

STATES OF JERSEY



SUSPENSION OF STATES EMPLOYEES AND STATES OF JERSEY POLICE OFFICERS: REVISED PROCEDURES

Lodged au Greffe on 31st March 2009
by the Deputy of St. Martin

STATES GREFFE

PROPOSITION

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

- (a) to request the States Employment Board and Minister for Home Affairs to amend policies, procedures and, if necessary, relevant legislation in relation to discipline for States employees and officers of the States of Jersey Police to ensure that –
 - (i) when any States employee or officer of the States of Jersey Police is suspended they shall, within 3 working days of the suspension, receive in writing the reason or reasons for the suspension;
 - (ii) at the time the person concerned is formally notified of the suspension they may be accompanied by a union representative, workplace colleague or friend;
 - (iii) 28 days after suspension, and every 28 days thereafter, the continuing need for the suspension will be reviewed by a panel drawn from within the public service which shall be independent of the department where the suspended person is employed and which will report its findings to the States Employment Board;
 - (iv) the suspended person should be able to be accompanied at each such 28 day review by a union representative, workplace colleague or friend and with the Chief Officer of the Department concerned or his nominee also to be required to attend the review; and
- (b) to agree that the above revised procedures will apply to every States employee and officer of the States of Jersey Police and become operative within 42 days of the approval of this proposition.

DEPUTY OF ST. MARTIN

REPORT

There can be very few people who are not concerned about the number of suspended States employees. Suspending employees must be one of the most unproductive actions undertaken by any employer. Suspensions are invariably disruptive in the work place, stressful for the employee and expensive for the taxpayer.

Over recent times, following a number of questions being asked at States Sittings, some amendments have been made to the Discipline Policy; however it is evident that inconsistencies remain. It is alleged that some employees are still being suspended without receiving anything in writing or being accompanied by a union representative or friend. Employees are still subject to lengthy periods of suspensions with no means of redress. It is also apparent that there has been little adherence to employees' Human Rights.

As a result of concerns being raised, in the spring of 2006 a review was undertaken into the States of Jersey disciplinary procedure, and in particular the area of suspension. The terms of reference were to undertake a review of the current procedures and make recommendations for improvement. The Chief Executive was asked to carry out an urgent review.

The review found that all disciplinary procedures in use within the States were fully compliant with best practice as set out by ACAS. However, whilst the overall procedures were fine, it was in their application where improvements could be made and were identified in the Report's findings which are as follows:

- Due to the existence of different negotiating bodies for different groups of staff there are a number of different disciplinary procedures. In some areas, the authority to suspend was, in practice, delegated to organisational levels below those specified in the procedures. There were inconsistent practices across the States in terms of the application of the potential reasons for suspension. There was no real time monitoring of the number, length and nature of suspensions, either within Departments or across the States as a whole. Once underway, there was no standard procedure for ensuring that suspensions were regularly reviewed. There was no time limit set for the lapsed time between a suspension and the subsequent disciplinary hearing.
- In most disciplinary cases where there is also a police investigation or law officer involvement, it became accepted practice to await the completion of that involvement before any action was taken by the employer. There was a general reluctance to hold disciplinary hearings in the absence of the employee.

Most of the recommendations were accepted by the States Employment Board and included the following:

- ❖ Whilst it was accepted that there may be a need for specific aspects in disciplinary procedures for particular pay groups, work should be undertaken to deliver a clearer generic disciplinary procedure, with a consistent core, applicable across all pay groups.

- ❖ That the authority to suspend employees be restricted to the Chief Officer of the Department or their nominee (i.e. one named individual).
- ❖ Clear guidance as to the circumstances under which suspension may be considered and guidance on action which can be taken in lieu of suspensions to be issued to Chief Officers, their nominees and HR practitioners.
- ❖ A requirement would be introduced that **all** suspensions must be notified to the Employee Relations section at the point of suspension to enable the level and duration to be monitored. Employee Relations section to produce a monthly monitoring report for the Director of HR.
- ❖ Chief Officers to ensure that all suspensions are formerly reviewed one month from the suspension date and no less frequently than monthly thereafter.
- ❖ A requirement that the maximum time between suspension date and the disciplinary hearing date be 8 weeks (with the expectation that it will be done before that time if possible) to be introduced.
- ❖ The employer to take a far stronger positive stance to deal with employment issues in cases of alleged indiscipline, even where the Police are investigating alleged offences. New guidance to be issued to Chief Officers as to the circumstances in which this can be achieved.
- ❖ Guidance to be issued to Chief officers so they are clear as to the circumstances within which it is legitimate to hold a hearing in an employee's absence.
- ❖ Introducing a policy of restricting pay following dismissal to a maximum period of 6 weeks, the expectation being that appeals will be held within that period.

Although the recommendations have been implemented, I believe much more needs to be done to ensure that suspensions are not seen to be the first option rather than the last. Also, it is imperative that if an employee is to be suspended, the suspension process must be put onto a more formal and transparent manner. It is not uncommon for employees to be called before an employer and informed that (s)he is being suspended and they would receive "something in writing in due course".

As one can imagine, being suspended can be a traumatic and humiliating experience. Receiving such news, particularly if not backed up with written reasons, can lead to confusion and understandably the employee not fully comprehending what is going on. I believe it is in everyone's interest that at the time employees are being suspended they are able to be accompanied.

Some suspensions are deemed to be "neutral acts", which seems to be an anomaly. It does not appear to be a neutral act for the employee. Whilst a person may well be suspended to enable an investigation to be carried out, there may be a perception that the employee is guilty of something until the employer has produced evidence to confirm the employee's guilt or innocence. Whilst provision is now in place for a Chief Officer of a Department to review his employee's suspension on a monthly basis, this cannot be appropriate as it could be that the Chief Officer suspended the

employee in the first place. In an effort to get a definition of a “neutral act” and whether there was any system in place for an independent review to enable a suspended person to appeal against the suspension, at the States Sitting on Tuesday 10th March 2009 I asked the following Oral Question of the Chief Minister –

“Will the Chief Minister define a ‘neutral act’ in relation to suspensions and advise whether there are any guidelines on the conduct of the reviews held after 8 weeks of suspension, particularly to ensure such reviews are independent and allow for the employee to be accompanied by a representative and, if no such provisions exist, is he minded to remedy the matter?”

Unfortunately, as Oral Question Time overran its allotted time, there was insufficient time for an answer or to ask supplementary questions, however the Chief Minister forwarded me the answer he would have given had time not run out.

“Suspensions are usually put in place to ensure that investigations into allegations can be made in an unfettered manner [and to remove the individual subject to the allegations from being potentially subject to further allegations that he/she might either repeat the act and/or interfere with the investigation]. The act is considered neutral as no judgement is made at the point of suspension as to the whether the allegations are true or not. It is the process of investigation, and subsequent consideration of the findings of the investigation, that would result in such a judgement being made.

There is no specific review after 8 weeks. 8 weeks has been set as a target, by the States Employment Board, for the desired maximum time between suspension and the holding of a disciplinary hearing, and this target is normally achieved.

The current practice is that all suspensions must be actively reviewed on a monthly basis. Reviews are undertaken by the Chief Officer of the Department concerned, other than in the case where it is a Chief Officer that is suspended and in that case the review would be completed by the Chief Executive to the Council of Ministers.

The purpose of the review is to establish whether any material change has occurred between the suspension date and the date of the review, i.e. are the reasons for the original suspension still sound. It is not expected that such reviews will involve a face to face meeting between the Chief Officer and the suspended employee. Should the individual subject to the suspension believe that there has been a material change in circumstances since the original suspension, then they are fully at liberty at any time to write to the Chief Officer and acquaint him/her with their views.”

As one can see, the “Neutral Act” is an open-ended act which does little to safeguard the employee’s interest. Examination of some suspensions has shown that “investigations” have taken months and even years, which has left employees with the view that even if the allegations are unfounded, the prospects of them resuming their employment in any meaningful way are very slim.

Often, suspended persons are informed that they may not enter their place of work, or even have contact with work colleagues. This can be most demoralising because often one's work and social life are entwined. There is also evidence which shows that suspensions can lead to short and long-term family tensions, particularly in families with children. This isolation can also pose difficulties for the suspended person to obtain any evidence to show there has been any material change in circumstances since the last review.

The review itself is flawed as it is a one-sided matter, as evidenced in the Chief Minister's answer when he says that: "it is not expected that such reviews will be face to face" and "if there has been a material change in circumstances since the original suspension, then they are fully at liberty at any time to write to the Chief officer and acquaint him/her with their views." I find such anti-personal action to be an affront to the employee who could be the innocent victim of a malicious allegation. A person under investigation for a crime would have greater rights.

It should be noted that the current policy provides for no specific review after 8 weeks. Such a policy gives one the impression that if an "investigation" is not completed within 8 weeks, the suspended person is presumed guilty, therefore there is no need to rush things. Even if that is only a perception, it is unacceptable to the employee and the tax payer.

As a result of a written question asked on 10th March 2009, it was revealed that suspensions in the past 2 years in 2 States Departments has cost the taxpayer just under one million pounds. This was to pay for 24 suspended members of staff and to pay overtime or to staff "acting up" to cover for the work not being undertaken by suspended staff.

I believe that such payment is scandalous and totally unacceptable. Steps must be taken, not only for suspended staff to be treated fairly, but also to save taxpayers' money. Whilst I can understand the need for suspensions, there must be a better way of dealing with the matter. It is also imperative that a fair system must be applicable to all employees in receipt of a salary that is paid from the public purse. Therefore the system should include every States employee and the States Police, which has its own disciplinary procedure.

It is apparent that suspensions are too readily given, with little concern being given to the affects of the suspension on the employer, employee or taxpayer. There appears to be an absence of any joined-up approach or urgency when investigating suspensions, particularly "Neutral Acts." It also appears that investigating officers are working to their time schedule to the detriment of the suspended employee.

Investigations are often left in the hands of "investigating officers" who can only give what spare time they have from their full-time employment to investigating.

There is evidence to show that investigations last months, and at considerable cost to the employer, employee and taxpayer. Such practice is unacceptable and must be remedied. There must be more urgency and accountability on the employer to substantiate whatever allegations are made. A system must be put in place for the employer to be given a reasonable time for the matter to be investigated; however it is imperative that after a reasonable time has been given, the interest of the suspended

person becomes of paramount importance. As such it should be for the employer to justify why a suspension should be extended.

I believe that if at the outset more consideration is given for the reason for the suspension and what it will achieve, this may lead to fewer suspensions. I also believe that if greater equality is given to employees when they are being suspended, it may also lead to fewer suspensions. That is why I believe that at the time the employee is suspended, (s)he is given the reasons for suspension in writing and the employee is permitted to be accompanied.

There have been occasions when employees have been given instant suspension; this may arise because the employee may have assaulted a work colleague or has been involved in some other unsavoury conduct. This action has caused difficulties because sometimes only one side of the argument may have been heard, or the matter has been mismanaged on possibly both sides. I believe a better way of dealing with the matter would be for the Chief Officer or his nominee to send the employee home to allow a cooling-off period. The employee would be told that (s)he will be required to report back to work within 3 working days. The cooling-off period would allow for both parties to contemplate their best course of action.

Very importantly, if the employer believes that the employee's action may best be dealt with by imparting suitable words of advice or warning, that could be carried out when the employee returns at the appointed time. If the incident is one which is deemed to be worthy of suspension, the employee would be warned to attend with a union representative, work colleague or friend where (s)he would be formally suspended and given written reasons for suspension.

I believe in most cases Chief Officers will have conducted sufficient enquiries to determine whether an employee should be suspended. In this case the employee would be warned to attend at a specific time with a work colleague, union representative or friend where a formal suspension would be carried out and the employee given written reasons for the suspension.

At present a period of 8 weeks has been set as a target by the States Employment Board for the desired maximum time between suspension and the holding of a disciplinary hearing. However, whilst the States Employment Board accepts that this target is normally reached, there is little or no provision for those employees whose cases are not addressed within the 8 week period.

There may be justifiable reasons for delay, however I believe that even 8 weeks is too long a period for any suspended person to be denied the right to contest their suspension, particularly if their suspension is an alleged "Neutral Act".

At present, Chief Officers are to ensure that all suspensions are formally reviewed one month from the suspension date, and no less frequently than one month thereafter. Because of possible conflicts, lack of transparency and fairness to the employee, this practice must cease and be replaced by a fairer procedure. I believe that after one month the onus should be placed on the employer to justify the extension of the suspension. I therefore propose that an independent review panel be established to afford employees the opportunity of contesting the continuation of their suspension.

If a suspended employee who has not, within one month of suspension, been notified of the date of the disciplinary hearing or the result of the investigation of the allegation (s)he would be able to ask why the investigation has not been completed, and it would be for the employer to justify the extension of the suspension to an independent panel.

It could be that the panel supports the employer's explanation but it could request the employer to ensure that the investigation is completed within a specified time. At least this would prompt the employer into completing the investigation or setting a date for the disciplinary hearing.

The sanction of an appearance before a Review Panel to justify the continuation of a suspension should concentrate the employer's mind and instil some urgency into the investigation. As mentioned above, there may be good reasons why investigations have not been completed and no doubt can be defended. However, there should be a right for employees to appeal to an independent body and to be accompanied at hearings. The establishment of a Panel will speed up the suspension process and save the taxpayer considerable sums of money.

At present there is a requirement that all suspensions must be notified to the Employee Relations section at the point of suspension, to enable the level and duration to be monitored. The Employee Relations section then produces a monthly monitoring report for the Director of Human Resources. The Chief Officers will need to continue reviewing suspensions within their Departments because they will be required to attend a formal review. However, it will be the responsibility of the Employee Relations section to organise the suspension review.

I believe that the Review Panel should comprise of employees from within the States Service. When adjudicating reviews, the Panel need not comprise of more than 3 persons. However, to ensure there are sufficient people it would be desirable for the Panel to consist of a pool of not less than 9 persons who should be appointed by the States Employment Board.

It should be noted that the review is not to review the allegation, but to review whether there is any justification for the continuation of the suspension.

After every review, the Panel will report its findings to the States Employment Board: if it is recommended that the suspended employee should be permitted to return to work, it will be for the States Employment Board to take whatever action is deemed to be the most appropriate. Also, very importantly, the Ministers, through the States Employment Board, will be kept updated on what is happening to suspended employees within their area of responsibility.

At present the States Employment Board consists of Senators Le Sueur, Ozouf, Perchard and the Connétable of St Brelade.

To ensure there is consistency for all persons paid via the public purse, it will be necessary for the States Police, which has its own discipline procedure, to come within the ambit of the above Proposition.

If my proposals are adopted, the number of people suspended should be reduced. If the onus is placed on employers to justify the continuation of suspensions, investigations should be conducted with more urgency and transparency. This in turn should lead to

less employees being suspended and also for shorter periods. This should also reduce the number of reviews required.

There are a number of States Employees and Police Officers who have been suspended for many months. To ensure that they are given the earliest opportunity for their suspensions to be reviewed, I propose that if my proposition is approved, the procedure should commence within 42 days of States' approval. This should allow Chief Officers sufficient time to consult the various staff groups to change their disciplinary procedures. It should also be sufficient time to establish an independent review panel.

Financial and manpower implications

If the reviews are carried out "in house", this should not require any great financial or manpower implications. If less people are suspended and/or for less time, there should be considerable savings.