

Employment Disputes and Litigation

Settlement Protocol

Corporate Law, Law and Governance
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Version 1

Definitions

- “Settlement Payments” are sums paid to employees on termination of their employment or when settling a potential claim and might include damages for wrongful dismissal, alleged unfair dismissal or compensation for discrimination, as well as for redundancy payments, payments into and out of pensions, notice pay and ex gratia payments. These payments are generally made under a settlement agreement whereby an employee waives their right to bring employment claims in return for an agreed sum, or compensation.
- “Special Severance Payments” are a subgroup of settlement payments set out in statutory guidance. They are settlement payments which include the termination of employment and to which the requirements of the statutory guidance apply.

1. Introduction

- 1.1 This Protocol is to assist officers of the Council in relation to settlement of employment disputes by way of a settlement payment. It sets out when a settlement payment would be appropriate and the process to be followed.
- 1.2 The Protocol applies to all employment disputes where a settlement payment beyond statutory and contractual entitlements is being considered. It includes matters at all stages including prior to and during ACAS Early Conciliation, claims in the Employment Tribunal and/or Courts and where the settlement relates to a termination of employment and where it does not.
- 1.3 The nature of employment disputes can require time sensitive negotiations. It is imperative that where settlement of a dispute is being considered that this Protocol is enacted expeditiously.

2. Background

- 2.1 Councils may consider making settlement payments in order to settle disputes where it can be properly demonstrated that other routes have been thoroughly explored and excluded. After receiving appropriate professional advice from HR, Legal Services and Finance, it may be concluded that a settlement payment is the most suitable option and prudent use of public money.
- 2.2 The Council is under a duty to secure economy, efficiency and effectiveness in its use of resources.
- 2.3 On 12 May 2022 the Government published *Statutory Guidance on the making and disclosure of Special Severance Payments by local authorities in England* (“the Guidance”). The Guidance sets out that Special Severance Payments should only be made in exceptional circumstances and local authority employers must ensure that their Special Severance Payments arrangements are fair, proportionate, lawful and provide value for money for the taxpayer. The Council applies this principle to all settlement payments whether involving termination of employment or not.

3. The Protocol

- 3.1 The Council’s approach is to manage employment disputes with use of the Council’s internal policies and procedures, to defend claims, where there is a legally defensible basis on which to do so, and not to make settlement payments to resolve disputes except in exceptional circumstances.
- 3.2 Central to this approach is a desire to discourage futile or vexatious claims and to demonstrate that such claims will not be rewarded. The cost of defending a matter compared to a potentially lower cost of settling a matter should not normally be the sole basis of pursuing resolution through a settlement payment.
- 3.3 Where (on completion of the below pro forma) there is a clear, evidenced justification for doing so, consideration of settlement of claims by way of a settlement payment may be appropriate.
- 3.4 A settlement payment should only be considered after attempts have been made to resolve the dispute using internal processes or in the case of a proposed termination of employment, where existing contractual entitlements are insufficient to facilitate an exit.
- 3.5 Additionally a settlement payment can only be made where it is considered the most suitable option and a prudent use of public money.
- 3.6 The Protocol does not apply where the settlement payment comprises solely of payments due under statute or a contract (for example – statutory and contractual redundancy payments, and outstanding annual leave), or where the settlement is non-

monetary (for example – an agreed reference only).

4. Procedure

- 4.1 Where a settlement payment is being considered to resolve a dispute, the relevant Service must complete the pro forma at the Appendix. The Appendix adopts the format of the pro forma for HM Treasury Approval for Special Severance Payments. This is to be used whether the proposed settlement payment relates to an exit from employment or not, as in both cases it will consider and document the appropriateness of a settlement payment.
- 4.2 In completing the pro forma, advice from HR and Legal Services should be recorded.
- 4.3 Settlement discussions generally should not commence until the necessary authority has been obtained. Any discussion which does commence prior to the necessary authority being obtained needs to be caveated with reference to the need for approval before finalising any agreement. The required authority to proceed with settlement discussions is set out in section 5.

5 Authorisation

- 5.1 For all settlement proposals, advice from the Employment Relations Team and Legal Services is required prior to seeking Service Director approval.
- 5.2 Where the proposed settlement payment is below £20,000, written approval from the Service Director is required.
- 5.3 Where the proposed settlement payment is £20,000 or above, in addition to the above steps within sections 5.1 and 5.2, written approval from the Director of HR (or relevant authorised officer in their absence), the Monitoring Officer (or relevant authorised officer in their absence) and either the Corporate Director of Resources or the Director of Finance (or relevant authorised officer in their absence) is required.
- 5.4 If the Corporate Director or Service Director either seeks to pursue a settlement or seeks not to pursue a settlement contrary to the advice from HR and/or Legal Services, Legal Service will refer the matter to the Corporate Director of Resources (or relevant authorised officer in their absence).
- 5.5 Where the matter is referred to the Corporate Director of Resources under paragraph 5.4, the Corporate Director of Resources, the Director of HR, the Director of Finance and the Monitoring Officer (or relevant authorised officers in their absence), will make a decision as to whether or not to pursue a settlement, and such decision will supersede any decision made by the Corporate Director or Service Director.

- 5.6 Additionally, in accordance with the Government Guidance, if the settlement payment is a Special Severance Payment as defined within the statutory guidance, and is not exempt (see 5.8 below for exempt payments), the following further approval is required:
- payments of £100,000 and above must be approved by a vote of full council, as set out in the Localism Act 2011
 - payments of £20,000 and above, but below £100,000, must be personally approved and signed off by the Head of Paid Service, with a clear record of the Leader's approval and that of any others who have signed off the payment
 - payments below £20,000 must be approved according to the local authority's scheme of delegation.

Where the discretionary payment to an officer on termination of employment exceeds £100,000 in total but does not qualify as a Special Severance Payment, approval is by the Personnel Sub-Committee. (In accordance with the Personnel Sub-Committee's Terms of Reference, discretionary payments exclude statutory entitlements and pension strain).

- 5.7 Where the dispute involves multiple individuals, in the event that the proposed settlement payments to all individuals involved in the dispute is in aggregate £100,000 or above then, in addition to the individual authorisations set out in the preceding subparagraphs of Paragraph 5, the total settlement sum must also be approved by the Corporate Director of Resources or the Deputy S151 Officer.

- 5.8 For the purposes of 5.6 the exempt circumstances where the approval in this paragraph is not required are:
- statutory redundancy payments
 - payments in lieu of notice where permitted under the employment contract and where the payment is made with good reason in accordance with best value
 - contractual redundancy payments, whether applicable to voluntary or compulsory redundancy, and whether agreed by collective agreement or otherwise
 - severance payments made in accordance with that local authority's policy adopted pursuant to Regulation 7 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006
 - a strain cost paid to the relevant LGPS administering authority under LGPS Regulation 68(2) which results from a LGPS member's retirement benefits becoming immediately payable without reduction under Regulation 30(7), or under Regulation 30(6) where the employer has waived the reduction under Regulation 30(8)
 - payment for untaken annual leave
 - payments ordered by a court or tribunal or agreed as part of a judicial or non-judicial mediation
 - payments made as part of the ACAS Early Conciliation process
 - payments made to compensate for injury or death of the worker
 - payments made in consequence of the award of ill-health retirement benefits under Regulation 35 of the LGPS Regulations.

Appendix

Proforma for Approval for Settlement Payments and Special Severance Payments

This template is to be used for all proposed settlement of employment disputes and special severance cases to be submitted for approval. When completing this template, officers must have regard to the [Statutory guidance on the making and disclosure of Special Severance Payments by local authorities in England - GOV.UK \(www.gov.uk\)](http://www.gov.uk) and advice from HR and Legal Service must be sought and included.

Business Case	
Service and Directorate	
Named Officer	
Date case is submitted	
Date decision is needed and why	
Approval Sought – Service Director Where the settlement payment is £20,000 or above – Director of HR Corporate Director of Resources or Director of Finance Additionally where the settlement qualifies as a Special Severance Payment in statutory guidance- <i>[Payments below £20,000 require approval as set out in the Directorate’s scheme of authorisation. Payments between £20,000 and above, but below £100,000 require chief executive personal approval with a clear record of the leader’s approval. Payments of £100,000 and above require approval by a vote of full Council and require a separate report]</i>	

Circumstances of the Case

Overview of the Case

A brief case history, with key dates, summarising how the situation has come about.

Terms of employment

What are individual's terms of employment (length of service, current salary, contractual notice period, type of contract (e.g. fixed term, part time)?

Breakdown of proposed settlement payment

Please list each type of payment separately e.g. Statutory redundancy, pay in lieu of notice, Special Severance Payment

Proposed ways of proceeding

What is the individual's contractual entitlement, and why do you propose to make a Settlement Payment? What is the scope for reference to tribunal Other options considered?

Financial Considerations

The value for money consideration underlying the proposed settlement payment

Set out breakdown of costs, including legal costs; potential tribunal awards. Highlight any efficiency savings from workplace reform and/or any associated repercussive risks e.g. conduct issues to the delivery of the organisation's objectives. Provide rationale for proposed level of settlement (with pay comparison i.e. x months' pay / y% of salary); costs of alternative options, and why a proposed

settlement offers best (include best value for money) solution. When considering vfm, non-financial costs (i.e. effect on staff morale, achievement of business objectives) can also be considered.

Non- Financial Considerations

Performance management

Specify if performance has been an issue for the individual. Provide details of performance management procedures followed if applicable.

Management procedures

Specify measures taken to prevent the exit, including efforts to perform reasonable adjustments, resolve grievances or redeploy.

Repercussive risk

Lessons learnt from this case

Explain what lessons have been learned and how management systems have been/will be improved to avoid future occurrences of similar cases.

Wider impact and potential precedents

Explain whether this case might have an impact on or set a precedent for other existing or future cases, both within own organisation, and for other public sector bodies.

HR Advice

Any other useful information

Legal Advice to be provided in a separate attachment marked: Confidential and subject to Legal Professional Privilege.

(incl. summary of the legal assessment of the chances of winning or losing the case, potential consequences)?