

STATES OF JERSEY



***EX GRATIA* PAYMENT: MR. D. TURNER (P.46/2012) – COMMENTS**

**Presented to the States on 28th May 2012
by the Minister for Planning and Environment**

STATES GREFFE

COMMENTS

1. This case relates to the prosecution of a restaurant for failing to comply with the terms of an Enforcement Notice served by the Planning Department pursuant to Article 40 of the 2002 Planning Law on 7th May 2011. The owner of the business was charged with the criminal offence of breaching the Notice during May and June 2011 on 2nd December 2011. Since 3rd July 2011, there have been no enforcement issues.
2. The Minister does not accept the Deputy's criticisms in respect of a case that was not straightforward. The Minister has confidence in the Department which worked hard on a case which ultimately resulted in a prosecution and guilty plea, but at the same time acknowledges that one can always improve and the Department will be better for the experience. Of course, the Minister also acknowledges that residents suffered as a result of the conduct that resulted in the issuing of the Enforcement Notice and the prosecution.
3. Proposition 46/2012 invites the States Assembly to agree an *ex gratia* payment to a prosecution witness in the sum of £7,757, described as compensation for costs incurred by the witness in gathering evidence to deal with an alleged breach of the Planning and Building (Jersey) Law 2002.
4. It is understood that only £1,626 of this sum directly relates to the expense incurred in obtaining evidence. The remaining £6,131 relates to legal expenses incurred by the witness.
5. It seems that the Proposition's primary aim is to compensate the witness for legal expenses incurred in appointing a lawyer to assist him, *inter alia*, to present his concerns and complaints to the Planning Department from 12th January 2010 to 17th May 2011.
6. The Minister accepts that the Department encouraged the witness to gather evidence for the benefit of the Department and therefore has paid Mr. Turner the sum of £1,626 as a Departmental expense.
7. The claim for legal fees in the sum of £6,131 is a different matter. There is no obvious connection between the taking of legal advice and the gathering of evidence. As a matter of law, the Minister is not obliged to pay a member of the public their legal fees because he or she feels that the Department's decisions are not correct. Indeed, the 2002 Law precludes the Minister from making such payments. If this payment is allowed, then presumably the States of Jersey will, in order to be consistent, have to consider making *ex gratia* payments in respect of all individuals who instruct lawyers when they feel that the Planning Department has been slow to act or has taken a wrong decision. Whilst the Minister has every sympathy for Mr. Turner in terms of the difficulties caused by the breaches of the planning conditions in this case that has since been put right, it is not appropriate to pay the legal fees in this case. It is contrary to the Law.

Financial and manpower implications

Any payment will need to be met from the existing resources of the Department of the Environment.