

4.3 Connétable K. Shenton-Stone of St. Martin of the Minister for Social Security regarding the use of Non-Disclosure Agreements (OQ.211/2025):

Will the Minister advise what consideration, if any, has been given to following the U.K. (United Kingdom) in amending the Employment (Jersey) Law 2003 to prohibit the use of N.D.A. (Non-Disclosure Agreements) in cases involving sexual harassment, discrimination, or other forms of misconduct; and in the absence of such legislation, what safeguards currently exist to ensure that N.D.A.s are not used to silence victims of workplace abuse or discrimination in Jersey?

Deputy L.V. Feltham of St. Helier Central (The Minister for Social Security):

I thank the Connétable for her question. She knows that this is a subject that is of great concern to me, as I said to the Scrutiny Panel when I met them last week. Non-disclosure agreements should not be being used to cover up instances of sexual harassment or discrimination. The U.K. proposal to which the Connétable refers still has some way to go before it becomes law, and my view is that similar action in Jersey should be pursued through the work of the Employment Forum. Given where we stand in terms of the forthcoming election and my published work programme, it would not be feasible to make meaningful progress on this issue before the end of this parliamentary term, as my team is currently focusing on completion of the whistleblowing legislation. However, the Discrimination Law is clear; protections are in place for those who experience poor treatment in the workplace and I encourage those who are affected by such behaviours to use the tribunal process to seek redress. But I do have to say to the Assembly that I do remain disappointed that the Employment Forum's recommendation in relation to compensation for discriminatory behaviour was rejected due to an amendment on compensation limits. We had the opportunity to send a powerful message that discrimination in all its forms would not and should not be tolerated and that sanctions should be meaningful but we failed to do so. I hope that a future Assembly will have more success when it comes to agreeing appropriate levels of compensation for Islanders whose lives can be blighted by discriminatory behaviours.

The Connétable of St. Martin:

I thank the Minister for her response on this and I think she sent out quite a clear message, thank you.

4.3.1 Deputy L.M.C. Doublet of St. Saviour:

Would the Minister seek to collect some data on how many N.D.A.s have been signed across various departments, Parishes, any data that can be collected? I think that would be a good short-term step to take.

Deputy L.V. Feltham:

I thank the Deputy for her question. I know that she mentioned Government employees and Parishes where I think potentially there could be a possibility to collect information. Obviously I am not responsible for that data, that question would be better asked to the chair of the States Employment Board and maybe the Comité des Connétables.

4.3.2 Deputy L.M.C. Doublet:

Would the Minister feel able to raise this herself with S.E.B. (States Employment Board)?

Deputy L.V. Feltham:

Yes, I am always happy to raise matters of concern such as this with the States Employment Board.

4.3.3 Deputy P.M. Bailhache of St. Clement:

My experience as a member of the States Employment Board showed that N.D.A.s were used as a matter of routine in cases against the S.E.B. before the Employment Tribunal. Would the Minister agree to request the States Employment Board to reconsider its stance in relation to N.D.A.s and to limit them to cases where they were absolutely necessary?

Deputy L.V. Feltham:

I think any employer should be limiting N.D.A.s to cases where it is absolutely necessary. Of course, any Member can speak to members of the States Employment Board, which do represent this Assembly, and make their views known. I encourage the Deputy to make his views known to the chair and the vice-chair of the States Employment Board.

4.3.4 Deputy J. Renouf of St. Brelade:

Is the Minister aware of any conversations that have been had between Ministers or with the States Employment Board on the subject of N.D.A.s relating to harassment, particularly with a view to suggesting that they would not be a good idea?

Deputy L.V. Feltham:

No, I am not aware of any such conversations. I believe that matters regarding the States Employment Board are always subject to confidentiality. I am not a member of the States Employment Board.

4.3.5 Deputy J. Renouf:

Developing the theme of Deputy Doublet's question, is it something that the Minister would feel able to approach the States Employment Board with to express her Ministerial view on that?

Deputy L.V. Feltham:

I think all members of the States Employment Board are in this Assembly and have heard my message loud and clear today about my view on matters of non-disclosure and treatment in the workplace.

4.3.6 Deputy R.S. Kovacs of St. Saviour:

Is the Minister aware what guidance or support mechanism are currently available to employees in Jersey who may be asked to sign an N.D.A. in circumstances involving alleged misconduct to ensure they fully understand their rights and they are not deterred from seeking justice?

Deputy L.V. Feltham:

Of course any employee has the right to join a trade union, who would be best placed to provide the best possible advice in that type of situation. But also the Jersey Advisory and Conciliation Service is available to provide objective advice to both employers and employees about appropriate processes.

4.3.7 Deputy M. Tadier of St. Brelade:

Is the Minister concerned that where an employee has been dismissed and does not wish to accept an offer from the employer, maybe in this case the S.E.B., that if they then go to tribunal and their case is upheld they may not get any compensation if they have refused an offer, and that the reason they may have refused that initial offer could be linked to the fact they did not

want to sign a non-disclosure agreement? Does the Minister think that is fair and that there should be a reconsideration also of the tribunal and employment law.

Deputy L.V. Feltham:

Obviously, I cannot comment on specific cases that may or may not have been through the tribunal. What I would say is, as I said in my initial answer to the first question, I would encourage and would want processes to be ones that would enable people to seek recompense through the tribunal process. I would be concerned if matters were that people were being discouraged from using the correct process because of outcomes in certain cases.

4.3.8 Deputy M. Tadier:

I would simply ask again if the Minister would commit to looking at I think it is Article 77(2), Article 77E of the relevant law which allows the tribunal to basically reduce the compensation that could be made if an offer has been refused given the fact that that person may wish for the matter to be dealt with in a public forum, and therefore it seems to me reasonable that somebody should not be penalised for wanting to go through a public process rather than a closed process involving an N.D.A. Does the Minister agree to look into that?

Deputy L.V. Feltham:

Yes, I am more than happy to look into that.