

STATEMENTS ON A MATTER OF OFFICIAL RESPONSIBILITY

7. The President of the Chairmen's Committee regarding the report on Overdale: The Closure of Leoville and McKinstry Wards (S.R.1/2007)

7.1 Deputy R.C. Duhamel (President of the Chairmen's Committee):

The Chairmen's Committee has noted the content of recent emails circulated to all States' Members from the Minister for Health and Social Services in regard to the Scrutiny report on the closure of wards at Overdale Hospital. The Committee wishes to affirm its support for the report and indeed would like to place on record its appreciation of the high standard of research within it and of the balanced and careful way in which the Panel has approached the subject. They would also like to draw attention to the competent and professional support provided by the Scrutiny Officers. Great care was taken to ensure that the Scrutiny inquiry followed the relevant codes and protocols. The Committee believes that the report, as well as undertaking an excellent analysis of how an important decision was made, also makes a useful contribution to the debate surrounding the care of the elderly. The Committee is very concerned that the Minister's comments appear to be an intemperate attack on the very basis of Scrutiny. It is a fundamental principle of Scrutiny that review topics are carefully considered before they are undertaken and the public interest is an important factor. In this case it seems extraordinary that the Minister should seek publicly to undermine a study by describing it as "a waste of public money." Both the Committee and the Panel welcome comments upon the report. However, the Committee believes that the process of responding to the report should be carried out in a measured and reasoned way.

The Deputy Bailiff:

Any questions?

7.1.1 Senator S. Syvret:

Yes, Sir, I have a couple of questions to the chairman of the Panel which I think can be answered quite simply. Does he believe that the work of the Scrutiny Panels and the reports they produce should be evidence-based and testable on a factual basis? That is the first question. The second question is, does he, having criticised me for responding in the way that I did, believe that it is acceptable for members of a Scrutiny Panel to make statements of utter falsehoods to the local media about the Minister concerned?

Deputy R.C. Duhamel:

Yes, of course, as chairman of the Chairmen's Committee and indeed a Scrutiny member, evidence-based scrutiny in the main is the way that we carry out our functions. We should not draw an innuendo or things that cannot necessarily be put to proof. On the second issue, I think the criticism that we are making, perhaps in this statement, is that carrying out exchange of comments by internet means or through email is not the established way or protocol with which we can treat both sides with the respect that is due to both sides.

Senator S. Syvret:

The Deputy did not answer my question. He speaks of the email exchange; what about the prior media exchange in which falsehoods were said about me?

Deputy R.C. Duhamel:

It is a question of judgment, of course, as to who has made those false statements and, indeed, in any review undertaken by the Chairmen's Panel, the Scrutiny Panel themselves or the body of which the Scrutiny report has been named, one would expect that all of these issues be properly looked at.

7.1.2 Deputy R.G. Le Hérissier:

Would the chairman not agree that in cases - as indeed are faced often by courts of law where there is one set of events but there is the possibility of 2, indeed, sometimes more interpretations - that it is the duty of a Scrutiny Panel to draw attention to where there are differences of interpretation so that the Members of the House may indeed be the final judges, and that it is therefore presumptuous for people who are themselves the subject of such interpretation to precipitously jump in, in order to try and distort the findings of the Panel?

Deputy R.C. Duhamel:

I am happy for those words to be put in my mouth, yes, Sir.

7.1.3 Senator S. Syvret:

No one I am aware of has attempted to inappropriately influence the Panel's report, but when it has so many fundamental errors in it does the Deputy suggest that he is really surprised that people should respond to it strongly? It is the case, Sir, that, yes, Ministers and others are subject to Scrutiny but Scrutiny itself also needs to be subject to scrutiny *ipso custodes* - and I am grateful to the Attorney General for his advice on the pronunciation; Latin was never a strong point at St. Helier Boys.

Deputy R.C. Duhamel:

The Latin phrase that the Minister refers to is "who watches the watchman" in the English translation. Absolutely right, Sir. The report as written should be evidence-based. However, when it is placed in the public domain we would expect, quite reasonably, the department and the Ministry to whom it refers to come back and to agree or disagree in the same way as the work was conducted in the first instance. In that sense, I mean evidence-based. If there are passages within the report where 2 different alternative interpretations can take place, as my Vice-President told the House, it is an acceptable point for Scrutiny to make sure that a level of interpretation can be placed. Perhaps that is as far as Scrutiny needs to go in those types of instance. However, I would agree with the Health Minister that, if indeed there are unsubstantiated claims made within the Scrutiny report, then I await his interpretation of those events and would sincerely hope that he could put pen to paper, or at least encourage his officers to do so on his behalf, to close the circle to make sure that somebody is indeed watching the watchman.

7.1.4 Senator S. Syvret:

Would the Deputy be pleased to know that I am in fact, in co-operation with my department, preparing a detailed evidence-based response to the Scrutiny Panel's report which I hope to have lodged with the Assembly some time in the next week or so, and that out of that I will probably be proposing amendments, either to the Standing Orders or the draft Code of Practice for Scrutiny when it comes forward for approval?

Deputy R.C. Duhamel:

I am very glad to hear that.

7.1.5 Deputy R.G. Le Hérissier:

Would the Chairman concede that, based on a measured, reasoned and unemotional analysis, the report is indeed praiseworthy for the most part of a lot of actions of the Health Department, and by placing the emphasis upon a couple of instances and a couple of decisions, this has entirely distorted the intent of the report and its overall thrust?

Deputy R.C. Duhamel:

I would agree with that. We have been told in setting up Scrutiny Panels and a Scrutiny system that Scrutiny should operate as a critical friend and, indeed, in most of the reports that have been

produced there are passages, where merited, which do heap praise upon the Ministers for carrying out the policies that we are scrutinising, and long be it so, Sir.

7.1.6 Senator F.H. Walker:

Does the Chairman believe that it is good practice for a member of the Scrutiny Panel to make comments to the media when a report is released which go far beyond the comments of the report itself, and does he share my regret that that was the basis upon which the *Jersey Evening Post* reported the matter and which has led, without any doubt at all, to an escalation of the disagreement between the Health Minister and the Scrutiny Panel?

Deputy R.C. Duhamel:

I would agree with the Chief Minister but would also counter that, as he told us at a recent meeting at lunchtime, it takes 2 to tango. Had the comments, perhaps inappropriately stated by the particular member of the Scrutiny Panel, not been made or pounced upon by the Minister then this whole thing could have been seen for what it is, which is probably a storm in a teacup.

7.1.7 The Connétable of St. Helier:

Would the Chairman not agree with me that this whole episode illustrates the dangers of hitting the Reply to All button on our computers and would he share with me that perhaps these disagreements could be kept between individual Members?

Deputy R.C. Duhamel:

Absolutely, Sir. If people would care to re-read the statement, this is, in essence, the main part of what we are saying. It is not right, in our point of view, to conduct messy discussions over the internet and we would ask for any such discussions or comments on particular reports to be carried out in a measured and reasoned way.

The Deputy Bailiff:

That brings questions to an end. We then come to a Statement which the Chairman of the Privileges and Procedures Committee will make concerning the Machinery of Government Review