

**REPLY BY THE CHIEF MINISTER OF THE POLICY COUNCIL
TO A QUESTION ASKED PURSUANT TO RULE 6 OF THE RULES OF
PROCEDURE BY DEPUTY PETER GILLSON**

Question

There have been occasions when employees (the “Former Employees”) have left the employment of the States of Guernsey and the exit has been facilitated by a financial settlement, some of these settlements have included a confidentiality or non-disclosure agreement which imposes a level of confidentiality greater than imposed by their employment contracts, - colloquially known as the “gagging” agreement.

For the period from January 2008 to 31 May 2013 please provide the following information:

- 1. the total number of Former Employees whose exist from the employment of the States of Guernsey has been facilitated by such a financial settlement,*

Answer

The Policy Council, acting in its role as employer of public servants is able to confirm that over the years the States have entered into a number of “compromise agreements” the vast majority of which may contain confidentiality or non-disclosure clauses. However, in the past records of such agreements have not been maintained centrally nor to the best of its knowledge are they held within Departments in a readily accessible manner. It will take considerable time and effort to work back through Departmental and central records to acquire the information requested and it will involve significant resources both within the Civil Service and the Law Officers Chambers. Furthermore, given that past records have not been kept in a central, consolidated and readily accessible form, even if such time was spent it cannot be guaranteed that a full and accurate picture will emerge. With the introduction of the new SAP system it should be possible to obtain such information in future. At a time when staff are under considerable pressure to focus on some very serious delivery matters, diverting them to the task of acquiring the information that you seek is not something that the Policy Council believes can be justified whilst such time pressures persist.

Questions

- 2. the number of Former Employees who have left States employment and been subject to a “gagging” agreement.*
- 3. the information provided in response to questions 1 and 2 analysed by employing department,*
- 4. total number of Former Employees who subsequently provide services for the States of Guernsey either as an employee or consultant,*
- 5. the total amount of the settlements* paid to Former Employees who have left the employment of the States during the specified period who were subject of a gagging agreement.*

**the total cost of the settlements to the taxpayer is more than just the cash payment, but includes indirect payments such as enhanced pension contributions (paid immediately or payable over a period of time), retaining vehicles or the cost of gardening leave. Ideally it would be appreciated if such costs could be included in the reply to question 5, but I do appreciate that many of the events will be pre-SAP and so it may be time consuming for the information to be collated. Not wanting to create a significant amount of additional work, if the information is not easily available I will be content for the information other than the cash payments not to be collated as long as the reply to question 5 specifies which type settlement benefits for all Former Employees have not included in the total cost figure provided in response to question 5. Again for the avoidance of doubt I am not requesting details of individual settlements, just a listing of the types of costs not included. I am sure that the examples of such costs is not exhaustive and I trust that our reply will be transparent and include any such costs which I have not included in the above list.*

6. *Assuming the reply to question 5 does not include all costs could you provide an explanation of why the information cannot be provided?*

Answer

In the light of the Policy Council's response to question 1, it will be clear that the Policy Council is not in a position to provide the detailed answers sought in 2 – 6 above nor does it consider it justifiable and efficient to devote scarce resources to this task.

Question

7. *I note that a compromise agreement will be signed by all employees who opt for voluntary redundancy under the current scheme. I assume that because the financial settlement is based on a pre-determined formula there will be no need for any "gagging" agreements but for completeness please confirm whether or not a "gagging" clause will be included in the compromise agreements?*

Answer

While reference is made to a voluntary **redundancy** scheme in practice this is a voluntary **severance** scheme. There is an important difference in that redundancy in an employment context indicates that a **post** is being made redundant and therefore once the current postholder leaves they will not be replaced because their role will have ceased to be required. Voluntary severance focuses on the person, not the role, and while in some instances it will be possible to restructure to avoid appointing a replacement there will be other circumstances where work will be distributed amongst other staff. In further cases a new employee may be recruited to fill a role but for strategic reasons, such an appointment will add value to the organisation.

All staff applying for, and subsequently accepted for voluntary severance will be required to sign a compromise agreement. Compromise agreements are a commonplace contract available to all employers and employees under Employment Law which record the terms under which the employment relationship ends. Compromise agreements are widely used under the laws of Guernsey and England & Wales and are recognised by the Guernsey Employment Relations Services, ACAS in the UK and Unions, all of whom regard such

agreements as a valuable means for both parties of ending an employment relationship. Compromise agreements are specific to the individual and are entered into voluntarily by the parties. As such no Island employer, including the States, can force an employee to enter into such an agreement. There are also very clear rules within the Employment Protection (Guernsey) Law, 1998, as amended, that protect employees by requiring them to take appropriate independent, professional advice before a compromise agreement may become binding (Note: further guidance on the use of compromise agreements for Guernsey employers is issued by the Commerce and Employment Department <http://www.gov.gg/CHttpHandler.ashx?id=5643&p=0>).

Ending the employer/employee relationship by way of voluntary severance departs from the more usual termination of an employment contract by resignation or dismissal. In such circumstances the use of compromise agreements record the reason for the end of the employment contract, the terms upon which the employee's employment will end and document any compensatory (and possibly contractual) payments that will be made to the employee. The use of compromise agreements ensure that both parties are clear as to why the contractual relationship is being terminated outside of the agreed terms of the Contract of Employment.

Voluntary severance will only take place by agreement between the employee and employer. However compromise agreements protect both parties in the unlikely event of a subsequent dispute in that the details of the termination of the employment contract are clearly recorded in a comprehensive document, in respect of which the employee has received independent professional advice, and which reduces ambiguity about the circumstances of the end of the employment contract.

It is common practice for compromise agreements entered into by the States of Guernsey include a confidentiality clause which protects both parties against the disclosure of information fundamental to the agreement. An employee, for example, is assured pursuant to such a clause that the States will not disclose details of any financial compensation that they may receive under the agreement. It is usual States practice, when entering into a compromise agreement, to require the employee to promise that they, also, will keep the terms of the agreement confidential and will not divulge any States information that has come into their knowledge by reason of their employment.

There will be no "gagging clauses" other than the normal reminder that public servants are obliged to continue to maintain confidentiality in respect of information they may have obtained in the course of their duties, and to require them to continue to act with good faith and fidelity to the Sates of Guernsey beyond the conclusion of their employment contract.

Date of Receipt of the Question: 2 July 2013

Date of Reply: 17 July 2013