

2019.09.24

**1 Deputy J.M. Maçon of the Chair of the States Employment Board regarding complaints made against civil servants at Tier 2 or above: (OQ.218/2019)**

Is it the case that, where there is a serious complaint or investigation against civil servants at level tier 2 or above, the Board and the relevant Ministers are informed of the matter; and, if not, will the Board agree a policy that this should happen in all such cases in the future?

**Senator J.A.N. Le Fondré (Chair, States Employment Board):**

The S.E.B. (States Employment Board) have met and agreed with officers that the principals are being kept informed of any serious complaint, or investigation. Mindful it must allow established policies to be followed and the confidentiality of such matters maintained for the protection of all parties. Just to expand on that slightly. The key consideration of S.E.B. at all times on this must be about meeting the duty of care towards employees and that duty of care extends not only to the person making the complaint, but also the person about whom any complaint is made. So, that is about keeping the confidentiality balanced off of oversight. Also, it is important to note that investigations are not prejudiced or compromised by inappropriate comment, or involvement at an inappropriate time. I hope that helps.

**3.1.1 Deputy J.M. Maçon:**

Is the Minister able to advise when this change of policy came into effect?

**Senator J.A.N. Le Fondré:**

There are a few facets at this point. Firstly, a relatively new policy was put in place which was around the reporting of bullying and harassment procedures. In fact, the first report - this is for not necessarily senior levels - certainly the date on the bottom of the report was 16th April this year. I cannot recall exactly what date it was sent to S.E.B., but it would have been around that sort of time. All that does, that just identifies the number of cases that are being investigated and gives a very short update as to their status. What is very clear - I assume the question is in relation to the exchange that occurred in the Assembly at the last sitting - it does get complicated in terms of the different roles of ministerial responsibility; Ministers and officers have a very clear duty to keep Ministers informed of matters that affect their political responsibility, *versus* the responsibility of the S.E.B. who have a duty to oversee the application of codes of practice and set policy and are kept informed as to how that policy is being applied. What complicates matters is S.E.B. is also the ultimate place of any appeal and that is why, to an extent, it has to be handled very carefully. to ensure that S.E.B. are not conflicted if they are ultimately at the point of appeal. I can elaborate on exact measures that have been taken place. Perhaps that might be a measure for another question. But it is a complicated process. I am satisfied that where we are is the right place to be.

**3.1.2 Deputy M.R. Higgins of St. Helier:**

What the Chief Minister just said worries me. How can any body, that is deciding something, also be the body that will determine an appeal? Surely there should be an independent body hearing any appeal from the S.E.B.?

**Senator J.A.N. Le Fondré:**

No, what we said is we have set the policy then if somebody is accused of bullying, for the sake of argument, that process they are, as an investigation takes place, if that process is such that it is not upheld, in other words the person who is complained about is exonerated, it goes no further. If

bullying is found to have taken place, it will potentially be brought up to the level of the S.E.B. but it will depend on the circumstances and if there is an appeal around how the process has been handled that would have to go to S.E.B. S.E.B. would only be notified if there was poor behaviour and that resulted in suspension and those types of action needing to be taken. The point I make is, we have rights of ... I will go into the nub of the matter. In terms of the exchange that took place last time round, I was approached by the Minister and had a discussion with him and I had a discussion with the Chief Executive, as well. It is a complicated position and at the point of the questions being asked in the Assembly, I was seeking some independent advice. I have now received that independent advice and a process has been put in place. I have seen, as Chairman of the S.E.B., the anonymised version of the report, to make sure that that confidentiality is maintained and we have also ensured that the independent adviser to the S.E.B. has also had the same information. We all concur that the conclusions in that report are sufficient, are detailed and that there is no case and that the individual, who has been investigated, has been exonerated. Just to also give some further comfort: we have also just commissioned a quick review to ensure that the process of compiling that report is sufficiently robust and we are waiting for the feedback on that, which I will get early next week. At that point, hopefully, I will be sitting down with the Minister and to have a discussion going forward. We have also put a process in place to ensure that proper communication in terms of updating S.E.B. as to whether there is an issue; we have to maintain the confidentiality side is a bit more robust than perhaps it was.

**Senator T.A. Vallois:**

May I raise the *défaut* on Senator Farnham please?

**The Bailiff:**

And Senator Farnham. The *défaut* is raised.

**Senator L.J. Farnham:**

Now I am not *en défaut*, just to let Members know I will be attending a funeral this afternoon, so will be absent from the Assembly for some time.

**3.1.3 Senator K.L. Moore:**

Will the Chief Minister be sharing with the public, or interested parties, the details of the person, or persons, who are reviewing the report in order for them to be able to share their experiences of trying to engage with the report's author?

**Senator J.A.N. Le Fondré:**

I do not understand the question. This is a very specific review that was done into a particular set of complaints and that person, who did the investigation, has spoken to all people who are mentioned in that report. That has been dealt with. It is not a public matter for the very reason that we said: it is about the duty of care to both the person making the complaint and the person about whom the complaint was made, particularly given that they were exonerated.

**Deputy J.M. Maçon:**

I just thank the Chief Minister for his response.