back, yet again, to the States?

Senator J.A.N. Le Fondré:

I was following the question right up to the very last bit. Part (d) of that particular amendment is: "To request the Chief Minister to consult widely on the design of the Public Services Ombudsman scheme, including with the members of the Jersey Complaints Board ... in order that the best elements of the Complaints Panel scheme are retained within the new system." I would expect that, once that work is done, that it would come back to the States in terms of the final form of legislation would come back. I would not expect there to be an intermediate stage of, for example, the revised principles to come back to the States. I am assuming that where we are, we have got an in principle decision, we go to the consultation, we get the framework correct, we build the legislation on that and this Assembly then considers that legislation. Does that answer the Deputy's question?

4.5.6 Deputy S.M. Ahier:

With reference to P.32/2018, which was, obviously, brought more than a year ago to this Assembly by Senator Ozouf, it was passed by a ratio of 3 to one. It stated that an appointment of an ombudsman should be progressed as a matter of priority. Does the Chief Minister concur with this statement?

Senator J.A.N. Le Fondré:

I agree it is important. The difficulty we have, as with many things, is that there are many priorities that the Council of Ministers face. I remind the Deputy that on day one of starting office, we were faced with the issues of a lawsuit of, I think, £240 million and the legislation had to be put in place to

mitigate that. That, I would hope Members would expect, took greater priority than improving the complaints system. They are all important. It is which order we do it in and this is why this matter is now going to the Council of Ministers on Friday.