

# LDBS GUIDANCE ON SETTLEMENT AGREEMENTS

Settlement agreements, if used correctly, can be a useful and cost-effective tool to end a contract of employment through mutual agreement.

The paragraph below is an extract from ACAS guidance:

## Key points about settlement agreements

- Settlement agreements are legally binding contracts that waive an individual's rights to make a claim covered by the agreement to an employment tribunal or court.
- The agreement must be in writing.
- They usually include some form of payment to the employee and may often include a reference.
- They are voluntary.
- They can be offered at any stage of an employment relationship.

Settlement agreements are legally binding contracts which can be used to end an employment relationship on agreed terms. They can also be used to resolve an ongoing workplace dispute, for example, a dispute over holiday pay. These agreements can be proposed by either an employer or an employee, although it will normally be the employer.

Once a valid settlement agreement has been signed, the employee will be unable to make an employment tribunal claim about any type of claim which is listed on the agreement.

Where the employer and employee are unable to reach an agreement, the settlement discussions cannot usually be referred to as evidence in any subsequent unfair dismissal claim. Where the settlement discussions are held to resolve an existing dispute between the parties they cannot be used as evidence in any type of claim.

## When will we advise schools to consider using a settlement agreement?

Capability – if a member of staff is under performing and would be able to successfully 'start again' elsewhere

Sickness – in order to minimise the potential stress around having to participate in the latter stages of the sickness absence process

Redundancy – some Local Authorities will meet the cost of redundancy on condition that it is through a settlement agreement. On some occasions voluntary redundancy may be agreed via a settlement agreement

Compassionate reasons – some other circumstance where the employee needs to be released from their contract.

**The LDBS HR team will not recommend a settlement agreement where there are allegations of gross misconduct, misconduct or safeguarding concerns.**

## **How to initiate a settlement agreement**

Settlement agreements are voluntary and parties do not have to agree to enter into discussion about them. There can be a process of negotiation during which both sides make proposals and counter proposals until agreement is reached or decide that no agreement can be reached.

There is no statutory requirement for an employee to be accompanied at any meeting to discuss an agreement but it is helpful if they are invited to bring a trade union representative or a colleague for support and for the Headteacher to be accompanied by HR.

The HR team may also liaise with the employee's trade union representative on behalf of the school so that there is no direct discussion between the school and the employee. This can be helpful where relationships are strained.

The LDBS uses a template, which is regularly updated by our solicitors. It includes notice, any lump sum payment (which is tax free if under £30,000) and an agreed reference.

The agreement is not compliant unless the employee receives independent legal advice which the school will pay for. This is usually provided by the employee's union but can be from a suitably trained solicitor.

The notice period must be shown on the agreement to meet HRMC requirements and the LDBS recommend that payments should not normally exceed six months pay to avoid a culture evolving where staff expect a payment rather than being subject to the relevant procedures.

There are no on-costs attached to compensation lump sum payments, which makes it a cost effective option if any alternative solution is likely to be protracted.

Schools should monitor the use of agreements to ensure that they are used in a fair and consistent way.

LDBS HR Advisers are always available and happy to help schools to negotiate an agreement and to draft the relevant accompanying documentation