

BRISTOL CITY COUNCIL

HUMAN RESOURCES COMMITTEE

11 July 2013

Report of: Service Director - Human Resources

Title: Use of Compromise Agreements

Ward: N/A

Officer Presenting Report: Helen Sinclair-Ross, Workforce Strategy Manager

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RECOMMENDATION

The committee are asked to note this report.

Summary

Following the recent well documented publicity on the use of compromise agreements in the public sector, this report highlights the extent of their usage in Bristol City Council.

The significant issues in the report are:

- The Council will continue to monitor the use of compromise agreements.
- Compromise agreements are a necessary tool in managing employment relationships although they are only used in exceptional circumstances where there is a business case that clearly supports the need.
- Since April 2010, the Council has used compromise agreements on 19 occasions.
- The Council continues to receive Freedom of Information requests regarding the use of compromise agreements.

1. Policy

- 1.1 The Human Resources Committee approves any compensation payments to Head of Paid Service, Strategic Directors or Service Directors. Decisions regarding whether these payments should form part of a compromise agreement are decided on a case by case basis.
- 1.2 For all other employees of the Council, the decision about whether a compromise agreement should be used to resolve a particular case is decided by the relevant Service Director and nominated delegates following HR advice.
- 1.3 In the case of schools, the decision to enter into a compromise agreement is entirely a matter for each Governing Body.

2. Consultation

2.1 Internal

Not Applicable

2.2 External

Not applicable

3. Context

- 3.1 The Council's use of compromise agreements is in the form of a legally binding written agreement between the Council, as an employer, and an employee in order to compromise any potential contractual and statutory claims. The terms of the agreement will typically provide for a severance payment by the Council as the employer, in return for the mutual termination of an employee's employment and the employee's agreement not to pursue a claim against the Council. An employee has to receive independent legal advice before an agreement can be entered into.
- 3.2 Compromise agreements are a necessary tool in managing employment relationships although they are only used in exceptional circumstances where there is a business case that clearly supports the need.
- 3.3 The use of compromise agreements in the Council received national publicity when it was reported by The Daily Telegraph on 3rd April 2013 that the Council had signed 121 compromise agreements during the period 2005 - 2010. (see Appendix A).

- 3.4 Of the 121 compromise agreements during this period, only 27 were related to employees who worked directly for the Council. The remaining 94 agreements related to employees who work in schools. This is not within the Council's control. (see Appendix B).
- 3.5 Since April 2010 (up to April 2013), 19 compromise agreements have been signed by the Council (excluding schools).
- 3.6 Since April 2007 to April 2013, £1,070,315 was spent on compromise agreements. (see Appendix C1)
- 3.7 Since April 2007 to April 2013, 56 compromise agreements were signed. (see Appendix C2).
- 3.8 The Council continues to receive Freedom of Information requests from media organisations in respect of the use of Compromise Agreements. The interest in compromise agreements was also captured by the Bristol Evening Post. (see Appendix D).

4. Proposal

- 4.1 That Members note this report for information.

- 5.1 Not applicable as the report is for information and discussion only.

6. Risk Assessment

- 6.1 At this stage, the risks associated with this report are low. The information contained within this information is already publically available. However, Bristol City Council must be clear how the figures are calculated in order to avoid adverse publicity. This report seeks to address this issue.

7. Public Sector Equality Duties

- 7a) Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following “protected characteristics”: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:
 - i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.

- ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to --
 - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;
 - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);
 - encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
 - iii) Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to --
 - tackle prejudice; and
 - promote understanding.
- 7b) Equalities Impact Assessments will be developed in any workplace where there is a requirement for workforce reductions. All HR policies have impact assessments and are regularly monitored.

Legal and Resource Implications

Legal None sought

Financial

(a) Revenue

None sought

(b) Capital

N/A

Personnel None arising from this report

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985
Background Papers
None

Appendix A

3 April 2013

Telegraph Newspaper

£14m bill for gagging axed public officials

Almost 5,000 council workers and civil servants have been gagged at taxpayers' expense at a cost of up to £400,000 each.

Last month the Government banned gagging orders for NHS employees after it emerged that more than £18 million had been spent on silencing 600 staff.

However, the use of similar orders is widespread for departing employees across both local authorities and Whitehall, leading to accusations that ministers are being "hypocritical".

In Whitehall, more than 200 civil servants and officials have signed compromise agreements in the past two years, at a total cost of £14 million. Officials said it was "standard practice" for them to include confidentiality clauses.

One of the biggest payoffs was made to Philippa Williamson, a former chief executive of the Serious Fraud Office, who left on voluntary redundancy.

She received £462,000 and is thought to have signed a confidentiality agreement. Local authorities have signed 4,562 compromise agreements with former staff, according to figures released under freedom of information laws. Most of them contain confidentiality clauses.

Eric Pickles, the Local Government Secretary, said: "For too long, local government has made departing staff sign gagging orders, often with big pay-offs attached, away from the eyes of those who get left with the bill: the taxpayer."

"When leaving a job, councils and their employees need to part ways fairly. Giving out thousands in under-the-counter pay-offs to silence departing staff is not the way to achieve this."

"Councils have a responsibility to the public and transparency is at the heart of that."

"By shining a light on these activities and introducing new democratic checks and balances to stop gagging orders being abused we are helping councils improve accountability in local government."

In Whitehall, hundreds of officials have been given "special severance payments" with Treasury approval. Officials say that most contain confidentiality clauses.

According to its most recent accounts, the Department for Business, Innovation and Skills has signed the agreements with 83 officials over the past two years, at a cost of £2.6 million. The Treasury has signed agreements with 64 individuals at a cost of £2.5 million, although a source said only a "small number" involved confidentiality agreements. The Department for Transport confirmed that it had signed 40 agreements in the past three years, all of which contain confidentiality clauses. The Department of Energy and Climate Change has signed 12 agreements containing confidentiality clauses at a total cost of £1.5 million.

The Ministry of Justice has signed 15 at a cost of £250,000, while the Foreign Office has spent £5.5 million on severance agreements in total. Richard Bacon, a Conservative MP and member of the Commons public accounts committee, said: "These agreements are outrageous, they are using taxpayers' money to shut people up. It reveals an approach and philosophy to the way the public service is run that is rotten to the core."

The actual total for Whitehall is likely to be far higher. There are almost 400,000 civil servants, and many government departments do not publish figures on compromise agreements. Jon Trickett, the shadow cabinet spokesman, said: "It is rank hypocrisy, ministers are telling others to stop doing something which is rife in Whitehall."

Freedom of Information Act requests established that 256 councils in Britain signed compromise agreements with former staff between 2005 and 2010. Employment lawyers said the agreements almost always included confidentiality clauses. The number of confidentially agreements issued by councils rose sixfold from 179 in 2005 to 1,027 in 2010. Those subject to the orders range from social services whistleblowers to former executives who left with six-figure pay-offs. Brighton & Hove city council has signed the most, with 123 agreements. Bristol city council signed 121 compromise agreements, Coventry city council 114 and Bolton 107.

A total of 95 agreements were signed at Kent council, including one for Katherine Kerswell, the council's former managing director, who was given a £420,000 payment after less than 20 months in the job. She is now the Cabinet Office's director of Civil Service reform In some cases, the agreements have been used to try to silence whistleblowers. Martin Morton, a social services manager at Wirral borough council, went to his superiors in August 2006 after receiving disturbing reports that some council care services were being run by criminals.

Four men with baseball bats were reported to have demanded money from one care home manager. There were also allegations that vulnerable patients had been raped and people with learning disabilities were being routinely overcharged. He subsequently signed a £45,000 compromise agreement after being ignored, isolated and bullied.

Mr Morton, however, refused to keep his silence. After going public with his allegations, the council admitted that it had overcharged 16 adults with learning disabilities more than £500,000.

An official report commissioned by the council confirmed many of Mr Morton's concerns. One of the carers had a conviction for assault with a deadly weapon, and the rape allegations were passed to police. Mr Morton said: "These gagging orders have a chilling effect. I was terrified about speaking out, I didn't know what the consequences would be."

A spokesman for the council said it had apologised to Mr Morton and admitted that it handled the claims "badly".

The widespread use of gagging orders by local authorities was uncovered using freedom of information requests by Paul Cardin, who was silenced by a council. Mr Cardin, a former lighting engineer at Cheshire West and Chester council, was barred from even making freedom of information requests under the terms of his compromise agreement.

Appendix B

Data supplied for the purposes of the Freedom of Information request regarding compromise agreements

**2005 – 2010 as reported in the 3 April 2013 in the
Telegraph Newspaper**

Year	Bristol City Council	Locally Managed Schools	Total
2006/07 -	0	0	0
2007/08	3	18	21
2008/09 -	15	31	46
2009/10 -	7	47	54

Total in Bristol City Council: 25

Total in Locally Managed Schools: 96

Total combined of Bristol City Council and Locally Managed Schools 121*

*As reported in the Telegraph

APPENDIX C

Bristol City Council Compromise Agreements - Values

PayPeriod	Sum of PeriodValue VisionDeptDesc	SalaryRange Total
2007/2008	Children & Young People's Services	£50k+ £52,080
	Children & Young People's Services Total	£52,080
	Planning Transport & Sustainable Development	£13k-£19k £2,700
	Planning Transport & Sustainable Development Total	£2,700
2007/2008 Total		£54,780
2008/2009	Children & Young People's Services	£20k-£29k £47,170
	£30k-£39k	£254,470
	£50k+	£42,150
	Children & Young People's Services Total	£343,790
	Children Young People and Skills	£50k+ £32,727
	Children Young People and Skills Total	£32,727
	Neighbourhood & Housing Services	£50k+ £25,058
	Neighbourhood & Housing Services Total	£25,058
2008/2009 Total	Transformation	£50k+ £18,297
	Transformation Total	£18,297
		£419,871
2009/2010	Children & Young People's Services	£13k-£19k £4,358
	Children & Young People's Services Total	£4,358
	Children Young People and Skills	£20k-£29k £2,000
	Children Young People and Skills Total	£2,000
	City Development	<£13k £6,655
	City Development Total	£6,655
	Neighbourhoods	£20k-£29k £3,179
	Neighbourhoods Total	£3,179
	Resources	£20k-£29k £2,808
	£50k+	£5,443
	Resources Total	£8,251
2009/2010 Total	Central Support Services	£40k-£49k £42,422
	Central Support Services Total	£42,422
		£66,864
2010/2011	Children Young People and Skills	£20k-£29k £1,834
	Children Young People and Skills Total	£1,834
	Deputy Chief Executive's	£50k+ £11,032
	Deputy Chief Executive's Total	£11,032
	Health and Social Care	£30k-£39k £13,814
	Health and Social Care Total	£13,814
	Neighbourhoods	£30k-£39k £8,755
	£50k+	£45,778
	Neighbourhoods Total	£54,532
	Resources	£30k-£39k £56,386
2010/2011 Total	Resources Total	£56,386
		£137,599
2011/2012	Children Young People and Skills	£20k-£29k £6,000
	£40k-£49k	£6,936
	£50k+	£59,000
	Children Young People and Skills Total	£71,936
	City Development	£30k-£39k £6,000
	City Development Total	£6,000
	Corporate Services	£20k-£29k £21,500
	Corporate Services Total	£21,500
	Neighbourhoods and City Development	£20k-£29k £16,931
	Neighbourhoods and City Development Total	£16,931
2011/2012 Total		£116,367
2012/2013	Children Young People and Skills	£30k-£39k £11,000
	£40k-£49k	£20,000
	Children Young People and Skills Total	£31,000
	City Director	£50k+ £47,383
	City Director Total	£47,383
	Corporate Services	£50k+ £62,300
	Corporate Services Total	£62,300
	Neighbourhoods and City Development	£13k-£19k £2,900
2012/2013 Total	£30k-£39k	£57,800

2012/2013	Neighbourhoods and City Development	£40k-£49k	£29,400
	Neighbourhoods and City Development Total	£90,100	
2012/2013 Total			£230,783
2013/2014	Children Young People and Skills	£13k-£19k	£4,500
	Children Young People and Skills Total	£4,500	
	Corporate Services	£20k-£29k	£16,000
		£30k-£39k	£20,050
	Corporate Services Total	£36,050	
	Neighbourhoods and City Development	£13k-£19k	£3,500
	Neighbourhoods and City Development Total	£3,500	
2013/2014 Total			£44,050
Grand Total			£1,070,315

Data excludes locally managed schools

Data is as at 28/06/2013

APPENDIX 8

Bristol City Council Compromise Agreements - Count

Count of EmployeeNumber PayPeriod	VisionDeptDesc	SalaryRange Total
2007/2008	Children & Young People's Services	£50k+ 2
	Children & Young People's Services Total	2
	Planning Transport & Sustainable Development	£13k-£19k 1
	Planning Transport & Sustainable Development Total	1
2007/2008 Total		3
2008/2009	Children & Young People's Services	£20k-£29k 2
	£30k-£39k 8	
	£50k+ 2	
	Children & Young People's Services Total	12
	Children Young People and Skills	£50k+ 1
	Children Young People and Skills Total	1
	Neighbourhood & Housing Services	£50k+ 1
	Neighbourhood & Housing Services Total	1
	Transformation	£50k+ 1
	Transformation Total	1
2008/2009 Total		15
2009/2010	Children & Young People's Services	£13k-£19k 1
	Children & Young People's Services Total	1
	Children Young People and Skills	£20k-£29k 1
	Children Young People and Skills Total	1
	City Development	<£13k 1
	City Development Total	1
	Neighbourhoods	£20k-£29k 1
	Neighbourhoods Total	1
	Resources	£20k-£29k 1
	£50k+ 1	
	Resources Total	2
	Central Support Services	£40k-£49k 1
	Central Support Services Total	1
2009/2010 Total		7
2010/2011	Children Young People and Skills	£20k-£29k 1
	Children Young People and Skills Total	1
	Deputy Chief Executive's	£50k+ 1
	Deputy Chief Executive's Total	1
	Health and Social Care	£30k-£39k 2
	Health and Social Care Total	2
	Neighbourhoods	£30k-£39k 1
	£50k+ 1	
	Neighbourhoods Total	2
	Resources	£30k-£39k 3
	Resources Total	3
2010/2011 Total		9
2011/2012	Children Young People and Skills	£20k-£29k 1
	£40k-£49k 1	
	£50k+ 2	
	Children Young People and Skills Total	4
	City Development	£30k-£39k 1
	City Development Total	1
	Corporate Services	£20k-£29k 1
	Corporate Services Total	1
	Neighbourhoods and City Development	£20k-£29k 3
	Neighbourhoods and City Development Total	3
2011/2012 Total		9
2012/2013	Children Young People and Skills	£30k-£39k 1
	£40k-£49k 1	

2012/2013	Children Young People and Skills Total	2
	City Director	£50k+
		1
		City Director Total
		1
	Corporate Services	£50k+
		2
		Corporate Services Total
		2
	Neighbourhoods and City Development	£13k-£19k
		1
		£30k-£39k
		2
		£40k-£49k
		1
		Neighbourhoods and City Development Total
		4
2012/2013 Total		9
2013/2014	Children Young People and Skills	£13k-£19k
		1
		Children Young People and Skills Total
		1
	Corporate Services	£20k-£29k
		1
		£30k-£39k
		1
		Corporate Services Total
		2
	Neighbourhoods and City Development	£13k-£19k
		1
		Neighbourhoods and City Development Total
		1
2013/2014 Total		4
Grand Total		56

Data excludes locally managed schools

Data is as at 28/06/2013