



# **Severance Policy**

Policy Date: February 2021

Approved Date: 10 March 2021

Review Due: March 2024

## ***Vision***

Transforming communities by providing aspirational homes and services to enhance the quality of life for our customers.

## ***Values***

- Customer and Community Focussed
- Accountable
- Making a difference
- Innovative

## ***Strategic Objectives***

Deliver first class customer services

Provide quality homes, communities and sustainable tenancies

Achieve robust financial management and governance excellence

Empower, develop and engage our staff

Build strong collaborative relationships locally and nationally

## **Purpose**

This policy sets out the circumstances in which Ardenglen Housing Association (AHA) will provide severance payments. It sets out when and how settlement agreements may be used and the key settlement agreement principles.

## **Introduction**

AHA 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 be considered when unique situations, that our policies do not directly provide for, arise.

Our aim is to resolve disputes sensibly and thus minimise the use of Settlement Agreements. When 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 value for money in any agreement(s) we conclude.

## **Definition**

### **Severance payments:**

Severance pay is provided when employment is terminated or ‘severed’ by an employer. This excludes dismissal where an employee receives no payment other than pay up to the dismissal date.

### **Settlement agreements:**

Settlement agreements are legally binding contracts which can be used to end the employment relationship on agreed terms. Their main feature is that they waive an individual’s right to make a claim to a court or employment tribunal on the matters that are specifically covered in the agreement. Settlement agreements may be proposed prior to undertaking any other formal process. They usually include some form of payment to the employee by the employer and may include a reference.

## **Background**

Settlement 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). Settlement Agreements will often be used to end an employment relationship in a conclusive and binding manner. 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.

We would expect our existing HR policies to provide methods to deal with the majority of such matters.

Without implying any sense of entitlement, we do 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.

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.

### **Contents of any Agreement**

Disputes in which employees are remaining in our employment 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.

Where a dispute 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).

### **Conditions for making voluntary severance payments**

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:

- a) The payment arises directly from a decision to bring the employee's employment to an end.
- b) The payment is approved by the Staffing Sub Committee in conjunction with the Association's Chair.
- c) The total sum of the payment/benefit does not exceed, in the opinion of our specialist legal/employment advisor, the upper limit achievable (weeks' pay basis) within Ardenglen Housing Associations arrangements on redundancy pay or what the employee may receive if they were successful at a subsequent court or employment process (not including any contractual payments, such as notice pay and outstanding holiday pay).
- d) Payment does not exceed the equivalent of one year's salary for the employee.
- e) That this payment is instead of (rather than additional to) any redundancy entitlement.

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, we 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.

The Association's Staffing Sub Committee has delegated authority from the Board of Management within their terms of reference to approve the level of settlement figure.

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 ended.

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.

### **Concluding Agreements**

We acknowledge that no agreement may be struck unless the employee(s) concerned have received advice from a suitably qualified and indemnified adviser. 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 **£350 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.

From our side we may use any resource whom we feel is best able to conclude the agreement on our behalf, for example an external HR service, an ACAS official, or an employment lawyer. We may also use a combination of advisers – for example, our HR adviser may deal with the difficult “negotiations” stage before passing the matter onto another adviser/ACAS official/lawyer to write up the formal agreement paperwork.

The Association will provide up to ten working days for an employee to consider the proposed written terms of a settlement agreement offer and notify us of their decision.

Payments under settlement agreements will be made in line with the Association’s Entitlements, Payments and Benefits Policy.

### **Costs involved**

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. As we do not have our own HR team, we will seek support from other external HR advisors, or from our lawyers.

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).

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.

### **Equalities Impact**

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).

## **Monitoring and Review**

The Association’s Staffing Sub Committee or other body in line with the Association’s Scheme of Delegated Authority will monitor the use of and payments associated with settlement agreements to ensure that payments represent value for money in line with the SHR’s Standards of Governance and Financial Management for RSLs.

This policy will be reviewed every three years, or sooner in the event of any legislative or regulatory changes. This means that the next review of this policy should take place in 2024.

## **Regulatory Framework**

The following Regulatory Standards are applicable to this policy;

### **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 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.”

**Settlement Agreements will be reported to the Scottish Housing Regulator in line with the Notifiable Event Guidance 2019.**

## **Useful links**

[..\..\Policies & Procedures\Corporate Policies\Entitlements, Payments & Benefits Policy.docx](#)

[..\..\Personnel Issues\Conditions of Service\EVH Full Member Terms Conditions April 2020 16.4.20.pdf](#)