

Chapter 7

Compromise agreements

- 228 A compromise agreement (also known as a settlement agreement²) is a written agreement between an employer and an employee whereby the employee gives up specific claims that they might have against the employer. In return for giving up the specific claims, the employee receives a financial settlement.
- 229 Compromise agreements typically contain provisions such as full details of the payments the employee will receive, details of the employer's and the employee's obligations, and details of the potential claims the employee agrees to forego as a result of signing the agreement.
- 230 The WAO recognises that compromise agreements can be an effective way of resolving employment disputes and avoiding employment tribunal proceedings. They are most often used as a means of terminating employment in a way that is mutually beneficial to both the employer and the employee.
- 231 The WAO will only use compromise agreements in appropriate circumstances (set out below), and will strive to be fair and consistent in its use of compromise agreements.
- 232 Severance transactions will be subject to disclosure in the WAO's accounts, and therefore open to public and audit scrutiny. The WAO will, however, be careful to ensure that any disclosure is in compliance with the Data Protection Act 1998.

When is it appropriate to use a compromise agreement?

- 233 In certain circumstances, for example following a management reorganisation, it may be appropriate to effect a compromise agreement with an employee as means of resolving a situation where the relationship between employer and employee has been damaged in some way.
- 234 If a workplace situation is undermining the WAO in some way, and cannot be resolved by another more appropriate internal mechanism, a compromise agreement may be considered as a useful means of resolution.
- 235 In all circumstances, a business case needs to be drawn up that considers whether a compromise agreement is in the best interests of the WAO, and whether it would be appropriate and good value for money.

² Particularly under the Enterprise and Regulatory Reform Act 2013.

When is it inappropriate to use a compromise agreement?

- 236 Compromise agreements should not be used as a substitute for disciplinary action, where such action would be more appropriate.
- 237 Compromise agreements should not be used as a means of resolving poor performance. The WAO's performance appraisal system, and related policies and procedures, should be used to deal with any issues regarding poor performance.
- 238 Compromise agreements should not be used in any circumstances where there is a more appropriate means of resolution available, and the financial implications of effecting a compromise agreement must be compared with any other possible methods of resolution.

Inappropriate provisions in a compromise agreement

- 239 The WAO does not support the use of inappropriate 'gagging clauses' in compromise agreements and any compromise agreements effected will not use such clauses. A 'gagging clause' is as a clause that prevents, or purports to attempt to prevent, an employee raising issues in relation to their employment that are in the public interest.
- 240 While the WAO will avoid using such 'gagging clauses' in its compromise agreements, it will sometimes be necessary to include certain confidentiality provisions as standard in order to protect the WAO's legitimate interests. For example, the employee may be asked to agree not to disclose confidential information that has come to his or her knowledge during the course of their employment. But it should be noted that any confidentiality provisions contained within a compromise agreement that purport to prevent an employee's ability to make a protected 'whistleblowing' disclosure under the Public Interest Disclosure Act 1998 are void. (This does not, however, mean that the 1998 act voids all confidentiality provisions. Legitimate confidentiality provisions, such as those that protect information obtained in the course of audit, still have effect.)
- 241 Compromise agreements commonly include an agreed employer's reference, which will be provided to any potential future employers. It should be noted, however, that the WAO believes it is unacceptable that a public sector employer should reach a confidentiality agreement that prevents disclosure of material concerns to another public sector employer. This is because it is not good value for taxpayers' money for one public sector employer to use confidentiality provisions to facilitate the passing on of HR problems.

Procedure for effecting compromise agreements

- 242 The WAO will only seek to implement a compromise agreement following the drawing up of a business case that sets out the rationale for making use of a compromise agreement and analyses other available options. The guiding principle will be that use of a compromise agreement must be good value for public money.
- 243 Any proposed compromise agreements will be scrutinised by the Remuneration Committee, and the opinion of the Remuneration Committee on whether effecting the compromise agreement is the most appropriate course of action, will be taken into account before the decision is made to proceed.
- 244 Before signing a compromise agreement, an employee must obtain independent legal advice. The WAO will help employees obtain such advice, and will pay the reasonable fees (agreed in advance) for such advice. If the employee is not content with the proposed compromise agreement, there is no obligation on them to sign it.