

# STATES OF JERSEY



## **SUSPENSION OF STATES EMPLOYEES: COMPOSITION OF REVIEW PANEL (P.98/2009) – COMMENTS**

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**Presented to the States on 30th June 2009  
by the Council of Ministers**

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**STATES GREFFE**

## COMMENTS

1. The Council of Ministers acknowledges that during the course of the debate on P.46/2009, a number of States Members expressed considerable disquiet about the handling of suspensions in the public sector. It is a matter of record that there are a number (albeit very small) of high profile cases of employees being suspended for many months, and in one case, as a result of a police investigation and criminal prosecution, over 2 years. In response to this concern, the Council of Ministers intend to revisit the disciplinary and suspension procedures, including the review processes for suspensions, and bring a proposal back to the Assembly in September. The Council of Ministers recognises the need to deal more quickly with disciplinary cases which involve suspensions and in particular where Police investigations and/or criminal proceedings are involved. In the meantime, it is the recommendation of the Council of Ministers that P.98/2009 be rejected.
2. Neither the Deputy of St. Martin's original proposition nor this one will do anything to improve the timescales in the cases where possible legal action is being contemplated under criminal law. It simply adds a layer of bureaucracy that will tie up management time without addressing the underlying issues. No other organisation is subject to such controls.
3. If the purpose of the review panel is to allow review of the original decision to suspend, bearing in mind that this decision will have been made by a Chief Officer, it is likely that a more junior employee will feel less qualified, comfortable or able to do this than another Chief Officer from a different department. As a result, it is considered that a more thorough and testing review would be undertaken under the SEB proposal.
4. Under the States Employment Board (SEB) proposal, Chief Officers will not review a suspension in their own department. Therefore, the reviewing Chief Officer will be independent of the department concerned and thus, capable of being objective and impartial.
5. The terms of reference that the Chief Officer will follow in reviewing a suspension will be laid down to ensure that policies, procedures and contractual responsibilities have been followed and that the original reason for the suspension still applies. It is a serious challenge to Chief Officers' professionalism to suggest that a Chief Officer drawn from another department is less likely to act in an independent and objective manner than a more junior employee drawn from another department.
6. The Deputy of St. Martin's original proposition (P.46/2009) that was agreed by the States on 30th April 2009, effectively gave suspended employees the right to be accompanied by anyone of their choosing at such hearings, thus allowing lawyers and States Members to represent them. The Council of Ministers feels it would be unfair and unreasonable to subject a more junior employee (who may not have had this type of exposure) to the pressure that acting as reviewer in such a situation could create. It must be remembered that these are procedures relating to employment matters, not a court of law.

7. There is an issue of proportionality too. The procedures to deal with problems that arise during employment need to cope with a range of problems; from the straightforward to more complex, occasionally even criminal, acts. The environment in which the employment procedures must be capable of being applied will range from an office or workshop to a hospital or school. Clearly the degree of impact that a person's action may have will vary, and that must be taken into account in the application of employment procedures including suspension. In some cases the duty of care to the public and/or to other staff will mean that suspension will be essential to ensure a full and thorough investigation can take place to establish all the facts prior to disciplinary action being taken.
8. In any event, the Employment (Jersey) Law 2005, and internal Disciplinary Procedures agreed with recognised Trade Unions, are already in existence that lay down the expectations of a good employer in dealing with employment and disciplinary problems, including what constitutes fair disciplinary and dismissal procedures. Due reference needs to be made to these when making new propositions which are binding on SEB employees.
9. The Deputy of St. Martin's original proposition made several allegations without evidence to back them up, that suggests a public sector being deluged with long-term suspensions that for a variety of reasons were not being appropriately dealt with. In fact, Chief Officers were already required to review suspensions in their own departments on a monthly basis and the States Employment Board receives a bi-annual report which details the number of suspensions and reasons why any of those suspensions have exceeded 8 weeks' duration.
10. Chief Officers are well aware of the cost of suspensions, particularly in view of the budgetary restrictions that have been imposed over a number of years, as well as the impact on the employee and the services to the public they provide. They do not take suspending an employee lightly, nor do they allow suspensions to continue without good reason and, as Members will see from the paragraphs below, in normal circumstances, the only reason why the resolution of a suspension is delayed is due to external influences that usually involve a police investigation. In the latter circumstance it is common for the police or other legal advisers to request that internal proceedings are held in abeyance pending the completion of their processes to avoid prejudicing any subsequent legal proceedings.
11. The following statistics were reported to the SEB in January 2009 for the period July to December 2008 –

*For the period 1st July to 31st December 2008, the total number of employees suspended from work was twenty two. Of those twenty-two –*

- *Seven have been subject to disciplinary action.*
- *Eleven remain suspended while investigations continue to take place.*  
*Note – This includes Police Officers who are subject to separate disciplinary arrangements.*
- *One has resigned from the service.*

- *Two have been reinstated.*
- *One has returned to work following a reduction in the disciplinary charge*

*The suspensions of the employees suspended during the period have been reviewed by their respective Chief Officers on a regular basis.*

12. To give Members an up-to-date picture, currently 5 employees are suspended; **this represents just 0.01% of the public sector workforce.** Details of the employees who have been suspended since 2006 who are still suspended as at June 2009 are set out in the table below, which does not include Police Officers.

<b>Employee Pay Group</b>	<b>Suspension Commenced</b>	<b>Reason</b>
<b>Doctors &amp; Dentists</b>	<b>18/10/2006</b>	<b>Police investigation completed. Now pending disciplinary action.</b>
<b>Civil Servant</b>	<b>12/06/2008</b>	<b>Police investigation completed. Now awaiting decision regarding potential disciplinary action.</b>
<b>Health Care Asst.</b>	<b>01/12/2008</b>	<b>Police investigation ongoing.</b>
<b>RCCO</b>	<b>23/01/2009</b>	<b>Police investigation ongoing.</b>
<b>Doctors &amp; Dentists</b>	<b>02/02/2009</b>	<b>Police investigation ongoing.</b>

13. The number of employees suspended as a result of disciplinary infractions since 1st January 2009 are as follows –

<b>Employee Pay Group</b>	<b>Suspension Commenced</b>	<b>Suspension Finished</b>	<b>Method of Disposal</b>
<b>Nurses &amp; Midwives</b>	<b>14/01/2009</b>	<b>28/01/2009</b>	<b>Disciplined</b>
<b>RCCO</b>	<b>23/01/2009</b>	<b>Ongoing</b>	<b>Ongoing</b>
<b>Doctors &amp; Dentists</b>	<b>02/02/2009</b>	<b>Ongoing</b>	<b>Ongoing</b>
<b>Civil Servant</b>	<b>11/02/2009</b>	<b>04/03/2009</b>	<b>Disciplined</b>
<b>Nurses &amp; Midwives</b>	<b>23/03/2009</b>	<b>29/04/2009</b>	<b>Disciplined</b>
<b>Teacher</b>	<b>07/05/2009</b>	<b>16/06/2009</b>	<b>Disciplined</b>

**The Council of Ministers opposes the Deputy of St. Martin's proposition (P.98/2009) on the grounds that –**

- (i) It interferes with the due process of line management of staff within the public sector and by implication says that Chief Officer members of the Corporate Management Board cannot be trusted to act impartially when undertaking reviews of suspensions;**
- (ii) It has the effect of placing a significant administrative burden and additional cost on management without delivering significant benefit; and**
- (iii) The Council of Ministers intends to bring its own proposals to the Assembly in the near future to address the fundamental issue of balancing duty of care to the public and other staff, and ensuring that adequate enquiries can be made to establish the facts of a case, with ensuring the rights of the individual to be treated fairly.**