

21.11.23

1 Deputy M.R. Higgins of St. Helier of the H.M. Attorney General regarding civil servants not applying the law in areas for which they are responsible (OQ.241/2021):

In cases when a civil or public servant is found to have knowingly or deliberately not applied the law in areas for which they are responsible, is the individual liable to be found guilty of a criminal offence and, if not, will H.M. Attorney General explain how the individual can be held accountable for their actions in such cases?

Mr. M. Jowitt., H.M. Solicitor General (*rapporteur*):

The Deputy's question asks specifically about what lawyers call misfeasance or nonfeasance in public office. The offence which exists in our law that covers that is misconduct in a public office. It is committed where a public officer, who is acting as such, either wilfully neglects to perform his duty or wilfully misconducts himself in the exercise of that duty in either case without reasonable excuse or justification and does so to such a degree as to amount to an abuse of the public's trust in the officeholder. Whether, in any given case, that offence is made out would be a matter for the facts of each individual case. Misfeasance is also a civil wrong. In other words, if someone, a member of the public, for example, suffers loss or damage as a consequence of a public officeholder's misfeasance it is open to them to sue to recover damages. Outside narrow criminal and civil law considerations there are administrative review options available. For example, an aggrieved person can complain to the States of Jersey Complaints Board under the Administrative Decisions Law. The board cannot overturn a decision but it can invite the Minister to reconsider a decision that has been taken. Another review option would be to apply for judicial review of a public law decision. Finally, if a civil or public servant is found to have knowingly or deliberately not applied the law in areas for which they have responsibility it may well be that that would amount to a breach of the code of conduct for States employees and that could, as a consequence, give rise to disciplinary proceedings.

4.1.1 Deputy M.R. Higgins:

Could the Attorney General say then in which case who would take this, for example, to the police if it was being pursued as a criminal matter because obviously anyone going for judicial review is going to be incurring great cost to themselves. Secondly, if the Complaints Board cannot do anything about it then surely a criminal case should be lodged? Who would bring that action? Would it be your office or would it be members of the public or States Members, or who?

The Solicitor General:

Any member of the public can report to the police the suspicion that someone has committed an offence, whether that is misconduct in a public office or any other form of offence. It would then be for the police to investigate and ultimately for the Attorney General to decide whether the prosecutor's test was met. It is not right to say that if a Complaints Board application is successful, in the sense that the Jersey Complaints Board consider that there has been misfeasance, it does not follow automatically that that would give rise to a prosecution because the test for whether or not a prosecution lies is a different creature entirely. I hope that answers the supplementary question.