

STATES OF JERSEY



CHILD ABUSE COMPENSATION CLAIMS: FREEDOM OF EXPRESSION FOR SURVIVORS (P.49/2009) – AMENDMENT

Lodged au Greffe on 29th April 2009
by the Council of Ministers

STATES GREFFE

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At the end of the proposition, after the words “any judgment or settlement”, insert the words “with the exception that there may be circumstances in which commercial terms relating to the sum of the settlement may be subject to a confidentiality agreement”.

COUNCIL OF MINISTERS

REPORT

In this Proposition, the States are asked to agree that in respect of claims being made against the States of Jersey by survivors of child abuse, the States shall not offer, seek or impose any form of confidentiality clause in any negotiations or settlement with claimants and their representatives, and to further agree that the States shall not make any request to a court, future redress board or similar body considering compensation claims, to impose such a clause as part of any judgment or settlement. The Council of Ministers completely agrees with the sentiment of this Proposition and would want to support it. However, whilst seemingly very attractive, there may be circumstances in which it would not be in the best interests of an individual. The Council of Ministers would therefore wish to put forward an amendment to ensure that in one respect, and only in this one respect, the option of negotiating confidentiality should remain open.

I would like to very briefly outline the reason for the amendment, but first let me be very clear that I and the Council of Ministers believe that any individual should be free to speak openly and honestly about their experiences, always recognising that they must be mindful of the law and the impact on other members of society. We therefore agree that the States should not offer, seek or impose any form of confidentiality clause in any negotiations or settlement with claimants which would impair their ability to speak of their experiences. However, it is very easy to envisage circumstances in which in order to settle one individual's valid claim, without prejudicing the interests of other claimants or the public, the size of the settlement should remain confidential. This amendment would allow such an agreement to be concluded where it was appropriate to do so.

Civil claims are at a very early stage and the States' legal advisors are in discussions with lawyers appointed by claimants concerning these claims. There are a number of issues that need to be addressed, and one preliminary issue concerns the legal representation of claimants. It is understood that a number of claimants are being represented by lawyers under conditional fee agreements whereby "success fees" are payable and those fees will operate to reduce any sum that might be payable to any claimant. As claimants are entitled to legal aid in Jersey, it is a concern that the best interests of claimants are not best served by the present arrangements, and this is being raised with the lawyers concerned.

The insurance position is very sensitive and is presently being actively pursued. We are not in a position to properly address this point as at today, or to advise on the Insurers' position in connection with the civil claims; however, solely as a matter of principle, it is understood that reaching any sort of agreement concerning the handling of civil proceedings without obtaining the consent of potential insurers could prejudice any insurance cover in place

Conclusion

I hope States Members will understand that these are very complex matters. People who have been subject to abuse must receive the support, respect and understanding they deserve, and the Council of Ministers will do all in its power to ensure these are delivered. However we also have to be aware of the wider public interest. I believe that with a very simple amendment that will not infringe the rights of any individuals we should be able to achieve that difficult balance.

Financial and manpower implications

There are no additional financial or manpower implications arising from this amendment.