



## **Settlement Agreements NEU guidance for members in England & Wales**

This fact sheet explains what settlement agreements are, when and why they are used, and the implications of signing one. If your employer, head teacher or principal suggests that you sign a settlement agreement, seek immediate advice from the union; you will find contact details at the end of this guidance.

### **What is a settlement agreement?**

The general rule is that employees cannot lawfully sign away their legal rights. Settlement agreements are an exception to this rule. A settlement agreement is a formal written contract between an employer and an employee. Under the agreement, the employee waives their right to make a claim to a court or employment tribunal on the matters specified in the agreement. The employee waives these rights in exchange for a benefit, usually compensation and an agreed reference. Most settlement agreements include the termination of the employee's employment contract. Settlements exclude claims for accrued pension rights and in most cases exclude claims for personal injury. The agreements are normally the culmination of a number of workplace meetings, discussions or events.

To be valid, a settlement agreement must meet a number of strict legal requirements; crucially, the employee must have received advice from an independent adviser on the terms and effect of signing the agreement.

### **In what circumstances are settlement agreements used?**

Settlement agreements are normally proposed by employers although they can be proposed by employees too. In the education sector, settlement agreements are used most often where teachers are threatened with formal capability or disciplinary procedures; where employers are proposing redundancies; in cases of long-term sickness absence; or where working relationships have broken down irretrievably.

### **What if my employer suggests a settlement agreement?**

Settlement agreements are voluntary; you do not have to agree to one. Neither employees nor employers are obliged to enter into discussions about a settlement agreement or to agree the proposed terms.

If your employer, head teacher or principal suggests a settlement agreement to you, seek immediate advice from the union. You will find contact details at the end of this guidance.

### **What is a protected conversation?**

A protected conversation is the legal term for a discussion held with a view to terminating an employee's contract on agreed terms. The details of these discussions would not be admissible in evidence to a tribunal in a subsequent claim for ordinary unfair dismissal. If your employer, head teacher or principal invites you to have a protected conversation, seek immediate advice from the union.

### **What if I want a settlement agreement?**

If you have an issue at your workplace, discuss your concerns with your workplace rep. Your colleagues may have made similar complaints and you may be advised to tackle the issue with them collectively. If your issue is an individual one, contact the union for further advice. The union will be able to advise what steps you should take – see contact details at the end of this guidance.

### **How is a settlement agreement reached?**

When you seek advice, your caseworker will assess your case and advise you on how to achieve the best available outcome. In some cases there may be more than one outcome available to you; having been advised on the options open to you, it will be a matter for you to decide on what route to take.

If you agree that your caseworker should seek to negotiate a settlement agreement on your behalf, you should keep in touch with your caseworker throughout the process. Your caseworker will ask you to read and confirm that you have read and understood the terms under which they advise you. This will include asking that you do not act contrary to your caseworker's advice. Your caseworker will agree with you the proposed basic terms of the agreement, including particular proposals for any termination date, compensation and any other terms relating to your current role and future career. There will then be a process of negotiation during which both sides make proposals and counter proposals until agreement is reached. Very occasionally the parties will recognise that an agreement is not possible.

Your caseworker will liaise with you on the final terms of the agreement. If you agree to these terms, your caseworker will send the agreement to the NEU's team of certified settlement agreement officers (CSAOs). The CSAOs act as independent advisers. The role of the adviser is to make sure that the agreement is appropriately worded and meets the legal requirements, and to advise you in writing of the consequences of signing the agreement. You will be asked to read the advice carefully and to sign and return the agreement if you agree to the terms.

The settlement agreement becomes a legally binding document when it is signed by all parties to the agreement.

### **How long will it take to get a settlement agreement?**

The length of time that it takes to negotiate and finalise a settlement agreement will vary considerably. The first stage of the process will involve discussions and negotiations between your caseworker and your employer's representative. The next stage will involve legal checks and the formal completion of the settlement agreement. In many cases, a settlement agreement might not be signed off until after a negotiated termination date has passed.

### **Why are there two stages?**

Your caseworker has been trained by the NEU and, as a teacher or educational professional and trade union officer, is the best person to advise and support you, and to negotiate the best deal for you. They will have a working knowledge of local schools and colleges and will have developed a relationship with employers in the area. Your caseworker's role is distinct from the role of the adviser (the CSAO). The adviser's role is to formalise the completion of the agreement and to provide written advice to you on the terms and effect of the agreement, in particular on your rights to take a claim to a tribunal.

### **How would a settlement agreement benefit my employer?**

The main benefit to an employer of signing a settlement agreement is that the employee will not be able to bring an employment tribunal claim about any type of claim which is listed in the agreement. A valid agreement will remove the risk of litigation for the employer.

### **What are the advantages of settlement agreements for teachers and education professionals?**

If you are in dispute with your employer and you wish to leave your job, a settlement agreement might be the best vehicle to secure the most favourable exit for you. In most cases, the advantages of agreeing a settlement is that the employee is able to leave a workplace with the best chance of starting afresh in a new job. A settlement agreement can provide some certainty, a stated sum of money, a defined termination date and a suitable reference.

In some cases, employees can avoid stressful formal disciplinary or capability procedures or other assessments by agreeing a termination under a settlement agreement.

### **What are the disadvantages of settlement agreements?**

Signing a settlement agreement will prevent a teacher or education professional from taking an employment claim to a tribunal.

An employer might not agree to everything that you ask for in a settlement agreement. The terms will be a matter of negotiation between your respective representatives. If you move to a new employer, your continuous service will be broken. Some employment rights and benefits under your contract are determined by how long you have worked for your employer. Employees who move to a new employer will, in most cases, be required to re-build their service before they can benefit from statutory employment protections such as the right to claim unfair dismissal after two years' service. Access to contractual maternity and sick leave and pay might not be available from day one with a new employer. This will depend on the terms of the new employer's sickness and maternity policies.

It is very likely that your employer will insist that you comply with a strict gagging or confidentiality clause that will prevent you from disclosing your settlement and its terms with anyone outside your family and advisers.

### **What is a gagging or confidentiality clause?**

Most settlement agreements include a gagging or confidentiality clause. A confidentiality clause will usually place obligations on you not to disclose the fact that a settlement agreement is being negotiated and/or the terms or subject matter of the settlement agreement. In most cases, you will be prevented from disclosing this information to anyone apart from close members of your family, your advisers in the NEU or for legal or tax purposes, for example, to reveal the terms to HM Revenue & Customs (HMRC). Most clauses apply from the point that negotiations begin and many employers will require you to confirm that you have not disclosed any relevant information before you sign the agreement.

Many confidentiality clauses impose reciprocal obligations on the employer and the employee not to make disparaging remarks about the other party.

The precise obligations to maintain confidentiality will be specified within the settlement agreement; you should follow your caseworker's advice. Care should be taken to understand and comply with the clause, as a breach of confidentiality might invalidate the settlement agreement and allow the employer to claw back a compensation payment.

### **What if I have agreed to leave my job?**

If you have agreed to leave your job, your caseworker will have negotiated a termination date which will be specified in the settlement agreement.

Once the settlement agreement is signed, your employment is treated as having ended from the termination date. Both your and your employer's obligations and entitlements under the contract of employment come to an end on this date.

You will continue to be employed by your employer until your contract is terminated. Some employers insist that employees confirm that, at the time of signing the agreement, they have neither accepted new employment nor started to work for a new employer. Seek advice from your caseworker if you wish to accept a new post or start working for another employer before your settlement agreement has been signed by all parties.

Agreeing to leave your job might mean that you avoid having to attend a workplace investigation, hearing or meeting. Teachers should be aware that if their contract is terminated for reasons relating to child protection, the employer must refer the matter to the Disclosure and Barring Service (DBS) and may refer such matters to the Teaching Regulation Agency (TRA) in England or the Education Workforce Council (EWC) in Wales. Where there has been any other form of serious misconduct (eg financial or exam dishonesty), the employer may refer the matter to the TRA or the EWC. Teachers in these circumstances might avoid a workplace investigation, hearing or meeting but might nevertheless be subject to an assessment by one of the regulatory authorities.

### **What if I do not want to leave my job?**

If you wish to stay in your post, you should let your caseworker know this. Depending on the circumstances of your case, a decision not to agree to the termination of your employment may mean that you will be required to take part in a workplace procedure and/or to participate in investigations and attend hearings.

### **What is an agreed reference?**

An agreed reference is a form of words that the employer agrees to use in the event of a request for a professional reference from a prospective employer. Positive professional references are a valuable part of settlement agreements for teachers and educational professionals.

The clauses in the settlement agreement will specify how and when the employer will use the agreed reference.

Many employers will also agree to the wording and timing of an announcement to the school community to explain your departure.

### **How much compensation will I get and will it be taxable?**

The amount of compensation paid under a settlement agreement varies widely, depending on the nature and seriousness of the dispute between the parties. Your

caseworker will discuss the value of your case with you before beginning to negotiate the deal with your employer.

Whether the compensation is taxable should be discussed by your caseworker and the employer during the negotiations. The answer will depend on the purpose, the amount and the timing of the payment. Most payments will be taken to include a sum that represents notice pay. HMRC will treat this as subject to tax and national insurance. The clauses in the agreement should state clearly whether a payment or part of a payment is intended to be made free from tax and national insurance.

### **Can the terms in a settlement agreement stop me from blowing the whistle?**

Any clause in a settlement agreement which attempts to stop a worker from blowing the whistle – otherwise known as making a protected disclosure – would be void. Such a clause would not prevent a teacher or educational professional from making a protected disclosure. If you have signed a settlement agreement, you are advised to seek advice before making a protected disclosure. For further information on whistleblowing and protected disclosures, see the guidance for members on the NEU website.

### **What if my colleagues have the same dispute as me with my employer?**

Discuss your concerns with your workplace rep. If your colleagues have the same dispute with your employer, a settlement agreement might not be the best solution. You may be advised to tackle the issue with your colleagues collectively. Ask your rep or school or college office for copies of relevant workplace policies, for example, pay policies, capability procedures, redundancy policies.

You or your rep might decide to contact the NEU for further advice. The NEU will be able to advise what steps you should take. You may be advised to lodge a formal grievance or to lodge a collective grievance with your colleagues. This may resolve the issue.

### **What should I do next?**

If your employer, head or principal suggests a settlement agreement to you, seek immediate advice from the NEU.

You may already be in touch with a local NEU caseworker; if so, let them know that your employer has approached you.

Further information and guidance on your rights at work can be found here.

If further advice is needed, contact your NEU workplace rep in the first instance. If there is no NEU rep in your workplace, or the peripatetic nature of your employment makes contact with a workplace rep difficult, contact the NEU Adviceline in England on 0345 811 8111 or NEU Cymru in Wales on 029 2046 5000. Further contact details may be found at: [neu.org.uk/contact-us](https://neu.org.uk/contact-us)