

## Appendix 9

### Special payments – ex-gratia payments, staff severance and compensation payments

Staff severance and compensation payments can only be made with the approval of the DFO of the Trust, following a recommendation from the Trust's Head of HR. The following statements reflect the duties laid on the Trust by the Academies Finance Handbook and as such are applied across the Trust and its schools.

Special staff severance payments (known as Settlement Agreements) are ex-gratia payments paid to employees outside of normal contractual requirements when leaving the employment of the Trust and a termination of contract is agreed. Such an ex-gratia payment is considered to be a damages payment for the waiving of employment rights/making a claim to an Employment Tribunal.

If the trust is considering making a staff severance payment above contractual entitlements for the payment of notice, it will consider the following issues:

Whether such a payment is justified, based on a legal assessment of the chances of the academy trust successfully defending the case at tribunal. If the legal assessment suggests a better than even chance of winning, there is no rationale for settling the case. But where the case will be lost, there is a justifiable rationale for the settlement.

If the settlement is justified, the trust would then need to consider the level of settlement. This must be less than the legal assessment of what the relevant body (e.g. an Employment Tribunal) is likely to award in the circumstances.

Special staff severance payments will not be made where they could be seen as a reward for failure, such as dismissal for gross misconduct or poor performance. The only acceptable rationale in the case of gross misconduct would be where legal advice is that the claimant is likely to be successful in an Employment Tribunal claim. In the case of poor performance, an acceptable comparison would be the time and cost of taking someone through performance management and improvement procedures.

Agreements associated with staff severance payments drawn up by the Trust's solicitors will not contain confidentiality clauses which prevent an individual from making disclosures in the public interest (whistleblowing).

Compensation payments are different to staff severance payments. Compensation payments are made to provide redress for personal injuries, traffic accidents, damage to property etc. If a compensation payment is under consideration, the Trust will consider whether the proposed payment is based on a careful appraisal of the facts, including the acceptance or otherwise of liability/culpability in the claim and in the context of having taken legal advice and that value for money will be achieved.

It is also good practice to consider routinely whether particular cases reveal concerns about the soundness of control systems, and whether they have been respected as expected. It is also important to take any necessary steps to put failings right.

The Trust can self-approve individual special staff severance payments and compensation payments provided any non-statutory/non-contractual element is under £50,000. The trust will not consider making a special staff severance payment or compensation payment exceeding the statutory/contractual entitlement by £50,000 or more, unless prior approval has been sought from HM Treasury (HMT), via the EFA, for the non-statutory/non-contractual element.