

7. Statement by Senator A.J.H. Maclean, The Minister for Economic Development regarding the payment of compensation to a group of local residents who were victims of misleading advice from Alternate Insurance Services Limited:

I, as you know, have been trying to make this statement for some time. [Laughter] At the last sitting, the Deputy of St. John raised some questions concerning a recent decision to compensate a group of local residents, who were victims of mis-selling. While the decision has been made, I appreciate the concern that it may have caused some Members. This statement is intended to offer clarification as to the circumstances behind the decision. In arriving at my decision, I consulted the Council of Ministers to seek their support before requesting a source of funding from the Treasury. The Minister for Treasury and Resources agreed to the request in accordance with Article 15 of the Public Finances (Jersey) Law 2005 to allocate funds from the 2008 underspend. The total carry forward request was for £597,000, although compensation could in fact be less and will be made available to allow one-off payments to be made to the 28 local investors. These individuals suffered losses as a result of recklessly misleading advice given by a local company called Alternate Insurance Services Limited. Payments to the investors will be made on the same basis as the U.K. Financial Services Compensation Scheme, with each investor limited to a maximum payout of £48,000. Following a full external audit, the payments will be distributed to the investors by my department, as Economic Development has the responsibility for financial services. My decision follows a Royal Court judgment in the case of *The Jersey Financial Services Commission (The Commission) v Alternate Insurance Services Limited*. In light of the unique circumstances of the case, which are unlikely to be repeated, there were clear and compelling arguments to support compensating these individuals. I gave particular regard to the following exceptional facts when arriving at my decision: without exception, those affected could fairly be characterised under the commonly used phrase “widows and orphans.” The affected investors in this case were all local residents who were not sophisticated investors. The Royal Court found that they were given recklessly misleading advice, which led them to invest in high-risk products, believing they were in fact low risk, resulting in significant losses, sometimes in excess of their initial investment. The court’s view was that all such investors should be compensated. In 2001, when this case occurred, the sector was not fully regulated. Normal professional indemnity cover became invalid. Due to the insolvency of Alternate, only a small proportion of the losses could be recovered. All other possible avenues for recovery through the courts were exhausted by the Jersey Financial Services Commission. Given the uniqueness of this case, the Council of Ministers supported my view that there were sufficient grounds to make one-off payments to the affected investors. I hope that these payments will go some way in helping to relieve the consequences, including genuine hardship, that many of these people have suffered, as set out in the judgment of the Royal Court. As a result of this case, I have asked my department to commence a review of investor protection. In the past it was decided, in common with other jurisdictions, not to have a standing scheme, due to the costs of running it. It was always intended to deal with exceptional cases as and when they arose on a case by case basis, as in this instance. We will now look again at the cost benefit analysis of establishing a standing investor compensation scheme and will report our findings and proposals to Members.

7.1 The Deputy of St. Mary:

I can see the list of circumstances that the Minister has put before us, but I am curious to know, what is the responsibility in this which led the Minister and the Council of Ministers to believe that compensation was the correct response? When you compensate, there is a responsibility that you are compensating for. I want to know what the responsibility was. I accept these very circumstances, that is not the issue.

Senator A.J.H. Maclean:

The responsibility quite simply was that these investors had been let down by the fact that the system did not suitably protect them. They were given advice by members of this particular company which was recklessly misleading. Because the investors were let down in this way, we felt - and the court indeed felt - that it was bordering on dishonesty, and on that basis, we felt that it was reasonable to make the compensation payments.

7.2 Connétable D.J. Murphy of Grouville:

I know a little about these instruments that we use, the T.E.P.s (Traded Endowment Policies) and because I have some experience of them, I find it very, very difficult to understand how they manage to do this without committing a fraudulent act. In that case, why were individuals not prosecuted instead of the companies?

Senator A.J.H. Maclean:

The Constable is absolutely right, and I know that it was a very close call as to whether indeed the individuals were going to be prosecuted, and it became a fraudulent act. However, indeed, the products of which the Constable is referring to- Traded Endowment Policies - in themselves are medium-risk investment products. What was the problem here or the additional issue here was the fact that this was packaged products which involved a degree of leverage; in other words, the investors were asked to borrow money to leverage the investment into a package and the risk was not explained to them, but the Constable, in principle, is absolutely right. The individuals came very close to being prosecuted.

7.3 Deputy G.P. Southern:

The Minister has talked in very neutral terms about defects in the system; a system devised by whom? Was it J.F.S.C. (Jersey Financial Services Commission); was it E.D. (Economic Development); who was responsible for these defects that occurred at the time? E.D. or J.F.S.C.?

Senator A.J.H. Maclean:

As the Deputy will be well aware, it is in fact the J.F.S.C. who are responsible for regulating financial services. I believe that they carried out their statutory obligations in this regard. I have to say that there are 2 factors: 1, at that particular point - and bearing in mind we are talking about the period from 2000 to the end of 2002, at which point it was a transitional period - that particular sector of I.F.A.s (Independent Financial Advisers) was not fully regulated. But if he is looking for accountability for regulation, that is in fact the J.F.S.C., but it was not fully regulated at that stage.

Deputy G.P. Southern:

If I may, a supplementary: so then the blame clearly lies with the equivalent of the Economic Development Industries Committee of the day, that regulation had not been extended to this apparently dangerous area?

Senator A.J.H. Maclean:

I think regulation is being improved all the time. There has been a tremendous increase in regulatory control in all sorts of areas. This, as I was mentioning a moment ago, we are going back to 2000/2002, the level of regulation has moved on a long way since then. I would certainly like to think that the chances of a similar case to this occurring is highly unlikely.

The Greffier of the States (in the Chair):

Briefly, Deputy. There are others waiting to speak.

Deputy G.P. Southern:

In answer to my question, who was responsible, nobody knows. There is no responsibility, no one responsible. Who was responsible?

Senator A.J.H. Maclean:

If the Deputy is asking who is responsible for the loss to the investors, then it would be the company themselves, because clearly they were the one that imparted the advice. If he is asking about regulatory oversight, the J.F.S.C. had regulatory oversight, but the level of regulatory oversight at that particular point is not at the stage that it is now. So I am satisfied that the J.F.S.C. did all that was reasonable and could be reasonably expected of them at that time.

7.4 Senator A. Breckon:

Could the Minister confirm that the court judgment was critical of the States of Jersey, among others, of not having a suitable compensation scheme and also could he advise when one will be in place?

Senator A.J.H. Maclean:

Yes, I can confirm that in the judgment - and in fact, if Members would like to read the judgment, just as an aside, there was a lot of very interesting information, it is over 100 pages long. I have it here and it would give some very useful background - it does refer to the fact that we do not have an investor compensation scheme. That is one of the reasons that I have asked for it to be reviewed again, for the reasons that I stated in my statement, why we have not had one to date. Fortunately, these incidents are relatively rare, certainly in Jersey - other jurisdictions are not quite as lucky, necessarily - once the review is complete, then I will make a statement to the House as to the position, and indeed timing of any scheme should indeed it be decided that a scheme will come forward.

7.5 The Deputy of St. John:

Given the public airings we have had of both Woolworths and Pound World, *et cetera*, will the Minister bring this to the Chamber to be debated by the Chamber, if necessary in camera? If he is not prepared to do so, a private Member is very likely to do it.

Senator A.J.H. Maclean:

Could I ask the Deputy to clarify what he is asking me to bring to the Assembly to debate in camera?

The Deputy of St. John:

The facts of the case have been explained to you. The Members, I am sure they were all given the facts with the Woolworths and the Pound World debate. They can give us the facts in their entirety, laid out by your department or the Treasury Department, Council of Ministers, so that we can decide for ourselves if that £600,000 has been correctly spent, or going to be spent.

Senator A.J.H. Maclean:

As I mentioned a moment ago, the judgment of the Royal Court, extending to over 100 pages, is here. All the facts are contained within this document. I am more than happy to let the Deputy have a copy of the judgment with all the facts in it, and indeed, any other Member in the Assembly if they would so wish.

7.6 Deputy D.J. De Sousa:

Most of my question has been asked already. Can the Minister really justify making this decision himself, knowing what we were put through as a House when debating the Woolworths and the Pound World at the time when it came? How can he now justify making this decision without coming to the House?

Senator A.J.H. Maclean:

Well, first of all, there is no direct relationship between the 2 cases, but I have to say that the decision that this House took with regard to Woolworths was something that I had in the back of my mind when considering this particular fact. It is clear the level of compassion that this House has for cases like Woolworths, and I have no doubt that having read the details of this particular Royal Court judgment, that Members would support my view. It is absolutely clear cut, in my view, and indeed, in the view of the court, and if I can indulge Members for one second, I will just quote what the judge said. He said: "To this court, it seems inconceivable that investors should be left uncompensated for their serious losses. This recommendation is made because it is not acceptable that unsophisticated small investors in Jersey can be so badly advised in relation to their small resources." These are not wealthy people, these are not sophisticated investors. The advice given was dishonest, it was misleading, and in my view, this was the right decision, and I hope Members accept it.

7.7 The Deputy of St. Martin:

Yes, it is very close to what the question has been going around the House. It is just a direct question of the Minister, because he knows how he upset me when he made his remarks about Pound World. With hindsight, would the Minister not have thought it would have been better to have brought this to the House so the Members could have a part in the decision, and maybe if a future occasion came, that he would bring it to the House and not make it an in-house decision? So would he bring a proposition in the future to the House if he had a similar occasion?

Senator A.J.H. Maclean:

I take the Deputy's point. I think you have to assess every individual case on its merits. I think the judgment that I took and I took to the Council of Ministers, which they supported, in this instance I believe was correct. However, I do say or am prepared to say to the Deputy in future, depending on the circumstances - and I certainly hope we do not have another case similar to this - but should we do so, I will assess it on merits, and it may well be one that would come for consideration to this House, depending on the circumstances.