

SETTLEMENT AGREEMENTS GUIDANCE NOTE (INCLUDING BUSINESS CASE)

1. Introduction

Fairness, transparency and good workplace relations are promoted by using rules and procedures for handling performance management and disciplinary and grievance situations and as such, settlement agreements should not be used as a substitute for good practice. Advice should be sought from the relevant HR Officer before consideration is given to a settlement agreement as there may be a more satisfactory way of dealing with the issue.

Settlement Agreements are, however, a tool that can be used to deal with workplace problems. They can be offered at any stage of an employment relationship and it is not necessary to go through a disciplinary process, or even start one before offering a settlement agreement.

It should be noted that the Corporate Safeguarding Group have supported the Council's guidance in relation to managing allegations of abuse against employees who work with children and vulnerable adults. This guidance sets out that settlement agreements should not be considered as an option for an individual to exit the Council if there are any safeguarding concerns.

Please note detailed information is available from ACAS and can be accessed [here](#).

A flowchart detailing the step by step procedure to be followed when using a settlement agreement is attached as **Appendix 2**.

2. Key Features of Settlement Agreements

- They are legally binding
- They can waive an individual's rights to bring a claim covered by the agreement i.e. the right to make a claim to an employment tribunal or court
- The employee usually receives some form of financial payment and may also receive a reference as part of the agreed terms
- They are entirely voluntary – the terms and conditions are mutually agreed and parties do not have to enter into them if they do not wish to do so
- They are reached through a process of discussion and negotiation - the parties do not have to accept the terms initially offered, there may be a process of negotiation
- Negotiations about settlement agreements are often confidential if handled properly and the negotiations **may not be admissible** as evidence in claims before an employment tribunal or other court proceedings (seek advice from the relevant HR Officer)

3. Matters for consideration before proposing a settlement agreement

- Serious consideration should be given to the reason(s) why a settlement agreement is required in the particular circumstances and if it is the best way to deal with the matter. The relevant HR Officer can provide advice on this.

- **Not all offers of settlement agreements are accepted.** It is important to consider what will happen to the employment relationship if this is the case. Depending on the reason for the settlement offer, employers should seek to tackle any underlying causes of workplace problems, eg by improving communications, training or working arrangements or by going through a performance management or disciplinary process as appropriate.
- Be clear before entering into any discussions or negotiation on the settlement agreement that there is no unlawful discrimination or victimisation involved in offering a settlement agreement in the circumstances
- Is the payment to be offered appropriate? If an amount is put forward by the employee and/or his/her trade union representative, it is important to note that a counter-offer can be made if the amount is not considered reasonable and good value for money for the Council.
- Is a reference to be provided with the settlement agreement and if so will it be a factual reference only or a more detailed reference?
- You will need to factor into the timescale of your negotiations that under the *ACAS Code of Practice 4 - Settlement Agreements* the employee must have a minimum period of **10 calendar days** to consider the proposed terms of the settlement agreement and to receive independent advice.

4. Discussions with Employee

- It is best practice to carry out settlement negotiations with an employee face to face. At the start of the meeting it is good practice to make sure that those involved are aware that any discussions about the proposed settlement agreement are expected to be inadmissible in any relevant legal proceedings (see paragraph 5 below).
- There is no statutory right to allow accompaniment at these discussions, however it is best practice to do so, this can be a work colleague or trade union representative and this companion should be allowed to play a full part in the discussion.
- Discussions should be conducted in a sensitive manner, including listening to concerns and providing informative answers to questions as there will be a greater chance of reaching a mutually agreed outcome.
- The discussion process is voluntary and either party is free to decide that they do not wish to enter into discussions or continue discussions or the process at any time.
- *The ACAS Code 4 – Settlement Agreements* provides that parties should be given a reasonable time to consider the proposed settlement agreements. As a general rule, a minimum period of 10 calendar days should be allowed to

consider the proposed written terms of a settlement agreement and to receive independent advice, unless the parties agree otherwise.

5. The Inadmissibility of settlement agreement discussions (S111A Employment Rights Act 1996)

If there is an existing dispute and a genuine attempt is being made to settle it, the principle of 'without prejudice' can apply, as long as there is no unambiguous impropriety in the conduct of the parties (e.g. fraud, discrimination, threatening behaviour or intimidation) during the settlement agreement discussions. These discussions will then be inadmissible in an employment tribunal.

Where there is not an existing dispute as long as there has not been any improper behaviours in the conduct of the parties (e.g. harassment, bullying, victimisation, discrimination, or putting undue pressure on the employee), then pre-termination settlement negotiations are also likely to be inadmissible in any unfair dismissal case that may proceed.

6. References

An agreed reference can be part of a settlement agreement, however those writing such references should take into account the reason for the employee leaving the Council and must provide a reference which accurately reflects this. Guidance on the provision of references is available on the HR Intranet. To ensure that officers providing references as part of a settlement agreement do not leave themselves open to challenge and withstand external scrutiny, all such references should be approved by the Head of Human Resources (or her nominated representative).

7. Authorisation

- All settlement agreements are subject to a robust business case being completed Corporate Director and / or Head of Service and approved by the Corporate Director, and must satisfy all the requirements of paragraph 3 above.
- Before making a formal offer to an employee in relation to a settlement agreement, the Corporate Director / Head of Service proposing a settlement agreement must complete the Business Case (attached as Appendix 1) which should be forwarded to the Director of Finance and Corporate Services (DFCS) and the Head of Human Resources (HHR) for their comments.
- If negotiations are ongoing, any revised business case should be referred again to the DFCS and HHR for their comments as the Council has a duty to ensure that best value is obtained when spending public money, that the sums paid will withstand external scrutiny and that all matters in relation to the settlement agreement are legally compliant.
- It is only when the negotiations have reached a mutually satisfactory conclusion, comments have been provided by the DFCS and HHR and

approval has been given by the Corporate Director , can a settlement agreement be drawn up. Following this, it will be forwarded to the employee and/or his/her representative in order for the employee to seek independent legal advice. The Council will pay up to a maximum of £350 to an independent legal adviser and this cost will be borne by the employing directorate.

**PRIVATE AND CONFIDENTIAL
BUSINESS CASE FOR SETTLEMENT AGREEMENT**

Please note BEFORE any discussion takes place with an employee and/or trade union representative in relation to a Settlement Agreement, advice should be sought from the relevant HR Officer to ensure its legality.

**Corporate Director/Head of Service
(or nominated representative) proposing
Settlement Agreement**

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Employee Details

Name
Directorate
Job Title
Pay Number
Post reference number
National Insurance number
Date of Birth

**Corporate Director/Head of Service
Proposing Settlement Agreement**

Name
Designation
Email
Phone number

Background and circumstances of the case

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Potential Risks if a settlement agreement is not reached. NB these risks must be evidence based and not based on hypotheticals.

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Details of settlement negotiations

Date/s	Notes

Assessment of the potential amount of the settlement *[please note that the amount must represent good value for money for the Council and if an amount is put forward by the employee or his/her representative a counter offer can be made]*

For consideration:-

- Length of employment
- Length of time it may take to resolve the problem if a settlement is not reached
- How difficult it will be to fill the post
- The possible liabilities and costs involved in dealing with any potential tribunal claim or court claim if a settlement is not reached

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Reference *[please provide details of any agreed reference here]*

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Comments from the Head of Human Resources (or nominated representative)

Signature / Date

Comments from the Director of Finance and Corporate Services (or nominated representative)

Signature / Date

Corporate Director Authorisation

[please tick]

All the information provided in this business case is true and accurate.

The use of a settlement agreement is the best course of action for the Council in dealing with this matter and the settlement amount represents good value for money for the Council.

The comments made by the DFCS and the HHR have been duly considered

I have not made and will not make an agreement with the employee concerning re-employment by the Council in any paid capacity

I confirm that I have read the Settlement Agreement Guidance Note and have complied with its contents throughout the process

Signature / Date

**To be returned to the relevant HR Officer
The Quays
Brunel Way
Baglan Energy Park
Neath SA11 2GG**

SETTLEMENT AGREEMENT FLOWCHART

