21.03.23

3 Senator S.Y. Mézec of H.M. Attorney General regarding cases involving a breach of the Residential Tenancy (Jersey) Law 2011 (OQ.77/2021):

Will the Attorney General advise how many cases involving a breach of the Residential Tenancy Law (including for non-compliance with the deposit protection scheme), or a breach of minimum standards rules for residential dwellings, have been referred to the Law Officers' Department by Environmental Health, and how many such cases have subsequently led to a successful prosecution?

Mr. M.H. Temple Q.C., H.M. Attorney General:

The Law Officers' Department has been notified of 8 cases involving potential breaches of the Residential Tenancy Law, and those include cases concerning the deposit protection scheme. Two of these cases are ongoing. One case was dealt with on a written caution at a Parish Hall Inquiry. Five cases were not prosecuted in accordance with the application of the code on the decision to prosecute. Those were for a range of reasons. In one case the company involved no longer existed. In one case the overcharging of electricity was the responsibility of the agent and was stopped. In another case the overcharging was stopped and the tenants were repaid. In 2 cases the deposit monies were paid into the deposit protection scheme.

3.3.1 Senator S.Y. Mézec:

I am very concerned by what I have just heard where it sounds like you can break the law but as long as you say sorry and try to unbreak the law that a prosecution will not be followed through with, even though you have broken the law. Since that is something that is not publicised until I ask a question about it, it will not be revealed to the public that this sort of thing is going on. The question to the Attorney General is if that is the approach that is going to be adopted does it not really render the laws that are in place rather pointless?

The Attorney General:

In the 2016 Order there is a defence that is available in relation to overcharging of services supplied. That is where the reseller recognises that the excess has been charged in error and then refunds as soon as possible after the reseller becomes aware of their error. So the law does include a defence in those circumstances. We have to prosecute cases in accordance with the code and where there is not a realistic prospect of a conviction then it is not open to my department to prosecute those cases.

3.3.2 Deputy M. Tadier:

The Attorney General talked about where the overcharging occurred in error. We have had 2 admissions this week from 2 people who did say they overcharged but they said that it was not done in error, it was done in full cognisance but in order to recoup the costs of the machines. Does the Attorney General accept those are 2 different things and that that cannot be reasonably interpreted to be in error?

The Attorney General:

The facts of those specific cases, it is a little bit difficult for me to comment on in this Assembly, but the key point is that there has been an acceptance that it is not open to charge for services supplied in the way that it was done and as soon as this was pointed out to them then that has been stopped and corrected. In those circumstances there is not a reasonable prosect of conviction.

3.3.3 Deputy M. Tadier:

I am just trying to understand because I was contacted by a constituent who reasonably asked me how this is different, for example, to a cannabis charge where somebody says: "Okay, I made an error, I should not have been buying and selling cannabis and I only sold the cannabis in order to cover my own costs as a medicinal user." I find it hard to believe that the prosecutor would then say: "Oh well, you did it in error and you are not going to do it again therefore we will not charge you. It is not in the public interest." Is there a difference there? I am sure there is but could the Attorney General clarify what the policy is on applying this approach across the board?

The Attorney General:

There is a difference and it is one that I have already said, which is that the law does include a defence for where someone accepts that it was done in error and they correct what they have done. In relation to the smoking of cannabis there is not that sort of defence. We have, as an example, in relation to possession of cannabis offences there is scope for them to be dealt with not through the courts in certain limited circumstances, which is set out in guidelines, which are available on the Law Officers' page of the website. So for small amounts of cannabis, and if it is a first-time offence of a person who admits to undergo counselling with the alcohol and drug service then that cannot be dealt with by way of charging. There is an exemption, there were differences of approaches in those circumstances.

[10:15]

3.3.4 Deputy M.R. Higgins:

Would the Attorney General say what is the difference between prosecuting someone who has admitted the offence? It is quite easy then to prosecute. Surely the mitigation comes to the court to decide whether that is adequate or not rather than the Attorney General?

The Attorney General:

I think I have already answered this question in that the law provides a defence where somewhere accepts that it is an error, they stop doing it and then they will recompense the tenants that have suffered. So the law accepts that there is a defence. In those circumstances there is not a reasonable prospect of a conviction.

Deputy M.R. Higgins:

I am still puzzled, if someone has pleaded guilty to the offence.

The Bailiff:

I am not sure there is a plea of guilty in any sense posited in the question but do you wish a supplemental? No.

3.3.5 Deputy G.P. Southern of St. Helier:

Does the Attorney General consider that there is any role for deterrents in what we are dealing with here and that people should know that people are being investigated and have been prosecuted where appropriate?

The Attorney General:

I am grateful for the Deputy's question because obviously if we come across a case which does meet the code obviously we will prosecute it. There was one case that was dealt with just for specific reasons, unique to that particular case, it was dealt with by way of a Parish Hall Inquiry, which is still

a criminal process or a criminal justice process. But certainly, yes, if we come across cases that meet the code then they will be prosecuted.

3.3.6 Senator S.Y. Mézec:

The Attorney General referred to a case where a deposit had not been paid into the protection scheme but later on it was. Does the Attorney General consider in that instance that shows the law on protecting deposits to really be futile if you can break the law but then once and only once a complaint or issue is raised as a result of it you then put it in the protection scheme and that you will be completely let off by it? Does he not share my concern that that could lead to a situation where deposits are routinely not protected on the basis that nothing needs to be done about it until there is a complaint and then you can just get away with it?

The Attorney General:

I do understand and appreciate the Deputy's concern. These cases we have to make decisions on the circumstances and the facts of each particular case and also of what we can prove in court. I do repeat that where we come across a case that does meet the criteria set out in a code, we will prosecute it. But I hope Members will understand that we cannot just prosecute cases that do not meet the code tests because we cannot put defendants through the stress and trauma of a court process if we do not think the case meets the test set out in the code of a realistic prospect of a conviction. But where we do come across cases where an individual or company is not acting in accordance with the law set out in relation to tenants' deposits, then if we can prove the case and if there is a realistic prospect of a conviction, then we will prosecute.