

MODEL LITIGANT POLICY IN THE CONDUCT OF LITIGATION

The States has never formally acknowledged that it should act as a "model" litigant. It should.

This model litigant policy, reflected in a number of principles set out below, demonstrates the community's and courts' expectations that the States should, by precept and example, practise justice, and affirms that, in exercising their governmental functions, always act in the public interest in contemplating and commencing and continuing or defending litigation.

Introduction

This policy has been issued at the direction of the Policy Council following consultation with H M Procureur.

The powers of the States in the conduct of litigation are to be used honourably in the public interest, and not as a means of oppression or out of pique or merely to satisfy personal inclinations. However, the Guernsey community also expects the States to use taxpayers' money properly and, in particular, not to spend it without due cause and process, and to recover what is properly due. This means, in particular, that demands on the States for compensation (e.g. for injury, loss or damage) or other financial relief must be carefully scrutinised to ensure that they are justified.

It should be noted that the principles below are not legally binding on the States or any other person, and are not intended to be applied rigidly. They do not prejudice the States' discretion to pursue any particular case according to its merits. They do not override any legislative requirement or authority concerning a Department's or

Committee's functions, and do not affect the professional duties of the States' legal advisers, including, without limitation, the Rules of Professional Conduct and Oath by which the Guernsey Bar are bound.

The principles contained in this policy apply as much to public law proceedings as to private law civil litigation. They apply equally to St James Chambers and legal consultants and external lawyers engaged by the States.

They will be kept under review and may be amended from time to time with the approval of the Policy Council and H M Procureur. Issues relating to compliance or non-compliance with the principles contained in this policy are to be referred to Her Majesty's Procureur.

Model litigant principles

The States, by its Departments and Committees, will conduct themselves as model litigants in all litigation, by adhering to the following general principles:

- acting consistently in the handling of litigation
- dealing with litigation promptly and not causing unnecessary delays
- endeavouring to avoid litigation until other means of resolving a dispute are exhausted or impractical
- where it is not possible to avoid litigation, keeping its costs to a minimum
- paying legitimate claims without litigation, including making partial settlements of claims or interim payments where liability is agreed or has been established
- taking account of the principles of equality of arms, reasonableness and proportionality, and not seeking to take advantage of a poor or disadvantaged opponent
- not contesting matters which it accepts as correct, in particular by:

- not requiring a party to prove a matter which the States know to be true
- not relying on a purely technical claim or defence where the States will suffer no prejudice by not doing so
- not contesting liability if the States know that the dispute is really about quantum
- not instituting or pursuing or defending proceedings unless the States believes that they have reasonable prospects for success, or so doing otherwise justified in the public interest
- not instituting or pursuing or defending proceedings on technical or pettifogging grounds which are likely to confer no practical advantage in the result of the litigation, or which are otherwise not in the public interest
- without prejudice to the above, to act in accordance with the highest professional standards and in accordance with the expectations of the community and the courts.

Principles of firmness and propriety

The principles set out above do not prevent the States from acting firmly and properly to protect the public interest, the public revenues and the interests of the States, and in particular – but only where appropriate - from :

- testing all claims
- contesting all spurious, frivolous, vexatious or abusive claims
- claiming legal professional privilege
- claiming public interest immunity to protect confidential information
- seeking security for costs, and seeking and enforcing orders for costs (including costs on an indemnity basis), in order to assist in protecting the public revenues and deterring spurious, frivolous, vexatious or abusive proceedings from being instituted or pursued or defended

- relying on all properly available defences to protect the States from unfair prejudice or practice
- acting properly to protect the public interest, the public revenues and the interests of the States.

28th April, 2009