

[3] On 19 August 2014, Ms Davidson filed a further statement of problem in the Authority seeking a compliance order in respect of a number of other alleged breaches of the Settlement.

[4] Mr Kelly filed a statement in reply on 9 September 2014 in which he contends that there has been a variation of the Settlement.

[5] On 25 September 2014, the Authority convened a telephone conference with Matthew Blomfield, representative for Ms Davidson and Michael Locke, counsel for Mr Kelly. During the course of the telephone conference it became clear that in the months since the Settlement was signed, the parties have re-negotiated a number of its terms but have not done so pursuant to s.149 of the Act.

[6] It is my view that the Authority does not have jurisdiction to enforce the re-negotiated settlement under s.151 of the Act as sought by Ms Davidson because it does not constitute a settlement under s.149 of the Act.

[7] In the event I am incorrect in this view, I determine that the terms of the Settlement which Ms Davidson now seeks to enforce are not terms which the Authority has jurisdiction to enforce.

[8] Terms (abbreviated) include:

- A requirement that Mr Kelly pay the balance of a mortgage owing against a property owned by a Trust and to procure a discharge of the mortgage;
- That Mr Kelly is to sign an agreement for sale and purchase whereby he will unconditionally purchase the property;
- That Mr Kelly is to use his best endeavours to procure repairs to the property as a result of current lack of weathertightness, repair ceilings, return the property to its original condition;
- Mr Kelly and Ms Davidson to ensure the resignation of Mr Kelly as a trustee of a Trust, Ms Davidson to have sole power of appointment of trustees and replacement trustees;

- The replacement trustees to be responsible for Council rates, body corporate levies and other obligations in respect of the property.

[9] There are further terms in the Settlement in relation to second mortgages being secured by caveats, default interest rates and the transfer of shares in development companies owned by the parties.

[10] These issues are in my view commercial issues between the parties, the resolution of which are for courts of civil jurisdiction, not a specialist employment tribunal such as the Authority.

[11] The object of the Act is “*to build productive employment relationships through the promotion of good faith in all aspects of the employment environment and of the employment relationship*”. Section 161 of the Act sets out the types of employment relationship problems the Authority has exclusive jurisdiction to determine. These problems do not include what are in effect commercial or property related matters.

[12] For these reasons, Ms Davidson’s application for compliance is struck out.

Costs

[13] There is no order as to costs.

Anna Fitzgibbon
Member of the Employment Relations Authority