

2024.10.22

### **3.7 Deputy M. Tadier of St. Brelade of the Minister for External Relations regarding the conduct of the Jersey Financial Services Commission (OQ.196/2024):**

Further to concerns raised in the media regarding the conduct of the Jersey Financial Services Commission, will the Minister state what measures, if any, he has taken, or intends to take, to ensure the public can have confidence in the Commission?

#### **Deputy I.J. Gorst (The Minister for External Relations):**

I recognise, as I have said, the disquiet and concern in the way that parts of the J.F.S.C. (Jersey Financial Services Commission) have operated and the legislative environment more broadly. I also recognise the need to ensure that there is balance between the need for regulation to meet international standards and allowing industry to continue to be competitive. I understand that industry and the public want to see greater transparency and accountability, and I have already announced a strategic review of the regulatory environment. This includes a review of the Jersey Financial Services Commission as the regulator of financial services in Jersey, as well as the legislative and regulatory framework more broadly.

#### **3.7.1 Deputy M. Tadier:**

I thank the Minister for those comments. His review seems to be focused on a very much administrative process about regulation, and possibly about an appeals mechanism, which you spoke to the media about. But will there be any review into the substantive allegations of bullying - among other things that have taken place - and if so, who will be doing this? If not, why will there be no independent review?

#### **Deputy I.J. Gorst:**

As the Deputy knows, the regulator is independent of Government, and needs to be, in order to comply with international standards. It therefore is not possible for a Minister to carry out an investigation into individual cases in the way which the Deputy is suggesting. But what is open to a Minister is what I have proposed. That will be wide-ranging, and we have already in the department started to take evidence from individuals around their experience. If, during that process, there are other issues which we need to address, then we will take those up with the Commission as well.

#### **3.7.2 Deputy J. Renouf:**

One of the issues raised around the public disquiet around this was that the J.F.S.C. was not covered by the Freedom of Information Law and that there was an extant States decision on the Freedom of Information Law, which has not been acted on. Will the Minister comment on whether he supports making the Freedom of Information Act apply to organisations like the J.F.S.C., in the interests of transparency and avoiding these sorts of problems in the future?

#### **Deputy I.J. Gorst:**

I will just come to that; it reminds me that I have missed part of Deputy Tadier's question, which was, was it just focused on those things administrative? No, it is not; it is focused on culture as well, which maybe is helpful. I have not been in favour of extending the F.O.I. (Freedom of Information) legislation - as I have been quite clear about - because of the way that our F.O.I. Law is drafted when it comes to commercial confidentiality. Council of Ministers met last week and discussed the extant decision about extending F.O.I. legislation. If we are able to - and I think work has already been undertaken previously - make those

amendments around an absolute exception to commercial confidentiality within the legislation, then my objection to extension of F.O.I. legislation falls away. But I have given a commitment, nonetheless, to consider its extension to the J.F.S.C., with the caveat, of course, that the F.C.A. (Financial Conduct Authority) in the U.K. has F.O.I. Most of those questions are really about expenses and budgeting issues, and not about individual enforcement cases.

### **3.7.3 Deputy J. Renouf:**

If I could burrow a little deeper, it is interesting that the Council of Ministers have discussed this. There is an extant decision; is the Minister saying that the Council of Ministers will bring a new proposition, a rescindment, or what? How will they approach bringing in this F.O.I. Law, given that discussions have taken place?

### **Deputy I.J. Gorst:**

In the same way that they do any legislation, of course. It needs to be a policy - I think I recall correctly - policy direction was given, which was to review the piece of work which had previously been undertaken but then put into the buffers, as it were, look at drafting an absolute exemption for commercial confidentiality, and then bringing forward legislation which gives effect to both that and the extension. Therefore, it would be this Assembly that ultimately decides.

### **Deputy S.M. Ahier:**

The question has just been asked, Sir.

### **3.7.4 Deputy P.F.C. Ozouf:**

The Minister engaged with Members and explained the review that he was undertaking. I asked him in that whether or not he will publish the terms of reference of the review. I noticed that the slides that were then given to Members have a tender process of 10th October guidance to 21st November. Can he confirm that the terms of reference have been finalised and will he agree to publish them please?

### **Deputy I.J. Gorst:**

As far as I am concerned, they have been finalised and yes, they can be published.

### **3.7.5 Deputy P.F.C. Ozouf:**

Can the Minister explain - I look forward to receiving the review; certainly, in Scrutiny nobody has had it - will the review include the operation of the way that the Commission and the Government itself work together? Because there is some concern about the Government marking its own homework; the regulator is independent, but they are accountable to Government and it is set out in the M.O.U. (memorandum of understanding).

### **Deputy I.J. Gorst:**

Yes, that is an important part of the review, as far as I am concerned. I think we have historically called those issues "gateway issues", where there is a flow of information or a lack of a flow of information. The regulator holds a great wealth of information which tells us what is happening in the industry, but we do not have it. That amalgamated information will help give confidence around the performance of the regulator, but equally it will help us show where issues need to be addressed, whether products continue to be used successfully or not, the number of registrations of Jersey companies on the register, and all those important issues which will help deliver policy for the future.

[11:00]

### **3.7.6 Deputy H.L. Jeune:**

Could the Minister explain how, if the Jersey Financial Services Commission is independent, that the Government themselves are doing this review? Does that mean that other commissioners and commissions that are independent, the Government can also do reviews?

#### **Deputy I.J. Gorst:**

It does. There is something called the democratic process, and I know that all Members in this Assembly fully support that and uphold it, and that is the democratic link between what Islanders want - this Assembly - and then what happens in various arms of government, even once they have created those bodies independently. This is of course not just a Jersey problem around accountability of regulators; it is a problem that countries are finding across Europe, particularly if we look north to the U.K. They are reviewing the operation of their independent regulators, because ultimately regulators not only are accountable to international bodies and policies and practices, but they are also accountable to the people of Jersey, and they are accountable to the people of Jersey through this Assembly. We need to make sure that that accountability is fit for the world in which we now live.

### **3.7.7 Deputy H.L. Jeune:**

Does that mean that the Council of Ministers have discussed other reviews for other independent bodies, or is this the main focus?

#### **Deputy I.J. Gorst:**

Not that I am aware of, but that does not mean to say that individual Ministers are not, within their own portfolios, considering the accountability of independent bodies that fall within their remit. As I sat down, I was just reminded that in the United States, for example, independent regulators are accountable to a committee of the House of Congress. I am not sure we are at that point yet in our thinking, but that may be one thing that we do to enhance accountability: have a special committee of this Assembly.

### **3.7.8 Deputy M. Tadier:**

My final supplementary might have been who regulates the regulator. But the Minister for External Relations with responsibility for Financial Services has reminded us that it is Government that regulates the regulator in this case, which I will let Members make their own thoughts and opinions about. But I bring it back to the point that very serious allegations have been made against the J.F.S.C. These are allegations of bullying, misuse of power by the J.F.S.C.'s enforcement division, and there are concerns about a lack of transparency and accountability more widely. Can the Minister give an assurance that these things, if they have occurred, will be brought to light and that there will also be redress, and can he indicate what kind of redress he would envisage for those who have been aggrieved or indeed harmed by this potential abuse of power and bullying?

#### **Deputy I.J. Gorst:**

I think that, as I indicated when the Deputy asked me the same question, but just in a slightly different formula, that that was not - I do not believe as we stand here - within the remit of a Minister. I am happy to give that further consideration, but I do not think it is, as I stand here; but perhaps the only thing I can do is say that I will consider his question further.