

**SG ANNUAL REPORT
ON THE USE OF SETTLEMENT AGREEMENTS
APRIL 2020 – MARCH 2021**

Introduction

1. The Scottish Public Finance Manual (SPFM) states that 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. The Scottish Government (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.¹ This report should be seen therefore as the means by which pan Scottish Administration information has been gathered.
2. The SG role in the process (as set out in the SPFM) is one of consultation, advice and reporting. The SPFM supporting guidance on Settlement Agreements clearly states that the final decision as to whether to enter into a Settlement Agreement will rest with the Accountable Officer for the public body. The SPFM also sets out the requirements for annual accounts disclosure in relation to settlement agreements.
3. On 11 June 2014 the SG notified the Public Audit Committee of the implementation of the above mentioned SPFM guidance on Settlement Agreements and undertook to report back to the Committee on the first year of operation of the guidance, spanning the period April 2014 – March 2015.² The first report was submitted in June 2015 and was considered by the Public Audit Committee in February 2016. The Public Audit Committee noted the report in their legacy paper and asked that the SG continue to submit a report annually to the Parliament to be placed in the Scottish Parliament’s information centre, SPICe.³ Reports have been submitted annually and this is the seventh such report.
4. This report continues to fulfil the 2014 commitment and covers pan Scottish Administration information on:
 - The status and use of Settlement Agreements;
 - SG Settlement Agreement guidance and review process;
 - The use of confidentiality clauses;
 - The number and cost of settlements entered into during 2020-21; and
 - Process improvements.

Status and use of Settlement Agreements

5. A Settlement Agreement is a legally binding contract entered into by an employer and employee to resolve an employment dispute. Settlement Agreements are recognised in law and are an accepted part of employment practice. As such, they are the subject of guidance by the Advisory, Conciliation

¹ <http://www.gov.scot/Topics/Government/Finance/spfm/severanceetcterms>

² Written submission from the SG to the Public Audit Committee, 11 June 2014

http://www.scottish.parliament.uk/S4_PublicAuditCommittee/General%20Documents/Written_submission_from_the_Scottish_Government_to_the_Public_Audit_Committee_dated_11_June_2014.pdf

³ 3rd Report, 2016 (Session 4): Session 4 Legacy Paper

<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/97733.aspx#e>

and Arbitration Service (ACAS).⁴ Settlement agreements are specific to an individual case and are separate from more general voluntary severance arrangements which enable organisations to make changes to their workforce by allowing staff the opportunity to leave the organisation with compensation as set out in their compensation schemes.

6. Settlement Agreements are used in circumstances where:
 - a) the employment relationship has broken down or been significantly impaired;
 - b) the situation cannot be remedied through mediation or other personnel processes; and
 - c) alternative routes to resolution would involve disproportionate cost at a tribunal or otherwise at law; and impair the efficient functioning of the service.
7. Consideration of the use of a Settlement Agreement will take into account:
 - a) the direct and indirect costs of alternative proceedings and of any awards that might be made;
 - b) disruption to the effective and efficient operation of the service caused by an on-going dispute and the resultant stress on individuals; and
 - c) the likely timescales involved, against the need to bring matters to a timely conclusion.
8. Scrutiny of Accountable Officer decision making in relation to Settlement Agreements is undertaken because:
 - a) they may involve payments to individuals above and beyond their normal contractual entitlement;
 - b) Parliament and the public will want to be assured that, in all the circumstances of the case, their use was appropriate and reasonable; and
 - c) there is a need to ensure their use does not cut across the important protections offered to whistleblowers.

SG Settlement Agreement guidance and review process

9. Settlement Agreement guidance introduced by the SG in 2014 provides for the central review and reporting of Settlement Agreements and is designed to increase transparency, promote consistency and ensure value for money.
10. The first line of assurance lies with the designated Accountable Officer for each body as set out in the Scottish Public Finance Manual⁵ (SPFM). The SPFM notes that “the essence of the Accountable Officer’s role is a personal responsibility for the propriety and regularity of the finances under their stewardship and for the economic, efficient and effective use of all related resources. Accountable Officers are personally answerable to the Parliament for the exercise of their functions”⁶. The SPFM and supporting guidance makes it clear that final decisions on Settlement Agreements rest with the Accountable Officer.
11. The SPFM and supporting guidance sets out the process for interaction between a designated Accountable Officer and the SG, and requires the relevant body to consult the SG before entering into a Settlement Agreement and to submit a business case.
12. The bodies covered by the reporting procedure in the SPFM and supporting guidance are set out at Annex A. For NHSScotland bodies, the reporting procedure follows a similar process and is overseen

⁴ ACAS statutory code of practice on Settlement Agreements. https://www.acas.org.uk/media/3725/Code-of-Practice-on-settlement-agreements/pdf/11287_CoP4_Settlement_Agreements_v1_0_Accessible.pdf

⁵ <http://www.gov.scot/Topics/Government/Finance/spfm/Intro>

⁶ <http://www.gov.scot/Topics/Government/Finance/spfm/Accountability>

by Director General Health and Social Care / Chief Executive of NHSScotland. As noted in the 2014-15 year report, scrutiny and oversight for the college sector is delegated to the Scottish Funding Council (SFC).

Confidentiality clauses

13. At the request of the employee or their legal representative, Settlement Agreements may include a voluntary provision whereby the parties agree to keep the agreement itself confidential and not disclose its details to third parties. Inclusion of such a clause protects the rights of the employee who may have legitimate concerns that disclosure of the terms and circumstances of the agreement and their identity would impact negatively on their privacy and employability. The ACAS guidance provides a model Settlement Agreement which includes a standard confidentiality clause⁷.
14. Nothing, however, in a Settlement Agreement can prevent the individual from making a protected disclosure under whistleblowing legislation. 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).

Information sharing

15. In presenting material we are mindful of the need to respect the confidentiality of Agreements and the general entitlement of individuals to privacy. We have thus provided information on the number of Settlement Agreements entered into and the costs involved.
16. Disclosing the name of the body entering into the agreement alongside the cost may disclose the name of an individual. As with the previous reports, an anonymised breakdown of each of the agreements and the associated costs is thus provided at Annex B.

Numbers and costs of settlements

17. Headline costs and number of Settlement Agreements for 2020-2021 are set out below. A full anonymised breakdown is provided at Annex B.
18. **Table of Agreements and associated costs (to nearest £)**

Oversight Body	Number of Agreements	Number of bodies	Total gross cost (£)	Non-contractual element	Number of confidentiality clauses used
SG and Public bodies	26	13	492,122	356,801	12
NHSScotland	23	11	724,161	681,071	0
Scottish Funding Council	23	8	406,224	333,009	11
TOTALS	72	32	1,622,507	1,370,881	23

⁷ [https://www.acas.org.uk/media/3736/Settlement-Agreements-A-guide/pdf/Settlement agreements Dec 18.pdf](https://www.acas.org.uk/media/3736/Settlement-Agreements-A-guide/pdf/Settlement%20agreements%20Dec%2018.pdf)

19. The costs above include the total gross cost of the Settlement Agreement to the employer, including the contractual and non-contractual payments made to the employee and ancillary costs, such as the cost of negotiating and concluding the settlement and any legal costs.
20. Contractual payments are those to which the employee is legally entitled. These will include payments on termination, such as notice payments and pay in lieu of time owed. They will also include any lump sum and pension payments to which the employee is entitled on termination of employment through the Civil Service Compensation Scheme or an equivalent scheme.
21. Non-contractual payments are those offered in order to resolve the employment dispute.
22. The level of proposed non-contractual payment is included in the draft business case submitted for consideration. This is weighed against the risks and costs of not entering into a Settlement Agreement, as set out in paragraph 7 above.
23. Employment disputes are fact and case specific, and the number of settlements (and overall cost) reported in a given year will fluctuate relative to the number of employment disputes in that year across the range of bodies. The objective here is to ensure that business cases for settlement are scrutinised effectively and that robust controls are in place rather than to reduce the number of cases. The business case process aims to ensure that these are the best value conclusions to disputes. While the number of cases this year has increased (from 67 to 72) we would not draw inference from this fact or assume that it will, or should, continue in future years.
24. When considered against the overall size of the public sector workforce and the number of leavers per annum however, it is clear that, Settlement Agreements are used only in very limited circumstances.

Governance and process improvements

25. Scottish Ministers considered wider severance issues and consulted on 'A Severance Policy for Scotland' in 2017. As a result of this consultation, and wider public and parliamentary scrutiny through the Public Audit and Post-legislative Scrutiny (PAPLS) Committee, the severance policy was amended through an update to the SPFM on 27 September 2019. The new policy includes an administrative exit payment cap of £95,000 ensures that payback periods for voluntary exit schemes do not exceed 24 months and introduces improved governance of cases. The policy applies to Settlement Agreements made after 27 September 2019 and retains provision for the central review and reporting of Settlement Agreements as set out in paragraph 9 above.

SG periodically reviews the guidance given to NHSScotland (as outlined in paragraph 12). The guidance within SG itself (for SG overseen bodies) has been similarly refreshed and clarified. SG itself continues to engage with Internal Audit to provide assurance on the processes surrounding the scrutiny of data. For the period April 2020 – March 2021 Internal Audit have provided a substantial assurance opinion, the top assurance level available, noting that controls are robust and well managed and risk, governance and control procedures are effective in the delivery of the scrutiny and challenge function and collective oversight.

26. **Colleges**

Colleges make a vital contribution to the SG's commitment to improving the lives and employability of all Scotland's people. Effective governance is fundamental in supporting colleges to improve the life chances of their students and the performance of businesses.

The college sector has embraced the need to focus on achieving the highest standards of governance.

A 'Code of Good Governance for Scotland's Colleges' has been developed and the sector's Good Governance Steering Group continues to meet to oversee its implementation and review.

The SFC is continuing to work with colleges to ensure that College board activities are sufficiently transparent, in line with the requirements of the Code, and the SFC continues to keep its guidance around settlement and severance arrangements to the college sector under review.

27. **Cases Exceeding £95,000**

The SPFM outlines where an organisation considers that there are compelling reasons that the exit payment cap of £95,000 cannot be applied, a full business case must be submitted outlining the reasons for this. Ministerial views must be obtained if this situation arises. For the 2020-2021 reporting year, two cases exceeded this cap with a total sum of £150,750 and £121,322 respectively. Ministerial approval was granted for these cases.

Conclusion

28. SPICe are asked to note this report.

**LIST OF PUBLIC BODIES COVERED BY REVISED REPORTING PROPOSAL
FROM 1 APRIL 2020 – 31 MARCH 2021**

[N.B. this list will be updated from time to time as required]

Scrutiny and oversight for the **college sector** is delegated to the **Scottish Funding Council (SFC)**

Scottish Government

The Crown Office and Procurator Fiscal Service

Executive Agencies

Accountant in Bankruptcy
Disclosure Scotland
Education Scotland
Forestry and Land Scotland
Scottish Forestry
Scottish Prison Service
Scottish Public Pensions Agency
Student Awards Agency for Scotland
Social Security Scotland
Transport Scotland

Non Ministerial Offices (NMOs)

Food Standards Scotland
National Records of Scotland
Office of the Scottish Charity Regulator
Registers of Scotland
Revenue Scotland
Scottish Courts and Tribunals Service
Scottish Housing Regulator
Scottish Fiscal Commission

Public Corporations

Caledonian Maritime Assets Ltd
Glasgow Prestwick Airport
Scottish Water
Crown Estate Scotland

Executive NDPBs

Accounts Commission for Scotland
Architecture and Design Scotland
Bòrd na Gàidhlig
Cairngorms National Park Authority
Care Inspectorate
Children's Hearings Scotland
Community Justice Scotland
Creative Scotland
Crofting Commission
David MacBrayne Ltd
Ferguson Marine (Port Glasgow) Ltd
Highlands and Islands Airports Ltd
Highlands and Islands Enterprise
Historic Environment Scotland
Independent Living Fund Scotland
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
Scottish Agricultural Wages Board
Scottish Canals
Scottish Children's Reporter Administration
Scottish Criminal Cases Review Commission
Scottish Enterprise
Scottish Environment Protection Agency
Scottish Funding Council
Scottish Futures Trust
Scottish Land Commission
Scottish Legal Aid Board
Scottish Legal Complaints Commission
Scottish National Investment Bank
NatureScot (replaced Scottish Natural Heritage)
Scottish Qualifications Authority
Scottish Social Services Council
Skills Development Scotland
Sportscotland
South of Scotland Enterprise Agency
VisitScotland
Water Industry Commission for Scotland

Advisory NDPBs

Judicial Appointments Board for Scotland
Boundaries Scotland
Mobility and Access Committee for Scotland
Poverty and Inequality Commission for Scotland
Scottish Advisory Committee on Distinction Awards
Scottish Commission on Social Security
Scottish Law Commission
Scottish Local Authorities Remuneration Committee

Tribunals

First-tier Tribunal for Scotland
Parole Board for Scotland
Upper Tribunal for Scotland

Health Bodies

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

Colleges

Ayrshire College
Borders College
City of Glasgow College
Dumfries and Galloway College
Dundee and Angus College
Edinburgh College
Fife College
Forth Valley College
Glasgow Clyde College
Glasgow Kelvin College
Inverness College

Lewis Castle College
Moray College
New College Lanarkshire
North East Scotland College
North Highland College
Orkney College
Perth College
Sabhal Mor Ostaig
Shetland College
South Lanarkshire College
West College Scotland
West Highland College
West Lothian College

Parliamentary Commissioners and Ombudsmen

Children & Young Peoples Commissioner Scotland
Commissioner for Ethical Standards in Public Life in Scotland
Scottish Biometrics Commissioner
Scottish Human Rights Commission
Scottish Information Commissioner
Scottish Public Services Ombudsman
Standards Commission for Scotland

Other Significant National Bodies

Audit Scotland
Convener of School Closure Review Panels
Court of Lord Lyon
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
HM Fire Service Inspectorate in Scotland
Justices of the Peace Advisory Committee (6 bodies)
Office of the Queens Printer for Scotland
Scottish Roadworks Commissioner
The Scottish Police Authority
The Scottish Fire and Rescue Service

LIST OF AGREEMENTS AND COSTS

TABLE A: All Agreements in cost order
(including SG and public bodies, NHSScotland and Further Education colleges)

Number	Overall cost (£)	Contractual cost (£)	Non contractual cost (£)	Ancillary costs (£)	Confidentiality Clause used
1a	1,500	0	1,500	0	N
2a	2,299	0	1,799	500	N
3a	2,500	0	2,000	500	N
4a	2,500	0	2,000	500	N
5a	2,901	401	2,000	500	Y
6a	2,960	0	2,610	350	N
7a	3,314	1,258	1,636	420	N
8a	3,942	2,566	1,016	360	N
9a	4,853	2,110	2,323	420	N
10a	4,913	2,913	2,000	0	Y
11a	5,000	0	5,000	0	N
12a	5,000	0	5,000	0	Y
13a	5,750	0	5,750	0	Y
14a	6,388	2,008	3,960	420	N
15a	7,093	2,093	5,000	0	N
16a	7,500	0	7,000	500	N
17a	7,850	0	7,500	350	N
18a	8,384	0	8,000	384	N
19a	8,500	0	8,000	500	N
20a	8,500	0	8,000	500	N
21a	9,000	0	8,500	500	N
22a	9,750	0	9,000	750	N
23a	10,500	0	10,000	500	N
24a	10,500	0	10,000	500	N
25a	10,704	0	10,404	300	Y
26a	10,919	3,309	7,190	420	N
27a	11,258	3,634	7,204	420	N
28a	11,589	2,839	8,750	0	N
29a	12,500	0	12,500	0	Y
30a	12,964	1,914	10,000	1,050	Y
31a	13,228	0	12,228	1,000	N
32a	13,355	5,246	8,109	0	N
33a	13,587	4,730	8,437	420	N
34a	13,750	0	13,750	0	Y
35a	14,297	0	14,047	250	Y
36a	15,480	12,533	2,467	480	Y
37a	15,500	0	15,000	500	N
38a	15,500	0	15,000	500	N
39a	18,113	14,501	2,342	1,270	Y
40a	18,912	11,929	6,563	420	N
41a	18,945	3,195	15,000	750	N
42a	20,000	0	20,000	0	N
43a	22,000	0	20,000	2,000	N

Number	Overall cost (£)	Contractual cost (£)	Non contractual cost (£)	Ancillary costs (£)	Confidentiality Clause used
44a	22,817	0	22,567	250	Y
45a	23,502	5,109	18,143	250	Y
46a	23,646	7,428	15,798	420	N
47a	24,811	2,958	21,603	250	Y
48a	25,000	0	25,000	0	N
49a	25,308	0	25,008	300	Y
50a	25,590	0	25,340	250	Y
51a	26,646	8,646	18,000	0	Y
52a	28,250	0	27,500	750	N
53a	28,281	5,281	22,500	500	N
54a	28,306	0	28,056	250	Y
55a	28,727	3,137	25,340	250	Y
56a	28,861	19,174	9,267	420	N
57a	29,482	14,482	10,000	5,000	N
58a	29,500	3,450	26,050	0	Y
59a	30,000	0	30,000	0	Y
60a	30,760	16,549	13,611	600	N
61a	30,800	0	30,000	800	N
62a	32,000	0	32,000	0	N
63a	32,432	0	30,521	1,911	N
64a	36,787	10,465	25,902	420	N
65a	38,880	0	38,580	300	Y
66a	45,480	7,852	37,148	480	Y
67a	51,500	0	50,000	1,500	Y
68a	52,772	11,382	41,040	350	N
69a	60,800	0	60,000	800	N
70a	85,500	0	85,000	500	N
71a	121,322	0	118,322	3,000	N
72a	150,750	0	150,000	750	N

TABLE B: NHSScotland Agreements in cost order

Number	Overall cost (£)	Contractual cost (£)	Non contractual cost (£)	Ancillary costs (£)	Confidentiality Clause used
1b	2,500	0	2,000	500	N
2b	2,500	0	2,000	500	N
3b	7,500	0	7,000	500	N
4b	8,384	0	8,000	384	N
5b	8,500	0	8,000	500	N
6b	8,500	0	8,000	500	N
7b	9,000	0	8,500	500	N
8b	9,750	0	9,000	750	N
9b	10,500	0	10,000	500	N
10b	10,500	0	10,000	500	N
11b	13,228	0	12,228	1,000	N
12b	15,500	0	15,000	500	N
13b	15,500	0	15,000	500	N
14b	18,945	3,195	15,000	750	N
15b	22,000	20,000	0	2,000	N
16b	28,250	0	27,500	750	N
17b	30,800	0	30,000	800	N
18b	32,432	0	30,521	1,911	N
19b	51,500	0	50,000	1,500	N
20b	60,800	0	60,000	800	N
21b	85,500	0	85,000	500	N
22b	121,322	0	118,322	3,000	N
23b	150,750	0	150,000	750	N

TABLE C: Further Education College Agreements in cost order

Number	Overall cost (£)	Contractual cost (£)	Non contractual cost (£)	Ancillary costs (£)	Confidentiality Clause used
1c	2,299	0	1,799	500	N
2c	3,314	1,258	1,636	420	N
3c	4,853	2,110	2,323	420	N
4c	5,000	0	5,000	0	N
5c	6,388	2,008	3,960	420	N
6c	10,704	0	10,404	300	Y
7c	10,919	3,309	7,190	420	N
8c	11,258	3,634	7,204	420	N
9c	12,964	1,914	10,000	1,050	Y
10c	13,355	5,246	8,109	0	N
11c	13,587	4,730	8,437	420	N
12c	14,297	0	14,047	250	Y
13c	18,912	11,929	6,563	420	N
14c	22,817	0	22,567	250	Y
15c	23,502	5,109	18,143	250	Y
16c	23,646	7,428	15,798	420	N
17c	24,811	2,958	21,603	250	Y
18c	25,308	0	25,008	300	Y
19c	25,590	0	25,340	250	Y
20c	28,306	0	28,056	250	Y
21c	28,727	3,137	25,340	250	Y
22c	36,787	10,465	25,902	420	N
23c	38,880	0	38,580	300	Y

TABLE D: SG and other public bodies Agreements in cost order

Number	Overall cost (£)	Contractual cost (£)	Non contractual cost (£)	Ancillary costs (£)	Confidentiality Clause used
1d	1,500	0	1,500	0	N
2d	2,901	401	2,000	500	Y
3d	2,960	0	2,610	350	N
4d	3,942	2,566	1,016	360	N
5d	4,913	2,913	2,000	0	Y
6d	5,000	0	5,000	0	Y
7d	5,750	0	5,750	0	Y
8d	7,093	2,093	5,000	0	N
9d	7,850	0	7,500	350	N
10d	11,589	2,839	8,750	0	N
11d	12,500	0	12,500	0	Y
12d	13,750	0	13,750	0	Y
13d	15,480	12,533	2,467	480	Y
14d	18,113	14,501	2,342	1,270	Y
15d	20,000	0	20,000	0	N
16d	25,000	0	25,000	0	N
17d	26,646	8,646	18,000	0	Y
18d	28,281	5,281	22,500	500	N
19d	28,861	19,174	9,267	420	N
20d	29,482	14,482	10,000	5,000	N
21d	29,500	3,450	26,050	0	Y
22d	30,000	0	30,000	0	Y
23d	30,760	16,549	13,611	600	N
24d	32,000	0	32,000	0	N
25d	45,480	7,852	37,148	480	Y
26d	52,772	11,382	41,040	350	N