

2019.04.30

16 Deputy M.R. Higgins of the Chairman of the States Employment Board regarding the policy underpinning the payments made under compromise agreements: (OQ.118/2019)

Will the Chairman bring forward changes to the policies underpinning the payment of compromise agreements, in order to prescribe that no payments are made under such agreements in instances where an employee has been assessed as failing in their duties, but is being removed from their position and, if not, what is the Chairman's justification for the continued use of the current policy in this area?

Connétable R.A. Buchanan of St. Ouen (Vice-Chairman, States Employment Board - rapporteur):

I am satisfied that the revised policies procedures, recently introduced to manage performance and poor performance, will reduce the use of compromise agreements. This year, the States Employment Board is overseeing the implementation of an organisational-wide employee performance review process called My Conversation, My Goals. This approach to performance appraisal requires managers to set goals with individuals and to review their performance against their agreed goals. This approach provides a formal process to manage employees, who are not meeting the required standards. For employees who continually do not meet the required performance standards, this is then managed through the Government of Jersey's capability policy.

[11:30]

The organisation expects its performance appraisal approach to largely mitigate the need for the use of compromise agreements. However, we will always reserve the right, in particular situations, to terminate an employee where it makes commercial sense to do so.

4.16.1 Deputy M.R. Higgins:

I find the answer remarkable, the fact that we are prepared to pay out large sums of money to people who have failed this Island and I think the public are fed up with that. Can I just ask the Assistant Minister: how many of those who have been employed recently, let us say in the last 2 years in Jersey, have provisions in their contracts that will enable them, if they do go, to go with a large sum of money?

The Connétable of St. Ouen:

I thank the Deputy for his question. The answer is rather more complex than that, because the use of compromise agreements is, really, a last resort where we have failed to reach an agreement with the employee over their performance. Currently, employment law makes that extremely difficult, it is a very lengthy process and requires a number of stages to be gone through and, in the past, the groundwork of that has not been done. All employees, who are employed by the States of Jersey, could be subject to a compromise agreement where we are unable to reach an agreement, but the introduction of a proper performance management ability within the States will reduce that considerably.

4.16.2 Deputy M. Tadier:

There was a suggestion in the media, in response to these so-called golden handshakes, that they were put in place so that the employees would leave quietly and not make criticisms of Government. Can the Minister confirm whether there was any gagging clause in these 3 high-profile cases and

whether there is also a system of exit interviews, so that Government can learn from any mistakes from individuals when they leave the system?

The Connétable of St. Ouen:

Yes, I thank the Deputy for his question. There is a system of exit interviews, so that we can learn from what we have got wrong in the past. I cannot really comment on the individual clauses for the people that were highlighted in the *J.E.P.* But, what I would say is the payments for standard redundancy payments are in line with Jersey law and they may, or may not, contain confidentiality clauses. I will undertake to review those contracts and while I cannot comment individually, I will get back to the Deputy with a note of whether there were any gagging clauses in those contracts.

4.16.3 Deputy M. Tadier:

Were there exit interviews for these 3 individuals? If there were not, why not and if there were, how is it compatible with gagging clauses and can we see the findings of those exit interviews if they did occur?

The Connétable of St. Ouen:

I cannot confirm individually whether there were exit interviews, but I will check on that. As far as the gagging clauses is concerned, sorry, could you just repeat the question again? I have lost the thread of what you were saying.

Deputy M. Tadier:

The point is, it seems desirable that we should have exit interviews, so we can learn from what employees have to say, but if one of the reasons for them going was that they did not speak out, then is there not a tension between an exit interview and paying somebody off to go quietly?

The Connétable of St. Ouen:

I think, as far as the gagging clause is concerned, they would have stated their reasons for leaving in the exit interviews. Some of that can be revealed and some of it cannot be revealed and I cannot tell you until I have looked at the interviews themselves. Does that cover the question?

4.16.4 Deputy M.R. Higgins:

Can the Assistant Minister give an assurance that, from now on, there will be no further gagging clauses? We need to understand what is going on. We just paid out £500,000 to 3 people who have gone and the public are fed up with these payments. We need to stop the compromise agreements and we also need to make sure that if there are failings in the system and these people feel they have been badly done by, or to protect their reputations, the public deserve to know. Will the Minister give an undertaking he will stop gagging clauses being put into these agreements?

The Connétable of St. Ouen:

I think, firstly, I can say, in terms of the amounts paid out to these people, they were very senior employees and they were statutory amounts under the law that we were required to pay them as redundancy payments, so we did not have an option there. It is not a variable payment, it is fixed by law and the calculation is fixed by law. I think all I can say is I will look at the gagging clause question and I will get back to the Deputy with an answer to his specific point. But, in some instances, the gagging clauses are in the interests of us, as an employer.

Deputy M.R. Higgins:

But not necessarily in the public ...

The Connétable of St. Ouen:

As I said, I will get back to you with an answer on that point. Without looking at the individual clauses for each of those agreements, I cannot confirm or deny, firstly, whether there were gagging clauses and, secondly, what those gagging clauses covered, but I will get back to you with a response.