

STATES OF JERSEY



REDUNDANCY PAYMENTS: BUSINESSES WHICH HAVE CEASED TRADING

Lodged au Greffe on 17th June 2014
by Deputy G.P. Southern of St. Helier

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to request the Minister for Social Security to extend the insolvency scheme to enable the Minister, in consultation with the Viscount, if appropriate, to use discretion to make payments to workers who have been made redundant without the payment of statutory notice by businesses that have stopped trading even if the businesses have not yet been declared insolvent.

DEPUTY G.P. SOUTHERN OF ST. HELIER

REPORT

On 17th June 2009 the States voted by 41 votes to 1 to adopt P.67/2009: ‘Insolvency: Temporary Scheme for Compensatory Payment – extension’ as follows –

- (a) *to refer to their Act dated 25th March 2009 in which they requested the Minister for Social Security to establish an easily accessible and well-publicised system within the Social Security Department to deliver payments on a similar basis to all Jersey workers made redundant by insolvency from 4th February 2009, and to maintain this system of payments until an Insolvency Scheme was in place; and*
- (b) *to request the Minister to **extend the scheme** (details of which were presented to the States by the Minister on 29th April 2009) **to enable the Minister, in consultation with the Viscount, to use discretion to make payments to workers who have been made redundant without the payment of statutory notice by businesses that have stopped trading even if the businesses have not yet been declared insolvent.***

In my report on that proposition, I laid heavy emphasis on the need for prompt government action in response to redundancies thus:

When the Assembly endorsed my propositions P.9/2009 and P.34/2009 to enable workers made redundant through insolvency to receive support through payments in lieu of statutory notice, the Social Security Minister reacted with commendable speed in bringing forward his temporary scheme outlined in R.44/2009 and presented to the States on 29th April 2009.

One of the major factors that influenced members, I believe, was the need for immediate support to be made available. Members recognised that, in the absence of redundancy payments in Jersey, the complexities involved in ex-employees seeking compensation through a court or tribunal process which might take months would be unsatisfactory.

In P.34/2009, the report stated this principle clearly.

It was clear to many in the Assembly that the vote in favour of P.9/2009 (Woolworths employees: payment of statutory notice periods), was based on 2 factors –

- (a) *that redundancies through insolvency were occurring;*
- (b) *that financial support was required to compensate those made redundant **in a timely manner.***

The Minister’s Report R.44/2009 also reinforced this issue –

“Time has been of the essence in drawing up this temporary insolvency scheme, which is designed to pay compensatory statutory notice pay to employees where their employer is insolvent.”

“As well as avoiding unnecessary delay, another priority has been to design a scheme that is easily accessible to those submitting a claim and that pays out relatively quickly to those who qualify.”

“To incentivise people to return to work as swiftly as possible, all those who qualify will receive up to 4 weeks of any compensatory notice pay entitlement – with no reductions. This removes any disincentive to find work quickly.”

“Prompt payment is another key aspect of this scheme. In the UK, any payment in lieu of notice is only made after the end of the notice period (up to 12 weeks) when any earnings during that period have been established. Under this temporary scheme, eligible employees will not have to wait unduly for their notice payment.”

In theory then, the temporary scheme should be able to provide timely and prompt assistance to employees made redundant as it was designed to do. However, in the case of Collas & Le Sueur Ltd., whose **employees were made redundant 5 weeks ago, no payments have yet been made.**

As I noted at the time: *“It appears that the scheme devised by the minister of Social Security has failed in its first test to deliver what the States has requested. This proposition is designed to give the minister a degree of flexibility to enable him to properly support redundant workers with payments in lieu of notice in a timely manner, whilst insolvency proceedings are resolved.”*

In that case there was a 5 week delay (at least) back in 2009. Today, 5 years later, despite the establishment of statutory redundancy, insolvency scheme and an insolvency fund, we have a delay in getting payments to the employees of Just Glass & Windows of over 7 weeks.

The then Chief Minister, Senator T.A. Le Sueur, reflected the mood of the Assembly when he offered his support as follows –

*“Members may have noticed that the Minister for Social Security and the Assistant Minister are both out of the Island and accordingly I am wearing another hat today as Minister for Social Security. In that context **I am happy to confirm the acceptance of this proposition by the Minister and indeed to welcome it** as further clarifying the desire to assist those employees in resolving as swiftly as possible the concerns and difficulties which they undoubtedly will have in this situation.”*

*“It is, as the proposer said, much a matter of **exercising discretion sensibly** and in an informed way and **using the assistance of the Viscount’s Department** in ensuring that that discretion is used wisely, as well as widely. Hopefully not too widely ... certainly wisely.”*

“There may be issues as Deputy Southern says, in being able to recover assets if the insolvency does not prove to be insolvency. But those I think are details which should not detract from the main intention here, which is that of helping employees in a position of difficulty.”

“I welcome the amendment from Deputy Southern and confirm that the Minister for Social Security will exercise his discretion in an informed way pending the implementation of a proper redundancy scheme.”

P.64/2011, which brought the Insolvency Benefit into existence, repeated the need for rapid reactions to the need for redundant employees to get support, when it stated in its opening paragraph: *“The intention is to promptly give employees some financial security by providing a benefit based upon a reasonable proportion of amounts owed.”*

There is no doubt that the insolvency/redundancy system set up is not capable of delivering such support in all cases in a prompt manner.

Financial and manpower implications

It is difficult to assess the extent to which this measure will involve further cost to the States. When insolvencies are finally resolved as a result of a lengthy process, there is often a return from the remaining assets to creditors, one of which may be the States, sometimes in its role of paying out redundancy payments when insolvency was first declared. In any case such payments are to come from the Insolvency Fund, which is largely funded from employer contributions. In the case that is currently before the States, that of the company Just Glass & Windows, where it is not certain whether the company which has ceased trading will be declared insolvent, the maximum cost to the States and/or the Fund would be the maximum payment allowed of £10,000 for each of the 8 employees concerned. I believe that this sum (£80,000) could come from within the existing Social Security budget.