

5.2 Deputy R.G. Le Hérissier of St. Saviour of the Minister for Home Affairs regarding the possible conflict of interest of the newly appointed Chairman of the Police Authority:

Given the appointee's chairmanship of Jersey Finance, would the Minister advise whether the issue of any conflict of interest in his appointment as the Chairman of the Police Authority was considered by the Appointments Commission and if so, why was it decided that the appointment should proceed?

Senator B.I. Le Marquand (The Minister for Home Affairs):

The interview board included 2 members of the Appointment Commission. The issue of any possible conflict of interest that may have an impact upon the application for the role of Chairman for the Police Authority was raised in a direct question during the interview of each candidate. Neither the appointed Chairman nor any of the members of the interview board saw that there was an issue of conflict of interest and the interview board recommended his appointment to me. I also considered this issue before making the appointment and I do not see that there is any conflict of interest by reason of any other roles of the Chairman of the Police Authority.

5.2.1 Deputy R.G. Le Hérissier:

Thank you for that, I am afraid, disappointing answer. Could the Minister define what he means by conflict of interest, what test he applies, and secondly, would he not acknowledge, given the oft-expressed wish of Jersey Finance that Jersey's finance industry be seen as absolutely clean and that there be maximum co-operation with the judicial and police authorities in upholding that reputation, it is very odd that the Head of Jersey Finance should head up the very body who are allegedly to be peerless in their investigation of that industry?

Senator B.I. Le Marquand:

I am afraid, Sir, that Deputy Le Hérissier demonstrates that he does not understand the role of the Police Authority, so I will try to explain that as quickly as I can.

The Bailiff:

Concisely.

Senator B.I. Le Marquand:

As concisely as I can. The Police Authority does not set the Annual Business Plan. It does not set policies. Those are all the role of the Minister. The role of the Police Authority is simply to ensure that the Police Chief and officers are doing the things which have been set down in terms of policy by the Minister. So it is very difficult for me to see how the Chairman of the Police Authority at that level of not setting policy could have a conflict of interest. Furthermore, at individual case level, the Police Authority is not going to get involved in individual cases in general because of the principle of the independence of the police in terms of investigation of matters. So they are not going to be intervening or interfering in individual investigations in that kind of way. So I cannot see how because of the nature of the role - which is not a policy-setting role, but an implementation of policy already set - how there could be a difficulty.

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

In those policies is, one has to presume, that financial crime, aggressive avoidance and evasion are all issues on which the Police Authority will be deciding if the Chief of Police has fulfilled his remit, is it not? Given that the appointee just spent the past few years promoting Jersey Finance through Jersey Finance, could it not be seen as what is known in small jurisdictions as regulator capture in this particular case?

Senator B.I. Le Marquand:

The sole interest of the police is in relation to financial crime, not in relation to avoidance or evasion, except insofar as those constitute financial crime. As I said, setting of policy in relation to matters and prioritisation rests firmly with the Minister. It is simply the role of the authority to ensure that the Police Chief is doing that which the Minister has decided in terms of policy without interfering in individual cases.

5.2.3 Deputy M. Tadier of St. Brelade:

The question that needs to be asked when looking at the test for a conflict of interest based on what the Minister has just told us is that on the one hand, you have the Police Authority Chairman, who is looking at how the Minister sets policy, and on the other hand, the question needs to be asked: “Does he have an interest in his other role in how that policy would affect financial services, indeed, Jersey Finance?” The question I think has to be yes, and if that is the case, how can the Minister say with a straight face that this does not imply a conflict of interest?

Senator B.I. Le Marquand:

The regulatory body in relation to financial matters is the Jersey Financial Services Commission, not the States of Jersey Police, and so for the reasons I have already said, I simply cannot see any conflict whatsoever.

5.2.4 Deputy M. Tadier:

A supplementary: going beyond conflict, was any consideration given to the reputational damage of Jersey which is now from critics and also from impartial observers in the international community going to look at this as an example of regulator capture and think of Jersey as nothing but a tinpot *soi-disant* potato or banana republic on the basis that it cannot even find somebody who is perceived to be independent, and that it is just a brazen attempt from an out of touch and captured Government which cannot even see that when it is dangled in front of their faces?

Senator B.I. Le Marquand:

I repeat, the regulatory body is the Jersey Financial Services Commission, not the States of Jersey Police. The fact that there may be all sorts of tittle-tattle on the internet and elsewhere by critics of Jersey, some of which is completely irrational, some of which have some partial basis, is neither here nor there. The objective test in relation to this is that there is no conflict of interest.

The Bailiff:

A final question, Deputy Le Hérissier.

Deputy T.M. Pitman:

I did have my light on, Sir. I do not know if you saw me or not.

The Bailiff:

I do beg your pardon, Deputy, and I had you down. I am so sorry. Deputy Pitman, yes.

5.2.5 Deputy T.M. Pitman:

I could not put it as eloquently as Deputy Tadier, but my concerns are pretty much the same. Has the Minister not considered how this does to look to outside, because we have heard this concern raised in the past where we keep selecting from an ever-shrinking group of people. Conflict is not just about real conflict, it is also about perception and does he not consider that that is a matter worthy of true analysis, then perhaps the decision would have been different. That is not an attack on this gentleman, because I do not know him.

Senator B.I. Le Marquand:

What the difficulty is if people misunderstand the nature of the role of the Police Authority, they may come to wrong conclusions. Once they understand that the true nature of its role - and the Chairman is only one person on that, we have elected today 2 States Members, and will shortly hopefully be choosing 4 other members - then they will see that on any objective test that there is no issue.

The Bailiff:

A final question from Deputy Le Hérissier.

5.2.6 Deputy R.G. Le Hérissier:

I wonder if the Minister could talk about a situation where he will be, for example, setting the policy re the investigation of financial crime. Is he seriously telling us this House that the Police Authority will simply passively receive this policy and just assess whether or not it is being implemented even if, for example, he were to say ... quite contrary to the views of the Financial Services Commission, the Chief Minister and all the people who were saying Jersey Finance has impeccable integrity in the way it deals with malfeasance in the industry, is he seriously saying he might well order the police to be soft on financial crime and the Police Authority has to accept that, because they are just implementation observers?

Senator B.I. Le Marquand:

I think that would be gross incompetence on the part of the Minister, if I may say so, so it is not a terribly good example and that is not going to happen while I am Minister.