

CHESHIRE EAST COUNCIL

Cabinet

Date of Meeting: 30th June 2015
Report of: Phil Badley
Subject/Title: Notice of Motion – Confidentiality Agreements
Portfolio Holder: Cllr Paul Findlow, Performance

1.0 Report Summary

- 1.1 The purpose of this report is to consider and respond to the following motion which had been moved by Councillor A Moran and seconded by Councillor B Murphy at the Council meeting on 26 February 2015 and referred to Cabinet for consideration:

“Subject to statutory and common law requirements and what can be deemed “good and fair practice in relation to innocent third parties”, this Council calls for an outright ban on Confidentiality Agreements (aka compromise/non-disclosure/gagging agreements), particularly in relation to financial payments by the Council. In the interests of transparency, honesty and public accountability, the Council requests the Cabinet to produce a protocol or policy document for this Council’s approval.”

2.0 Recommendations

- 2.1 That for the reasons set out in this report, Cabinet reject the motion referred to in paragraph 1.1 and retain the Council’s current policy on Settlement Agreements.

3.0 Reasons for Recommendations

- 3.1 This Council does not have any gagging clause included in Settlement Agreements. The right to our whistleblowing procedure is specifically reserved. Settlement Agreements (known as Compromise Agreements until July 2013) are legally binding contracts which are used to end employment on terms agreed with an employee. It is standard good practice for employers to use these when an employee leaves an organisation on voluntary redundancy or following a dispute which has been settled with an agreed payment. A recent survey by XpertHR found that 90% of public sector employers had used Settlement Agreements in the previous twelve months and many private sector employers had also used them, also this was less common in small firms. The survey found

that public sector employers used them as the costs of defending an employment tribunal claim outweighed the cost of using Settlement Agreements.

- 3.2 The Council's Settlement Agreement has been prepared taking full legal and HR advice in accordance with the Council's constitution and Scheme of Delegation.
- 3.3 Guidance for Cheshire East staff states that 'A Settlement agreement is a legally binding agreement. It provides employees with certainty by setting out the details on which voluntary redundancy has been agreed, in return for which the employee agrees not to pursue any claims they may to an Employment Tribunal. It is a requirement of the Settlement agreement for employees to take independent legal advice, either via a solicitor or their trade union. '
- 3.4 The terms agreed by the employer may include an agreed reference as well as a payment and agreed timing of the termination of employment.
- 3.5 The majority of Settlement Agreements used in Cheshire East Council are in redundancy situations.
- 3.6 Whilst the Council's standard settlement agreement does contain a confidentiality clause in relation to the settlement it also states:

Nothing in this clause shall prevent the Employee from making a protected disclosure under Section 43(b) of the Employment Rights Act 1996 and nothing in this clause shall prevent the Employer from making such disclosure as it is required by law to make.

This achieves a balance of consistently protecting the Council's reputation and in some cases preventing the legal costs of a protracted dispute, whilst still protecting the former employee's right to raise critical issues through a whistleblowing route.

- 3.7 The Settlement Agreements used by the Council are raised and drafted in accordance with the Guidance for local authorities "use of severance agreements and off payroll arrangements" issued by DCLG in March 2015.

4.0 Wards Affected

- 4.1 None

5.0 Local Ward Members

- 5.1 None

6.0 Policy Implications

6.1 No change of policy advised.

7.0 Implications for Rural Communities

7.1 None

8.0 Financial Implications

8.1 None

9.0 Legal Implications

9.1 As set out in the main body of the report.

10.0 Risk Management

10.1 The current approach mitigates against claims against the Council and is fair and transparent. It meets employment law and good practice in HR.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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