Settlement Agreements Policy

If you have difficulty with reading this policy, including any difficulties with sight or hearing, or if you require this document translated into another language, please contact us and we will be happy to provide this information in a format that suits your needs.

Reviewed: October 2024 Date Of Next Review: October 2029 Policy Number: HR23

Our Vision, Our Values, Our Strategic Objectives

Our Vision
A vibrant neighbourhood where everyone can prosper

Our Values
Caring, Reliable, Fair, Open and Adaptable

Our Strategic Objectives



Equality and Diversity Statement

Elderpark Housing are committed to ensuring people or communities do not face discrimination or social exclusion due to any of the following protected characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion and belief; sex or sexual orientation.

This document complies with our Equality and Diversity Policy.
We will regularly review this Policy and consider any equalities implications taking the necessary action to address any inequalities (either directly or indirectly) that result from the implementation of this Policy.

Executive Summary

Policy Author

The Chief Executive Officer has developed this policy on behalf of the organisation and it applies to all committee members and all employees of Elderpark Housing.

Purpose of the Policy

The purpose of this policy is to set out Elderpark Housing's approach to the use of Settlement Agreements in a way which is fully compliant with employment law, the regulatory requirements and good practice guidelines.

Aims and Objectives of the Policy

To provide information on what Settlement Agreements are and how and when they can be used to end the employment relationship in a mutual way, where employment relations concerns arise in the workplace. Also, this policy sets out the process for agreeing and making payments, and for obtaining the necessary approval ensuring transparency in all aspects of the process ensuring full compliance with all legal and statutory obligations.

Legislative and Regulatory Compliance

Employment Rights Act 1996 section 111A

In terms of the regulatory framework produced by the Scottish Housing Regulator, the Settlement Agreements policy is developed to meet the following standard:

Standard 5

'The RSL conducts its affairs with honesty and integrity'

5.7 *Severance payments are only made in accordance with a clear policy, which is approved by the governing body, is consistently applied and is in accordance with contractual obligations. Such payments are monitored by the governing body to ensure the payment represents value for money. The RSL has considered alternatives to severance, including redeployment.*

5.8 *Where severance payment is accompanied by a settlement agreement, the RSL does not use this to limit public accountability or whistleblowing. The RSL has taken legal advice before entering into a settlement agreement.*

Equalities

Elderpark Housing will ensure there is a consistent approach in promoting equality and diversity across all areas of our business, which will be embedded within our policies and will be administered in accordance with this policy.

Privacy

This document fully complies with General Data Protection Regulations (2018) and will be published on our website.

Related Policies

Policy Title	Location
Entitlements, Payments and Benefits	M:\Governance\Policy\Updated policies\Governance\G16 Entitlements, Benefits and Payments
Data Protection Policy	Under Review
Equality and Diversity Policy	M:\Governance\Policy\Updated policies\Governance\G13 Equality and Diversity

1. Introduction

1.1 Elderpark Housing expects that its existing range of employment policies will be able to successfully resolve the huge majority of workplace disputes and business challenges we may face. However, we also acknowledge that there may be occasions when "Settlement Agreements" can or should be considered when unique and challenging situations occur that our policies do not directly provide for arise.

1.2 Our aim is to resolve disputes sensibly and thus minimise the use of Settlement Agreements. Where they are used, we will ensure that conditions contained within them are restricted to those necessary to deal with the industrial relations, business challenge and employment law issues concerned. We will also seek to ensure that any agreement we propose has considered value for money both directly and indirectly.

1.3 Elderpark Housing has adopted an Entitlements, Payments & Benefits policy based on the Scottish Federation of Housing Associations' model policy. This model policy is endorsed by the Scottish Housing Regulator (SHR) as meeting its requirements to have a policy that sets out what payments and benefits Elderpark Housing will permit, and to ensure that these arrangements demonstrate transparency, honesty and propriety.

1.4 Under this policy, all entitlements, payments and benefits arising from the contract of employment are permitted. Conversely, payments proposed to be made to employees that are outside the terms of their contract of employment are not normally permitted. Some such payments, such as voluntary severance payments, can be approved, provided that certain conditions are met.

1.5 The purpose of this Policy is to make the process for agreeing and making payments, and for obtaining the necessary approvals, absolutely clear and thus avoiding any improperly authorised payments being made.

2. Background

2.1 Settlement Agreements (formerly known as Compromise Agreements) are one way in which employers and employees (or former employees) mutually agree to deal with local disputes and business challenge issues that may otherwise have had potential to reach an Employment Tribunal (or other court).

2.2 Settlement Agreements will often be used to bring the employment relationship to an end in a conclusive and binding manner. However, they can also be used to deal with other types of workplace issue we may have from time to time, such as changes to working patterns; disputes over overtime arrangements; introduction of new grading systems and similar or a particular circumstance where it could be considered to be in both the employer and employees' best interests, for example

an issues which requires to be sensitively handled and is / has the potential to have a detrimental impact on the operations of the associations activities.

2.3 A voluntary severance payment can be made to an employee outside the terms of their contract of employment provided that the following conditions are met:

- Appropriate legal or independent human relations advice has been sought which considers the approach the most suitable method to deal with the particular situation

- The payment arises directly from a decision to terminate the employee's contract of employment

- The payment is specifically approved by the staffing sub-committee or in their absence an agreed panel of management committee members

- The total sum of the non-contractual payment/benefit does not exceed, in the opinion of our specialist legal/employment advisor, the total cost of a successful application by the employee to a Court or Tribunal (including the likely level of compensation that might be awarded by a court or tribunal and associated costs to Elderpark Housing to participate in the tribunal)

- Payment does not exceed the equivalent of one year's salary for the employee

- That this payment is instead of (rather than additional to) any redundancy entitlement

2.4 We would generally expect our existing policies such as Redundancy, Retirement, Grievance, Discipline, Company Sick Pay, Notice Provisions and similar; along with, our local/national negotiating framework(s) - to provide methods to deal with the majority of such matters however it is recognised that situations can (and will arise) in the workplace from time to time whereby the approach taken may require to differ.

2.5 However, without implying any sense of entitlement, we do nonetheless reserve the right to resolve employment disputes using Settlement Agreements where we consider it sensible to do so. For example, we may include our using these as a further safeguard in cases of mass redundancies. We may also consider their use where the employment relationship with one of our employees has irretrievably broken down; or, where it has broken down between employees – and where none of our existing policies offer an obvious method to resolve the problem.

2.6 We accept that in all cases any agreement struck must be entered into voluntarily by the employee(s), and that they must also have received suitable advice from an appropriately qualified and indemnified person.

3. Process of Using Settlement Agreements

3.1 In almost all circumstances where a 'Settlement Agreement' is considered to be the most suitable approach the following process outlined below will be undertaken.

3.2 Please note however that the process is outlined on the assumption that the Chief Executive is not the employee who the 'protected conversation' is with as in this instance it will revert to the Chairperson and any other committee members together with appointed external support. For the purposes of this policy it will focus on the process being undertaken by the Chief Executive under delegated authority following approval from the Staffing Sub-Committee or in their absence representatives of the management committee.

3.3 The Chief Executive will prepare a report (with support where required from external advisors) for discussion with the Staffing Sub-Committee or in their absence members of the Management Committee (excluding the Chair who remains removed from the process in the event of any appeal or challenge by the employee).

3.4 Due regard will have been given to the Scottish Housing Regulators Regulatory Framework and in particular Regulatory Standard 5 and the following sections contained within it:

- Severance payments are only made in accordance with a clear policy which is approved by the governing body, is consistently applied and is in accordance with contractual obligations. Such payments are monitored by the governing body to ensure the payment represents value for money. The RSL has considered alternatives to severance, including redeployment
- Where a severance payment is accompanied by a settlement agreement the RSL does not use this to limit public accountability or whistleblowing. The RSL has taken professional legal advice before entering into a settlement agreement.

3.5 In addition, in line with the Scottish Housing Regulators Notifiable Events guidance any decision to progress with a Settlement Agreement as the desired approach, will be reported as a notifiable event and information provided to the Scottish Housing Regulator on the rationale and the process.

3.6 Once the decision has been taken to explore a Settlement Agreement including the maximum sums and terms approved by the Staffing Sub-Committee, the process is delegated to the Chief Executive who will have the autonomy to formally enter into a 'protected conversation' and undertake discussions and negotiations with an employee about a possible Settlement Agreement right through to the concluding the agreement on behalf of the association.

3.7 In arranging and conducting such discussions, and confirming any agreements in writing, the Chief Executive should have regard to the guidance set out in the ACAS publication, "Settlement Agreements: A guide", and to any specific advice received from specialist employment advisors.

3.8 At the start of any 'Protected Conversation' the Chief Executive will make clear that such discussions are confidential and "without prejudice" through Section 111 of the Employment Rights Act 1996 and they will ensure that the employee understands what a 'protected conversation' is with the main purpose of a Settlement Agreement being that the staff member waives their rights to make a claim to Employment Tribunal for unfair dismissal. The employee is reminded that this discussion is private and confidential and should not be discussed outwith their legal representation and immediate family members and that any breach of this confidentiality may result in the settlement agreement being withdrawn.

3.9 The employee will be given reasonable and sufficient time by the association to make a decision. In line with the ACAS Code of Practice on Settlement Agreements (under section 111a of the Employment Rights Act 1996'), this is generally considered to be up to ten working days unless the parties agree between them otherwise.

3.10 Upon reaching agreement with the employee on the proposed severance payment, any contractual sums the employee is entitled to and a proposed termination date the Chief Executive will instruct the associations solicitor to draft the agreement for the association to provide to the employee.

3.11 We acknowledge that no agreement may be struck unless the employee(s) concerned have received advice from a suitably qualified and indemnified adviser – such as an authorised/certified trade union person; an authorised/certified advice worker; or a lawyer. We will not permit the employee to use any adviser who is also acting for us. Where the adviser charges the employee a fee, we will cover that cost up to the value of £500 plus VAT. Where the fee is higher than this, then the employee will be responsible for paying the balance. Such sum as we pay in this regard will be over and above the overall limits we have earlier set out.

3.12 The following section outlines the particular components of a settlement agreement with regards to the monetary, references and confidentiality aspects of any agreement.

4. Components of any Settlement Agreement

4.1 While Settlement Agreements are usually designed to bring the employment relationship to an end there may be disputes or particular changes to an employee's contract in which employees are remaining in our employment. In this circumstance there can be occasions where this may be settled with a variety of monetary and/or other provisions as are pertinent to the matters at hand – overtime pay rates may be altered; small monetary sums may be agreed to effect a change in working practices;

changes to shift working patterns may be agreed, and such like. These forms of 'compensatory payments' will be infrequent and will be agreed by the Staffing Sub-Committee with only limited use of this undertaken and a legally binding change will be documented.

4.2 Where either a dispute or another valid reason results in the employee leaving our employment (or a similar issue with a former employee resulting in their waiving any rights to approach an employment tribunal) the main tool in settling the matter will generally be to pay an agreed financial sum to the employee. In this regard we will always aim to keep such payments reasonably low (albeit keeping in mind the depth and complexity of the particular dispute). In no circumstances will the total value of any payment exceed the upper limit achievable (weeks' pay basis) within our local arrangements on redundancy pay which in this case would be a maximum of 12 months' salary.

4.3 That amount aside, we also acknowledge the additional need to pay contractual elements as may be due, such as notice pay and outstanding holiday pay. Any agreement we strike will separate the various payments and will identify clearly those elements (and their value) which will be subject to income tax and national insurance contributions in the normal way.

4.4 From time to time, and in the light of particular circumstances faced, we may consider including other "one-off" components within an agreement. For example, me may waive our right to reclaim training costs made on behalf of the employee concerned; or, come to an arrangement over the employee not having to return company property or vehicles we had provided. This list is not exhaustive but, in all cases, the realistic value of such items will be taken into account (and form a part of) the overall limits we have set out above.

4.5 We will also offer a factual reference where asked to do so. Such reference will state the start and end dates of employment with us; the post title; the range of duties included within the post; and, the applicable salary range. Our reference will not allude to the level of performance, nor the reason the employment came to an end.

4.6 We will also include the expected provisions confirming that both parties will maintain suitable confidentiality in relation to the terms of the agreement and the requirement not to disclose these. However, we will restrict such provisions to cover those matters that are normally confidential within an industrial relations framework; or those that are otherwise specifically contained within the spirit of the General Data Protection Regulations framework. We will not include restrictions on disclosing matters beyond – particularly such issues that are undeniably of wider public interest/whistleblowing.

5. Costs involved

5.1 Aside from the value of any payments made to employees, we will seek value for money in the cost involved in our executing any agreement. Wherever possible we will have our Chief Executive and HR And Corporate Services Officer perform all required work ensuring that they have taken appropriate advice, where required, from our external HR advisers, or from our lawyers.

5.2 Where the matter has reached ACAS Pre-Employment Tribunal conciliation we will use the (free) ACAS service in concluding any agreement – unless we feel that the matters are so complex as to warrant our substituting our own agreement paperwork (bearing in mind that this may undo any good will built up with the employee/ACAS officials in getting to a "yes" position).

5.3 Due to the expected limited use, we will sense check likely costs involved each time we execute a Settlement Agreement. We are aware that EVH, and others, may be able to offer information on what a variety of advisers typically charge.

6. Review

6.1 This policy will be due for review in October 2029 or earlier should legislation or good practice change.

Appendix 1 Equality Impact Assessment

Name of policy to be assessed	Settlement Agreements Policy	**New policy or revision of existing?**	Revision
Person(s) responsible for assessment		Chief Executive	
Briefly describe the aims, objectives and purpose of the policy.	To provide information on what Settlement Agreements are and how and when they can be used to end the employment relationship in a mutual way, where employment relations concerns arise in the workplace. Also, this policy sets out the process for agreeing and making payments, and for obtaining the necessary approval ensuring transparency in all aspects of the process ensuring full compliance with all legal and statutory obligations.		
Who is intended to benefit from the policy? (e.g applicants, tenants, staff, contractors)	Employees and Management Committee members will benefit from this policy.		
What outcomes are wanted from this policy? (e.g the measurable changes or benefits to members/ tenants / staff)	A clear policy and process for using settlement agreements to mutually end the employment relationship which is line with employment law and statutory obligations. To ensure there is transparency in the process which is fully explained.		
Which groups could be affected by the policy? (note all that apply)			
Age	x	**Disability**	x
Gender reassignment	x	**Marriage and Civil Partnership**	x
Pregnancy and Maternity	x	**Race**	x
Religion or Belief	x	**Sex**	x
Sexual Orientation	x		
5. If the policy is not relevant to any of the equality groups listed above, state why and end the process here.			
6. Have those affected by the policy / decision been involved?			
We aim to consult with our staff on any policy which may affect them and will consult in the most appropriate way to gain feedback and input. This policy will also be approved by our Management Committee.			
7. Describe the likely positive or negative impact(s) that the policy could have on the groups identified above.		**Positive Impact(s)**	**Negative Impact(s)**
8. What actions are required to address the impacts arising from this assessment? (This might include: additional data, putting monitoring in place, making adjustments, taking specific action to mitigate any potentially negative impacts)	We do not see this policy as having any direct impact upon the protected characteristics contained within the Equality Act 2010. We will however be mindful in the way we select those unresolved disputes/business challenge issues to route via the Settlement Agreement method. We will also be mindful of the way in which we present this option to employees and the language we use when discussing any proposition with them. By extension we will avoid holding any assumptions as may be viewed to be discriminatory, and/or taking actions which in themselves could be perceived as victimising the employee(s) concerned. We will also take account of the advice contained within the EVH		

	"Pre-termination Discussions & Settlement Agreements" Information Note (May 2019); along with the information contained within the relevant ACAS Guide (December 2018).

Signed:	Vicky Ross
Dated:	15.10.24

Appendix 2 - GDPR Impact Assessment

Name of Policy to be assessed	Settlement Agreement Policy	**New policy or revision of existing?**	Revision of existing
Person(s) responsible for assessment		Chief Executive	
Briefly describe the aims, objectives and purpose of the policy.	To provide information on what Settlement Agreements are and how and when they can be used to end the employment relationship in a mutual way, where employment relations concerns arise in the workplace. Also, this policy sets out the process for agreeing and making payments, and for obtaining the necessary approval ensuring transparency in all aspects of the process ensuring full compliance with all legal and statutory obligations.		
Which type of data will be used by implementation of this policy? (e.g. personal, sensitive or special category)	Personal and sensitive data may be used by the implementation of this policy.		
What outcomes are wanted from this policy? (e.g. necessary to meet legal obligations)	To comply with employment law and statutory obligations. We are required to have a policy which sets out the rules on the use of Settlement Agreements.		
Which groups could be affected by the policy? (note all that apply)			
Tenants		**Committee**	x
Employees	x	**Candidates**	
If the policy is not relevant to any of the data groups listed above, state why and end the process here.			
Management Committee would use this policy in the event they are asked to approve the use of a Settlement Agreement. Employees will benefit as the reasons and process for using a Settlement are set out offering transparency and clarity.			
Have those affected by the policy / decision been involved?			
We aim to consult with our staff on any policy which may affect them and will consult in the most appropriate way to gain feedback and input. This policy will also be approved by our Management Committee.			
Describe the likely positive or negative impact(s) that the policy could have on the groups identified above.		**Positive Impact(s)**	**Negative Impact(s)**
		Our aim is that our policy is designed with Diversity and Inclusion in mind which clearly represents our organisational commitment and values.	
What actions are required to address the impacts arising from this assessment? (This might include: additional data, putting monitoring in place, making adjustments, taking specific action to mitigate any potentially negative impacts)		None required.	
Signed:		Vicky Ross	
Dated:		15.10.24	