
STATES OF JERSEY



STATES EMPLOYMENT BOARD: CHIEF EXECUTIVE OFFICER EXIT DELIBERATIONS

Presented to the States on 20th May 2021
by the States Employment Board

STATES GREFFE

REPORT

The States Employment Board has been provided with the report of the Comptroller and Auditor General (C&AG) in respect of the termination arrangements agreed with the former Chief Executive in November 2020. We have also considered the publication today of the Annual Report and Accounts which includes the Report of the Independent Auditors and the Certificate of the Comptroller and Auditor General to the States Assembly.

The C&AG report concludes that whilst there have been a number of weaknesses in policies and procedures the severance payment made to the former chief executive was “reasonable in light of the potential claims that the employer might have faced and the costs of defending them”.

The CAG points out that the whilst the Independent Auditors qualified the regularity opinion that does not mean that the States lacked the power to agree and make the payment. This response covers clarifications from SEB relating to the decision-making process of the Board.

Considerations

Throughout our deliberations, the Board benefited from professional advice, alongside advice from the Group Director for People and Corporate Services (as head of the human resources profession) and our own independent adviser.

The functions and powers of the States Employment Board are established in the Employment of States of Jersey Employees (Jersey) Law 2005, for which we have due regard in our deliberations and decision-making.

In this particular case our deliberations included consideration of how we discharged our duties of ‘economy, efficiency, probity and effectiveness’, the ‘proper administration and management of States’ employees’, our duty of care towards employees, and the requirements under our own Codes of Practice, policies and legal obligations.

The Board in particular welcomes the finding of the CAG of the need to promote clarity of accountability for decisions and associated expenditure and the recommendation to undertake a fundamental review of the interaction between key pieces of legislation, in particular the Public Finances (Jersey) Law 2019 and the Employment of States of Jersey Employees (Jersey) Law 2005.

The Board welcomes the report and recommendations of the C&AG and has accepted in principle the recommendations. We will provide a more detailed response to the recommendations in due course.

The C&AG has indicated that she intends to undertake a follow-up of progress against previous audits towards the end of 2021, by which time the Board expect to have made good progress against all the recommendations set out in this and her previous reports.

Points of clarification

The Board was afforded the opportunity by the C&AG to comment upon and check the factual accuracy of her draft report prior to her issuing the final report to the States. We were grateful for the opportunity to provide evidence on these matters in advance of her publication and prior to the issue of the auditors opinion on the Annual Report and Accounts.

Within the C&AG report, the 'Agreed Terms' section (paragraphs 48 to 55) provide a factual representation of the negotiated settlement with the former Chief Executive. We do not intend to go beyond the facts set out in the report.

The auditors have provided an unqualified opinion on the financial statements confirming that they give a true and fair view of the States of Jersey's Core Entities and the income and expenditure of the Group as at 31 December 2020.

The auditors are also required to report on a number of other matters including whether financial transactions conform to appropriate governance. They have concluded that, except for, the one matter referenced below, income and expenditure has been applied in line with the purposes intended by the States Assembly.

This matter is the subject of a sole technical qualification which requires internal control processes and associated governance to be clarified to avoid a reoccurrence.

The exception relates to the severance payments to the former Chief Executive.

It is important to note that the C&AG considers that the settlement agreed was reasonable in the light of potential claims that the SEB might have faced and the costs of defending them. The settlement was also within the powers of the SEB.

The C&AG has made certain recommendations to improve policies and procedures going forwards. These are accepted in principle by the SEB which recognises that certain deficiencies within existing processes resulted in an instance of technical non-compliance with the Public Finances Manual.

Within the Annual Report and Accounts, the auditors state:

In considering the regularity of expenditure, we identified an exception related to the settlement agreement in respect of the severance of the Chief Executive's employment contract which is included in staff costs. The Public Finances Manual (Special Payments) requires that where special payments are being considered, the Treasury and Exchequer must always be consulted. In our view, the amount agreed was in excess of the minimum contractual requirements and the consultation required by the Manual did not take place.

The Board, in its deliberations, was mindful of a range of employment liabilities and sought advice on the quantum of these liabilities. In our deliberations, the Board focused on the 'contractual exposure' arising from the circumstances leading up to the Board's considerations.

The C&AG recognises that the specific contractual clauses were specified as 'up to' certain limits. The Board asserts that it did not exceed the upper limits in the total sum

agreed with the former employee, although the Board did agree to package these limits in the final compromise agreement. In our opinion, the maximum limits envisaged in the contract were not exceeded. Indeed, at the time, the Board was advised that there was a minimum contractual exposure of £500,000.

The Board readily accepts that the Public Finance Manual is intended to ensure consultation with professional officers from Treasury & Exchequer and that doing so at that time would have reinforced the discharge of its duty and placed the matter beyond doubt.

The Board has historically often taken advice from and consulted with the officers from Treasury & Exchequer and has already taken steps to ensure that officers (including the Treasurer) enjoy enhanced participation in its deliberations of matters that have significant financial implications for the States and Government. Of critical significance, there is no inference or suggestion that the payment or arrangements agreed by the Board were unlawful, illegal or outside of its powers. Nor is there any inference or allegations that the Board acted in such a manner that it did not meet its legal duties or act in any manner that contradicts its legal duties.

Conclusion

The Board has had the opportunity to consider its actions and decisions in a measured and reflective manner. In doing so it recognises that:

- the terms reached with the former Chief Executive have been considered 'reasonable' and within the authority of the Board.
- a number of improvements in policy and process are recommended; this includes addressing tensions between the Public Finances (Jersey) Law 2019 and Employment of States of Jersey Employees (Jersey) Law 2005.
- the conclusion reached by the external auditors is rightly an independent one. The Board has had the opportunity to make representations to the auditors and clarify their position. Whilst the Board reached a different conclusion, it recognises the conclusions reached by the external auditors.
- there are a certain weaknesses within existing policies and procedures that made decision-making for the SEB more difficult and resulted in a single instance of technical non-compliance with the Public Finances Manual.

During its negotiations, the Board sought, under advice, to achieve a reasonable settlement, taking account of the risks of any potential claims that the employer might have faced, as well as the costs of defending such claims and welcomes the recognition by the C&AG and her conclusions surrounding this objective.

In addition, the Board was mindful of the desirability of achieving an orderly handover and departure, considering that this was all in the best interests of both the taxpayer and the Island, particularly given the status of the pandemic which the Island was suffering at the time.

In the opinion of the Board these objectives were achieved. The Board recognise and accept the recommendations of the C&AG, particularly where processes need clarifying or improving, and these will be implemented over the coming months.