

WIRRAL COUNCIL

THE EMPLOYMENT AND APPOINTMENTS COMMITTEE

23 APRIL 2012

SUBJECT:	COMPROMISE CONTRACTS
WARD/S AFFECTED:	ALL
REPORT OF:	DIRECTOR OF LAW HR AND ASSET MANAGEMENT
RESPONSIBLE PORTFOLIO HOLDER:	CLLR TOM HARNEY
KEY DECISION? <i>(Defined in paragraph 13.3 of Article 13 'Decision Making' in the Council's Constitution.)</i>	YES

1. EXECUTIVE SUMMARY

1.1 The purpose of this report is for The Employment and Appointments Committee to consider appropriate arrangements for the authorisation of compromise contracts which include a payment or financial incentive over £50,000 for any proposed termination of employment of officers above SCP49.

2. BACKGROUND AND KEY ISSUES

- 2.1. On 13 February 2012 Council passed a motion that that all future “compromise deals”, that include an element of financial or other incentive are subject to a full democratically accountable process. Council asked that The Employment and Appointments Committee are tasked with forming a Sub-Committee to assess and sign off any compromise deals before any such offer is made to employees, and the process and scope of reporting to be agreed by this Sub-Committee. Members for this Sub-Committee are to be co-opted from the list of Members available for the Appeals Sub-Committee with a proportionality of 1:1:1. The Chair for any such meeting can be decided by the agreement of the Sub-Committee.
- 2.2. Council also asked that all such “compromise deals”, once agreed by the Sub-Committee, are reported to the next meeting of The Employment and Appointments Committee, under exempt items if the details are of a sensitive nature.
- 2.3. Cabinet, on 29 March 2012 resolved that:
- (1) A process be adopted whereby any proposed termination of employment of officers above SCP49 be via compromise contract, which includes a payment or financial incentive as part of the termination arrangement, or where a payment or financial incentive as part of the termination arrangement is over £50k.

- (2) A report be presented to The Employment and Appointments Committee to agree appropriate arrangements for authorisation which will allow such decisions to be taken in a timely manner.
- 2.4. The previous arrangements under the Scheme of Delegation of Functions to Officers, (Part 3, Schedule 4, Page 111. Para 28), continues to allow Chief Officers to appoint, dismiss or transfer staff, or take any other action with regard to the employment of staff in accordance with the Employment Procedure rules. This includes authorisation to settle claims or potential claims against the Council at Employment Tribunal where it is in the interests of the Council to do so and which may involve use of a compromise contract (or COT3). The Head of Legal Services has delegated powers to settle legal proceedings against the council (Para (40), Page 118).
- 2.5. A Compromise Contract (or agreement) is a statutory device authorised under s203 of The Employment Rights Act (1996) and Section 147 of The Equality Act 2010. It is one of only two mechanisms by which an employee can waive his/her statutory employment related claims. The other requires the involvement of ACAS using a COT 3 form (see Para 4.5).
- 2.6. The object of a compromise contract is to settle some or all of the claims rising out of the employment relationship or its termination.
- 2.7. It is a mutually agreed document and usually provides for a payment by the employer, in return for which the employee agrees not to pursue any claim they may have to an employment tribunal.
- 2.8. The most commonly included clauses within a compromise contract usually fall under the following headings:
- Definition of terms
 - Termination of employment
 - Accrued salary and benefits
 - Confidentiality
 - Return/retention of company property
 - Restrictive covenants
 - Legal fees
 - Full and final settlement
- 2.9. A compromise contract is valid only if its satisfies the following conditions;
- It is in writing.
 - It relates to 'particular complaints' or 'particular proceedings'.
 - The employee has received advice on the terms and effect of the contract from a relevant independent adviser (usually a solicitor), who is identified in the contract.
 - There is a contract of insurance covering the risk of the employee bringing a claim against the adviser in respect of their advice.
 - The contract states that the conditions regulating compromise contracts under the relevant legislation are satisfied.
- 2.10. A compromise contract ensures that any specified employment related claims are settled. Any complaints outside of employment such as Whistleblowing concerns

are not covered by such an agreement, unless the employee claims that he/she has been victimised because she/she raised such concerns and is willing to settle his/her claim, whilst raising concerns with the appropriate authority.

- 2.11. Compromise contracts are not the only instance where an employee can waive their statutory employment rights. There is also an ACAS conciliated settlement otherwise known as a "COT3". This contract is valid and binding in the same way as a compromise agreement.
- 2.12. A COT3 contract is used where employment tribunal proceedings have commenced or are likely to commence and an ACAS conciliator is involved in helping parties involved reach a settlement. A COT3 contract does not necessarily include the provision that an employee's employment is to be terminated. It may relate simply to settlement of an employment claim in exchange for a financial sum.
- 2.13. A discussion with an employee about the compromise contract should be on a 'without prejudice' basis with a view to reaching a settlement. The understanding is that such discussions cannot be relied on in a later court or employment tribunal claim. This is because such discussions are 'privileged' so can't be used in a court or tribunal or even referred to. The privilege is given to such discussions by the courts so as to allow parties to negotiate openly without fearing that the discussions will be used against them if the negotiations fail.
- 2.14. For the "without prejudice" rule to apply there must be a dispute between the parties and the written or oral communications and the purpose of the without prejudice discussion must be a genuine attempt to compromise it.

3. THE COUNCIL'S USE OF COMPROMISE CONTRACTS

- 3.1. The Council enters into compromise contracts in the following circumstances.
 - a) Settlement of claims that have been lodged with an Employment Tribunal. This includes multi-equal pay claims, unfair dismissal and discrimination claims. It also includes potential claims not yet lodged.**
- 3.2. In these circumstances, claims may be settled at any stage of the process right up to the day that proceedings are due to commence. This process often involves ACAS.
- 3.3. In determining whether to settle claims, the Council's Legal and HR representatives, with counsel advice as appropriate, would consider the merits of the employee's claim, the financial and reputation risks to the council of defending and/or losing the case and whether settling a case for a smaller sum before other side potentially wins a case (if that is a risk), is in the economic interests of the council.
- 3.4. The employment tribunal process also now includes a Judicial Mediation scheme. Judicial Mediation involves bringing the parties together for a Mediation Case Management Discussion before a trained Employment Judge who remains neutral

and tries to assist the parties in resolving their disputes. Over 65% of cases mediated reach a successful settlement on the day of mediation.

- 3.5. The judicial mediation process requires that representatives for both parties have appropriate 'authority' to make decisions in relation to any potential proposals reached on the day in settlement of the claims. This could include termination of employment if that is presented and agreed.

b) To bring an employment relationship to an end through mutual agreement.

- 3.6. The Council has entered into a small number of compromise contracts with employees where it has been considered to be in the interests of the Council and the employee for their employment to be terminated.
- 3.7. The Council has also used compromise contracts for all leavers under VS/EVR over the past couple of years. This mitigated any risks to the organisation arising from the VS/EVR process. A simplified version of the standard compromise contract was used, This did not include any provisions in relation to confidentiality.

4. PROCESS FOR AUTHORISING COMPROMISE CONTRACTS

- 4.1. On 13 February 2012, Council passed the following motion:
 - That The Employment and Appointments Committee are tasked with forming a Sub-Committee to assess and sign off any compromise deals before any such offer is made to employees; and
 - That Members for this Sub-Committee are to be co-opted from the list of Members available for the Appeals Sub-Committee with a proportionality of 1:1:1. The Chair for any such meeting can be decided by the agreement of the Sub-Committee.
- 4.2. It is therefore proposed that The Head of Legal Services (or their representative), in conjunction with The Head of Human Resources and Organisational Development (or their representative), puts forward an appropriate payment or financial incentive in respect of the termination of employment for officers over SCP49, with appropriate justification, to a Sub-Committee of The Employment and Appointments Committee.
- 4.3. A Sub-Committee with a proportionality of 1:1:1 will be co-opted from the list of Members available for the Appeals Sub-Committee by Committee Services, who will call a meeting of the Sub-Committee, giving five clear days notice, or sooner by agreement of all parties.

5. RELEVANT RISKS

- 5.1. There are potential financial risks to the Council if the Council does not have a workable arrangement to allow decisions to be made quickly to offer or agree to settle claims and, by doing so enter into compromise contracts in response to Employment Tribunal proceedings.

6. OTHER OPTIONS CONSIDERED

- 6.1. The proposal for the authorisation of compromise contracts over £50,000 for officers over SCP49 is considered the most appropriate to ensure that payments or financial incentives are assessed by a Sub-Committee of The Employment and Appointments Committee before being offered, and that decisions are taken in a timely manner.

7. CONSULTATION

- 7.1. No consultation undertaken.

8. IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

- 8.1. No implications

9. RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

- 9.1. No implications

10. LEGAL IMPLICATIONS

- 10.1. Legal implications are set out within main body of the report.

11. EQUALITIES IMPLICATIONS

- 11.1. Has the potential impact of your proposal(s) been reviewed with regard to equality?
- (b) No because there is no relevance to equality.

12. CARBON REDUCTION IMPLICATIONS

- 12.1. No implications

13. PLANNING AND COMMUNITY SAFETY IMPLICATIONS

- 13.1. No implications

14. RECOMMENDATION/S

It is recommended that The Employment and Appointments Committee agree to:

- 14.1. The Head of Legal Services, in conjunction with The Head of Human Resources and Organisational Development, puts forward an appropriate payment or financial incentive in respect of the termination of employment for officers over SCP49, with appropriate justification, to a Sub-Committee of The Employment and Appointments Committee.
- 14.2. A Sub-Committee with a proportionality of 1:1:1, to be co-opted from the list of Members available for the Appeals Sub-Committee by Committee Services, who

will call a meeting of the Sub-Committee, giving five clear days notice, or sooner by agreement of all parties.

15. REASON/S FOR RECOMMENDATIONS

15.1. To ensure that payments or financial incentives over £50,000 for officers over SCP49 are assessed by a Sub-Committee of The Employment and Appointments Committee before being offered, and that decision are taken in a timely manner

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APPENDICES

None

REFERENCE MATERIAL

There is no reference material.

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Council	13 February 2012
Cabinet	29 March 2012