

Settlement Agreements

Southwark Schools Human Resources Guidance
and Process for Schools Considering Settlement
Agreements

Contents

- Settlement Agreements 1
 - Southwark Schools Human Resources Guidance and Process for Schools Considering Settlement Agreements..... 1
 - 1. Purpose..... 4
 - 2. Scope..... 4
 - 3. Definition of a Settlement Agreement..... 4
 - 4. Guiding Principles 5
 - 5. Circumstances Where Settlement Agreements May Be Considered 6
 - 6. Circumstances Where Settlement Agreements Will Normally Not Be Appropriate..... 7
 - 6.1 Reward for Failure 7
 - 6.2 Safeguarding Allegations 8
 - 6.3 Ill Health Cases 9
 - 6.4 Ongoing or Concluded Investigations..... 9
 - 7. Initial Proposal Process..... 11
 - 7.1 Proposal Submission 11
 - 8. Professional Assessments 13
 - 8.1 Legal Assessment 13
 - 8.2 Educational Assessment 13
 - 9. Safeguarding Requirements 14
 - 10. Approval Process 14
 - 10.1 Maintained Schools 14

11. Financial Considerations 15

 11.1 Compensation Structure 15

 11.2 Taxation 15

 11.3 Funding Support 16

12. Instruction to Legal Services 16

13. References..... 17

14. Agreement Finalisation..... 18

15. Record Keeping 18

16. Payment Arrangements..... 19

17. Equality, Data Protection and Confidentiality 19

18. Governance, Audit and Review 20

1. Purpose

This document sets out the framework for considering, approving, negotiating, and finalising settlement agreements involving school employees.

The document aims to:

- ensure settlement agreements are used appropriately, lawfully, and consistently;
- protect the interests of the school and local authority;
- minimise legal, financial, operational, and reputational risk;
- ensure safeguarding obligations are fully met;
- support effective workforce management; and
- promote accountability and value for money.

There is no obligation on any party to enter into a settlement agreement.

2. Scope

This procedure applies to:

- maintained schools;

Academies and other non-maintained schools may choose to follow this guidance document in full or in part.

3. Definition of a Settlement Agreement

A settlement agreement is a legally binding agreement between an employer and employee used to:

- resolve workplace disputes;
- settle actual or potential employment claims; and/or

- bring employment to an agreed end on mutually acceptable terms.

Settlement agreements normally include:

- a waiver of employment claims;
- confidentiality provisions;
- termination arrangements;
- financial compensation (where applicable); and
- an agreed employment reference (where appropriate).

Some agreements may not include a termination payment, for example where an employee agrees to leave on a future date whilst remaining on gardening leave.

4. Guiding Principles

All settlement agreements must:

- represent value for money;
- be supported by a clear business rationale;
- comply with employment law and safeguarding legislation;
- be legally defensible;
- be supported by full and accurate information;
- follow appropriate governance arrangements;
- protect the interests of pupils and the school community; and
- be handled confidentially and professionally.

Settlement agreements must never:

- compromise safeguarding responsibilities;
- prevent statutory referrals;
- conceal misconduct;

- circumvent proper employment procedures; or
- result in inaccurate or misleading references.

All discussions regarding potential settlement agreements must be conducted:

- “without prejudice”; and
- “subject to contract”.

No commitments or guarantees must be made before formal approval is obtained.

5. Circumstances Where Settlement Agreements May Be Considered

Settlement agreements may be considered in the following circumstances where:

- there is an ongoing employment dispute;
- relationships have irretrievably broken down;
- there is a significant risk of employment tribunal proceedings;
- continued formal procedures are unlikely to achieve a constructive outcome;
- organisational considerations support a mutually agreed exit; or
- ongoing proceedings are likely to incur disproportionate cost, disruption, or reputational risk.

This is not an exhaustive list.

Relevant processes may include:

- disciplinary;
- grievance;
- capability;
- sickness absence;
- redundancy;

- restructuring;
- whistleblowing matters; or
- parental complaints.

6. Circumstances Where Settlement Agreements Will Normally Not Be Appropriate

Settlement agreements should not normally be used in the following circumstances unless there is a clearly evidenced legal, operational, or financial rationale supported by both HR and legal assessment.

6.1 Reward for Failure

Settlement agreements will not normally be approved where they could reasonably be perceived as rewarding failure, including cases involving:

- alleged gross misconduct;
- serious misconduct;
- poor performance; or
- persistent capability concerns.

Exceptions may only be considered where:

- legal assessment identifies a material risk of successful litigation;
- there is significant financial or reputational risk to the school or local authority;
- there are substantial operational concerns regarding continuation of formal proceedings; or
- an HR assessment concludes that the time, cost, employee relations impact, or likelihood of resolution through formal process makes settlement a proportionate option.

Any such exception must be fully documented and justified within the business case.

6.2 Safeguarding Allegations

Settlement agreements must not be used to:

- avoid proper safeguarding investigation;
- prevent statutory referrals;
- suppress safeguarding information; or
- agree misleading references.

Where safeguarding allegations exist:

- safeguarding procedures must continue as required;
- the Local Authority Designated Officer (LADO) must be consulted;
- consideration must be given to referrals to the Disclosure and Barring Service (DBS) and/or Teaching Regulation Agency (TRA); and
- references must comply fully with statutory safeguarding guidance.

The existence of a settlement agreement must not prevent disclosure of:

- safeguarding concerns;
- substantiated allegations;
- relevant conduct issues; or
- information required under Keeping Children Safe in Education (KCSIE).

Where investigations are:

- ongoing;
- concluded with no formal action; or
- discontinued due to settlement,

careful consideration must still be given to whether reference disclosures are required in order to ensure references are factual, fair, accurate, compliant with safeguarding obligations, and not misleading.

Any agreed wording for references must be approved by HR and legal services.

6.3 Ill Health Cases

Settlement agreements should not normally be used in cases primarily relating to ill health where ill health retirement has not first been properly explored.

Before considering a settlement agreement in such cases:

- occupational health advice must be obtained;
- reasonable adjustments must be considered;
- redeployment options must be reviewed; and
- eligibility for ill health retirement must be assessed where applicable.

The rationale for proceeding with a settlement agreement instead of ill health retirement must be clearly documented.

6.4 Ongoing or Concluded Investigations

Settlement agreements may not always be appropriate where an employee wishes to leave employment during, or following, an investigation process.

This may include investigations relating to:

- conduct;
- disciplinary matters;
- grievances;
- capability;
- workplace relationships;
- attendance concerns;
- other employment matters; or
- parental complaints.

The existence of an investigation does not automatically prevent consideration of a settlement agreement. However, any decision to proceed must be supported by:

- a clear business rationale;
- HR advice;
- legal assessment; and
- appropriate governance approval.

Before any agreement is considered, the employer must determine:

- the nature and seriousness of the allegations or concerns;
- whether the investigation should continue to conclusion;
- whether there are safeguarding implications;
- whether there are any employment law breaches (e.g. Equality Act 2010);
- whether there are regulatory or professional reporting obligations;
- the risks associated with discontinuing the process; and
- the potential impact on future employment references.

Where an investigation is:

- ongoing;
- substantially complete; or
- concluded without formal action,

careful consideration must be given to whether information relating to the investigation should be disclosed in future references in order to ensure references are:

- factual;
- fair;
- accurate;
- compliant with safeguarding and safer recruitment obligations; and

- not misleading.

The fact that a settlement agreement has been entered into must not:

- prevent the employer from retaining investigation records;
- prevent disclosure of relevant factual information where legally required; or
- override statutory, safeguarding, regulatory, or professional obligations.

Where appropriate, the employer may decide:

- to conclude the investigation prior to settlement discussions;
- to pause the investigation pending negotiations; or
- to discontinue the investigation following legal and HR advice.

The rationale for the chosen approach must be clearly documented.

Any agreed reference wording relating to investigations must be approved by HR and, where appropriate, legal services.

7. Initial Proposal Process

7.1 Proposal Submission

A settlement agreement proposal form must be completed and submitted to the Head of Schools HR.

The proposal must include:

School and Employee Details

- school name and address;
- school type;
- employee name and address;
- date of birth;

- job title;
- employment start date;
- continuous service;
- contract type;
- salary details; and
- contractual notice period.

Business Case

The proposal must clearly explain:

- why the agreement is in the interests of the school and/or local authority;
- the risks associated with continuing employment processes;
- the legal merits of the case;
- the likelihood of successfully defending any tribunal claim;
- anticipated legal costs;
- operational impact;
- reputational considerations; and
- alternatives considered.

Supporting Information

This must include:

- school context;
- background to the matter;
- status of any formal procedures;
- previous attempts to resolve issues;
- safeguarding considerations; and

- relevant employment law considerations.

8. Professional Assessments

8.1 Legal Assessment

A legal assessment must consider:

- legal merits;
- litigation risk;
- financial exposure;
- tribunal prospects;
- safeguarding implications;
- reputational impact; and
- recommendation.

The assessment must include:

- name;
- role; and
- date completed.

8.2 Educational Assessment

An educational assessment must consider:

- operational impact;
- pupil impact;
- staffing implications;
- continuity of education;
- employee relations implications; and

- recommendation.

The assessment must include:

- name;
- role; and
- date completed.

9. Safeguarding Requirements

Safeguarding obligations take priority over all other considerations.

Where safeguarding concerns exist:

- the Local Authority Designated Officer (LADO) must be consulted;
- consideration must be given to referrals to the DBS and/or TRA;
- safeguarding information must not be withheld from references where disclosure is required; and
- confidentiality clauses must not prevent statutory safeguarding disclosures.

All references must comply with:

- Keeping Children Safe in Education (KCSIE);
- safeguarding legislation; and
- safer recruitment requirements.

Settlement agreements must never compromise safeguarding obligations.

10. Approval Process

10.1 Maintained Schools

The approval route is:

1. HR Business Partner completes proposal with Headteacher.
2. Proposal reviewed by Head of Schools HR.
3. School confirms acceptance of legal costs.
4. Education, Finance, Legal and Safeguarding review and provide their view on the proposal.
5. Proposal submitted to Director of Children's Services for sign off.

No negotiations may commence without formal approval.

11. Financial Considerations

11.1 Compensation Structure

Payments may include:

- notice pay;
- payment in lieu of notice (PILON);
- accrued annual leave;
- ex gratia compensation;
- pension-related payments;
- legal fee contribution; and
- other agreed sums.

11.2 Taxation

Payments must be clearly categorised for tax purposes.

Generally:

- non-contractual termination payments up to £30,000 may be tax free;
- contractual payments are taxable;

- PILON and holiday pay are taxable and subject to National Insurance contributions.

Employees should obtain independent financial advice where appropriate.

11.3 Funding Support

Where financial support is requested by maintained schools:

- applications must be submitted to the Schools Financial Support Panel; and
- approval must be formally recorded.

The council must be a party to agreements involving maintained schools where financial support is provided.

12. Instruction to Legal Services

Following approval, detailed written instructions must be sent to legal services.

Instructions must include:

- pension scheme membership;
- proposed leaving date;
- notice arrangements;
- gardening leave arrangements;
- statutory referrals;
- compensation breakdown;
- tax treatment;
- agreed reference wording;
- leaving statement;

- legal representative details;
- legal fee contribution; and
- any additional support arrangements.

13. References

Any agreed reference must:

- be factual;
- be fair;
- not be misleading; and
- comply with safeguarding obligations and statutory guidance.

References should include:

- dates of employment;
- job title;
- key duties and responsibilities;
- safeguarding information; and
- details of any formal processes, including where investigations are ongoing, have concluded without formal action, or were not progressed due to a settlement agreement, where disclosure is necessary to ensure the reference is accurate, fair, compliant with legal obligations, and not misleading.

Agreed references must be clearly marked as the only reference to be used.

All reference wording must be approved by HR and, where appropriate, legal services.

14. Agreement Finalisation

Legal services will:

- draft the agreement;
- conduct negotiations;
- issue documentation; and
- coordinate execution.

Once signed:

- copies must be securely retained;
- payroll instructions issued;
- HR records updated; and
- payment arrangements initiated.

Copies of the final agreement must be distributed to:

- the employee;
- the employee's legal adviser;
- the school confidential file; and
- HR records.

15. Record Keeping

A signed agreement must:

- be stored securely on the employee file;
- be retained in accordance with data retention requirements; and
- only be accessible to authorised personnel.

Confidentiality obligations must be maintained throughout.

Any agreed reference must be retained with the settlement agreement documentation.

Schools Human Resources will also retain a copy of the final signed agreement.

16. Payment Arrangements

Payments are normally made within 28 days of receipt of the signed agreement unless otherwise agreed.

The school must provide:

- payment amounts;
- payroll instructions; and
- details of any deductions.

Legal advisers will confirm final payment arrangements.

The HR Business Partner / Head of Schools HR may provide guidance regarding possible tax implications, although employees remain responsible for obtaining independent financial advice.

17. Equality, Data Protection and Confidentiality

All settlement agreement decisions must:

- comply with the Equality Act 2010;
- consider reasonable adjustments;
- avoid discriminatory outcomes; and
- comply with UK GDPR and Data Protection Act 2018 requirements.

Personal data must be:

- processed lawfully;
- retained securely; and
- shared only where necessary.

Confidential information must only be disclosed on a need-to-know basis.

18. Governance, Audit and Review

The use of settlement agreements should be periodically reviewed to:

- ensure consistency;
- identify trends;
- monitor financial impact;
- review safeguarding compliance; and
- ensure appropriate governance oversight.

This document will be reviewed by Schools HR, with input from Legal Services, Education and Safeguarding colleagues.