

7. Statement by the Chief Minister regarding P.49/2009 'Child abuse compensation claims: freedom of expression for survivors'

7.1 Senator T.A. Le Sueur (The Chief Minister):

I apologise for the length of this statement but in the proposition P.49 the States are asked to agree that in respect of claims being made against the States of Jersey by survivors of child abuse, the States shall not offer, seek or impose any form of confidentiality clause in the negotiations or settlement with claimants and their representatives and to further agree that the States shall not make a request to the court, future redress board or similar body considering compensation claims to impose such a clause as part of any judgment or settlement. The Council of Ministers completely agrees with the sentiments of this proposition and would want to support it. However, while seemingly very attractive there may be circumstances in which it would not be in the best interests of an individual claimant. The Council of Ministers would, therefore, wish to put forward an amendment to ensure that in one respect, and only in this one respect, the option of negotiating confidentiality should remain open. I would, therefore, ask Senator Syvret to allow the proposition to be deferred to allow such an amendment to be brought forward which I hope would then allow all of us to unanimously agree the amended proposition. I have drafted the outline of an amendment which is before the States today and it is just to add the words to the end of the proposition. I quote: "With the exception that there may be circumstances in which commercial terms, including the sum of the settlement and any associated conditions, may be subject to a confidentiality agreement" so that it reads: "The States are asked to decide whether they are of the opinion to agree that in respect of claims being made against the States of Jersey by survivors of child abuse, the States shall not offer, seek or impose any form of confidentiality clause and any negotiations or settlement with claimants and their representatives and to further agree that the States shall not make any request at court, future redress board or similar body considering compensation claims to impose such a clause as part of any judgment or settlement with the exception that there may be circumstances in which commercial terms, including the sum of a settlement and any associated conditions, may be subject to a confidentiality agreement." Given that the motives of the Council of Ministers seem very similar to those of Senator Syvret, Members are asked to consider sympathetically a request for a short delay in the debating of this proposition. If the proposition is deferred I will undertake to present this or a very similar amendment as soon as is practical once it has been fully considered by the independent legal advisers. I would like to, very briefly, outline the reason for the amendment but first let me be very clear that I and the Council of Ministers believe that any individual should be free to speak openly and honestly about their experiences, always recognising that they must be mindful of the law and the impact on other members of society. We therefore agree that the States should not offer, seek or impose any form of confidentiality clause in any of the investigations or settlements with claimants which would impair their ability to speak of their experiences. However, it is very easy to envisage circumstances in which in order to settle one individual's valid claim, without prejudicing the interests of other claimants or the public, the size and related terms of the settlement should remain confidential. This amendment would allow such an agreement to be concluded where it was appropriate to do so. Civil claims are at a very early stage and the States legal advisers are in discussions with lawyers, appointed by claimants, concerning these claims. There are a number of issues that need to be addressed and one preliminary issue concerns a legal representation of claimants. It is understood that a number of claimants are being represented by lawyers under conditional fee agreements whereby success fees are payable and those fees will operate to reduce any sum that might be payable to any claimant. As claimants are entitled to legal aid in Jersey it is a concern that the best interests of claimants are not best served by the present arrangements, and this is being raised with the lawyers concerned. In conclusion, I hope that States Members will understand that these are very complex matters. People who establish that they have been subject to abuse must receive the support, respect and understanding that they deserve and the Council of Ministers will do all

in its power to ensure these are delivered. However, we have also to be aware of the wider public interest. I believe that with this very simple amendment, that will not infringe the rights of any individuals, we should be able to achieve that difficult balance. In the short time available we have not been able to take all the necessary advice from our independent advisers and I hope the States Members will allow us the opportunity to ensure that we take the very best decision in everyone's interest. So I hope that Senator Syvret will agree to defer this proposition in order to ensure that the States has the best advice available before we take our decisions. I do not believe that there is any overriding urgency for taking the decision today or probably tomorrow as there are no present restrictions on any claimants' rights to speak freely about their experiences nor is there any intention to impose any such restriction. I hope that we are able to consider this amicably in the best interests of the individuals concerned and their families.

7.1.1 Senator S. Syvret:

I wondered if the Chief Minister could inform the Assembly whether this amendment is going to approval because I can certainly say that if I tabled an amendment of this nature it would be rejected out of hand because the effects of the amendment is to negative a proposition. Quite clearly it is a wrecking amendment designed to basically destroy the effect of the proposition. I certainly will not be accepting this amendment nor will I be willingly agreeing to the deferment of the proposition.

Senator T.A. Le Sueur:

I do not believe it is a wrecking amendment as the Senator implies. It has approval in principle but, as I have said, it is a draft amendment which has to be subject to legal clearance so I cannot commit at this stage to say that that really has clearance because clearly the Chair cannot finally clear an amendment until they see the final wording of it.

7.1.2 Deputy G.P. Southern:

That seems to me to be a very confusing statement that the Chief Minister has just made. The fact is he has not addressed the point made by Senator Syvret that this is a negative of the amendment. Will he please address that before I ask him a further question?

Senator T.A. Le Sueur:

In my view and I have sought advice on this, it is not a negation of the proposition. It simply amends one part of it dealing with the financial terms. Other than that the claimants are perfectly at liberty to say what they like, see whom they like, when they like within the normal confines of the law.

7.1.3 Deputy G.P. Southern:

The final paragraph of his statement says that there are no present restrictions on a claimant's rights to speak freely about their experiences nor any intention to impose such a restriction except if that impinges on the commercial terms that are accepted. It seems to me that the statement itself is a contradiction in terms, would the Minister not agree?

Senator T.A. Le Sueur:

No, the amendment is not saying or certainly not intending to say that should there be any commercial confidentiality requirement that would restrict the claimants' ability to speak in general terms about their experiences because I am saying that they can still speak freely about their experiences whether or not there is commercial confidentiality on the actual sum of the settlement. That is not in question. That is why I equally say that this is not a negation of the proposition whether the amendment that I am proposing is accepted or rejected does not affect the individuals' rights to speak freely about their experiences.

7.1.4 Senator B.E. Shenton:

When I lodged P.1, which was lodged for 2 months, the Council of Ministers made their comment 3 days before the debate. When I lodged the Reg's Skips proposition the Council of Ministers lodged their comment on the same day of the debate. The Chief Minister is now coming here at the last minute with an amendment to a proposition, may I respectfully suggest that the Council of Ministers get their act together and abide by Standing Orders which is quite clear. I would tend to agree with the other speakers that this is a negative amendment and I reluctantly agree with Senator Syvret that it should not be accepted.

Senator T.A. Le Sueur:

I can only accept and apologise that the fact that these are very late comments. They are late partly because we are also being advised by third party lawyers acting for the Health Department and in a situation like this, where an act is under litigation or the claims as the statement says, are at a very early stage but while we have matters of legal process it is something which has to be done very carefully and, unfortunately, takes a longer time than I would expect. This proposition was lodged 3 weeks ago over which time there has been an Easter recess and I apologise that the first meeting of the Council of Ministers was not until last Thursday. Action took place in the meantime but it was only on Thursday that Ministers gave steer as to which way forward we should go. Certainly, what concerns me is that the alternative to not accepting a short delay is that we will simply have to debate the proposition which I would then be required to oppose even though the syntheses of the proposition are one which I and the Council of Ministers totally endorse.

Senator B.E. Shenton:

May I just suggest to the Chief Minister that, like the Chairmen's Committee, he has extra meetings for urgent matters.

7.1.5 Connétable D.W. Mezbourian of St. Lawrence:

Will the Chief Minister explain why he felt it necessary to make a statement on the fact that he intended to bring an amendment to a proposition?

Senator T.A. Le Sueur:

I think the proposition is down for debate today and there has to be some explanation of why, at this late stage, the Council of Ministers wanted to request a delay in this debate. I could have just stood up at the appropriate time that the Senator was about to propose it and do so. I believe that that would have been discourteous to the House. I believe that by doing it this way I have given, granted, only a little bit of notice but at least some chance for Members to consider the situation and for the Senator himself to consider the situation. I have heard his reaction which I can understand, but I still maintain the position which the Council of Ministers finds itself in of wanting to support the general thrust of Senator Syvret's proposals but being caught on this narrow point of the financial settlement terms.

7.1.6 Senator A. Breckon:

I wonder if the Chief Minister could clarify that the actual point of the amendment is not to prejudice any other case that may be pending, and that is the intent rather than to frustrate anything that Senator Syvret wants to do?

Senator T.A. Le Sueur:

Yes, I believe that is an important consideration which would come out in the course of the actual debate on the subject itself. Each case needs to be discussed on its merits and one case should not necessarily be regarded as influencing another and if the outcome already determines

a settlement. This is not uncommon in cases where there are more than one claimant and I would think that is just good legal practice.

7.1.7 Senator S. Syvret:

Does the Chief Minister not understand that of the dozens and dozens and dozens of abuse survivors out there, a great majority of them have had wrecked lives and they have lived in isolation of each other even, let alone proper support and care and mutual support. Does he not recognise and see that it is now, in fact, entirely right and justifiable that these people who we, as a society and we as an administration failed, should be able, in fact, to work together and compare notes on each others civil claims. Heaven knows it is not as though we have helped these people in the past. Are we seriously now going to try and further handicap them on a divide-to-rule basis?

Senator T.A. Le Sueur:

No, I think that misrepresents the situation. Certainly, I am sure that those people do and will continue to work together and support one another but every case here potentially is a different situation with different outcomes, just different degrees of severity, and I am not going to second guess the rights of a civil court or anybody else to distinguish between one case and another. All I am saying is that there will be differences from one case to another and that we have to ensure that every claimant gets justice but that the outcome of this new settlement is related to the facts of that case and not simply related to the fact of cases in general. As I say, in view of the fact of the complexities of the way in which the legal claim may well be pursued and the need of the States to ensure that fairness is done to all sides, we believe this is a better way forward.

7.1.8 Deputy A.E. Jeune:

I am just trying to make sure I understand this properly. Could the Minister explain, is his statement about ensuring the claimants' ability to request confidentiality and not for us, as the States, to be putting in confidentiality?

Senator T.A. Le Sueur:

No, it is for the States or independently it is for both sides but it would be including the States. The States may well require confidentiality in respect of each individual case so that each case is dealt with on its own merits.

7.1.9 Deputy M. Tadier:

I think first of all it is important to say that I believe we are all on the same side here. Nobody wants to restrict anyone's freedom of expression and I think that can be said for all of us. It is just simply a case of how we go about this. There does seem to be a negating here of the proposition I feel, and excuse my childlike simplicity if you will, but on the one hand you have a statement that said no restrictions would be imposed to talk about one's experience and then it says, but you must not talk about any settlement. That is, effectively, what we are being told. Now it seems to me that, say, if someone wanted to write a book about their experiences subsequently, any settlement that you enter into the way that that is arranged and any figure that might come out is part of one's experience. You cannot say that it is any different so you may have a very valid reason for explaining in a book or in an interview, for example, how much you received. You might make an allegation, for example, that I received peanuts from the Government and I should have received more. Then if you cannot back that up with a figure then you could be open to a charge of lying. So, I think it is important here that we establish what experience is and I think that really we either support this and say you are allowed to talk about your experiences or you are not, it is one or the other.

The Deputy Bailiff:

Deputy, can I bring you to your question.

Deputy M. Tadier:

Yes, my question is really one for the Chair and I would ask, on a practical point, what happens now if Senator Syvret does not agree to defer the proposition because this seems to be what the nub is of the problem?

The Deputy Bailiff:

That is a matter entirely for the Assembly. That concludes time for questions to the Chief Minister on that statement.