

EMPLOYMENT MATTERS COMMITTEE

3 SEPTEMBER 2014

EMPLOYMENT TRIBUNAL SETTLEMENTS

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Summary

This paper outlines the settlements in relation to Employment Tribunal claims over the last 5 years as requested by Full Council on 24 July 2014.

1.0 Budget and Policy Framework

1.1 It is within this Committee's delegations to review this matter and note the types of claims and payments made.

2.0 Background

2.1 The Council has a good record on employment and whilst claims are made against the organization we are generally able to defend them. Out of 25 claims over the last five years the Council has settled 10, won 12 and lost three (which were joint claims).

2.2 On 24 July 2014 Full Council considered a settlement payment to an employee, who was making three separate claims on discrimination and personal injury. These claims were not settled because the merits of the case were weak on the Council's side, but because it made commercial sense to do so. Full Council 'instructed officers to produce a report the Employment Matters Committee detailing Medway Council settlements of employment tribunals for the past 10 years to examine any trends and potential improvements in practice'. Unfortunately records of these tribunals are not held for 10 years, so this paper covers the last 5 years.

3.0 Options and Advice

3.1 As a very large employer the Council will inevitably face employment claims, although the number of these claims is comparatively low. Nationally there has been an increase in tribunal claims of 38% between 2009 and 2011 (Ministry of Justice – Annual Tribunal Statistics). The Council has seen no such increase with claims being on average 5 a year from a workforce of around 3,000. Each claim is reviewed in relation to the merits of the case, the possibility of the Council losing and the cost of defending a claim. The Employment Tribunal expects high standards from the Council in relation to employment and we have to show that in all cases we have done everything

possible to maintain the employment relationship. It is therefore vital that any employment policies are robustly adhered to and managers are strongly advised of this. However there will be occasions where the relationship does break down and the Council always attempts to resolve this amicably where ever possible.

- 3.2 It is important to note that the cost of defending a claim can be expensive both in external costs for legal advice and representation and internal costs in terms of management/staff time and energy. Over the years Employment Tribunals have become increasingly formal and the Council has had to respond to this trend. The cost of legal representation on average is around £2,000 per day and cases can take from 2 to 10 days in Court. It is therefore often cheaper to settle rather than defend the claim, even if the case is strongly in the Council's favour.
- 3.3 In addition it is often difficult to predict the outcome of a case, particularly in relation to discrimination. Cases can often turn on the day depending on the quality of the witnesses and the employee's representative. With discrimination claims, if the claimant establishes that there is sufficient significance to raise a presumption of discrimination the onus then turns on the employer to demonstrate that the actions were not due to the individual's race/gender/age/disability/sexual orientation. To prove a negative in this way is clearly more difficult than to show that your actions were reasonable given the circumstances. In addition compensation for discrimination claims are uncapped and therefore any award can potentially be substantial. It is therefore very difficult to predict the financial liability should a Tribunal find in favour of the employee.
- 3.4 The regulations on tribunal claims have recently changed and individuals are now required to pay an issue fee for the processing of an application, of either £160.00 or £250.00 (depending on the type of claim) and a further hearing fee of either £230.00 or £950.00 (depending on the type of claim) should the claim proceed to a hearing. Previously there was no such payment and therefore individuals had nothing to lose when initially lodging a claim. The Council currently has no outstanding employment tribunal claims.
- 3.5 On analysing the cases there is no particular trend, each case having some very distinct circumstances. Appendix 2 shows the claims to tribunals together with their outcomes. Individual claims are always reviewed and any lessons learnt are fed back to the manager concerned or changes in procedures are made to address any gaps. The main lesson for the Council is to deal with issues quickly as they arise and try and prevent cases dragging on. How to manage effectively is built into many of our training sessions to ensure that managers are proactive when it comes to managing their staff. We have also recently introduced an electronic system (netconsent) whereby staff/managers are all sent new policies to read and confirm they have done so. This is a way of ensuring that everyone understands the employment policies, which affect them.

4.0 Risk management

- 4.1 The risks relating to employment tribunal claims are both financial and reputational. The Council prides itself on being a good employer and always seeks to find a resolution to difficulties.

Risk	Description	Action to avoid or mitigate risk	Risk rating
Possibility of losing an employment tribunal claim	Once a claim is submitted to the tribunal it will have to proceed unless an amicable agreement with the employee can be reached. Discrimination claims can be very costly as the amount of the compensatory award the tribunal can make is unlimited,	<ul style="list-style-type: none"> • Ensure that managers are well versed in employment practice and policies • Review individual claims and assess the merits of the cost and the possible costs and settle if appropriate 	

5.0 Consultation

5.1 All employment policies are agreed by this Committee and subject to consultation with the trade unions.

6.0 Financial and legal implications

6.1 The financial implications of settlements are shown in appendix 1. It is worth noting here that out of the 10 cases settled 4 were less than £5,000, and 4 were less than £10,000. The maximum compensatory award for unfair dismissal can be up to £76,574 and awards could be higher if loss of pay and pension is taken into account. There is no limit to awards for discrimination, and there are a number of cases nationally where nearly £500,000 has been awarded. It is therefore vital that the financial risks of any case are reviewed carefully.

7.0 Recommendations

The Committee is asked to note the contents of this report.

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Background papers

Employee records (exempt)

Appendix 1

Year	Directorate	Settlement £	Claim:	Notes
2009	BSD	2,000	Held: suffered a detriment, made a protected disclosure under s47B ERA 96	Award of court for winning case against Council
2009	RCC	25,590	Held: unfairly dismissed by reason of making a protected disclosure	Award of court for winning case against Council
2009	RCC	29,866	Held: ordinary unfair dismissal	Award of court for winning case against Council
2010	BSD	7,634.05	Disability discrimination, failure to make reasonable adjustments to work pattern	Settled before court
2011	C&A	3,500	Unfair dismissal	Settled before court
2011	C&A	3,750	Unfair dismissal	Settled before court
2011	C&A	3,750	Unfair dismissal	Settled before court
2011	C&A	3,750	Unfair dismissal	Settled before court
2012	RCC	10,000	Unfair dismissal and other complaint	Settled before court
2012	RCC	10,000	Unfair dismissal, Disability discrimination, and failure to make reasonable adjustment under s20 EA10	Settled before court
2013	C&A	17,500	Unfair dismissal	Settlement once hearing had commenced
2014	RCC	25,000	Race discrimination and other complaint	Two claims – personal injury and termination of employment settled before court
2014	C&A	6,0000	Unfair dismissal, race discrimination, owed other payments and other complaint	Settled before court

Employment Cases (last 5 years)

Directorate	Claims	Dismissal	Outcome
BSD	Unfair Dismissal and Sex Discrimination,	On the grounds of ill health, breach of contract and human rights	Struck out – claims outside time limit
BSD	Disability Discrimination and Sex Discrimination	On the grounds of redundancy	Dismissed at the Pre Hearing Review
C&A	Unfair Dismissal and Race Discrimination		Tribunal held that the decision to dismiss was not unfair. Claimant also appealed to the Employment Appeals Tribunal but was unsuccessful.
C&A	Unfair Dismissal	On the grounds of constructive Dismissal	Tribunal held that there was not a constructive dismissal.
C&A	Unfair Dismissal and detriment for Protectect Disclosure	On the grounds of gross misconduct	Tribunal held the decision to dismiss was not unfair.
RCC	Unfair Dismissal	On the grounds of redundancy	Claim was struck off at the Pre Hearing Review.
RCC	Unfair Dismissal and Race Discrimination	On the grounds of redundancy	Claim was struck off at the Pre Hearing Review.
RCC	Unfair Dismissal	On the grounds of redundancy	Tribunal held the decision to dismiss was not unfair. 04.10.13
RCC	Unfair Dismissal	For gross misconduct	Tribunal held the decision to dismiss was not unfair.

Directorate	Claims	Dismissal	Outcome
RCC	Unfair Dismissal	On the grounds of Gross Misconduct	Struck out at Pre Hearing Review
RCC	Unfair Dismissal	On the grounds of selection for redundancy	Claims struck out by the Tribunal on 19.08.13
RCC	Unfair Dismissal, Race Discrimination, Disability Discrimination, Age Discrimination and Protected Disclosure		Some claims struck out and others withdrawn by claimant.
RCC	Disability Discrimination and Unfair Dismissal	On the grounds of ill health capability	Tribunal held that claimant was not dismissed unfairly.