

3.8 Deputy J.H. Young of the Minister for Planning and Environment regarding complaints from those subjected to enforcement proceedings for alleged infractions of the Planning and Building Law:

The Deputy Bailiff:

We are now going to come to question 9, but before I call on Deputy Young to put it, may I say this: the question is about complaints by those subject to enforcement proceedings, whether these have been the subject of independent investigation and whether disciplinary action has been taken, and it is a very general question. It seems to me, from listening to the Deputy and the report on the radio this morning, that it may be directed to a particular circumstance and a particular appeal against conviction which is pending and coming to the Royal Court in the next weeks. Therefore, I remind Members that, by Standing Order 10(10): "A question shall not refer to a case pending in a court of law in such a way as might prejudice the case." The grounds of appeal in the case that I am referring to include an abuse of process claim. The nature of the investigation may therefore be relevant to that ground of appeal. I wish to say from the Chair immediately, therefore, that nothing in the questions or the answers should refer to the case involving the company Kanetech Limited, or its circumstances. I also wish to say that the Minister will know more than I do about whether a question may go to what is involved in the appeal and, in those circumstances, I will take any statement by him that it might prejudice the appeal as absolutely confirmatory that it might and therefore I will stop the question at that point. Nonetheless, because it is such a general question, because it may be that there are other matters which the question is intended to address, I am allowing it to continue but, no doubt, Deputy, you will bear those comments in mind.

Senator P.F.C. Ozouf:

Sir, may I also ask a point of order before the question is asked? I realise that Deputy Young will not thank me for asking this. There are various different laws which preserve the independence of the Civil Service. The difficulty I have, and I just wish to ask if there is any guidance in relation to this. Deputy Young is asking, effectively, a question challenging the actions of officials in relation to taking or advising a breach which ends up in enforcement action. Deputy Young was, effectively, the boss of that department a number of years ago and I just want to ask whether or not it is appropriate. He may or may not know these individuals and these individuals may or may not have reported to him, and for the good separation and the maintenance of the independence of the Civil Service, I ask whether or not any of the individuals whose actions Deputy Young is questioning reported to him in a previous life, and if that is appropriate. It is a genuine question which is based upon the importance of the preservation of the independence of the Civil Service and fairness in asking Ministers questions.

The Deputy Bailiff:

All Members bring an amount of knowledge of previous business to their membership of the States and to the contributions which they make in the States. In some cases, the information which Members might have might be confidential information and they no doubt would be expected to honour that confidence and, if they do not honour that confidence, then it would be open to whichever is the person affected by it to take such steps as he or she thinks would be appropriate for the breach of confidence. It does not seem to me that there is any further guidance that I could give from the Chair and certainly I expect Members, and the public are entitled to expect Members, to bring their experience with them when they come to this Assembly to make a contribution to debates. Deputy Young?

[11:00]

Deputy J.H. Young:

At some stage - I do not think it is appropriate now - I do need to respond to the point of order that the Minister for Treasury and Resources made because he suggested that my question was, I think, badly motivated, and I certainly resent that suggestion. My question is a general one ...

The Deputy Bailiff:

I did not understand it that way, Deputy, and I am sure the Minister would confirm that he did not intend it that way.

Senator P.F.C. Ozouf:

It is not in any way badly motivated, it is just to preserve the independence of the Civil Service, that is why I am asking it. It is not badly motivated; it is just civil service should be independent.

Deputy J.H. Young:

Just one briefly, my question, I think, is aimed at the independent rights of Members to challenge and to question Ministers on important points of public policy [**Approbation**] that members of the public raise with us. Is it appropriate I continue with the ...

The Deputy Bailiff:

At that stage, if you wish to continue with your question, bearing in mind the remarks that I made ...

Deputy J.H. Young:

Yes, please, Sir. Yes. I would just like to say before I ask the question, that it was intended and is intended as a general question about a number of matters. The question: will the Minister inform the Assembly whether he is aware of any complaints from people who have been the subject of enforcement proceedings for alleged infractions of the Planning and Building Law alleging either maladministration, unreasonable or unfair conduct of investigations or improper processes by his officers and, if so, whether he has ensured that these complaints have been subject to independent investigation and whether disciplinary action has been taken?

Deputy R.C. Duhamel of St. Saviour (The Minister for Planning and Environment):

The department receives both informal and formal comments and complaints in relation to its activities and many of these are progressed within normal department operations and help inform service improvements. All formal complaints are recorded and investigated. Any complaints addressed to the Minister are passed to the relevant officers and I do make efforts to chase them for action. The department has received the following formal complaints in relation to enforcement officer behaviour since 2009: 2009 zero complaints, 2010 one complaint, 2011 zero complaints, 2012 one complaint, 2013 2 complaints, 2014 one complaint, via the Data Protection Commissioner. Complaints or comments about the Environment Department activities can be made to the department by phone, submitted via the gov.je website or in writing. Formal complaints made in writing will be investigated by a relevant manager or director. If the complainant is not satisfied with the result of any investigation, they can request that the complaint is reviewed by the Chief Executive Officer. If the complainant is still not satisfied, they can contact the States of Jersey Complaints Board and, in some instances, the complainant may be able to refer the complaint to another

independent body, for example, the Data Protection Commissioner. Full details of the department's customer feedback policy is available on the States of Jersey website. Any matter that relates to an employee of the States Employment Board following a formal complaint and investigation would be dealt with by the department Chief Officer or his nominee, in accordance with the States of Jersey disciplinary procedures. I know Deputy Young has a number of queries regarding enforcement activities of the department and I have on many occasions, successfully at the last invitation, invited the Deputy to meet with me and some of my department's senior officers to discuss enforcement activities further. I hope that at that meeting, which is to be convened tomorrow at 10.00 a.m., we can clarify matters and answer any questions that Deputy Young has more easily in a face-to-face meeting.

3.8.1 Deputy J.H. Young:

I may have missed it, and I apologise, I was concentrating, but I did not hear the Minister telling me whether or not there had been any disciplinary processes held within the department during the period that he has dealt with since 2009.

Deputy R.C. Duhamel:

I am happy to discuss the schedule of complaints, of which I have a copy here, some of which may be confidential, with the Deputy tomorrow.

3.8.2 Deputy J.H. Young:

Can we not know the number of disciplinary complaints? I am not expecting him to disclose the details of them, but it is parallel with earlier questions; we surely should know the number.

Deputy R.C. Duhamel:

I will repeat, that information will be available tomorrow.

3.8.2 Deputy M.R. Higgins:

I know the Minister is aware of a number of the complaints, and there are many complaints about the actions of his enforcement officers. One in particular involved an officer going into a home and taking a private diary away from the individual. I am sure that was the subject of complaint to the Data Protection Commissioner, because he had no right to take that information. That was just one example of where officers have gone too far. Will the Minister confirm to the States that he has personally had to apologise to members of the public for the actions of his officers and also some of his other senior officers have also had to apologise for the excesses of some of the enforcement officers?

Deputy R.C. Duhamel:

Indeed, I have, and in the particular case that the Deputy refers to, it was my actions that caused the action that was taken to be taken.

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

Will the Minister advise whether he thinks the department is adequately-resourced with the correct number of enforcement officers? If he thinks that it is not adequately resourced, how will he resolve that issue?

Deputy R.C. Duhamel:

I think, for the number of complaints that have been received over the years, that the staffing is adequate at the present time.

3.8.4 Deputy R.G. Le Hérissier:

Can the Minister outline what checks and balances are in place within the department when there is a proposal to initiate a prosecution?

Deputy R.C. Duhamel:

I think that might well be straying into information that might be useful for an appeal.

Deputy R.G. Le Hérissier:

Can I object? I have just asked a procedural question which should be open to anyone to hear about.

Deputy R.C. Duhamel:

I did read out the customer feedback policy in part. For formal complaints, it is a 3-tier process that escalates all the way up to a formal request to the Jersey Complaints Board to be convened. It goes through from the relevant line manager to the relevant director through to the Chief Executive Officer and, after then, if satisfaction is still not given, to the Complaints Board.

The Deputy Bailiff:

I think, Minister, the question was not about the complaints process but about the prosecution process. It is a general question which certainly casts no immediate relevance to any pending case. It should be a matter of public record, the way in which the Planning Department monitors investigations and brings potential matters for prosecution forward.

Deputy R.C. Duhamel:

Reports are written by the enforcement officers, they are then presented to the court officials and it is for the court to decide whether or not a prosecution is forthcoming or not.

3.8.5 Deputy R.G. Le Hérissier:

I take it by the “court officials” the Minister is referring to the Crown Officers Department, is he?

Deputy R.C. Duhamel:

Correct.

3.8.6 Deputy M. Tadier:

Does the Minister have the number of complaints that have been made that were asked about a moment ago?

Deputy R.C. Duhamel:

Yes and no.

The Deputy Bailiff:

That invites a supplementary. [Laughter]

3.8.7 Deputy M. Tadier:

Give the fact that these questions are deliberately asked in public for the public record, will he give as much information as he can now to the Assembly and then give any further information that may need to be verified privately, or in whatever format, tomorrow to the Deputy?

Deputy R.C. Duhamel:

I think I would prefer to do it the other way round. As I have stated earlier, I have requested for both Deputy Young and indeed Deputy Higgins to attend the department so that we can discuss issues and clear the decks to their satisfaction. That meeting, as I mentioned, is to in part happen tomorrow. I would much prefer, following that meeting, to then present a more formal report to States Members if they indeed would like me to do so.

3.8.8 Deputy J.M. Maçon of St. Saviour:

Will the Minister extend that meeting, as it has generated a lot of interest today, to other States Members who may wish to attend?

Deputy R.C. Duhamel:

I personally would have no objections to any other States Members attending that meeting but, as it is a meeting that Deputy Young was specifically invited to and he has agreed, I think I would leave it up to him if he decided to invite any other Members to attend with him.

3.8.9 Senator S.C. Ferguson:

Would the Minister like to confirm whether he has a code of practice for his enforcement officers, and are they given training in relevant aspects of their particular role, such as planning matters and performance of their role?

Deputy R.C. Duhamel:

There is a code of practice and it is currently being reviewed. Indeed, some of the experiences of the enforcement officers are learned, if you like, from alternative careers.

3.8.10 Deputy G.C.L. Baudains:

Clearly, if an enforcement officer attends upon a landowner, there is likely to be a difference of opinion. Could the Minister assure us that, when enforcement officers attend a site, they do explain to the landowner what avenues are open to that person should they wish to complain or challenge what is happening?

Deputy R.C. Duhamel:

Indeed, and I think that does happen.

3.8.11 The Connétable of St. Lawrence:

Notwithstanding the number of complaints against enforcement officers, does the Minister consider that issues are investigated and dealt with by them on a timely basis and that adequate responses are given to the member of the public who has drawn the matter to their attention?

Deputy R.C. Duhamel:

Absolutely. The customer feedback policy does indicate timetables for formal acknowledgment of the complaint that is being made and the timetable for its investigation. If indeed those timetable outlines are not stuck to, then I would suspect that would give rise to further complaint.

The Deputy Bailiff:

A final supplementary?

3.8.12 Deputy J.H. Young:

I am very pleased at the amount of interest from other Members and if other Members wish to attend the meeting, as far as I am concerned, I am delighted, although I must say I think the

answers really would have been better put here in public, but nonetheless. Could the Minister clear up 2 points in relation to his answers: firstly, regarding the information he has given us, as tightly-drawn and sparse as it is on the numbers of complaints, does it include those people who have been through the court procedures where there is no current case at the moment but where the court set aside previous convictions for reason of invalidity of the action in the first place? Secondly, are his enforcement officers subject to disciplinary codes applicable to the Honorary Police, for example?

Deputy R.C. Duhamel:

The figures referred to are contained within a schedule entitled Formal Complaints. So I would suspect that one or 2 of them might well have been acted upon through the court and, indeed, others may well have been resolved through the 3-tier or 4-tier process.