

2019.03.12

8 Deputy S.M. Wickenden of the Attorney General regarding the legal responsibilities of the Minister for Home Affairs in relation to the appointment of the Chief Officer and Deputy Chief Officer of the States of Jersey Police: [OQ.57/2019]

Certainly, Sir, OK. Will Her Majesty's Attorney General advise whether the Minister for Home Affairs has a legal duty, under the States of Jersey Police Force (Jersey) Law 2012, and Regulations made thereunder, to appoint a Chief Officer and Deputy Chief Officer of the States of Jersey Police Force within a reasonable time of those offices becoming vacant and, if so, whether a period of 7 months exceeds a reasonable time?

Mr. R.J. MacRae, H.M. Attorney General (The Attorney General):

Article 8 of the States of Jersey Police Force 2012, says: "There shall be a Chief Officer and a Deputy Chief Officer." The States of Jersey Police Force (Chief Officer and Deputy Chief Officer) (Jersey) Regulations 2012, Regulation 6, says: "The Minister shall appoint a Chief Officer and a Deputy Chief Officer." The word 'shall' means these provisions are mandatory and, therefore, in my view, in the absence of there being, unless there is no appointable candidate, that is one that is so suitably qualified for the post under Regulation 6(2), then the first part of the question must be answered, yes. That is to say, the Minister must appoint to the posts within a reasonable time of them falling vacant. As to whether or not the period of 7 months exceeds a reasonable time, this is a question of fact, rather than law and would depend on a full assessment of the circumstances, which I cannot carry out, as I am not privy to the factors which may explain the delay.

The Bailiff:

Supplementary?

Deputy S.M. Wickenden:

No, thank you, Sir, I think that was very clear.

6.8.1 Deputy M. Tadier:

Under the law would the Attorney General just state who it would be that would decide whether, or not, to pursue any consequence for the Minister, in the absence of an appointment having been made?

The Attorney General:

There are no specific appeal rights, to any third party, in relation to a refusal, or failure, to appoint. But that decision would be subject to judicial review at the behest of any affected person with *locus* to pursue an application.

6.8.2 Deputy R. Labey:

Has the Attorney General's office been in contact with the Home Affairs Department on this issue yet, or will his office be doing so?

The Attorney General:

I regret to say that, of course, as is well known, the clear convention is that any advice that the Attorney may give, or could give, is privileged, as is the fact of the giving of any such advice.

6.8.3 Deputy M. Tadier:

Is it ultimately up to the Attorney General to decide whether, or not, an offence has been committed by this Minister, or any Minister and is it up to the Attorney General to decide whether to prosecute, if that is appropriate under this law, the said Minister, who he is also giving advice to?

The Attorney General:

Perhaps we are at cross-purposes here, but there is no suggestion that a failure to appoint an officer would give rise to a criminal offence under statute, but it could be subject to judicial review, which would be determined by the courts and not by the Attorney General.

6.8.4 Deputy M. Tadier:

In the case of a judicial review, what would the role of the Attorney General, or the Solicitor General, be in that judicial review, with regard to this decision?

The Attorney General:

The Attorney would, obviously, have no role as applicant, or determiner, of the process. The Attorney might be convened to the court to express a view as *amicus*, or might be invited to represent the respondent, depending upon who the respondent to the application was. It may be, as the Deputy suggests, that my department would provide legal advice and representation to the Minister in the event of there being a challenge; that does not prevent me from giving independent advice to this Assembly, as I hope is clear what I have said today to the Assembly.

[10:45]

6.8.5 Deputy M.R. Higgins:

With what the Attorney General has just told us, does he not think that the mixed relationships he has with Ministers, the Assembly and so on - and also if it does go to judicial review - that his department, or his position, is totally conflicted?

The Bailiff:

That does not arise out of the question; that is disallowed. Final supplementary, Deputy Wickenden?

Deputy S.M. Wickenden:

Sir, I am fine, thank you.