

Protocol for Settlement Agreements and Non-Disclosure Clause

1. This protocol provides the process to follow when considering settlement agreements with members of staff. This will ensure that the correct approvals have been obtained and recorded and will ensure that we are able to provide assurance and oversight of the process to members.
2. 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 an agreed reference.
3. 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.
4. 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.

5. 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. At this stage the conversation is protected and without prejudice.
6. 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 and gain approval from the Executive Member and from the Section 151 Officer/ Chief Executive. This will all be documented in the Settlement Agreement template, shown in Appendix 1.
7. Where the business case has been approved, as in paragraph 6 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.
8. 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.
9. 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.
10. The Settlement Agreement Template (anonymised) will be sent to SMU for noting, after the agreement has been signed.
11. 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 closure, whilst affirming the right of either party to make a protected disclosure (i.e. whistleblowing).

Template

Business Case – Settlement Agreements

Briefly outline the circumstances of the request to provide a settlement agreement. This should be very brief.

Please provide full details of the settlement proposal, not named individuals

Directorate:

Department:

Reason:

Overall total cost of the settlement:

Total cost and breakdown :

Please provide details of alternative courses of action and advantages and disadvantages of each. For example the potential cost (and resource) of following internal process.

Non Disclosure Clause

If this is included is there anything additional to the norm ?

Business Case prepared by:

Name of Manager:

Date:

Directorate Sign Off: Assistant Director / Director

To confirm date of discussion with Executive Member – signed below

Name of Manager:

Date:

Name of Executive Member

Date:

HR Comments:

Name:

Date:

Finance Comments

Name: ...

Date:

Legal Comments

Name: ...

Date:

Date submitted to Section 151 Officer / Chief Executive for approval:

Business case approved/not approved on

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