

# Time to say goodbye?

Julia Gray looks at how settlement agreements can be used effectively in social care

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Employing the right people means that dismissing staff is an inevitable – if occasional – part of a manager’s role. Settlement agreements (formerly known as “compromise agreements”) can facilitate a lower-risk and mutually beneficial termination. They are the only legally binding method for staff to waive employment rights, such as the right to claim unfair dismissal or discrimination. Once those rights are waived, they can’t be pursued in a court or tribunal.

Settlement agreements tend to be used where:

- An employee is facing possible dismissal (for example for redundancy, or capability reasons) and wants to leave quietly and with dignity.
- The parties agree to expedite a dismissal process to save cost and minimise stress.
- The parties acknowledge that the employee has been mistreated and want to resolve a potential legal claim by agreeing an out-of-court settlement;
- The parties have amicably agreed to go their separate ways and want to achieve a tax-efficient exit (although the tax rules have changed and they are no longer as efficient as they used to be).
- One or both parties want to keep the circumstances of a dismissal, or events leading up to it, confidential.

A recent report by the Women and Equalities Committee was critical of the use of confidentiality clauses (also known as non-disclosure agreements) where there have been allegations of harassment or other forms of discrimination. It’s possible that settlement agreements will become more regulated in future, as recommended by the report. There are already rules governing settlement agreements; they only have legal effect if they conform

to certain statutory requirements. These requirements change from time to time, so it’s important to ensure that an old agreement you might have used in the past has been updated. In addition, as with any contract, each party must have something to gain from signing a settlement agreement, even if no money changes hands.

As an employer within the care sector, you must be confident that the agreement does not restrict you from complying with reporting obligations to commissioners or regulators. Such considerations may arise, for example, where you are considering a settlement agreement for a nurse or other regulated professional in the context of potential misconduct.

Introducing the idea of a settlement agreement to a member of staff can be daunting, not least because broaching the subject could itself be grounds for complaint. If you’re not sure how to raise it or you are concerned about saying the wrong thing, you could start by looking at the guidance produced by ACAS, but consider whether you need more detailed advice based on your circumstances.

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