



**POLICY AND RESOURCES SCRUTINY COMMITTEE –  
12TH NOVEMBER 2013**

**SUBJECT: CAERPHILLY COUNTY BOROUGH COUNCIL – SETTLEMENT AGREEMENTS**

**REPORT BY: ACTING DIRECTOR OF CORPORATE SERVICES AND SECTION 151 OFFICER**

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**1. PURPOSE OF REPORT**

- 1.1 To provide Policy and Resources Scrutiny Committee with information on the Settlement Agreements that the Council has entered into in the last three financial years.

**2. SUMMARY**

- 2.1 There are certain situations where it is appropriate for an employer, in this case the Council, to make use of a Settlement Agreement (formerly called a Compromise Agreement) to mutually terminate an employee's contract of employment. Settlement agreements can be proposed by both the employer or employee although in normal circumstances it is the employer. Such agreements can be made at any stage of an employment relationship. These situations normally arise when the employment relationship has broken down, which may be for a variety of reasons.
- 2.2 Settlement agreements can be also be negotiated post employment to settle an Employment Tribunal claim. These Agreements are achieved via ACAS negotiation.
- 2.3 Settlement Agreements are also progressed to protect the Council from any unnecessary reputational risks during public legal processes or through any other public forum; risk assessing and mitigating foreseeable risks; representing value for money for the Council in terms of officer time and potential legal and claim costs.
- 2.4 This report provides information on the number of Settlement Agreements that the Council has entered into in the last three years and the total cost of these Agreements for each of those financial years.

**3. LINKS TO STRATEGY**

- 3.1 The use of Settlement Agreements links to the People Management Strategy and therefore to all other strategies that rely on employees to deliver the strategy and service provision.

**4. THE REPORT**

- 4.1 The Government has recently been consulting on changes to legislation to change the way that terminations are managed. Although some of these changes have come into being, i.e.

Section 23 of the Enterprise and Regulatory Reform Act 2013 renames compromise agreements and compromise contracts as "settlement agreements" in all relevant pieces of primary legislation. This legislation has also produced an ACAS Code of Practice, published in July 2013, but there are numerous other changes still being consulted upon. The ACAS Guide is a Statutory Code of Practice on Settlement Negotiations and it sets out what employers and employees should and should not do when conducting pre-termination negotiations and how to avoid "improper behaviour".

- 4.2 There are occasions when the Council has used Settlement Agreements to end an employment relationship with an employee or to end a post employment dispute following an application to the Employment Tribunal.
- 4.3 It is important to confirm to Members that the Council would never consider a Settlement Agreement for employees or former employees where there has been cause to move or remove an employee (or may have done had they not resigned) because they have harmed a child or vulnerable adult, or there was a risk of harm, as the Council has a legal duty to refer the person to the Disclosure and Barring Service (DBS).
- 4.4 On occasions, when the employment relationship has broken down, the main option that a satisfactory conclusion to the relationship may be achieved is through the use of a Settlement Agreement. The Settlement Agreement is drawn up between the parties and will cover all the detail of the employee's termination. This will include the provision of a reference for the employee, the date of termination, any compensation that is to be paid to the employee for loss of office.
- 4.5 In turn, the employee accepts full and final settlement in relation to all claims or potential claims that the employee is aware of having or possibly having against the Council and its officers and employees arising out of or in connection with the Employee's employment with the Council and/or its termination before an employment tribunal and/or court. This settlement cannot include matters relating to pension or personal injury. There is a confidentiality clause included in the Agreement, preventing both the Council and the employee from publicising the termination details. The Settlement Agreement is a binding legal agreement between the parties concerned and employees must seek legal advice on the content of the document prior to signing it. The employee's legal advisor also must sign the document.
- 4.6 The first £30,000 of any compensation that an employee receives is tax-free and any amount over that is taxable. In addition to the amount of compensation the Council agrees to pay the employee a fee is also paid in respect of legal advice the employee has to obtain in relation to the Settlement Agreement, to ensure that the Agreement is legally binding. This is a maximum of £350 plus VAT per agreement.
- 4.7 As part of the Settlement Agreement, the employee also receives a £100 payment, as agreement to not, at any time, to use, copy, disclose, communicate and/or publish or enable or cause any person to become aware of and/or use, copy, disclose, communicate and/or publish any Confidential Information of the Council including any information which the Employee received or obtained during the course of or as a result of the Employee's employment with the Council.
- 4.8 Both the Head of Workforce and Organisation Development and the employee sign the Settlement Agreement. Each of these parties also has to arrange for an independent witness to sign the Agreement.
- 4.9 Post employment Settlement Agreements are negotiated via ACAS and only settle the matter being presented to the Employment Tribunal. The Agreement is not a full and final settlement of all the other employment matters as detailed in paragraph 4.4. The Agreement does not attract an agreed reference, the confidentiality payment or payment of the legal fees.

- 4.10 In order for the Settlement Agreement to be progressed, a business case must be completed and authorised for the Council by the Head of Service / Head teacher, the relevant Director / Chair of Governors and the Head of Workforce and Organisational Development.
- 4.11 The business case outlines the rationale for the Settlement Agreement including the position to date, any risks to the Council including financial and reputational, the time period and costs (including potential payments if the employee reports sick, officer time to deal with a formal process, potential legal costs of a tribunal etc) involved, alongside the benefits to achieving a certain resolution in a known timescale. The business case should also state the date of termination and the reason for the amount of compensation that has been agreed. The possibility of defending an Employment Tribunal should also be accounted for on the business case.
- 4.12 Where the individual has already left the employment of the Council and lodged an application with an Employment Tribunal, consideration for a Settlement Agreement will include the costs of preparation for and attending the Tribunal, including officers time, external legal costs where appropriate, reputational risk of the case being heard and the potential financial award if the case is lost. All of these factors will influence the business case decision making process.
- 4.13 Attached at Appendix 1 and 2 are anonymised examples of the business case forms that are used to progress both types of Settlement Agreements referred to in the report.

## **5. EQUALITIES IMPLICATIONS**

- 5.1 No equalities impact assessment has been undertaken as this report is for information only. Any termination, however (whether to end an employment relationship with an employee or to end a post employment dispute following an application to an Employment Tribunal) would have been subject to all relevant equalities related employment regulations and policies and any equalities related issues would be reflected in the records of the individual cases.

## **6. FINANCIAL IMPLICATIONS**

- 6.1 There are financial implications to using Settlement Agreements and the exact amounts will vary from case to case depending on the individual facts of each case. Prior to the signing of a Settlement Agreement a robust business case must be agreed as detailed in the main body of the report, including the section entitled 'Cost'.
- 6.2 Appendix 3 details the total amounts paid via Settlement Agreements in the previous three financial years and also the average compensation amount paid per employee.

## **7. PERSONNEL IMPLICATIONS**

- 7.1 The content of the Settlement Agreements and business cases evidence all the HR implications that are specific to each individual case.

## **8. CONSULTATIONS**

- 8.1 There are no consultation responses that have not been reflected in this report.

## **9. RECOMMENDATIONS**

9.1 Policy and Resources Scrutiny Committee are asked to note the contents of the report.

## **10. REASONS FOR THE RECOMMENDATIONS**

10.1 The recommendations are designed to inform Policy and Resources Scrutiny Committee of the reasons that the Council may enter in to a Settlement Agreement and also the details of the numbers of Agreements and amounts paid in the last three financial years.

## **11. STATUTORY POWER**

11.1 Local Government Act 1972, Local Government Act 2000, Employment Rights Act 1996, Enterprise and Regulatory Reform Act 2013.

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Appendices:

Appendix 1 Business Case Example – Pre Termination  
Appendix 2 Business Case Example – Post Termination  
Appendix 3 Outline Costs incurred