

STATES OF JERSEY



COMPROMISE AND NON-DISCLOSURE AGREEMENTS

**Lodged au Greffe on 10th March 2022
by Deputy M.R. Higgins of St. Helier
Earliest date for debate: 25th April 2022**

STATES GREFFE

PROPOSITION

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

to request the Council of Ministers to issue the necessary law-drafting instruction in order that legislation may be brought forward that –

- (a) prohibits the States Employment Board or any other body controlled or funded by the Government of Jersey from –
 - (i) entering into compromise agreements with anyone employed by them under a contract of employment or a contract of service unless the agreement is reviewed and signed off by the Comptroller and Auditor General; and
 - (ii) entering into non-disclosure agreements with anyone employed by them under a contract of employment or contract of service unless the agreement is reviewed and signed off by the Comptroller and Auditor General; and
- (b) gives the Comptroller and Auditor General the legal powers to review all such agreements and the events and circumstances leading to the agreements and to sign them off as being in the public interest or to refer them to the States Assembly if they are not; and
- (c) prohibits the use of compromise agreements or non-disclosure agreements which are not in the public interest including, but is not limited, any such agreements designed to hide crime, bullying, sexual harassment, inefficiency, incompetence, waste, to save the States, politicians and/or civil servants from embarrassment or to protect the Island's reputation.

DEPUTY M.R. HIGGINS OF ST. HELIER

REPORT

In preparing this report I have read through almost every oral and written question asked in the States Assembly on compromise and non-disclosure agreements by members since I entered the States in 2008.

I believe I can say without contradiction that it is the area which has been subject to the most evasion and non-answers of any topic raised in the States Assembly by repeated Ministers and Chairmen of the States Employment Board. Why? Because their position is indefensible and if they evade enough they hope States Members will go away and not ask again.

Over the years the States have paid out millions of pounds to ex-employees who have left the employment of the States of Jersey under a wide range of circumstances including some which are the result off some disastrous failures that the employee had been wholly, or largely responsible for, but the agreements they enter into with the States are accompanied by non-disclosure clauses which prevent States Members or the public do not get to know anything. This is not acceptable.

Whilst initially I was proposing to seek to abolish all compromise agreements I have come to accept that there is a legitimate case for some of them and exceptionally for non-disclosure agreements but not the wholesale use of them as are used by the States of Jersey. It is to allow for the legitimate cases that I have instead decided that we need to have someone independent of the States to vet and approve any proposed agreements and have them refer those agreements which are problematical to the States Assembly for consideration. Something I might add is highly unlikely as the thought of them being considered in public in the Assembly is likely to cause them to be withdrawn and reconsidered by the officers concerned.

I can think of no one other than the Comptroller and Auditor General in the public service who is both independent of Officers and States Members and who commands the respect of State Members. Successive Comptroller and Auditor Generals have also issued a number of reports on compromise agreements and made recommendations, many of which have still not been implemented by the States Employment Board, they are thus very conversant with the issue and know how these matters should be dealt with.

In putting the Comptroller forward to vet these agreements we will have to change the law regarding the C&AG's functions. It could be that the existing Comptroller may not want to get involved in a vetting arrangement but I can see no alternative and perhaps she would undertake the role until a better system can be devised. To do nothing and allow the current system to continue is not an option. The public deserves better.

Financial and manpower implications

There are no financial or manpower implications arising from this proposition.