
STATES OF JERSEY



UTILISATION OF COMPROMISE AGREEMENTS

**Presented to the States on 28th February 2012
by the Chief Minister**

STATES GREFFE

REPORT

In response to concerns raised by States Members and the wider public, the States Employment Board (SEB) has drafted a new guidance framework policy and guidelines (see attached **Appendix**) concerning the use of compromise agreements.

A compromise agreement is defined as a legally binding agreement in which an employee (or ex-employee) agrees not to pursue particular claims in relation to his or her employment or its termination, which is usually accompanied by a financial settlement that is considered to be in full and final settlement of any claims that might have been pursued by either party. Such an agreement is normally mutually beneficial to both parties, employer and employee, and is accompanied by a confidentiality clause.

The Board will require regular reports on the use of compromise agreements across the States in order to satisfy itself that the policy is being applied as intended. Where compromise agreements are being considered for senior staff in the Civil Service "A" grades, or, where the salary is in excess of £100k, prior approval from the SEB will be required.

Acknowledging the Proposition (P.2/2012) lodged by Deputy R.G. Le Hérissier of St. Saviour concerning contractual arrangements for Chief Officers, a request to disclose the sums in 2 recent compromise agreements was made to the individuals concerned. Following contact with the former Chief Executive Officer who left his post in May 2011, he has agreed that his settlement of £546,337.50p can be disclosed, which was as a result of his contractual agreement with the States of Jersey. A response is awaited from the other former officer of the States.

The Chief Minister is aware that the Comptroller and Auditor General (C&AG) has announced that he is to undertake an investigation to review the use of "Golden Handshakes" within the States of Jersey.

The Chief Minister welcomes this review and will await the outcome of the C&AG report, so that any recommendations arising can be built into the final version of the new SEB Severance Guidance Framework policy.

APPENDIX**STATES EMPLOYMENT BOARD****STATES EMPLOYMENT POLICY – COMPROMISE AGREEMENTS****Objective**

The purpose of this policy is to establish the framework for the appropriate use of compromise agreements and the process that supports their use. The States Employment Board reserves the right to modify or terminate this policy at any point.

Definition

A compromise agreement is a legally binding agreement in which an employee (or ex-employee) agrees not to pursue particular claims in relation to his or her employment or its termination, typically in return for a financial settlement. Such an agreement is normally mutually beneficial to both parties – employer and employee.

Compromise Agreements

There are 2 levels of agreements within the States of Jersey (SoJ):

1. Grades up to and including Civil service Grade 15/3 or equivalent salary; and
2. 'A' Grades, personal contract holders or equivalent.

1. Level One Agreements: Grades up to and including Civil Service Grade CS15/3 (or equivalent salary)

The States Employment Board give delegated authority to the Director of Human Resources and the Chief Officer of the employing department to make severance arrangements including a compromise agreement on their behalf. As part of the agreement between the employer and employee a settlement payment at this level may be made subject to the following:

- The maximum possible payment offered, is strictly limited to the salary payable to a Grade 15/3 plus contractual notice and must not exceed this amount. Contractual notice is in addition to such a payment unless notice is worked.
- The use of the SoJ standard compromise agreement.
- The advice of the Law Officers is sought in determining the compromise agreement if a significant departure from the use of a standardised agreement is required, then the proposed agreement will be referred to the SEB.
- Wherever possible normal employment processes such as disciplinary, grievance, capability, performance, absence management, etc. must be exhausted prior to the consideration of a compromise agreement. A compromise agreement should only be used when it is not possible to deal

with the circumstances of the breakdown of the employment relationship by any other means.

Payment principles

- The total payment is not to exceed number of months' pay that would have been received to normal retirement age.
- The total payment is not to exceed the amount which would otherwise be paid to the individual for the remainder of contract if they are employed under a time-limited contract.
- Acting-up payments which are not pensionable should not be included when calculating payments.
- One-off lump sum payments will be subject to Tax at the prevailing rate.

The SEB requires that Employment Relations must be kept informed of all compromise agreements in process, in order to report regularly to SEB.

2. Level Two Agreements: 'A' Grades, personal contract holders or equivalent

When there is a recognised need for compromise agreements to be made at this level, they must be considered and approved by SEB through their normal decision-making process *before* settlement is agreed. In such circumstances:

- A fully justified business case outlining the requirement for the compromise agreement and detailing its content must be tabled at an SEB meeting. The Chief Officer of the employing department is expected to present this case. Each case will be considered on its own individual merits and due regard must be made to the risks and benefits of making an agreement.
- The employing department is expected to ensure appropriate legal advice is taken to inform their business case and such amounts as are considered should reflect the compensation to the individual, the risks and benefits to the employer, and the termination of the contract.
- Advice and guidance must be sought from ER, acting as secretariat to SEB.

No prospective agreement can be presented to SEB without the sanction of Chief Executive Officer and/or the Director of Human Resources. SEB reserve the right to reject any application which it does not consider to be in the interest of the States of Jersey.

COMPROMISE AGREEMENTS – GUIDELINES FOR HUMAN RESOURCES

Purpose

The purpose of these guidelines is to ensure the use of compromise agreements is appropriate and strict process around their use is followed by Human Resources when advising Chief Officers and managers.

Definition

A compromise agreement is a legally binding agreement in which an employee (or ex-employee) agrees not to pursue particular claims in relation to his or her employment or its termination, typically in return for a financial settlement. Such an agreement is normally mutually beneficial to both parties – employer and employee.

Levels of Agreement

The SEB policy on compromise agreements identifies 2 levels of agreements:

1. Grades up to and including Civil Service Grade 15/3 or equivalent salary (£83,018 as at 01/01/2011); and
2. 'A' Grades, personal contract holders or equivalent.

Level One Agreements: Grades up to and including Civil Service Grade 15/3 or equivalent salary

This level of agreement may only be used:

- For grades of employees up to Civil Service Grade 15/3 or equivalent salary level (£83,018 as at 01/01/2011);
- When all possible normal employment process such as disciplinary, grievance, capability, performance, absence management, etc. have been exhausted and there is justification as to why these processes cannot be applied (A compromise agreement should only be used when it is not possible to deal with the circumstances of the employment contract breakdown by these processes.);
- When there are a number of employment processes in train which cannot individually or severally be brought to conclusion in an appropriate or timely way;
- Using the standardised compromise agreement form and format; and
- That the advice of the Law Officers must be sought in determining the compromise agreement if a significant departure from the use of a standardised agreement is required, then the proposed agreement will be referred to the SEB;

- That the Employment Relations team, as Secretariat to SEB, must be consulted to ensure the normal employment processes have been followed and that all alternatives have been explored;
- On the understanding that a business case must be prepared (see separate section on Business Case) and signed off by the Chief Officer concerned and the Director of HR;
- Any necessity to depart from this must be endorsed by the Law Officers and referred to the SEB for their approval (See Level Two agreements).

Level Two Compromise Agreements: ‘A’ Grades, personal contract holders or equivalent

When there is a recognised need for compromise agreements to be made at this level, they must be considered and approved by SEB through their normal decision-making process *before* settlement is agreed. In such circumstances:

- A fully justified business case (see section on Business Case) outlining the requirement for the compromise agreement and detailing its content must be tabled at an SEB meeting. The Chief Officer of the employing department is expected to present this case. Each case will be considered on its own individual merits and due regard must be made to the risks and benefits of making an agreement.
- The business case must be signed off by the Chief Officer, the Director of HR and Chief Executive Officer before presentation to SEB.
- The employing department is expected to ensure appropriate legal advice is taken to inform their business case and such amounts as are considered should reflect the compensation to the individual, risks and benefits to the SoJ, and the termination of the contract.
- The settlement amount should not normally exceed the equivalent of one year’s pay subject to the agreement of SEB; the mandate and discretion to vary this rests with SEB. Although the SEB retains discretion to approve a total sum exceeding the equivalent of one year’s salary, it has confirmed that it would only be minded to consider payment of a greater sum if it was presented with an exceptional and compelling business case.
- Advice must be sought from ER particularly with regard to ensuring normal employment processes are not appropriate and that all alternatives have been considered and also from the Law Officers as a non-standard agreement is likely to be used.

Who to notify and when***Law Officers:***

- When the business case is being prepared (Levels One and Two).
- During the preparation of the compromise agreement (Level Two).

Employment Relations:

- When the need for a compromise agreement has been identified (Levels One and Two).
- Prior to sign-off by the Director of HR as this will require his assurance from ER that normal employment processes have been followed and/or exhausted (Levels One and Two).
- Once the compromise agreement has been signed by all parties (employer and employee) to notify SEB.

SEB:

- (via Employment Relations) to review the business case for Level Two agreements and in non-standard situations review the business case.

Business case

This business case is the justification as to why a compromise agreement is being sought to bring an employment contract to a conclusion. It is expected that a business case will be an integral part of the casework paperwork. The business case is required either:

- When a Level Two agreement is being determined, or
- If the Level One agreement cannot for whatever reason follow a standardised format appropriate to the circumstances, and has to be referred by exemption to the SEB.

It should contain the following:

- Clear reasoning as to why normal employment practices cannot be used to terminate the employee and demonstration that such options have been considered and exhausted.
- Benefits and risks as to the employer as to why the compromise agreement should be made.
- Financial information detailing proposals for the settlement sum, taking into account the payment principles (see section following) and information to demonstrate that funding is available to meet any costs incurred.
- The standardised compromise agreement.

Payment principles

Level 1 agreements should be equal to the paid notice period applicable to the employee plus their standard benefits entitlement plus a sum equivalent to 26 weeks' pay (reflecting the maximum award that could be made by the Jersey Employment Tribunal).

Both levels of agreement should take into account the following principles:

- The total payment is not to exceed number of months' pay that would have been received to normal retirement age.
- The total payment is not to exceed the amount which would otherwise be paid to the individual for the remainder of contract if they are employed under a time-limited contract.
- Acting-up payments which are not pensionable should not be included when calculating payments.
- One-off lump sum payments will be subject to Tax at the prevailing rate.
- Notice is normally payable in addition to the settlement amount.

Confidentiality

Inclusion of any confidentiality clause must only be on the strict advice of the Law Officers. The SEB would generally expect the total sums payable under such agreements to be disclosable, albeit that a pay band system broadly similar to that already in use for reporting public sector salaries to the States Assembly would be used to disclose payments to staff. Severance payments made to staff where they are "accounting officers" would be disclosable in the States of Jersey Annual Report and Accounts in accordance with the requirements of the Public Finances (Jersey) law 2005 on an individual basis.

PROCESS DIAGRAMS



