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GOHEBIAETH YN DILYN CYFARFOD Y PWYLLGOR

Pwyllgor PWYLLGOR ARCHWILIO

**Dyddiad ac amser
y cyfarfod** DYDD MAWRTH, 2 EBRILL 2019, 2.00 PM

Gweler isod gohebiaeth anfon gan Gadeirydd y Pwyllgor ar ôl y cyfarfod , ynghyd ag unrhyw ymatebion a gafwyd

17 **Gohebiaeth yn dilyn y cyfarfod pwyllgor** *(Tudalennau 3 - 8)*

Mae'r dudalen hon yn wag yn fwriadol

My Ref: AuditComCL29.03.19

Date: 29 March 2019



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Christopher Lee
Corporate Director Resources
Room 343 Cardiff Council
County Hall
Cardiff
CF10 4UW

Dear Christopher,

Re. Non-Disclosure Agreements

As an Audit Committee we have an interest in a range of governance, control and risk related matters across Council activities. As part of this role we are looking for assurance on the use of non-disclosure agreements in terms of the financial cost, as well as the governance and transparency around their use, authorisation and monitoring.

We understand that there may be a range of reasons that non-disclosure agreements could be used and in terms of our particular Audit Committee role I would be grateful if you could please provide:

- information on the instances in which they may be used and the purpose of their use.
- an explanation of the policy or procedure which is applied for the decision-making process.
- an overview of the considerations which need to be satisfied before they can be used.
- details of who can authorise their use and how the approval process operates.
- information on how their use is agreed with those subject to them.
- the arrangements in place to ensure oversight and monitoring of their use.
- the process in place to learn from instances which have led to their use, and the actions which are taken.

Many thanks in anticipation.

Yours sincerely

Ian Arundale
Chairperson, Audit Committee
Cardiff Council

c.c. Members of the Audit Committee
Davina Fiore, Director, Governance and Legal Services
Philip Lenz, Chief HR Officer
Ian Allwood, Head of Finance
Gary Jones, Head of Democratic Services
Chris Pyke, Audit Manager
Rita Rohman, PA / Secretary to Chris Lee

Our Ref: CL/rr

Date; 10 April 2019

Ian Arundale
Chairperson, Audit Committee
Cardiff Council
County Hall
Cardiff
CF10 4UW

Dear Ian

Non-Disclosure Agreements

Thank you for your letter dated 29th March 2019. There has been a level of misinformation in the press on this subject in recent months, and I welcome the opportunity to clarify some details around settlement agreements in my response to your letter.

Firstly, you will notice that the Council does not refer to these agreements as non-disclosure agreements but as settlement agreements. The reason for this is that their fundamental purpose is to settle any outstanding or potential employment claims rather than to secure a non-disclosure of information.

There are two main areas in which settlements agreements are used and these are in voluntary redundancy situations where there could be a potential employment claim by an individual and secondly, in circumstances where there is, or there is potential of, an employment tribunal claim. This can include employees whose employment has been terminated for whatever reason as well as those where employment is on-going.

The answers to some of your specific questions differ based on these two scenarios so I have separated them out below.

1. Settlement Agreements in voluntary redundancy cases

There have been significant changes in the number of these cases since January 2015, as from that date, we have had a policy not to use settlement agreements on a routine basis and only use them where there has been difficulties with the employment relationship, (ref: Cabinet decision 26th January 2015).

Therefore, they are now used in only a small proportion of voluntary redundancy cases where the employee has a potential employment tribunal claim. In these cases, the manager would need to state on the voluntary redundancy business case form that they require a settlement agreement. The HR People Partner (Operational Manager level) will discuss this with the manager, and if there is a strong case that there is a potential employment tribunal claim will decide whether a settlement agreement is appropriate. Each case is agreed on its own merits, and legal advice is sought as required.

PLEASE REPLY TO: Mr C. Lee, Corporate Director Resources, Room 343C, County Hall, Atlantic Wharf, Cardiff, CF10 4UW.

Tel: (029) 20872300; E-Mail: Treasurersoffice@cardiff.gov.uk

GWEITHIO DROS GAERDYDD, GWEITHIO DROSOCH CHI
Mae'r Cyngor yn croesawu gohebiaeth yn Gymraeg, Saesneg neu'n ddwyieithog.
Byddwn yn cyfathrebu â chi yn ôl eich dewis, dim ond i chi roi gwybod i ni pa un
sydd well gennych. Ni fydd gohebu yn Gymraeg yn arwain at oedi.

WORKING FOR CARDIFF, WORKING FOR YOU

The Council welcomes correspondence in Welsh, English or bilingually. We will ensure that we communicate with you in the language of your choice, as long as you let us know which you prefer. Corresponding in Welsh will not lead to delay.

Tudalen 5



It is important to note that no one individual can approve a settlement agreement and that the overall approval process requires two senior officers to sign off the individual settlement agreement.

We also offer guidance to staff involved in a voluntary redundancy situation by setting out the process on the Council's HR A to Z, where they can find an explanation of the process and specific information on the settlement agreement, including the selection of their own solicitor for independent legal advice, and that the agreement itself is 'voluntary'.

2. Settlement Agreements in other cases

In these cases, the settlement agreements used are because of various employment law mechanisms that can include ACAS Early conciliation, judicial mediation, or legal advice from either in-house or external lawyers / barristers.

It is important to recognise that the use of settlement agreements in these cases will follow meaningful attempts of resolution from internal and often external experts and advisors.

For these cases, we are informed by professional judgements and guided by the solicitor / barrister providing advocacy on that particular case.

Any settlement that is made, as part of a tribunal claim will automatically have a settlement agreement attached to it as that is the only legal way of preventing the employee continuing with the claim, after a payment has been made.

3. Wider information

In response to your wider areas of assurance, I set out our general principles and practices, applied for all settlement agreements.

All settlement agreements, in whatever circumstances, are authorised by the Director of Legal & Governance or their nominated officer and the Chief HR officer. Authorisations are reviewed by the Wales Audit Office as part of their audit of the Statement of Accounts.

Once a draft of the settlement agreement has been prepared, it is sent to the employee, who as part of the process must take independent legal advice from a legal professional before they can sign it. This ensures that their rights have been fully explained to them prior to them signing the document.

In respect of the settlement agreements for voluntary redundancy cases, these are discussed with the Director of the service area and the rationale for the settlement agreement is agreed. In these cases, the monitoring is done by the HR People Partner to ensure that the agreements are only used in specific circumstances. The lessons learnt from the circumstances that have brought the need for the agreement are discussed with the Director to ensure that remedial actions, where necessary are put into place.

As stated in section 2 above, the agreement of settlement on 'other' cases is determined by the advice from the solicitor / barrister providing advocacy on the case.

In respect of monitoring and oversight, there is also a differentiation between voluntary redundancy and other cases. As stated above, the settlement agreements that are a result of tribunal claims are required as part of the process, for which the oversight, monitoring and lessons learned come from the claim itself rather than the settlement agreement. All claims whether they reach the actual tribunal or not, are reviewed with the service area concerned as well as HR, and any improvements either within the service area or across the council are taken forward.

It is important to note that the agreements used by the Council do not reflect those that are much publicised in the press. There is nothing in the agreements used by the council which prevent an employee making a report to the police should they believe that a criminal action has taken place.

I trust this response provides you with the information you have sought. It may be helpful to meet with you and officers to discuss any further clarifications you may be looking for and provide any further details.

Yours sincerely

A handwritten signature in purple ink, appearing to read 'C Lee'.

Christopher Lee
Corporate Director Resources / Cyfarwyddwr Corfforaethol Adnoddau

c.c

Members of the Audit Committee

Davina Fiore, Director, Governance and Legal Services Philip Lenz, Chief HR Officer

Ian Allwood, Head of Finance

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Mae'r dudalen hon yn wag yn fwriadol