

**WRITTEN QUESTION TO THE CHAIR OF THE STATES EMPLOYMENT BOARD  
BY DEPUTY M.R. HIGGINS OF ST. HELIER  
QUESTION SUBMITTED ON MONDAY 21st FEBRUARY 2022  
ANSWER TO BE TABLED ON MONDAY 28th FEBRUARY 2022**

**Question**

Will the Chair advise –

- (a) the circumstances in which compromise agreements with States employees are justified and any identified circumstances in which they cannot be justified;
- (b) the circumstances in which non-disclosure agreements with States employees are justified and any identified circumstances in which they cannot be justified;
- (c) who has the authority to enter into compromise agreements and non-disclosure agreements on behalf of the States;
- (d) the number of compromise agreements and non-disclosure agreements entered into in each of the last 5 years by each of the categories of officers identified in response to paragraph (c); and
- (e) the cost to the States of the compromise agreements entered into in each of the last 5 years by each of the categories of officers identified in response to paragraph (c)?

**Answer**

- a) Compromise agreements are normally used to bring an employment relationship to an end in a mutually agreed and cost effective way. They are often in situations where an employer and employee feel that their employment relationship is no longer working and a ‘clean break’ is the best way forward. In these situations, both parties can agree the basis for bringing the employment to an end. This may, for example, be considered in cases of conduct/attendance/performance where there might not be a clear case for dismissal. .

The agreements can also be used to reach an agreed final conclusion to a workplace dispute or issue which does not result in an end to the employment relationship, this is in exceptional circumstances and only when other options have been fully explored and excluded.

Compromise agreements can be offered at any stage of an employment relationship. There is no legal requirement to go through a disciplinary process, or even start one, before offering a compromise agreement if it is in the parties’ best interest.

Advantages to using the agreements include a swift and dignified end to an employment relationship that is not working. It can avoid the time, cost and stress involved for both parties in a tribunal claim.

When considering if a compromise agreement is appropriate it is key to consider if the employer or employee has brought, or might reasonably have contemplated bringing, legal proceedings against the other party at the time that the compromise offer and discussions are taking place.

Not all disputes or problems in the workplace lend themselves to resolution through a compromise agreement and managers understand that they are not an alternative to good management.

Compromise agreements should not be used in cases of blackmail, fraud, physical violence or unlawful discrimination. Nor, should agreements be considered when the employee is asserting a statutory right, carrying out trade union activities, or ‘whistleblowing’.

- b) We do not enter into non-disclosure agreements with employees as a discreet document. NDAs are typically used to protect information, i.e. client, sales, manufacturing, company information. The compromise agreement protects confidentiality for all parties subject to the agreement.
  
- c) The following procedure is in place to be able to enter into a Compromise Agreement:
  - a) Approval must be given by the Accountable Officer of the department wishing to enter into negotiations or their delegate, and;
  - b) the Group Director of People and Corporate Services or their delegate
  - c) the Law Officers Department must approve / provide advice on the payment and agreement to ensure it is not “ultra vires”
  - d) Treasury and Exchequer (Tiers One and Two) must also agree any terms that constitutes a ‘special payment’ under the Public Finance Manual.
  - e) If the salary is above grade 15 or equivalent States Employment Board approval is required

d&e)

Year	Number of Agreements	Total Value
2022	0	0
2021	19	£531,433
2020	18	£808,173
2019	14	£308,777
2018	28	£1,484,809
2017	6	£247,369

Unfortunately, it is not possible to provide a further breakdown by category as this would risk identifying the individuals.