

**BUSINESS CASE FOR SETTLEMENT AGREEMENT**

*Please note all text boxes automatically expand as necessary when they are being completed. Once complete this Business Case should be sent to the Scottish Government relevant SG Sponsor Director or SG Lead Contact, who should then submit for scrutiny to the* *Severance Policy team**, copied to* *People Directorate**.*

**Contact Details**

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| **Name of organisation**  |  |

 **Senior manager to be contacted**

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| --- | --- |
| Name |  |
| Job Title |  |
| Email |  |

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| **SG Sponsorship Lead or equivalent** |  |
| Name |  |
| Job Title |  |
| Email |  |

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| **SG Sponsor Directorate** |  |

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| **SG Sponsor Directorate-General** |  |

(for data collection purposes)

**Case Details**

**Confirm there is an employment dispute** [ ]

**What is the current stage of the employment dispute?** *(e.g. internal grievance/employment tribunal )*

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**What is the nature of the employment relationship?** *(e.g. employee, ex-employee, contractor)*

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**Summary Background and relevant circumstances of the case** *(personal information to be anonymised)*

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**Risks arising** *(including legal advice on risk of legal challenge by employee and prospects of success)*

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**Confirmation of relevant management procedures that have been followed** *(e.g. absence/performance management)*

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**Explanation of the value for money offered by the proposal** *(reference the figures in the Employment Information Schedule section which starts at page 3 below)*

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**Any** **non-financial considerations** *(e.g. where it is desirable to end a person’s employment but dismissal is not warranted)*

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**Options** *(including risks/benefits for each)*

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**Recommendation** *(including reasoning)*

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**Details of Handling / Communications plan**

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**EMPLOYMENT INFORMATION SCHEDULE FOR BUSINESS CASE**

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| **Please refer to guidance notes for additional assistance during completion. Use TAB key to navigate between cells.**  |
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| **NAME OF ORGANISATION -**  |  |
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| **Section 1 -** **Employee Detail***This section sets out to record basic information on the employee. Any potential identifying detail shall be anonymised/redacted.* |
| **1.****1** Length of continuous service |  | years |  |  months |
| **1.****2** Full Time Equivalent |  |
| **1.3** Age |  | years |  | months |
| **1.****4** Contractual Notice Period |  | weeks |
| **1.5** Proposed Leaving Date *State if employee has already left the organisation* |  |

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| **Section 2 -** **Employment benefits and costs arising through normal course of employment** *This section sets out to collect information on total remuneration received by the employee.* *NB – Travel, subsistence, expenses and relocation costs should not be included below as they are considered as compensation for costs incurred by the employee for travel or moving location.**Read in conjunction with Section 2 of Guidance Note.*  |
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| **[Remuneration received by employee before deductions](#remuneration" \o "NB - travel, subsistence, expenses and relocation costs should not be included below as they are considered as compensation for costs incurred by the employee for travel or moving location.)** |
| **2.1** [Current annual salary rate](#salary" \o "As at the date the Business Case is signed.) | £ |
| **2.2** Non-consolidated performance related payment received for latest reporting year | £ |
| **2.3** Allowances received (value over last 12 months) | £ |
| **2.4** [Overtime payments](#overtime" \o "Include any payments for working additional hours within the last 12 months. ) (value over last 12 months) | £ |
| **2.5** Any other remuneration received over last 12 months | *(specify if applicable)* | £ |
| **2.6** Total remuneration received by employee before deductions (*Sum of 2.1 to 2.5*) | £ |
|   |
| Other benefits received | *(specify if applicable)* |
| **2.7** Benefit 1 | *(specify)* | £ |
| **2.8** Benefit 2 | *(specify)* | £ |
| **2.9** Total other benefits (*sum of 2.7 and 2.8*) | £ |
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| **2.10** Overall remuneration and benefits received by employee before deductions (*2.6 + 2.9*) | £ |

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| **Section 3 -** **Termination costs (contractual/through Civil Service Compensation Scheme/Employer equivalent)** *Indicate any elements not included towards the £95,000 cap.* |
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| **3.1** Pay In Lieu of Notice (PILON) | £  |
| **3.2** Payment in lieu of annual leave untaken | £ |
| **3.3** Other | £ |
| **3.4** Total (*Sum of 3.1 to 3.3*) | £ |
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| **Benefits received by employee from Civil Service Compensation Scheme/ Employer Equivalent** *(if applicable)* |
| **3.5** Pension Costs per year | £ |
| **3.6** Pension lump sum | £ |
| **3.7** Compensation lump sum *(payable in full if pension not drawn)* | £ |
| **3.8** Employer cost of making up any pension shortfall | £ |
| **3.9** Other costs | *(specify, if any)* | £ |
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| **3.10** Total contractual termination costs*(Sum of 3.4 to 3.9)* | £ |

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| **Section 4 – Employer’s Legal Advisors** **estimate of realistic costs of defending a case***This section collects information regarding the prospective costs of preparing and defending the case. Estimates are expected but should be realistic rather than worst case. It is possible that no legal action is envisaged, in which case cell 4.1 will show 0%, and the rest of this section need not be completed.* ***Please read in conjunction with Section 4 of the Guidance Note***  |
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| **4.1** **What is the likelihood of the employee pursuing legal redress?**  | % |
| **4.2** **What is the estimate of their chances of winning their case?**  | % |
| **4.3 Weighted calculation of legal action** *(4.1 x 4.2)* | % |
| **4.4 What is the employer’s legal advisor’s realistic estimate of what the employee might receive if they won their case?** | £ |
| **4.5 What are the estimated costs of defending a case if one was lodged?**  | £ |
| **4.6 Weighted calculation of estimated costs** *(4.4 + 4.5)* | £ |
| **4.7 Total estimate of weighted costs of defending a case** *(4.3 x 4.6)* | £ |
| **4.8 What are the estimated costs of negotiating and concluding an agreement?** | £ |

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| **Section 5 -** **Proposed terms of agreement** *List any non-contractual payments or benefits. Full details of these should be laid out in the business case above where asked for value for money. These should represent the mandate for the maximum to be offered during negotiations and must not exceed £95,000.* ***Please read in conjunction with Section 5 of the Guidance Note.***  |
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| **5.1** **Maximum gross value of any non-contractual sum to be offered** | £ |
| **5.2** **Maximum value of employee support for legal assistance** *Capped at £600* | £ |
| **5.3** **Other**  | *(specify)* | £ |
| **5.4 Confirm an** **Information Sharing clause will be included** | [ ]  **Yes**  |
| **5.5 Proposing to use a**  **Confidentiality Clause?** | *(If yes, why?)* | [ ]  **Yes**[ ]  **No** |
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| **5.6 Total proposed terms of agreement** *(Sum of 5.1 to 5.3)* | **£** |

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| **Section 6 - Complete estimated total cost of settlement** *(3.10 + 5.6)* | **£** |
| **Settlements are not to exceed £95,000. Please confirm whether it was necessary to apply the cap to this payment.** | [ ]  **Yes**[ ]  **No** |

**Authorisation**

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| **Signed**  |  |
| **Date** |  |

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 **ACCOUNTABLE OFFICER**

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| Confirmation that this business case is appropriate and complies with the SPFM guidance   |
| **Signed**  |  |
| **Date** |  |

Send the completed form to your SG Sponsor Team

If you do not have a Sponsor Team, send the completed form to your DG Office, copied to

SG People Directorate / Finance Business Partner / Severance Policy Team

**Scottish Government Comments**

**Scottish Government People Directorate Comments:**

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| Name: | Date:  | Job Title: |

**Scottish Government Finance Business Partner Comments:**

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| Name: | Date: | Job Title: |

**Scottish Government Public Spending Division (Severance Policy Team):**

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| **Does the scheme comply with the Settlement and Severance chapter of the Scottish Public Finance Manual?** |
| Yes: [ ]  | No: [ ]  |
| **Comments:** |
| Name: | Date: | Job Title: |

**Scottish Government Sponsor Director or Lead Contact Comments (if appropriate):**

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| Name: | Date: | Job Title: |

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| **FOR MINISTERIAL USE** - if appropriate  |
| Approved:  | Date: |
| Conditions attached to approval or reasons for refusal: |
| Cabinet Secretary [insert portfolio] |
| Name: | Name of Ministerial Private Office : |

**Guidance Notes**

To be returned to the public body by the SG Sponsor Team within a target of 5 working days if the SG does not find the case to be contentious or unusual, or within 15 working days if there may be elements which are contentious or unusual, or if the case is being referred to Scottish Ministers.

When filling out, ensure care is taken to redact any identifiable information where possible.

**Information Schedule**

**Section 1**

**1.2 FTE Calculation**

Full Time Equivalent - This is the ratio of number of hours worked in relation to full time hours. For example if the organisation has a standard 35 hour working week and the employee is contracted to 35 hours, then this equals 1.0. If the employee is contracted to 28 hours then this equals 28 divided by 35 = 0.8.

**Section 2**

**2.2 Non-consolidated performance related payment received for latest reporting year**

(if any – if the most recent payment was made more than 2 years ago then no figures should be entered).

**2.3 Allowances**

There are a number of possibilities, for example, Recruitment and Retention allowances, Market Supplements, On-Call allowances etc. The value of these should be totalled.

**2.4 Overtime Payments**

Include any payments for working additional hours in the last 12 months.

**2.7 Other Benefits**

There may be other benefits received not already mentioned i.e. some employers provide for subsidised medical insurance etc.

**Section 3**

**Termination Costs**

To include all contractual elements, including those that will not be included towards the £95,000 cap.

**3.1 Compensation In Lieu of Notice (CILON)**

Payment for the balance of any contractual period of notice not worked. Notice of termination of appointments should not be delayed in order to generate compensation payments in lieu of notice.

**3.2 Payment in Lieu of Annual Leave untaken**

Payment for the balance of any contractual period of annual leave that remains to be taken as at the time of the employees last day of service.

**3.3 Other Termination Costs**

e.g. Payment for any untaken Time off in lieu.

**3.5 Pension Costs per year**

Estimate of what the employee would receive in pension were they to leave and draw their pension immediately. Only complete where they would potentially benefit through immediate payment of pension under their pension scheme rules.

**3.7 Compensation Lump Sum**

Either enter the full value of the lump sum or if the payment is partly being used to access their pension on an unreduced basis, enter any amount that remains payable.

**3.8 Employer Cost of making up any Pension shortfall**

Enter value of lump sum due to pension provider to fund any reduction. There is a presumption against incurring such costs, and any proposal to make such a payment must be fully justified in the business case.

**Section 4**

**4.1 What is the likelihood of the employee pursuing legal redress?**

If there is already a claim lodged – 100%. Otherwise, using legal advice and knowledge of those involved and the circumstances surrounding the case, estimate the likelihood considering their motivation and the risks of them taking a case e.g. costs, impact on reputation etc.

**4.2 What is the estimate of their chances of winning their case?**

Legal advisors should be able to indicate.

**4.4 What is the employer’s legal advisor’s realistic estimate of what the employee might receive if they won their case?**

Provide realistic, rather than worst case scenario figure based on legal advice.

Where cases such as discrimination may not have an award, ET data is available indicating the average award.

**4.5 What are the estimated costs of defending a case if one was lodged?**

Legal advisors should be able to provide an estimate of the potential legal costs.

This should include preparation of witnesses, submission of evidence, appearing/instructing legal advisers at ET, and any other management costs.

**4.7 Total weighted calculation of estimated costs**

This combines the likelihood of the employee pursuing legal redress and winning the case with estimate of what the might receive if they won, plus the costs of defending the case. For example, if an employee is estimated to have a 80% chance of pursuing legal redress, with a 75% chance of winning, where they may receive £15,000 with an estimated £8,000 in legal costs, the formula would be used as follows: 80% x 75% (or 0.8 x 0.75) = 60% (0.6). This is then multiplied by the total estimated costs i.e. £15,000 + £8,000 = £23,000. 0.6 x 23,000 would give a total weighted cost of defending the case of £13,800.

**4.8 What are the estimated costs of negotiating and concluding an agreement?**

Include legal and management costs and any VAT. Legal advisors should be able to supply an estimate of the potential legal costs, for example, providing a template for the agreement or providing specific advice.

**Section 5**

**5.1 Maximum gross value of any non-contractual sum to be offered**

This must not be made pensionable under any circumstances, as this will greatly inflate costs to the public purse and the costs of the agreement and raise questions of propriety.

**5.2 Maximum value of employee support for legal assistance**

To make an agreement binding, the employee must receive independent advice from a relevant adviser. Normally this will be a trained trade union representative at no cost, or a legal representative. For other representation this cost will be capped at no more than £600 (inc VAT).

**5.3 Other**

Other costs are only applicable if they form part of the terms of the proposal, and are not normally available. These costs should be exceptional, must be reasonable, and reasons for making such payments must be fully set out in the business case. e.g. cost of outplacement support for employee not available through normal course of employment. (Include any VAT).

**5.4 Information Sharing Clause**

The SPFM sets out that the Scottish Government will be entitled to use the fact that a Settlement Agreement has been entered into to enable them to collate and provide information on the number of Settlement Agreements entered into with the Scottish Government and across the wider public sector and also to provide collated information on the costs involved. A draft information sharing clause is available in the SPFM.

**5.5 Confidentiality Clause**

The SPFM sets out a general presumption against the use of confidentiality clauses in Settlement Agreements. A confidentiality clause may only be included at the request of either party, and then explicitly agreed by both, particularly the employee. If a confidentiality clause is used, the rationale must be included in the business case above.