

2.11 The Deputy of St. Martin of the Minister for Home Affairs regarding whether Parish Hall sanctions for various breaches of the law which the public receive during the course of a year are considered to be convictions and subject to the requirements of the Rehabilitation of Offenders (Jersey) Law 2001:

Will the Minister advise whether the Parish Hall sanctions for various breaches of the law, which the public receive during the course of a year are considered to be convictions and subject to the requirements of the Rehabilitation of Offenders (Jersey) Law 2001?

Senator W. Kinnard (The Minister for Home Affairs):

Parish Hall inquiry sanctions are not considered to be convictions within the terms of the Rehabilitation of Offenders (Jersey) Law 2001, and during drafting it was expressly intended that such sanctions would not fall within the scope of the Law. The intention complied with the then existing and continuing advice of the Law Officers Department to both the States and Honorary Police, that an offence admitted and punished at a Parish Hall inquiry has never amounted to a conviction in law. And further, that the Constable or Centenier is empowered to impose such a penalty only with the agreement of the offender. A Parish Hall is not a court of justice.

2.11.1 The Deputy of St. Martin:

Is the Minister aware that when an applicant applies to the States Police for a list of his or her previous convictions the States Police do include Parish Hall sanctions as part of that list?

Senator W. Kinnard:

I think there is some confusion and conflation of the 2 Laws here, one of which is the Data Protection (Jersey) Law and one is the Rehabilitation of Offenders (Jersey) Law. If I begin with the Rehabilitation of Offenders (Jersey) Law; it is possible, Sir, that within the vetting process that in some instances, where appropriate, the form signed by an applicant requests that details will be given of Parish Hall sanctions. For example, an enhanced check for sensitive posts may disclose such sanctions. But, Sir, it has come to my notice that individuals have been asked to - if you like - get their details through enforced subject access requests. Sir, under those circumstances of course the person is entitled to all the information that is held about them under the Data Protection (Jersey) Law and under those circumstances, Sir, they will also be provided with details of any Parish Hall sanctions that have been made against them.

2.11.2 The Deputy of St. Martin:

I thank the Minister for the answer but I always understand the difficulties and the complications of it and that is why I am trying to bring it out again this morning. But if a Parish Hall sanction is not deemed to be a conviction, then surely once that has been resolved at the Parish Hall then that record should no longer exist and should no longer be passed on by the police to the applicant or anyone else for that matter. Would the Minister not agree?

Senator W. Kinnard:

I am afraid the Deputy is again confused because the Law does not allow for any records to be removed from the system, including Parish Hall sanctions, and there are certain circumstances when it is appropriate that those sanctions should become known to an employer particularly with sensitive posts. Sir, this is a complicated area and I have agreed to give the States a report on the issues surrounding the complications of the Data Protection (Jersey) Law as it relates to enforced subject access and the Rehabilitation of Offenders (Jersey) Law. Also, Sir, my department is looking very seriously at how best to provide advice to the public on how the Law should work in practice with a view to producing a layperson's guide. I think, Sir, that would be appropriate really if we await the outcome of that report. It is a very technical and complicated area and in a sense trying to answer bits of questions like this is not necessarily going to provide Members with the best information. I think if they await the outcome of the report my department is preparing that will probably be a more sensible approach.

2.11.3 Deputy S.C. Ferguson:

As a former Centenier, I can assure the Minister that this is not a difficult area. An important part of the Parish Hall inquiry is to keep youth out of the court system and a conviction for a youthful indiscretion can ruin a life. Does the Minister not think that including Parish offences as part... which could be scrumping apples. Does the Minister not think that including Parish offences as part of a criminal record is totally reprehensible? **[Approbation]**

Senator W. Kinnard:

Again, I think that people are confused.

Deputy S.C. Ferguson:

I am not. I was a Centenier.

Senator W. Kinnard:

If someone makes an application under the Data Protection (Jersey) Law, they are entitled to all the information that is held on them, which will include as I say, Sir, Parish Hall inquiry sanctions. It is a matter for the individual as to whether or not that information is passed on. I am very concerned at the extent to which employers are using what is known as enforced subject access to obtain information under the Data Protection (Jersey) Law in an inappropriate way. As I said at last sitting, Sir, this practice is being looked at and it is a matter of concern and is hoped to bring forward legislation to prevent this practice in future. But, Sir, there is confusion in this House and elsewhere about the workings of subject access under the Data Protection (Jersey) Law and the workings of the Rehabilitation of Offenders (Jersey) Law. As I have said, Sir, the Rehabilitation of Offenders (Jersey) Law does not cover Parish Hall sanctions. This is why I intend to bring a clear report with all of the details so that Members can, as I say, look at all the arguments that are there logically. There is confusion in the Deputy's mind and confusion in the public's minds, Sir, which I seek to address.

The Bailiff:

Well, I think you have made your point on that, Minister.

2.11.4 The Connétable of St. Helier:

While I welcome the Minister's assurance that she will be investigating this matter further and bringing forward a report, would she not agree with me that the Parish Hall inquiry system is not just about sanctions; it is also about giving advice and steering members of our community away from the criminal justice system, and it is worthy of our support? **[Approbation]**

Senator W. Kinnard:

Absolutely. So, I think my views on the Parish Hall inquiry system are well known in this House from my taking forward the Criminal Justice Policy. I believe it is the jewel in the crown of our criminal justice system, particularly in relation to keeping young offenders out of the court system. I am an absolute supporter of it and nothing I have said this morning undermines that.

2.11.5 Deputy S.C. Ferguson:

There is no confusion in this Deputy's mind. A Parish Hall inquiry is not a court of law. Does the Minister not realise that local employers will disregard Parish Hall inquiries but unfortunately imported employers or employers in other countries do not realise the distinction. It is not a court of law, therefore, it should not be included in a criminal record. Does the Minister not understand this?

Senator W. Kinnard:

The matter, as I have said, depends on whether it is an enhanced check for sensitive posts. I have made it clear that I cannot speak or put myself in the mind of employers, either in the Island or

from outside the Island, as to what they may or may not understand, Sir. But it is clear that we would all benefit I think from a layperson's guide into how the law should work and what is appropriate for employers to ask for and what is not appropriate. That, Sir, is what my department is working upon now that we have the opportunity to link into Disclosure Scotland where we have not had the opportunity previously.

2.11.6 The Deputy of St. Martin:

Can I say, I too welcome the Parish Hall Inquiry and it should be seen as it is, giving friendly words of advice, warnings, *et cetera*, with the purpose of keeping people - whether they are young people or older people - out of court. So, I hope that that system will continue to exist. But what I would ask the Minister is that the Minister will be aware of the Cooper Opinion, which touched on the Parish Hall inquiry, and as it gives sanctions it was questioning whether in actual fact the Parish Hall inquiry - as it is with giving out sanctions - is human rights compliant. Will the Minister give consideration maybe to looking in to see whether the Parish Hall inquiry which delivers sanctions is human rights compliant?

Senator W. Kinnard:

I think in response to the Scrutiny Panel Report it was agreed that all matters that were raised in that report would be looked at.

2.11.7 The Deputy of St. Martin:

I have got to press the Minister. The Centenier's report did not touch on the Parish Hall inquiry and whether it violated the Human Rights Law. Will the Minister give consideration to carrying out a human rights audit on the Parish Hall inquiry where it delivers sanctions - as I have inferred this morning - delivering fines and official cautions?

Senator W. Kinnard:

The advice I have had is that the Parish Hall inquiry is not a court of justice so these issues do not arise. [Approbation]

2.11.8 Deputy P.V.F. Le Claire:

I have not been a Centenier Sir, so I am just an ordinary... [laughter] I am getting hassled from the police over here. Sir, I would like to know if it is not a judicial court then how are the records transferred from the Parish Hall inquiry to be contained within the records that are available for information under the Data Protection Law? Should they not be held at the Parish and not transferred to the police station where they are being accessed? Or is that inappropriate?

Senator W. Kinnard:

I believe that the whole issue of how records are kept, how they are transferred, and whether or not they are disclosed is attendant upon the advice of the Attorney General. So, I cannot answer that specifically. I do not know whether the Attorney General would like to attempt to answer it himself or not.

2.11.9 Deputy R.G. Le Hérisier:

Just to confirm, I thank the Minister for her study into exemptions. Would she now acknowledge that despite her commitment to this area it is totally pockmarked; the current legislation is a disaster; and she will as soon as possible bring new legislation to that?

Senator W. Kinnard:

I do not believe the actual legislation is the thing that is at fault. I think it has been the misuse of enforced subject access requests under the Data Protection Law that has caused the greatest concern to those that have certainly contacted me. We have already said that the Data Protection Commissioner - now that she has the ability to have access through Disclosure Scotland - would

see that it is appropriate that we should bring forward an amendment to the Data Protection Law to outlaw enforced subject access. I think, Sir, once that is completed and once we are able to sort out the other aspects of vetting and barring I think we will find, Sir, that it is not the Law itself that is at fault; it is the way in which it has been used inappropriately.