

Correspondence from the Scottish Government to the Public Audit Committee, dated 18 March 2014

Settlement Agreements – Consultation on Updated Process

I write, further to my letter of 10 December which set out the intention to strengthen the processes around Settlement Agreements, with effect from 1 April 2014.

You will recall that the Permanent Secretary gave an undertaking to the Public Audit Committee in October 2013 to strengthen the process set out in the Scottish Public Finance Manual (SPFM) by requiring the bodies listed in Annex C to:-

- a) consult the Scottish Government when considering and before committing to Settlement Agreements;
- b) notify the Scottish Government of Settlements once finalised; and
- c) report on their use in their annual reports or otherwise as appropriate.

This letter outlines how we intend to give effect to this commitment and seeks your feedback on the proposed administrative arrangements. I would be grateful for your response by Tuesday 8 April 2014.

I wish to apologise for the short timescale for this consultation due to the need to implement revised arrangements from the new financial year.

Overview of Strengthened Process

The proposed process is as follows:

1. A public body prepares a business case using the attached guidance, template and supporting material (including revised SPFM section) (**Annex A**). *(N.B. These materials may also be used to submit cases for voluntary resignation secured by a financial consideration, however the reporting arrangements do not apply to voluntary resignation).*
2. Prior to offering or entering into any Settlement Agreement, the public body will consult Scottish Government by submitting a copy of the business case to the relevant SG Sponsor Director or SG lead contact copying it to the SG Head of HR (Email: HeadofHR@scotland.gsi.gov.uk). The business case should contain (if there is one) a draft of any Settlement Agreement, which makes provision as contained in paragraph 7 below.
3. The Head of HR will identify an HR lead to work with the Sponsor Team or SG lead contact to advise as necessary on the business case. Ministerial views will also be sought as and when appropriate, including in relation to any potentially high profile cases. If further information is required this will be sought either directly from the public body or their agents from HR or SGLD, Finance or the SG lead contact depending on the type of information requested. The Sponsor Team or SG lead contact will co-ordinate this step.
4. The response from the SG will be in writing via the relevant Sponsor Team or SG lead contact with a target of responding within 5 working days, unless discussion

with Ministers is required (for potentially high profile cases), in which case up to 15 working days. If the Scottish Government is not satisfied with either the need for such an agreement, or the terms of the proposed agreement, or its value for money, any response will be copied to the Accountable Officer of the public body.

5. The final decision as to whether to enter into a Settlement Agreement will rest with the Accountable Officer for the public body. Information on Settlement Agreements where SG has provided comments indicating that the agreement should not be entered into will form part of the information that will be made available to the Scottish Parliament.

6. The public body is required to notify the Sponsor Team, the Sponsor Director or SG lead contact and SG Head of HR, once the Settlement Agreement is finalised; and to provide, where applicable, the associated outturn costs of the Settlement Agreement using the proforma provided at Annex A. SG HR will hold the records.

7. The SG will be entitled to use the fact that a Settlement Agreement has been entered into to enable SG to collate and provide information to the Scottish Parliament on the number of Settlement Agreements and the costs involved in reaching those agreements across the Scottish Administration. SG sponsored bodies should ensure that all Settlement Agreements allow for this.

It is worth noting that the process for Settlement Agreements differs from that for voluntary resignation with a financial consideration due to the case-by-case requirements of the former, balancing the maintenance of the extant approvals process for severance schemes and the accountability of the public bodies. As you will be aware, the voluntary resignation of an employee outwith any existing (and approved) scheme must be approved by the SG Head of HR and relevant SG Finance Business Partner (or equivalent) before any offer is made.

Data Protection and Information Sharing/Reporting

We recognise that different organisations will use their own form of words for their Settlement Agreements but we thought it would be helpful for public bodies to have at their disposal a draft information sharing clause for Settlement Agreements and this is attached at **Annex B**. This is not prescriptive and public bodies should feel free to use their own version providing the Agreement makes reference to the Scottish Government being entitled to use the fact that an Agreement has been entered into to collate and publish information on the number of Settlement Agreements entered into across the Scottish Administration and the costs involved. The Scottish Government will not, however, disclose the terms or circumstances of the Agreement or the name of the Employee without the written consent of the Employee or as required by the Scottish Parliament solely for the purposes of Parliamentary scrutiny relating to the use of public money, or as required by law. By entering into a Settlement Agreement the employee will be agreeing to the release of information on the above basis and will be taken to have provided the necessary consent for the use of their personal data for this limited purpose as required by the Data Protection Act.

Scope

I attach a list of public bodies who will come under the revised reporting arrangements from 1 April 2014, at **Annex C**. This list will be amended from time to time as required.

Annual Accounts

These new arrangements will not affect the requirements for related disclosures in annual accounts: individual bodies will follow the requirements of the Financial Reporting Manual (FReM) for the financial year in question. You will wish to be aware, however, that for the financial year 2014-15 the reporting requirements in the FReM will be updated to ensure the mandatory and consistent disclosure of special severance payments in public sector annual accounts.

Confidentiality Clauses

You may be aware that the Public Audit Committee has also expressed concern about the use of confidentiality clauses in Settlement Agreements, particularly in relation to their use by NHSScotland. The Cabinet Secretary for Health and Wellbeing has decided that there will be a presumption against the use of any confidentiality clauses in NHSScotland Settlement Agreements unless there are clear and transparent reasons for inclusion. These clauses may still be used in some cases but only where there is explicit agreement between both the employer and employee that this is required.

We consider that the same approach should apply to other public bodies. To this end we will develop, in consultation with public bodies, a draft optional confidentiality clause which should only be inserted on the request of either party (i.e. employee or employer) and then explicitly agreed with both parties, particularly the staff member. Any use of any confidentiality clauses will also result in the Scottish Government being notified, to allow them to be better scrutinised. No confidentiality clause can be used to prevent relevant parliamentary committees or audit bodies from carrying out their appropriate oversight and scrutiny functions. Any Agreement which sought to prevent staff from raising concerns about health and safety or malpractice would be void under the Employment Rights Act 1996 (as amended by the Public Interest Disclosure Act 1998).

Consultation

We would appreciate your feedback on these proposals and supporting materials by Tuesday 8 April 2014 via the Public Bodies Unit mailbox: PublicBodiesUnit@scotland.gsi.gov.uk

If you have any issues or questions regarding this letter or its contents, please do not hesitate to contact Paul Ingram from the Public Bodies Unit (Paul.Ingram@scotland.gsi.gov.uk) or on telephone number 0131 244 0388.

Please note that notwithstanding the need to finalise these materials in light of your comments, you should make provision now to ensure compliance with

the broad principles i.e. to consult SG before offering or agreeing any Settlement Agreement; to report on the associated costs of any such agreement; and to end the automatic inclusion of confidentiality clauses, from 1 April 2014.

Yours sincerely
Alison Douglas
Head of Public Bodies & Public Service Reform Unit

BUSINESS CASE TEMPLATE AND SUPPORTING MATERIALS

1. GUIDANCE ON COMPLETION OF A BUSINESS CASE FOR A SETTLEMENT AGREEMENT OR A VOLUNTARY RESIGNATION SECURED BY A FINANCIAL CONSIDERATION

Context

The Scottish Public Finance Manual (SPFM) sets out the governance of the circumstances in which an employee may be offered an arrangement as above.

The current version of the SPFM should be referred to for full details. An extract of the version current at the time this Guidance was issued (March 2014) is attached.

Settlement Agreements

Settlement Agreements are generally pursued in two different circumstances. The first is where an end to the employment relationship is being considered or has actually happened in circumstances that are the subject of an employment dispute between the parties. The second is in situations where the employment relationship is continuing but the employee has indicated that s/he has an employment dispute that remains unresolved. A legal claim may already have been lodged by the employee or the employer might believe there to be grounds that one might be. Whatever the case, if the employer would wish to seek to settle the matter at issue, a Settlement Agreement could be pursued. Such agreements will often involve payment of a non-contractual financial consideration. A Settlement Agreement is legally binding in form and is intended to remove the possibility of the matters that it covers being the subject of future or, where commenced, further legal action. Settlement Agreements have statutory status. The ACAS Code of Practice <http://www.acas.org.uk/media/pdf/j/8/Acas-Code-of-Practice-on-Settlement-Agreements.pdf> and the ACAS Guide [http://www.acas.org.uk/media/pdf/o/a/Settlement_agreements_\(the_Acas_Guide\)JULY2013.pdf](http://www.acas.org.uk/media/pdf/o/a/Settlement_agreements_(the_Acas_Guide)JULY2013.pdf) are essential further reference.

Alternative Approach

In some circumstances employers may wish to consider the option of voluntary resignation secured by a financial consideration which does not involve a Settlement Agreement.

Choice of Approach

An employer considering the offer of a financial consideration to secure a voluntary resignation will require to carefully consider whether instead to pursue a Settlement Agreement, and is expected to have taken legal advice. While a Settlement Agreement may entail some additional cost with regard to a contribution towards the cost of legal advice for the employee, it does have the effect of removing the possibility of future legal action and is likely to be the preferred mode in most situations.

Exclusions

Not included in the requirement to submit a business case to the Scottish Government is the resolution of claims for reparations, personal injury or lost property which are handled by reference to the employer's normal litigation or lost property management procedures.

Defining Contractual versus Non-Contractual Payments

It should be noted that in the case of Settlement Agreements, a non-contractual financial consideration is not always required in order for an Agreement to be reached whereas, by definition, securing a voluntary resignation by use of a financial consideration does. Where payments to an employee are made under either kind of agreement they will be either contractual or non-contractual in nature.

Contractual payments are those which would be received in the normal course of employment. These will include performance related payments and, on termination, notice payments and payments in lieu of time owed. They will also include lump sum and pension payments to which the employee is entitled in relation to termination of employment through the Civil Service Compensation Scheme or a non-civil service employer's equivalent.

Non-contractual payments are those to which the employee has no entitlement in the normal course of employment and which are being offered solely in order to resolve an employment dispute.

While it is non-contractual costs that may be subject to greatest public scrutiny, reporting arrangements to the Scottish Parliament in relation to Settlement Agreements may also include information on contractual costs as required.

The Business Case & Employment Information Schedule

The sections for completion in the Business Case template are designed to promote rigorous consideration of whether a Settlement Agreement would be appropriate to pursue and, if so, what costs it might be appropriate to incur.

The data provided in the Employment Information Schedule, attached to the Business Case template, sets out the financial context. When completed, those considering the case will know what the value of the employee's current employment benefits are (before and after deductions), what the total employment cost is, contractual termination costs and, where applicable, what the costs of defending a legal case might be taking into account the likelihood of it being pursued and won by the employee. This will then help inform the decision on whether an agreement should be pursued and, if so, what if any non-contractual financial consideration it would be reasonable and proportionate to offer.

An Explanatory Notes section is provided with the Employment Information Schedule which sets out definitions of the relevant data required to populate the Schedule.

Business Case Submission Arrangements – Proposed Settlement Agreements

Before offering or entering into any Settlement Agreement, any constituent part of the Scottish Administration (including SG Executive Agencies and non-ministerial departments) or bodies sponsored by the SG must – using the Business Case

Submission template - consult the relevant SG Sponsor Director or SG lead contact, copying in the SG Head of HR (Email: HeadofHR@scotland.gsi.gov.uk). The response from the SG will be in writing via the relevant Sponsor Team or SG lead contact. **Any questions relating to the terms or value for money of any proposed agreement will be directed to the relevant Accountable Officer for that public body.** Ministerial views must also be obtained as and when appropriate, including in relation to any potentially high profile cases. The body is also required to notify the Sponsor Team, the Sponsor Director or SG lead contact and SG Head of HR, once the Settlement Agreement is finalised; and to provide, where applicable, the associated outturn costs of the Settlement Agreement. SG HR will hold the records.

Business Case Submission Arrangements – Resignations Secured Through Financial Consideration

Any proposal by constituent parts of the Scottish Administration (including SG Executive Agencies and non-ministerial departments) or bodies sponsored by the SG to offer a financial consideration to secure the voluntary resignation of an employee outwith any existing (and approved) scheme must be approved by the SG Head of HR and relevant SG Finance Business Partner (or equivalent) before any offer is made, whether orally or in writing. Ministerial views must also be obtained as and when appropriate, including in relation to any potentially high profile cases. The Business Case template should be used for making submissions.

Timeframes for Feedback

A target for response is within 5 working days if the Scottish Government does not find the case to be contentious or novel, or within 15 working days if there may be elements which are contentious or novel, or if the case is being referred to Scottish Ministers.

Final Confirmation Of Costs - Reporting Requirements for Settlement Agreements

All categories of costs associated with Settlement Agreements are potentially reportable to the Public Audit Committee of the Scottish Parliament. Scottish Government will do this using the outturn data received from the Public Body that reaches an agreement with the employee. A proforma to be used for submissions is attached at Annex A. Data protection principles will be observed in relation to putting in place reasonable measures for protecting the identities of individuals.

Please note there is no reporting requirement in respect of voluntary resignation costs.

Technical Advice

Advice on any technical aspects of the completion of the Business Case template, Employment Information Schedule or Final Confirmation of Costs return may be sought from the SG Employee Relations and Reward team.

The SPFM has been amended to include the changes on Settlement Agreements – see key changes at paragraphs 4, 10, 11, 12 and 13. For ease of reference, those sections which have been changed are also highlighted in yellow below.

Settlement Agreements, Severance, Early Retirement and Redundancy Terms

SETTLEMENT AGREEMENTS, SEVERANCE, EARLY RETIREMENT AND REDUNDANCY TERMS

Contents:

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Scope

1. This section gives guidance on considerations to be taken into account in relation to settlement agreements and compensation for severance, early retirement or redundancy. The guidance is aimed primarily at the constituent parts of the Scottish Administration (i.e. the core Scottish Government (SG), the Crown Office and Procurator Fiscal Service, SG Executive Agencies and non-ministerial departments) and bodies sponsored by the SG. However, other organisations to which the Scottish Public Finance Manual (SPFM) is directly applicable should ensure compliance with any relevant provisions and follow procedures consistent with the guidance.

Key Points

2. In considering terms for settlement agreements, severance, early retirement or redundancy packages public bodies should ensure that issues of regularity, propriety and value for money are fully taken into account.

3. Any proposal by constituent parts of the Scottish Administration (including SG Executive Agencies and non-ministerial departments) or bodies sponsored by the SG to offer a financial consideration to secure the voluntary resignation of an employee outwith any existing (and approved) scheme must be approved by the SG Head of HR and relevant SG Finance Business Partner (or equivalent) before any

offer is made, whether orally or in writing. Ministerial views must also be obtained as and when appropriate, including in relation to any potentially high profile cases.

4. Before offering or entering into any settlement agreement, any constituent part of the Scottish Administration (including SG Executive Agencies and non-ministerial departments) or body sponsored by the SG must consult its relevant Sponsor Director or SG lead contact, copying it to the SG Head of HR (as SG coordinator). The response from the SG will be in writing via the relevant Sponsor team or SG contact. **Any questions relating to the terms or value for money of any proposed agreement will be directed to the relevant Accountable Officer for that public body.** Ministerial views must also be obtained as and when appropriate, including in relation to any potentially high profile cases. The body is also required to notify the Sponsor Director or SG lead contact and SG Head of HR once the settlement agreement is finalised; and to provide, where applicable, the associated costs of the settlement agreement.

5. The SG will be entitled to use the fact that a settlement agreement has been entered into to collate and provide information to the Scottish Parliament on the number of settlement agreements and the costs of special payments across the Scottish Administration. Bodies should ensure that the terms of any settlement agreements allow for this.

6. The benefit structure and terms of compensation schemes for severance, early retirement or redundancy provided by SG sponsored bodies - or separately by any constituent parts of the Scottish Administration - should be set by reference to the arrangements in place within the core SG and set out in the [Civil Service Compensation Scheme](#) - as amended or replaced periodically.

7. A SG sponsored body must obtain prior approval from the SG for a new severance, early retirement or redundancy scheme or changes to a previously approved scheme. Approval lasts for the duration of the scheme. In arriving at a decision on approval the SG will consider comparability to SG equivalent schemes and to the overarching Civil Service Compensation Scheme rules currently in force, along with an assessment of the regularity, propriety and value for money offered by the proposals.

8. Constituent parts of the Scottish Administration (including SG Executive Agencies and non-ministerial departments) or bodies sponsored by the SG must report on the use of settlement agreements and compensation for severance, early retirement or redundancy to comply with the specific requirements that exist for annual accounts disclosure (remuneration and relating to exit costs) in the form and to the standard (audited) for [annual accounts](#).

Background

9. In considering terms for settlement agreements, severance, early retirement or redundancy packages - whether compulsory or voluntary - public bodies to which the SPFM is directly applicable should ensure that issues of legal and regulatory compliance, propriety and value for money are fully taken into account, alongside employee relations issues. Specifically:

- public funds must not be used wastefully or to underwrite inequitable or over-generous conditions of service, including severance;
- notice of termination of appointments should not be delayed in order to generate compensation payments in lieu of notice;
- where appropriate, ex-gratia severance or redundancy packages should be based on the arrangements set out within relevant extant terms and conditions of employment. In particular, prior consideration should be given to the availability of pension and compensation benefits within these conditions;
- special payments should be transparent and negotiated in a way which avoids conflicts of interest;
- offers of subsequent employment or consultancy work should be exceptional and only made where they represent value for money; and
- any undertakings about confidentiality should leave transactions open to proper public scrutiny.

Settlement Agreements

10. The term settlement agreement in this guidance refers to any binding agreement between an employer and an employee to settle an employment dispute. Where settlement agreements are entered into they normally relate to the termination of employment but they can also be used to settle disputes during employment which may not result in the individual leaving the organisation. This guidance relates to all settlement agreements regardless of whether the individual remains with or leaves the organisation and regardless of whether or not the employee has commenced a process of litigation against the employer.

Voluntary Resignation

11. Severance, Early Retirement, Redundancy are all defined within the current Section 11 of the [Civil Service Management Code](#). Compensation is not normally payable when someone resigns voluntarily outwith any existing (and approved) scheme. Any proposal by constituent parts of the Scottish Administration (including SG Executive Agencies and non-ministerial departments), bodies sponsored by the SG, or other public bodies for whom the SPFM guidance is applicable to offer a financial consideration to secure the voluntary resignation of an employee in such circumstances must be approved by the relevant SG Finance Business Partner (or equivalent) and SG Head of HR before any offer is made, whether orally or in writing. Ministerial views must also be obtained as and when appropriate, including in relation to any potentially high profile cases.

Business Cases for Settlement Agreements and Voluntary Resignation [N.B. change is to extend business case requirements to Settlement Agreements]

12. Any business case presented for consideration should include;

- an explanation of the circumstances of the case, including the legal assessment of the risk of litigation and likely outcome;

- confirmation that the relevant management procedures have been followed;
- an assessment of the value for money offered by the proposal, including a breakdown of each of the constituent parts of the proposal and any associated contractual entitlements that may be relevant;
- any non-financial considerations, e.g. where it is desirable to end a person's employment but dismissal is not warranted.

13. Compensation should only be offered on a value for money basis with issues of regularity and propriety fully examined, having taken into account normal management procedures, disciplinary action and organisational risk. And even if the cost of defeating an appeal would exceed the cost of a particular settlement it may still be desirable to take the case to formal proceedings.

Compensation Schemes Provided by SG Sponsored Bodies

14. The benefit structure and terms of compensation schemes for severance, early retirement or redundancy provided by SG sponsored bodies - or separately by any constituent parts of the Scottish Administration - should be broadly similar to the arrangements in place within the core SG and set out in the [Civil Service Compensation Scheme](#) - as amended or replaced periodically. A sponsored body must obtain prior approval from the SG for a new scheme or changes to a previously approved scheme. Approval lasts for the duration of the scheme. The business case presented to the SG should include:

- the rationale for introducing / changing the scheme;
- mitigating action already taken or planned to avoid the need for headcount reductions e.g. recruitment freeze, redeployment, reductions in working hours;
- the terms available under the relevant compensation / pension scheme and the rationale for offering any terms other than the contractual minimum;
- the estimated annual costs and savings of the new / revised scheme over the payback period;
- details of how, by whom and over what timescale the costs of the scheme will be funded; and
- the impact that the restructuring / headcount reduction will have on the paybill.

15. In arriving at a decision on approval the SG will consider comparability to SG equivalent schemes and to the overarching Civil Service Compensation Scheme rules currently in force, along with an assessment of the regularity, propriety and value for money offered by the proposals. The SG's consideration of such schemes - coordinated by the sponsoring unit - must include consultation with:

- the Finance Policy Team;
- the relevant Finance Business Partner (or equivalent);

- the Public Bodies Unit;
- Head of HR; and
- the Scottish Public Pensions Agency.

16. It should be assumed that the SG would not be prepared to approve any scheme that involved retention payments designed to encourage key staff to delay their departures.

Employment Law

17. Nothing in this guidance overrides the requirements of extant employment law. In particular, public bodies should have in place robust and transparent Human Resources policies. While employment law applies to employees and not to office holders such as NDPB board members, its principles do offer helpful guidance in dealing with all relevant cases and the same issues apply when assessing value for money in the wider public context. Practical guidance on the application of employment law is provided on the [Business Gateway](#) website.

18. In putting in place arrangements for voluntary exit schemes for severance, early retirement or redundancy and in reviewing employees' terms and conditions generally, bodies to which the SPFM is directly applicable should, as well as ensuring compliance with employment law, consider the interaction of any new proposals with existing contractual terms and the need to ensure flexibility in employment arrangements such that periodic changes to scheme rules can be accommodated.

RESTRICTED – STAFF (WHEN COMPLETE)

BUSINESS CASE FOR SETTLEMENT AGREEMENT OR PROPOSAL TO SECURE A VOLUNTARY RESIGNATION THROUGH THE OFFER OF A FINANCIAL CONSIDERATION

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, copied to Head of HR at HeadofHR@scotland.gsi.gov.uk.

Name of organisation

Senior manager to be contacted

Name

Designation

Email

Phone number

SG Contact or equivalent

Name

Designation

Email

Phone number

SG Sponsor Directorate

SG Sponsor Directorate-General

(for data collection purposes)

Confirm whether this is a proposed Settlement Agreement or a proposal to , offer a financial consideration to secure the voluntary resignation of an employee

Background and circumstances of the case

Risks arising

Confirmation that the relevant management procedures have been followed

An assessment of the value for money offered by the proposal by reference to the completed (attached) Employment Information Schedule

Any non-financial considerations, e.g. where it is desirable to end a person's employment but dismissal is not warranted

Options

Recommendation

Handling / Communications

Signature (email address instead if necessary)

Date

FOR OFFICE USE

Scottish Government Head of HR (or nominee) Comments

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Signature (as email address if necessary)

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Date

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Scottish Government Sponsor Director (or nominee)/SG Lead Contact Comments

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Signature (as email address if necessary)

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Date

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To be returned to the originating organisation by the Scottish Government Sponsor Team with a target for response within 5 working days if the Scottish Government does not find the case to be contentious or novel, or (within 15 working days if there may be elements which are contentious or novel, or if the case is being referred for Scottish Ministers' views.

2. EMPLOYMENT INFORMATION SCHEDULE

Please refer to explanatory notes below before completion as accurately recorded information will reduce processing time.

Explanatory Notes

Items believed to be self-explanatory are indicated by '....'

1. Employee Detail

This section sets out to record some basic information on the employee.

1.1 First name

1.2 Last name

1.3 Job title

1.4 Length of Continuous Service *This means with the same employer. Within the civil service this may span any number of roles and departments / agencies etc. With non-civil service organisations, moving from one body to another often means a change of employer with the start date for continuous service beginning again. If an employment dispute were taken to an Employment Tribunal, length of service might be considered within the decision-making process and the value of any award made to the employee.*

1.5 Full Time Equivalent. *This is calculated by dividing the number of contracted hours for the staff member by the full time hours for the grade. E.g. if contracted hours are 20 per week and full time hours are 37, the Full Time Equivalent is 0.54. Knowing what the contracted hours are as a proportion of full time hours for the grade will assist judgements on reasonableness and proportionality of the proposal.*

1.6 Age

1.7 Current Grade. *This, together with the job title and information on remuneration provides an indication of the level of seniority of the employee within the organisation.*

1.8 Contractual Notice Period (weeks). *Confirms how much notice is due to the employee on termination. This will be the greater of what the employee is entitled to under statute or as set out within their terms and conditions of service.*

2. Employment Benefits and Costs Arising Through Normal Course of Employment

This section sets out to collect information from two perspectives. (1) Before tax and deductions. (2) The total cost of employing the individual. The perspective provided by each measure will help shed light on whether the terms of a proposed Agreement might be seen as reasonable and proportionate.

Remuneration Received by Employee Before Deductions (£)

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. *As at the date the Business Case is signed.*

2.2 Non-consolidated performance related payment received for latest pay year (if any). *Only the most recent payment should be recorded – if the most recent payment was made more than 2 years ago no figures should be entered.*

2.3 Allowances received (value over last 12 months). *There are a number of possibilities, for example, Recruitment & Retention allowances, Market Supplements, on call allowances etc. The value of these should be totalled. Care should be taken to adjust the value of those payments which are claimable on an ad hoc basis and where a number of 'stockpiled' claims have been submitted and processed representing payments due from periods outwith the 12 month timeframe. Similarly any payments that would count within the 12 month timeframe that are due but have not yet been processed through payroll should be taken into account.*

2.4 Overtime payments (value over last 12 months). *Include any payments for working additional hours whether called overtime or not – these should be totalled. Do not include elements such as time in lieu due to the employee as this is covered at Box 4.3. Care should be taken to make adjustments to reflect the correct timing of payments as they should have fallen due within the 12 month period (see 2.3).*

2.5 Any other remuneration received (specify) over last 12 months. *Anything classed as pay not mentioned above.*

Other Benefits Received (please state nil as required)

2.6, 2.7 *There may be other benefits received not already mentioned. Some employers provide for subsidised medical insurance for example.*

Employer On-costs of Remuneration & Benefits Received

2.8 Employer's Pension Contributions. *This is the cost of the employer's contribution to the pension scheme of which the employee is a member. Costs over the last 12 months to be entered.*

2.9 Earnings Related National Insurance Contributions (ERNIC). *Only enter the Employers' National Insurance Contributions costs over the last 12 months.*

2.10 Other (including VAT). *VAT may be payable on benefits that the employer purchases for use by the employee. Costs over the last 12 months to be entered.*

Remuneration Received by Employee After Deductions

3.1 *Remuneration after deductions i.e. (what the employee actually received). Remuneration over the last 12 months to be entered. This is net pay and should exclude payments to the employee for travel, subsistence, expenses, compensation for relocation costs and should add back in voluntary deductions for trade union membership, charitable giving etc. This measure provides an indication of the employee's disposable income after tax; national insurance and pension contributions have been made. It is a useful measure among others against which the reasonableness and proportionality of the proposed value of an agreement can be assessed.*

4. Termination Costs (contractual / through Civil Service Compensation Scheme or Non-Civil Service Employer Equivalent)

4.1 Compensation In Lieu of Notice (CILON). *This is payment to the employee for the balance of any contractual period of notice that remains to be served as at the time of the employee's last day of service. Notice of termination of appointments should not be delayed in order to generate compensation payments in lieu of notice.*

4.2 Payment in Lieu of annual leave untaken. *This is payment to the employee for the balance of any contractual period of annual leave that remains to be taken as at the time of the employee's last day of service. Ideally this should be zero.*

4.3 Other. *For example, payment at the end of employment for Time Off In Lieu that it was not possible for the employee to take.*

Benefits received by employee from Civil Service Compensation Scheme / Non-Civil Service Employer Equivalent (please state nil as required)

Occasionally an employment situation that is subject to a proposal is extant at the time that an employee is leaving through a published Compensation Scheme. If this is the case careful consideration should be given to whether, given the employee's departure on Compensation Scheme terms, a further agreement that involves significant additional and non-contractual benefits for the employee should be pursued.

4.4 Pension / Year. *The estimate of what the employee would receive in pension were they to leave and draw their pension immediately, whether through the Civil Service Compensation Scheme (or other employer's equivalent) or through receiving a pension with an actuarial reduction applied. This should be completed only where the employee would potentially benefit through immediate payment of pension under the pension scheme rules applying to them.*

4.5 Pension Lump Sum. *As 4.4 above.*

4.6 Compensation Lump Sum. *If leaving through the Civil Service Compensation Scheme (or potentially other employer's equivalent), a Compensation Lump Sum may be due calculated on pay and length of service. If leaving through the Civil Service Compensation Scheme and pension and lump sum are to be paid on an unreduced basis, this will require the employee to contribute to making up any shortfall using some or all of their compensation lump sum. If any of this lump sum remains payable to the employee following this contribution being made, the value should be entered in this box. If the employee does not contribute their compensation lump sum in order to receive unreduced pension, the entire value of the lump sum due to them should be entered in the box.*

4.7 Employer cost of making up any pension shortfall (if applicable). *Under the terms of the Civil Service Compensation Scheme (or potentially other employer's equivalent) if the employee opts for an unreduced pension and use of the employee's compensation lump sum is not sufficient to make up any shortfall that exists due to an actuarial reduction, it may be possible for the employer to 'make up' for any reduction that might otherwise be applied to the employee's pension. This requires the employer to pay a lump sum into the Pension Scheme. The value should be recorded here.*

4.8 Other costs (please specify, if any). *For example, pre-retirement course provision etc paid by the employer.*

5. Estimate of Other Relevant Costs

This information helps inform the decision about a proposal by estimating the likelihood of the employer being faced with legal action if not already launched, the chances of the employee being successful and what they might gain as an award from an Employment Tribunal or court. Factored in would be the prospective costs of preparing and defending the case. Estimates are expected to be 'in the round' rather than seeking absolute precision. In some cases it is possible that no legal action from the employee is currently envisaged, in which case this section need not be completed.

5.1 What is the likelihood of the employee pursuing legal redress? (%). *If the employee has already lodged a claim, this will be 100%. If not and in the absence of detailed information, 50% should be assumed. There will be an element of subjectivity where no claim has yet been submitted and it can only be estimated with the best knowledge of those involved in relation to the potential strength of the employee's motivation etc.*

5.2 What is the estimate of their chances of winning their case (%)? In the absence of detailed information, 50% should be assumed. *Legal advisors should be able to indicate.*

5.3 What is the estimate of what the employee might receive if s/he won their case? *While certain kinds of discrimination cases might not have limit of award, in practice public domain data is available that indicates the average award made by Employment Tribunals for such cases. This information should be factored in unless there are clear reasons for doing otherwise.*

5.4 What are the estimated costs of defending a case if one was lodged? Include legal and management costs and any VAT. *The employer's legal advisors should be able to supply an estimate of the potential legal costs. Management costs including preparation of witnesses with legal advisors, appearance at the Tribunal and someone to instruct legal advisors at the hearing can be estimated in round terms.*

Total This weights the estimated costs by the likelihood of a claim being pursued and won by the employee. $(5.1) \times (5.2) \times ((5.3) + (5.4))$.

6. Proposed Terms of Agreement

These should represent the negotiating mandate proposed to be given by the employer to the employer's representative and represents the maximum to be offered during negotiations. Any payments or benefits will be non-contractual in nature, i.e. not receivable in the normal course of employment. Settlement Agreements can be reached without special payments or benefits in some cases.

6.1 Maximum gross value of any lump sum to be offered (£). *Sums of this kind must not be made pensionable under any circumstances as this will greatly inflate costs to the public purse and the costs, correctly calculated, of the agreement, also raising questions of propriety.*

6.2 Net value of any lump sum after any tax deducted. (£). *Sums offered as compensation are not subject to employee National Insurance contributions. Sums of less than £30,000 are not subject to UK income tax. Sums over £30,000 – any excess above £30,000 is taxable (information accurate as at February 2014).*

6.3 Maximum value of employee support for legal assistance (£). *In order to make a Settlement Agreement binding, the employee must receive independent advice from a relevant adviser. Normally this will be a trade union representative trained in the matter, or a legal representative. Advice provided to the employee from a trade union representative of a Trade Union of which s/he is a member should be at no cost. Typically an employer will offer a cost-capped contribution if an employee takes up advice that would otherwise be wholly at their own cost. The financial assistance should be inclusive of VAT. The employee securing independent advice from a relevant advisor is not a statutory requirement in relation to agreements that are not statutory Settlement Agreements. The employer may nonetheless wish to consider offering the facility on the same basis as for a Settlement Agreement if it were to materially assist with reaching an agreement and / or demonstrating that the terms of the agreement were fair.*

6.4 Other (e.g. cost of outplacement support for employee not available through normal course of employment). Include any VAT. *If the individual is leaving through a published Compensation Scheme and s/he would receive support such as for Outplacement or Retirement Preparation through that route in the normal course of events, this cost should not be included here. If this type of support forms part of the terms of the proposal only, it should.*

6.5 What are the estimated costs of negotiating and concluding an agreement if one was pursued?

Include legal and management costs and any VAT.

The employer's 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.

3. EMPLOYMENT INFORMATION SCHEDULE FOR BUSINESS CASE

Please refer to explanatory notes before completion. Use TAB key to navigate.					
Section 1 - Employee detail					
1.1 First name					
1.2 Last name					
1.3 Job title					
1.4 Length of continuous service		years			
1.5 Full Time Equivalent		years			
1.6 Age		years		months	
1.7 Current pay grade					
1.8 Contractual notice period		weeks			
Section 2 - Employment benefits and costs arising through normal course of employment					
Remuneration received by employee before deductions					
2.1 Current annual salary rate					£
2.2 Non-consolidated performance related payment received for latest reporting year (if any)					£
2.3 Allowances received (value over last 12 months)					£
2.4 Overtime payments (value over last 12 months)					£
2.5 Any other remuneration received over last 12 months (specify)					£
Total remuneration received by employee before deductions					£
Other benefits received					
2.6 Benefit 1 (specify)					£
2.7 Benefit 2 (specify)					£
Total other benefits					£
Total remuneration and benefits received by employee before deductions					£
Employer on-costs of remuneration and benefits received					
2.8 Employer's Pension Scheme Contributions					£
2.9 Earnings Related National Insurance Contributions (ERNIC)					£
2.10 Other (including VAT)					£
Total employer on-costs of remuneration and benefits received					£
Total cost to employer of benefits received by employee					£
Section 3 - Remuneration received by employee after deductions					

3.1 Remuneration after deductions					£
Section 4 - Termination costs (contractual / through Civil Service Compensation Scheme / Employer equivalent)					
4.1 Compensation In Lieu of Notice (CILON)					
4.2 Payment in lieu of annual leave untaken					£
4.3 Other (e.g. Time Off In Lieu untaken)					£
Total					£
Benefits received by employee from Civil Service Compensation Scheme / Employer Equivalent (if applicable)					
4.4 Pension / year					£
4.5 Pension lump sum					£
4.6 Compensation lump sum (payable in full if pension not drawn)					£
4.7 Employer cost of making up any pension shortfall					£
4.8 Other costs (specify, if any)					£
Total termination costs					£
Section 5 - Estimate of weighted costs of defending a case					
5.1 What is the likelihood of the employee pursuing legal redress? (%)					%
(In the absence of detailed information, 50% should be assumed.)					
5.2 What is the estimate of their chances of winning their case? (%)					%
(In the absence of detailed information, 50% should be assumed.)					
5.3 What is the estimate of what the employee might receive if s/he won their case?					£
5.4 What are the estimated costs of defending a case if one was lodged?					£
(Include legal and management costs and any VAT.)					
Total estimate of weighted costs of defending a case					£
Section 6 - Proposed terms of agreement					
These should represent the mandate for the maximum to be offered during negotiations.					
6.1 Maximum gross value of any non-contractual sum to be offered					£
6.2 Net value of any non-contractual sum to be offered after any tax deducted					£

6.3 Maximum value of employee support for legal assistance					£
6.4 Other (specify)					£
e.g. cost of outplacement support for employee not available through normal course of employment. (Include any VAT)					
6.5 What are the estimated costs of negotiating and concluding an agreement?					£
Total proposed terms of agreement					£

4. EMPLOYMENT INFORMATION SCHEDULE - FINAL CONFIRMATION OF COSTS

Please refer to Business Case submission for the employee before completion. Use TAB key to navigate.					
NAME OF ORGANISATION					
Section 1 - Employee detail					
1.1 First name					
1.2 Last name					
1.3 Job title					
1.4 Length of continuous service		years			
1.5 Full Time Equivalent		years			
1.6 Age		years		months	
1.7 Current pay grade					
1.8 Contractual notice period		weeks			
1.9 Date employment ended.					
Section 2 - Termination Costs Outturn (contractual / through Civil Service Compensation Scheme / Employer equivalent). See Section 4 of Employment Information Schedule for Business Case submitted in relation to this employee.					
2.1 Compensation In Lieu of Notice (CILON)					£
2.2 Payment in lieu of annual leave untaken					£
2.3 Other (e.g. Time Off In Lieu untaken)					£
Total					£
Benefits received by employee from Civil Service Compensation Scheme / Employer Equivalent (if applicable)					
2.4 Pension / year					£
2.5 Pension lump sum					£
2.6 Compensation lump sum (payable in full if pension not drawn)					£
2.7 Employer cost of making up any pension shortfall					£
2.8 Other costs (specify, if any)					£
Total contractual termination costs					£
Section 3 – Outturn cost - terms of agreement					
3.1 Gross value of non-contractual sum offered (if any)					£
3.2 Net value of non-contractual sum offered after any tax deducted					£
3.3 Outturn cost of employee support for legal assistance					£

3.4 Other (specify)					£
e.g. cost of outplacement support for employee not available through normal course of employment. (Include any VAT)					
3.5 What are the estimated costs of negotiating and concluding an agreement?					£
Total outturn cost - terms of agreement					£

DRAFT INFORMATION SHARING CLAUSE

The Scottish Government will be entitled to use the fact that an 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. The Scottish Government will not however disclose the terms or circumstances of the Agreement or the name of the Employee without the written consent of the Employee or as required by the Scottish Parliament solely for the purposes of Parliamentary scrutiny relating to the use of public money or as required by law.

**LIST OF PUBLIC BODIES AFFECTED BY REVISED REPORTING PROPOSAL
FROM 1 APRIL 2014**

(N.B. this list will be updated from time to time as required)

The Crown Office and Procurator Fiscal Service

Executive Agencies

Accountant in Bankruptcy
Disclosure Scotland
Education Scotland
Historic Scotland
Scottish Prison Service
Scottish Public Pensions Agency
Student Awards Agency for Scotland
Transport Scotland

Non Ministerial Departments (NMDs)

National Records of Scotland
Office of the Scottish Charity Regulator
Registers of Scotland
Scottish Court Service
Scottish Housing Regulator

Public Corporations

Caledonian Maritime Assets Ltd
David MacBrayne Ltd
Highlands and Islands Airports Ltd
Scottish Canals
Scottish Futures Trust
Scottish Water

Executive NDPBs

Architecture and Design Scotland
Bòrd na Gàidhlig
Cairngorms National Park Authority
Care Inspectorate
Children's Hearings Scotland
Creative Scotland
Crofting Commission
Highlands and Islands Enterprise
Loch Lomond and The Trossachs National Park Authority
National Galleries of Scotland
National Library of Scotland
National Museums of Scotland
Police Investigations and Review Commissioner
Quality Meat Scotland
Risk Management Authority
Royal Botanic Garden, Edinburgh
Royal Commission on the Ancient and Historical Monuments of Scotland
Scottish Agricultural Wages Board
Scottish Children's Reporter Administration
Scottish Criminal Cases Review Commission
Scottish Enterprise

Scottish Environment Protection Agency
Scottish Funding Council
Scottish Legal Aid Board
Scottish Legal Complaints Commission
Scottish Natural Heritage
Scottish Qualifications Authority
Scottish Social Services Council
Skills Development Scotland
sportscotland
VisitScotland
Water Industry Commission for Scotland

Advisory NDPBs

Judicial Appointments Board for Scotland
Local Government Boundary Commission for Scotland
Mobility and Access Committee for Scotland
Scottish Advisory Committee on Distinction Awards
Scottish Law Commission
Scottish Local Authorities Remuneration Committee

Tribunals

Additional Support Needs Tribunals for Scotland
Lands Tribunal for Scotland
Mental Health Tribunal for Scotland
Parole Board for Scotland
Private Rented Housing Panel
Scottish Charity Appeals Panel

Health Bodies

Healthcare Improvement Scotland
Mental Welfare Commission for Scotland
NHS 24
NHS Boards
NHS Education for Scotland
NHS Health Scotland Board
NHS National Services Scotland
National Waiting Times Centre Board
Scottish Ambulance Service Board
State Hospital Board for Scotland

Other Significant National Bodies

Drinking Water Quality Regulator
HM Chief Inspector of Constabulary in Scotland
HM Chief Inspector of Prisons in Scotland
HM Chief Inspector of Prosecution in Scotland
Office of the Queens Printer for Scotland
Scottish Roadworks Commissioner
The Scottish Police Authority
The Scottish Fire and Rescue