

STATES OF JERSEY



COMPROMISE AND NON-DISCLOSURE AGREEMENTS (P.76/2022): COMMENTS

Presented to the States on 8th April 2022
by the Public Accounts Committee
Earliest date for debate: 25th April 2022

STATES GREFFE

COMMENTS

The Public Accounts Committee makes the following comments in relation to a Proposition lodged by the Deputy Higgins regarding compromise and non-disclosure agreements (P.76/2022). Amongst other things, Deputy Higgins asks Members to give the Comptroller and Auditor General (C&AG) the legal powers to review all such agreements and the events and circumstances leading up to them. He also asks that the C&AG sign off the agreements as being in the public interest or refer them to the States Assembly if they are not.

The Public Accounts Committee shares Deputy Higgins' concerns regarding compromise and non-disclosure agreements. The Committee reviewed this issue most recently during its review of the States Annual Report and Accounts 2020 when it made a number of key findings and recommendations in relation compromise agreements and exit payments following the termination agreement with the former Chief Executive (Charlie Parker).

The Committee concurs with Deputy Higgins that this matter deserves greater attention by the States of Jersey and that some kind of vetting system should be explored. However, the Committee does not believe that the C&AG should be the one to carry out this duty.

The Committee would like to draw Members' attention to Appendix One which are comments made by the C&AG specifically in relation to paragraph (b) of Deputy Higgins' proposition. The C&AG explains that her functions do not extend to 'signing off' compromise agreements as being in the public interest and the imposition of such a role would be inconsistent with her independence. The Committee shares the concerns raised by the C&AG, particularly around her independence.

The Committee intends to highlight the use of compromise and non-disclosure agreements in its legacy report for the next Public Accounts Committee to consider. The Committee hopes that this issue will be thoroughly reviewed by the next PAC in order to find a solution that works for all parties.

Re-issue Note

These comments were re-issued to include the attached appendix.

P.76/2022 Compromise and Non-Disclosure Agreements: Statement in response to enquiries

N.B. This statement relates only to paragraph (b) of the Proposition and the related elements of the Report.

The Comptroller and Auditor General has wide powers to review termination of employment and associated compromise agreements. Article 11 of the Comptroller and Auditor General (Jersey) Law 2014¹ requires the Comptroller and Auditor General:

- to provide the States Assembly with 'independent assurance that the public finances of Jersey are being regulated, controlled, supervised and accounted for in accordance with the Public Finances Law and that the provisions of that Law are otherwise being duly complied with'; and
- to consider and report to the States Assembly on general corporate governance arrangements; the effectiveness of internal controls; whether resources are being used economically, efficiently and effectively; and actions needed to bring about improvement, where improvement is needed.

In exercise of their statutory functions the Comptroller and Auditor General has reported on severance of employment and the use of compromise agreements, most recently in *States Employment Board - follow up: Employment of the former Chief Executive* (May 2021)².

As recognised in the accompanying report, the Comptroller and Auditor General's functions do not however extend to 'signing off' compromise agreements as being in the public interest. The Comptroller and Auditor General is of the view that the imposition of such a role would be inconsistent with her independence.

INTOSAI, The International Organisation of Supreme Audit Institutions (SIAs) adopted the Mexico Declaration on Supreme Audit Institution Independence³ that specifically states that 'SAIs should not be involved or be seen to be involved, in any manner, whatsoever, in the management of the organizations that they audit.' The Comptroller and Auditor General is of the view that 'signing off' compromise agreements would entail involvement in the management of the States.

The Comptroller and Auditor General does, however, recognise the importance of effective internal scrutiny of severance decisions and the associated use of compromise agreements. The previous Comptroller and Auditor General in her report *The Role and Operation of the States Employment Board* (March

¹ https://www.jerseylaw.je/laws/current/Pages/24.140.aspx#_Toc83305267

² <https://www.jerseyauditoffice.je/wp-content/uploads/2021/05/States-Employment-Board-follow-up-report.pdf>

³

https://www.intosai.org/fileadmin/downloads/documents/open_access/INT_P_1_u_P_10/INTOSAI_P_10_en_2019.pdf

2019)⁴ highlighted that, whilst the Jersey Appointments Commission had oversight of the appointment of States employees, there was no similar independent oversight of the termination of employment. She recommended a fundamental review of the framework for oversight of the human resources of the States, including in respect of the role of the States Employment Board and the Jersey Appointments Commission.

The Comptroller and Auditor General notes that the recent consultation by the Government of Jersey entitled *Regulation of Public Appointments: An Independent Jersey Public Appointments Commission*⁵ does not recommend that a newly established Jersey Public Appointments Commission has a role in respect of the termination of employment.

The second phase of the Comptroller and Auditor General's follow-up review of her predecessor's 2019 report *The Role and Operation of the States Employment Board* is scheduled for 2022⁶.

⁴ <https://www.jerseyauditoffice.je/wp-content/uploads/2019/03/Role-and-Operation-of-the-States-Employment-Board-Report.pdf>

⁵ <https://www.gov.je/government/consultations/pages/publicappointments.aspx>

⁶ <http://www.jerseyauditoffice.je/wp-content/uploads/2022/01/Jersey-Audit-Office-Audit-Plan-2022-2025-published-07.01.2022.pdf>