

## **2.12 Deputy M.R. Higgins of the Minister for Economic Development regarding the costs of court action relating to the abolition of low value consignment relief:**

Will the Minister advise whether the figures of potential costs for taking the U.K. Government to court over its decision to abolish low-value consignment relief differ between Guernsey and Jersey when both Islands are contesting the same point, and whether an offer by a specialist costs lawyer to determine the costs of this action more accurately at no cost to the States was rejected, and if so, why?

### **Senator A.J.H. Maclean (The Minister for Economic Development):**

Jersey and Guernsey have arrived at different estimates for the legal costs of taking the U.K. Government to court over L.V.C.R. (Low-Value Consignment Relief). It is not appropriate for me to comment on Guernsey's estimated case costs especially as the case is still live, however, I can say that the quality of expertise we have engaged and the significant and thorough work undertaken in a short period of time has, in my view, been fundamental to securing a court hearing date far earlier than is normal procedure. This has been critical to allowing businesses that are considering relocation to remain in Jersey until the outcome of the court case is known. As Minister I take legal advice from the Law Officers Department rather than those who work in the private sector and this case was no exception. I did, however, refer the costs specialist to the Law Officers Department but I do not believe they chose to use his services.

### **2.12.1 Deputy M.R. Higgins:**

For the benefit of Members and the public, the costs estimated by Jersey are £360,000 and the costs for Guernsey £60,000, so you can take from it that maybe our lawyers are 6 times more expensive than those in Guernsey. However, the point is that any legal action is an expensive undertaking and we should, in my view, get the best possible advice. The Minister has mentioned that Jim Diamond's - who is a costs lawyer - letters were forwarded on to the Law Officers but he did not even respond. Is that not correct? Have you not even responded to letters from this individual who offered his services for free to the Island to make sure that we were getting best value from the legal profession? Would the Minister not agree that he should have responded to the person and should still pursue trying to get proper costs advice?

### **Senator A.J.H. Maclean:**

I do find this line of questioning quite frustrating. The gentleman that the Deputy is referring to used to work for the Law Officers Department before he was replaced by a permanent employee. On the subject of answering emails, the Deputy has previously raised questions about legal fees in the Island. I took those questions seriously and referred it to the Law Society. The Law Society has approached Mr. Diamond and failed on 7 occasions to get a response as to the methodology he used in his survey on legal charges. I would also say, which is equally frustrating, that Deputy Higgins himself raised questions about legal charges.

[10:45]

I raised that point to the Law Society and I am afraid the Law Society had a similar problem with Deputy Higgins who failed to reply. I have a letter here from the President of the Law Society that says that on 3 occasions there was no reply.

### **The Bailiff:**

The question is whether you had replied to the individual in this case. **[Laughter]**

### **Senator A.J.H. Maclean:**

I was trying to build a picture but it is a question of kettle, pot and black in some respects. I passed the details to the Law Officers Department which is the appropriate thing to do and left the matter

with them to make a decision on. I believe they did not use the individual; I am not sure of what communication directly or otherwise they had with him.

**2.12.2 Deputy J.H. Young of St. Brelade:**

I would like to ask the Minister to clarify a point that his answer raises; as the Minister responsible for this particular piece of States litigation, could he advise the Assembly whether he sought advice and whether it was possible to agree a cap or negotiated maximum fee in order to limit the extent of costs running and financial risks in the litigation?

**Senator A.J.H. Maclean:**

I am satisfied that the Law Officers Department negotiated hard and got an acceptable deal as far as costs are concerned. I am not aware in relation to a cap. With litigation, as you would know, it is very difficult to put a cap. I think if we are going to take the difficult decision that we have to take legal action, particularly in this particular case, we would not wish to hamstring that case in any way in advance of starting proceedings. Consequently I am satisfied with the estimate given although clearly these matters can change through litigation; as the case progresses the figures can alter.

**Deputy J.H. Young:**

Sorry to come back but I would like the Minister to clarify whether on this particular piece of legislation the decision on the spending is within his Ministerial responsibilities or whether that is a responsibility of the Law Officers to agree within their budget.

**Senator A.J.H. Maclean:**

It would be a matter for the Law Officers. It is certainly not funded from my department directly.

**2.12.3 Deputy R.G. Le Hérissier:**

Could the Minister inform the House, given the emphasis he placed upon the obtaining of an early date, when will the Guernsey case be heard?

**Senator A.J.H. Maclean:**

H.M.R.C. (Her Majesty's Revenue and Customs) has asked for the 2 cases to be joined together. They started as 2 separate cases; they have been asked to be joined together and so they will be heard at the same time.

**2.12.4 Deputy M. Tadier:**

Will the private companies in Jersey which stand to benefit if the legal challenges are successful be contributing to the costs of legal action?

**Senator A.J.H. Maclean:**

We have asked companies to contribute towards the legal costs and there have been already some undertakings that some contributions will be made?

**2.12.5 Deputy M. Tadier:**

Does the Minister have any idea about what proportion that might be and will it be dependent on whether the cases are successful or not?

**Senator A.J.H. Maclean:**

Not dependent on the cases' success and I cannot give an indication at this stage of what any contributions may be.

**2.12.6 Deputy T.M. Pitman:**

I am sorry if I missed this but could the Minister confirm those figures given by Deputy Higgins, because I think there is £300,000 different and were those quotes received on the same day?

**Senator A.J.H. Maclean:**

I think I made it clear that the case is still live and I was not going to go into details between the different estimates. The word I have used is “estimate”. Guernsey has received an estimate and we have received an estimate. I am satisfied certainly with our estimate, Guernsey’s is a matter for them to consider.

**2.12.7 Deputy J.A. Martin:**

I would like to prefix my question with saying good luck to whoever is representing us in the English courts against the English Government and I do hope we win, I really do. My question on that is, does it not follow that if we do win (as I hope we do) that we would get our costs back?

**Senator A.J.H. Maclean:**

Yes, the indication is that we would get certainly a proportion of costs back, which would significantly mitigate what our costs would be. I think the question from the Deputy is, in many respects, what would winning look like? People have asked me that question; you can win and still lose, if Members can follow; but in fact in this particular case we are looking for a level playing field and if we received a level playing field with Europe then that would allow us to maintain businesses in the Island and importantly jobs. This is about protecting local jobs.

**2.12.8 Deputy M.R. Higgins:**

Just a piece of information for the Deputy and for the Minister as well; I have not responded to the Law Society because I am bringing 2 propositions to the States in a short while to do with the legal profession, to do with charging and I am going to consult for 3 months on it, and they will have their opportunity to speak then. Going back to the idea of the costs; is the fact that we seem to have been quoted estimates much higher than Guernsey an indication that legal charges are too high in this Island?

**Senator A.J.H. Maclean:**

Absolutely not; it has got nothing to do with it at all. The costs are about taking this particular case through the High Court in the U.K. It has got nothing to do with costs locally.

**The Bailiff:**

Very well, we will come next to a question which Deputy Trevor Pitman will ask of the Chief Minister.