



<u>Committee and Date</u>	<u>Item</u>
Audit Committee 25 th June 2015	

2014/2015 Settlement Agreements

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1. Summary

Settlement Agreements are legally binding agreements used within the Council in limited circumstances, following a strict authorisation process, used to mitigate risk to the Council (financially, reputationally) either as an exit strategy or to resolve conflict where there is a risk of an Employment Tribunal claim being made. Settlement Agreements should only be used as a method to resolve a dispute when all other options have been exhausted.

The discussions that take place in order to reach a settlement agreement in relation to an existing employment dispute can be, and often are, undertaken on a 'without prejudice' basis. This 'without prejudice' confidentiality does not, however, apply where there is no existing dispute between the parties. Section 111A of the Employment Rights Act 1996 was introduced to allow greater flexibility in the use of confidential discussions as a means of ending the employment relationship. Section 111A, which will run alongside the 'without prejudice' principle, provides that even where no employment dispute exists, the parties may still offer and discuss a settlement agreement in the knowledge that their conversations cannot be used in any subsequent unfair dismissal claim. Where an Employment Tribunal finds that there has been improper behaviour in such a case, any offer of a Settlement Agreement, or discussions relating to it, will only be inadmissible if, and in so far as, the Employment Tribunal considers it just. (See Appendix A for further information).

This report provides an update to the Shropshire Council Audit Committee on the number of Settlement Agreements for Council employees over the last year, 1 April 2014 – 31 March 2015, (excluding school based employees).

2. Recommendations

The Audit Committee is asked to:

- a. Consider and comment on the contents of the report.

REPORT

3. Risk Assessment and Opportunities Appraisal

- 3.1 The Council has in place an effective authorisation process to limit the use of Settlement Agreements.
- 3.2 The Council proactively encourages the use of policies and procedures (Disciplinary, Grievance, Performance Management, Capability) encouraging the discussion and appropriate management of disputes\conflicts that arise within the workplace, limiting the risk of Employment Tribunal Claims being made. The use of Settlement Agreements contribute to minimise risk to the Council of potentially expensive and time consuming Tribunal claims that could have a detrimental effect on the reputation of the Council, both internally and externally. Where individuals feel unable to raise concerns through these channels of communication, the Council has in place a Whistleblowing policy that contributes to our zero tolerance of fraud, bribery and corruption. There were no Settlement Agreements entered into as a result of issues raised through the Whistleblowing Policy.
- 3.3 The recommendations contained in this report are compatible with the provisions of the Human Rights Act 1998. There are no direct environmental, equalities, consultation or climate change consequences of this proposal.

4. Financial Implications

- 4.1 The management and investigation of issues raised in response to the use of Settlement Agreements are met from approved budgets.

5. Background

- 5.1 This is the first report to Audit Committee on the number of Settlement Agreements with Council staff during 2014/15.
- 5.2 A Settlement Agreement is a written agreement signed by the parties which, in exchange for an agreed sum of money and any other agreed terms, acts to bar the claimant from taking any of the claims referred to in the Settlement Agreement to any Court or Employment Tribunal.

Settlement agreements (formerly known as compromise agreements prior to 29 July 2013) are legally binding contracts which can be used to end an employment relationship on agreed terms. They can also be used to resolve an ongoing workplace dispute, for example, a dispute over holiday pay.

Settlement agreements can be proposed by either an employer or an employee, although it will normally be the employer. They can also be agreed between an employer and someone other than an employee (or former employee) who may be able to bring a claim to an Employment Tribunal – for example, an unsuccessful

job applicant who feels they were discriminated against at job interview, or a worker who has a complaint about holiday pay.

5.3 Key points about Settlement Agreements:

Settlement agreements are legally binding contracts that can waive an individual's rights to make a claim covered by the agreement to an Employment Tribunal or Court.

The agreement must be in writing.

They usually include some form of payment to the employee and may often include a reference.

They are voluntary – they include terms and conditions that are mutually agreed, and parties do not have to enter into them if they do not wish to do so.

They can be offered at any stage of an employment relationship.

5.4 Risks of successful Employment Tribunal claims

If an individual is successful with their claim, the Tribunal can order the Employer to do certain things depending on the type of case, examples include;

- Giving the claimant their job back
- Paying compensation if you can't give the claimant their job back
- Paying witness expenses
- Paying damages or loss of earnings
- Paying the claimant's Tribunal fees

Paying compensation is the most common outcome of a Tribunal. Whilst there are limits on compensation payments that an Employment Tribunal can award, it should be noted that there are no limits on the compensatory award that may be awarded for dismissals for health and safety reasons, dismissals for making a protected disclosure (whistleblowing), or unlawful discrimination based on one of the protected characteristics (sex, race, age, sexual orientation, disability, religion or belief).

5.5 Financial penalties on Employers who lose at Tribunal

With effect from 6 April 2014, in addition to the award made to the claimant, the Employment Tribunal can impose a financial penalty on the losing employer. These penalties will be payable to the Secretary of State if the Tribunal finds the employer has breached the employees' employment rights and has 'one or more aggravating feature', for example where the treatment of the employee was

deliberate or malicious, where the employer had repeatedly breached the right in question, or where the employer has a dedicated Human Resources Department.

The highest sum awarded by the Employment Tribunal Award in 2013-2014 (latest full year statistics) was £3,402,245 and was awarded in an unfair dismissal claim. High awards were also made in claims arising from race discrimination, sex discrimination, disability discrimination and age discrimination. (See Appendix A for further information.)

5.6 Settlement Agreements 2014/2015

In 2014/15, there were 13 settlement agreements entered into with employees of Shropshire Council, none of these relating to whistleblowing:

Directorate	Number	£
Adult Services	5	38,873.42
Children's Services	4	49,247.80
Commissioning	2	16,178.89
Public Health	0	0
Resources & Support	2	42,300.00
	13	146,600.11

Settlement Agreements are not entered into until a business case has been completed, detailing associated costs, risks and recommendations. These were agreed after a strict sign off process involving:

Clive Wright, Chief Executive
 Michele Leith, Head of Human Resources and Development
 James Walton, Head of Finance, Governance and Assurance
 Appropriate Head of Service within the Directorate.

The starting point for calculations of a Settlement Agreement is the statutory minimum amount that the employee would receive if made redundant. Legal Advice is always sought – separate for both parties.

The Council also pay £250 + VAT towards the cost of a solicitor (to represent the employee and provide advice on the Settlement Agreement) - invoice required and paid by the Service Area.

6. Conclusion

- 6.1 During the Financial Year 2014/2015 Settlement Agreements were used in a small number of cases, following the authorisation procedure that is in place.

List of background papers (This MUST be completed for all reports but does not include items containing exempt or confidential information) – None

Cabinet Member (Portfolio Holder) Keith Barrow (Leader of the Council) and (Chairman of Audit Committee)

Local Member- N/A

Appendices:

Appendix A - Further information on Settlement Agreements and Employment Tribunals

Appendix B - Flowchart of Settlement Agreement Process and Authorisation