

3.7. Senator S.C. Ferguson of the Chief Minister regarding the use of ‘gagging’ clauses in compromise agreements:

Will the Chief Minister confirm that, in common with best practice, ‘gagging’ clauses will no longer be permitted in compromise agreements?

Senator I.J. Gorst (The Chief Minister):

The States Employment Board is of the view that there is a presumption that confidentiality clauses should not be used in all but exceptional circumstances.

3.7.1 Senator S.C. Ferguson:

My thanks to the Chief Minister. Would he like to outline what procedures will be used to convey this information to the various departments of the States?

Senator I.J. Gorst:

The Senator is probably aware that last February I issued a report entitled *Utilisation of Compromise Agreements* and the process to be used is quite clearly outlined in that, and ensuring that it is used accordingly will be part of the responsibility of the H.R. (Human Resources) Department and there are processes in place to ensure that it is used accordingly.

3.7.2 Deputy T.M. Pitman:

Could I just ask the Chief Minister to define “exceptional circumstances”? Thank you.

Senator I.J. Gorst:

A very good question, but quite difficult to do. They arise from time to time. Other jurisdictions use them. It is mostly about protecting the interest of the person with whom the agreement has been reached, rather than the States itself.

3.7.3 Deputy R.G. Le Hérissier:

Building on that, could the Chief Minister outline, irrespective of the paper that did outline this earlier or some aspects, what checks and balances are in place to ensure that the public interest is always preserved and the impression is never given that the individual - or perhaps the victim, as he was inferring - is the person driving the process?

Senator I.J. Gorst:

It is quite clear. I expect the Deputy himself has read the report. It is in the public domain, and that is why in answer to his question the States Employment Board when they were undertaking this review - and this work for the Comptroller and Auditor General did an excellent piece of work reviewing compromise agreements which had been undertaken by the States as well - that the States Employment Board came to the view that there should be a presumption against using confidentiality clauses. It is that presumption that I believe protects the public interest.

[10:30]

3.7.4 The Connétable of St. John:

How many gagging orders have been put in place over your time in office, Chief Minister?

The Bailiff:

In the Chief Minister’s time in office?

The Connétable of St. John:

In the Chief Minister’s time in office, Sir. Also state whether or not those which have been gagged, given his comments earlier this morning, are now able to speak freely if it has been solely put in place because of those people?

Senator I.J. Gorst:

As the Connétable would expect in light of the presumption, I am aware of an agreement which was reached which I made public statements about in regard to a consultant, that there was information made public with regard to that agreement and with regard to the amount of money spent. I believe that this States Employment Board can stand on its record there, and I am not aware of any other.

3.7.5 Senator S.C. Ferguson:

How will the States Employment Board deal with departments who wilfully ignore the strictures of the S.E.B.?

Senator I.J. Gorst:

Carefully but thoroughly and, I suppose, ultimately forcefully.

The Bailiff:

Very well. We will come to the next question which Deputy Pitman will ask of the Chief Minister.