
Staffing Matters & Urgency Committee

5 August 2019

Report of the Director of Customer & Corporate Services

Settlement Agreements and Non Disclosure Clause

Summary

1. This report provides SMU with the process in which they will be given assurance and oversight of the council's activity on settlement agreements and the inclusion of a non disclosure clause within.

Background

2. Audit & Governance Committee in March 2018 considered the council's use of settlement agreements and a non disclosure clause.
3. It was agreed at Audit & Governance that the following recommendations be made:
 - 3.1 A system of Member oversight of proposed settlement agreements and non-disclosure clauses be introduced to ensure that expenditure of Council Tax payers' money is prudent and accountable;
 - 3.2 There should be a presumption against a non-disclosure unless a business case is presented that is viable and is then approved by Members (in a format to be decided); and
 - 3.3 A formalised process be implemented so that there is consultation with Members on proposed settlement agreements and that the Constitution be amended to reflect this.
4. In line with the above three actions, this report provides the process of Member oversight to be agreed, having consideration of the confidentiality of the settlement agreement and a need to know basis on who is involved.

CYC's Settlement Agreement Protocol

5. Settlement agreements are legally binding contracts which can be used to end the employment relationship on agreed terms. Their main feature is that they waive an employee's right to make a claim to a court or employment tribunal on the matters that are specifically covered in the agreement. Settlement agreements may be proposed prior to undertaking any other formal process. They usually include some form of payment to the employee and may also include a reference.
6. Settlement agreements are voluntary. Parties do not have to agree them or enter into discussions about them if they do not wish to do so. Equally the parties do not have to accept the terms initially proposed to them. There can be a process of negotiation during which both sides make proposals and counter proposals until an agreement is reached, or both parties recognise that no agreement is possible.
7. For a settlement agreement to be legally valid the following conditions must be met:
 - a The agreement must be in writing;
 - b The agreement must relate to a particular complaint or proceedings
 - c The employee must have received advice from a relevant independent adviser on the terms and effect of the proposed agreement and its effect on the employee's ability to pursue that complaint or proceedings before an employment tribunal;
 - d The independent adviser must have a current contract of insurance or professional indemnity insurance covering the risk of a claim by the employee in respect of loss arising from that advice;
 - e The agreement must identify the adviser;
 - f The agreement must state that the applicable statutory conditions regulating the settlement agreement have been satisfied.
8. Settlement agreements can be proposed by both CYC managers and employees. A settlement agreement proposal can be made at any stage of an employment relationship. How the proposal is made can vary depending on the circumstances but reasons for the proposal should be given when the proposal is made. The initial proposal may be oral although it must ultimately be put in writing.

9. The initial proposal should be considered by the Head of Service / Assistant Director, Legal, HR, and Finance. Where it is proposed to progress then the AD/Corporate Director should inform the Executive Member and gain approval from the Section 151 Officer. This will all be documented in the Settlement Agreement template, shown in Appendix 1.
10. Where the business case has been approved, as in paragraph 9 above, parties should be given a reasonable period of time to consider the proposed settlement agreement and a minimum period of 10 calendar days should be allowed to consider the proposed formal written terms of a settlement agreement and to receive independent advice, unless the parties agree otherwise.
11. Whilst not a legal requirement, CYC should allow employees to be accompanied at the meeting by a work colleague, trade union official or trade union representative.
12. Where a proposed settlement agreement based on the termination of the employment is accepted, the employee's employment can be terminated either with the required contractual notice or from the date specified in the agreement. The details of any payments due to the employee and their timing should be included in the agreement.
13. The Settlement Agreement Template will be sent to SMU for noting in line with redundancy decisions.
14. The use of a non disclosure clause within the settlement agreement may be used for the benefit of either CYC or the employee, but in general is included for the benefit of both parties. The clause is confidential and provides certainty and closer whilst affirming the right of either party to make a protected disclosure (i.e. whistleblowing).

Consultation

15. Legal services have been involved in formalising the protocol and template as detailed above. There is no change to process other than documenting the approval / decision making and enabling SMU to oversee the process to give assurance to the Council that they are being used appropriately.

Council Plan

16. Whilst the actions being proposed in the report are not material to the Council Plan they are consistent with the required outcomes of the Workforce Strategy (People Plan).

Implications

17. There are no implications for the process as described. Any implication of individual cases coming forward will be detailed in the Business case / approval document.

Risk Management

18. This approach manages the risk to the council and gives greater oversight and scrutiny whilst maintaining confidentiality in line with the settlement agreements.

Recommendations

19. It is recommended that SMU

- 19.1 Agree to the proposed reporting to SMU on settlement agreements used within the authority.

Reason: To provide assurance and oversight by Members, as agreed by Audit and Governance Committee.

Contact Details

Author:

Trudy Forster

Head of HR

Tel: (01904) 553984

Chief Officer Responsible for the report:

Ian Floyd

Deputy Chief Executive / Director of
Customer & Corporate Services

**Report
Approved**

Date 23/7/19

Specialist Implications Officer(s)

None

Wards Affected: List wards or tick box to indicate all

All

For further information please contact the author of the report

Annex:

1. Settlement Agreement - Business Case Template