



**POLICY AND PROCEDURE ON PAYMENTS AND BENEFITS
TO COMMITTEE MEMBERS AND STAFF**

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For details contact the Association on
01236 457948 or e-mail: admin@abronhillha.org.uk

ABRONHILL HOUSING ASSOCIATION LTD

POLICY AND PROCEDURE ON PAYMENTS AND BENEFITS TO COMMITTEE MEMBERS AND STAFF

INTRODUCTION

1. This Policy is intended to ensure that committee members or employees do not abuse their positions or benefit from their connection with Abronhill Housing Association (**the Association**) as a Registered Social Landlord (**RSL**) and as a charity, and that they uphold the reputation of the Association and of RSLs and charities more generally.
2. The Scottish Housing Regulator (**SHR**) requires the Association to comply with the SHR Regulatory Framework and the Association's Rules as well as the law in relation to payments and benefits.
3. This Policy sets out the key provisions of the SHR Regulatory Framework, the Association's Rules and the law, and the Association's procedures for dealing with payments and benefits. It should be read in conjunction with other relevant Association policies and procedures, notably the Code of Conduct for Committee Members and the Code of Conduct for Staff (**the Codes of Conduct**).
4. This Policy was approved by the Management Committee on [date to be confirmed].

THE SHR REGULATORY FRAMEWORK

5. For payments and benefits, the SHR Regulatory Framework provides:

The Housing (Scotland) Act 2010 “does not restrict or prohibit payments and benefits to governing body members and employees. So it is for each RSL to decide if, and how, it wants to manage payments and benefits to its governing body members, staff, and their close relatives. Where an RSL exercises its discretion and does decide to make such payments we require it to do so within a clear policy framework to make sure it acts with transparency, honesty and propriety and avoids any public perception of improper conduct.”

“Charitable RSLs also need to be mindful of complying with the Charities and Trustee Investment (Scotland) Act 2005 and any associated guidance from the charity regulator when considering payments or benefits to charity trustees.”

“Governing body payments and employee remuneration are matters for the governing body. But RSLs use significant sums of taxpayer money and this comes with responsibilities around restraint and economic effectiveness. We will hold an RSL to account and may take regulatory action if we consider, with regard to industry standards and set scales, that an RSL has made excessive payments to either its governing body members or employees.”

THE ASSOCIATION'S RULES

6. The Association's Rules are in line with the 2013 SFHA Model Rules. The following Rules are relevant to payments and benefits to Committee Members:

38.1 The Committee shall set and periodically review its policy on payments and benefits. If a person is a Member, employee of the Association or serves on the Committee or any sub-committee he/she must not receive any payment or benefit unless it is permitted by the policy. In making any payment or conferring any benefit the Association shall act at all times with transparency, honesty and propriety.

38.2 If a person serves on the Committee or any sub-committee he/she must declare any personal or other external interests on an annual basis in accordance with the Association's Code of Conduct for Committee Members. If while serving on the Committee that person has any conflict of interest in any contract or other matter about to be discussed at a meeting, he/she must tell the Committee. He/she will be required to leave the meeting while the matter is discussed and will not be allowed to vote on the matter or to stay in the meeting while any vote on the matter is being held. If that person is inadvertently allowed to stay in the meeting and vote on the matter, his/her vote will not be counted.

38.3 If a person serves on the Committee or any sub-committee he/she must not receive any payment or benefit unless it is permitted by the Charities and Trustee Investment (Scotland) Act 2005 and as set out in the Association's policy referred to in Rule 38.1. He/she shall also comply with the requirements of the Charities and Trustee Investment (Scotland) Act 2005 in respect of any conflict of interest that might arise.

7. This is the policy referred to in Rules 38.1 and 38.3.

KEY PROVISIONS OF THE LAW

Housing law

8. As noted in the SHR Regulatory Framework, current housing law does not restrict or prohibit payments and benefits to governing body members and / or employees.

Charity law

9. The Charities and Trustee Investment (Scotland) Act 2005 (**the Charities Act**) places restrictions on remuneration received by charity trustees – that is, the Committee Members.

10. Under the Charities Act, the Committee Members cannot receive any remuneration, whether direct or indirect, whether payment or benefit in kind and whether received by them or a person / body “connected” to a them (see the Appendix), unless either (a) the Association’s Rules allowed the remuneration since at least 15 November 2004 or (b) the following 5 conditions are met:
 1. A maximum amount of any benefit must be set in writing.
 2. The amount of the benefit must be reasonable.
 3. At any time less than half the trustees can receive remuneration / benefit – a matter of fact to be checked on each occasion.
 4. The benefit should be the Association’s best interest – for the trustees to decide.
 5. Nothing in the Association’s Rules prohibits the benefit being offered.
11. Only if the above conditions are met, can a Committee Member be remunerated for:
 - a) Services provided by the Committee Member to or on behalf of the Association; or
 - b) Such services provided by persons “connected” to the Committee Member.
12. The Association will consider a person or body is “connected” to a charity trustee / Committee member or an employee if they meet the definition of “connected” set out in the Appendix.

Other legislation

13. **The Bribery Act 2010** codifies the law relating to bribery and corruption. Corruption is the misuse of office or power for private gain. Bribery is a form of corruption and means:
 - a) Giving or receiving money, gifts, meals, entertainment or anything else of value;
 - b) As an inducement to a person to do something dishonest or illegal; and
 - c) In the course of doing business.
14. Under the Bribery Act 2010 it is illegal to:
 - a) Offer, promise to give or to pay a bribe;
 - b) Request, agree to receive or accept a bribe;
 - c) Bribe a foreign public official;
 - d) Fail to have adequate procedures in place to prevent bribery.
15. The Association is a registered society under the Co-operative and Community Benefit Societies Act 2014 (**the Registration Act**). Under the Registration Act, if the Association enters into any transaction including a Committee Member or someone connected with them, then that transaction

should not exceed any limitation placed on the Committee in the Association's Rules. The Rules are commented on above.

16. Also under the Registration Act various elements of company law apply to the Association as a registered society and additional provisions of company law (in relation to in-solvency, investigations, names and dissolution) may also be applied to the Association in the future.

A SUMMARY OF THE PROVISIONS

17. Restrictions on payments and benefits cover all "connected persons" i.e. not just Committee Members and staff and their relatives but also include contract payments to businesses trading for profit which are connected at a senior level to Committee Members or staff, and their close relatives. See the definition of "connected" set out in the Appendix. If in doubt, check with the Director or the Chair.

18. Payments and benefits include:

- granting a tenancy or shared-ownership agreement;
- the purchase or sale of property;
- the award of a contract of employment (remembering that, under the Association's Rules, Committee Members cannot be employees or close relatives of employees);
- the award of a commercial contract such as a building contract, letting of commercial premises or provision of services or supplies;
- use of Association premises for non-Association business except where the value is minimal;
- payments to staff outwith the terms of their contract.

19. These benefits may be granted provided that:

- they are within the scope of the Association's Rules and charitable status;
- they fall within approved policy and practice of the Association;
- the decision to award the payment or benefit is taken by the Management Committee with relevant Committee Member(s), employees or other "connected persons" absent;
- a register is maintained recording the granting of each payment or benefit.

POLICY

20. The Association will operate in an open and transparent way when dealing with any potential payment or benefit to a Committee Member or employee.
21. Any Committee Member or employee who considers that they may have a conflict of interest on any item of business should declare this and exclude

themselves from any decision making in respect of any matter where a conflict of interest arises.

22. All payments or benefits to a Committee Member, employee or “connected person” will be made in accordance with the Association’s Policies and Procedures. As noted above on conflicts of interest, decisions to make a payment or grant a benefit will be made excluding the relevant Committee Member, employee or “connected person” from the decision.
23. The Association will maintain a Register of Payments and Benefits in which all decisions on the making of payments or the granting of benefit shall be recorded. Decisions *not* to make a payment or benefit will be recorded as well as decisions to grant a payment or benefit. This Register shall be available for public inspection at the Association’s office and the Management Committee shall receive an annual report on the payments and benefits recorded in it.
24. The Association’s application forms for housing and employment and contract documentation will make provision to identify “connected persons”.

PROCEDURES

25. **Routine payments:** Routine payments and benefits, for instance salaries, travel or childcare expenses shall be processed in accordance with the Association’s Policies and Procedures (such as the Policy on Committee Member Expenses) without recourse to the Management Committee.
26. **Payments to staff:** Staff will not be involved in determining or influencing their remuneration package and will withdraw from any part of a Committee meeting discussing such matters. That does not preclude any employees making representation, either through their Trade Union or as an individual, to the Association.

The Association will always observe regulatory guidance in respect of the remuneration of staff. For example, SHR’s Senior Officer Remuneration Recommended Practice publication (November 2012) provides recommended practice and advice for the Committee regarding the remuneration of the Association’s senior officer.

If consideration is to be given to a non-contractual payment to a staff member, this will only be in exceptional circumstances and the Committee will first consider whether it is in the best interests of the Association and permitted by the Association’s Staff Settlement and Severance policy and any statutory or regulatory provisions relating to such payments. If the Committee is satisfied that a payment is in the Association’s best interests they may agree terms with any employee or former employee outwith that person’s terms and conditions of employment.

27. **Tenancies:** If through the operation of the Association’s approved allocations policy a Committee Member, employee or “connected person” is identified as

eligible to be offered a tenancy or shared ownership house the following procedure will be adopted:

- a) the relevant Committee Member or employee will not be involved in any aspect of consideration of the application;
- b) the Housing Officer will compile a file of all papers relating to the applicant and the selection process;
- c) the Director, who is not normally involved in allocations, will check the file to confirm how the decision was reached and that the correct procedures have been followed;
- d) a recommendation will be made to the Management Committee preserving as much confidentiality as possible;
- e) any Committee or staff member affected will declare an interest, leave the meeting and take no part in the decision.

28. **Staff Recruitment:** The law and the Association's current recruitment and selection procedures must be thoroughly observed and decisions made must be transparent and impartial and must also comply with the Association's Equality and Diversity Policy and relevant SHR guidance.

Rule 37.4 of the Association's Rules excludes employees or close relatives of employees from being Committee Members. In relation to the possible employment of a "connected person", the following procedure will be adopted:

- a) application form for employment will require that an applicant indicate whether they are related to a current employee or Committee member;

If related to a current employee:

- b) an employee who is a relative of an applicant shall not take part on short-listing or any other part of the recruitment process;
- c) if a relative of an employee is selected as the preferred applicant, the recommendation from the interview panel shall be referred to the Human Resources Sub-Committee for decision;
- d) notwithstanding the Association's policy on equal opportunities in employment, the recruitment of a close relative of an existing employee is not encouraged where e.g. relatives would work in the same team or in a line management relationship. The Human Resources Sub Committee shall satisfy itself that the relationship would not be likely to create special problems for the Association as employer.

If related to a current Committee Member:

- b) the Committee Member who is a relative of an applicant shall not take part on short-listing or any other part of the recruitment process;
- c) if a relative of a Committee Member is selected as the preferred applicant, the recommendation from the interview panel shall be referred to the Human Resources Sub-Committee for decision; at the same time, the Committee Member will be advised of this referral (in confidence, not for sharing with their relative) and of the potential consequences at step (d) below, including that the Committee Member may have to step down;

d) if the decision of the Human Resources Sub-Committee is that the applicant is the best person for the job, and an offer of employment is made and accepted, the Committee Member will step down.

29. **Commercial Contracts:** The award of a commercial contract by the Association to a Committee Member, employee or “connected person”, such as a building contract, letting of commercial premises or provision of services or supplies, may be permitted but only if the Committee Member, employee or “connected person” has had no involvement in the decision making process leading to award of that contract.

If the contract relates to a Committee Member or a person “connected” to a Committee Member, the Association must first meet the conditions in the Charities Act – that is:

- a) A maximum amount of any payment under the contract must be set in writing.
- b) The amount of the benefit must be reasonable – that is, the contract should be comparable to another contract for the same or similar services or goods but not provided by a “connected person”.
- c) At any time less than half the Committee can be in this position – a matter of fact to be checked on each occasion.
- d) The benefit should be the Association’s best interest – for the Committee to decide (excluding the connected Committee Member from that decision).

As a matter of good practice, where a contract relates to an employee or a person “connected” to an employee, the Association will adhere to conditions – a), b), and d) – as set out above.

30. **Use of Association Premises:** The Association will allow charities or community groups who are “connected” to Committee Members or employees to use its premises but only subject to conditions, which will include as a minimum the following conditions:

- a) The premises must be used for a charity or community group, not for personal and / or family use.
- b) A charge will be levied for such use, and the charge will be the same for charities or community groups connected to Committee Members and / or employees as it is for un-connected bodies.
- c) Any such use by Committee Members, employees and / or “connected persons” shall be noted in the Register of Interests.
- d) If any damage occurs while the premises are used in this way, the organisation using the premises must bear the costs of such damage.
- e) Insurances, satisfactory to the Association, are in place in respect of the proposed use of the premises.
- f) Such a use of the premises may be terminated by the Association at any time.

g) “Conditions of let” must be signed by or on behalf of the charity or community group prior to use of the premises, which conditions may be varied from time to time by the Association.

31. **Personal Arrangements:** The Association maintains a register of contracts used by the Association. Committee Members and employees must seek the Association’s permission in advance of concluding any arrangement to use any contractor or supplier that is on the register.

Committee Members and employees are required to exercise care in respect of any such personal arrangement that you are considering. You are encouraged to refer to the approved list of contractors / suppliers before entering into any such arrangements. Where permission is required because a contractor or supplier is on the list, the Committee Member or employee:

- a) must provide a written declaration that they have not received any advantage or preferential treatment (financial or otherwise) from the contractor or supplier arising out of their connection to the Association (this may be supported by providing quotations for the proposed work);
- b) may be required to illustrate that there is no other available supplier that you could reasonably be expected to use; and
- c) must record the request, our decision and the details of any permitted arrangement in the Register of Interests.

“DE MINIMUS” PAYMENTS AND BENEFITS

32. Payments and benefits which have no substantive value or material consequence will be permitted, for instance gifts of small value, promotional material or donations.

33. The Association shall ensure that:

- the scale and nature of activity is proportionate to the scale of the Association’s business; and
- there is an appropriate policy on the matter – see the Association’s Policy on Gifts and Hospitality; and
- the budget for these activities is made known to the membership; and
- potential and real conflicts of interest are pro-actively managed; and
- there is a fair and open approach to any event or activity; and
- equipment located outwith the Association’s office is recorded in the fixed asset Register.

BREACHES OF THIS POLICY

34. In the event of any breach of this Policy by a member of the Management Committee or an employee, the Committee will take the action it considers appropriate in the light of the seriousness of the matter. This may include action under the Code of Conduct for Committee Members or disciplinary action under the terms and conditions of employment.

REVIEW

35. This guidance, policy and procedure note will be reviewed every three years.

Appendix: definition of “connected person”

In summary: a person is **connected** with:

Family =

- Spouses, civil partners, co-habitees
- Children, parents, grandchildren, grandparents, siblings and any spouses of these relatives

Institutions = if **controlled** by, or conducted in accordance with the person’s wishes, (directly or through nominee(s)) by:

- The trustee or
- A connected family member (above) or
- A connected Corporate body or Partnership (below)

Corporate bodies = if **substantial interest** (more than one fifth of: the share capital; or the voting power at any general meeting) held by:

- The trustee or
- A connected family member or Institution (above) or
- A connected Partnership (below)

Partnerships = if one or more partner is:

- The trustee or
- A connected family member (above)

The full definition: Section 68 of the Charities and Trustee Investment (Scotland) Act 2005 defines individuals who are “connected” to a charity trustee as follows:

(2) ... the following persons are “connected” with a charity trustee—

- (a) any person—
 - (i) to whom the trustee is married,
 - (ii) who is the civil partner of the trustee, or
 - (iii) with whom the trustee is living as husband and wife or, where the trustee and the other person are of the same sex, in an equivalent relationship,
- (b) any child, parent, grandchild, grandparent, brother or sister of the trustee (and any spouse of any such person),
- (c) any institution which is controlled (whether directly or through one or more nominees) by—
 - (i) the charity trustee,
 - (ii) any person with whom the charity trustee is connected by virtue of paragraph (a), (b), (d) or (e), or
 - (iii) two or more persons falling within sub-paragraph (i) or (ii), when taken together,
- (d) a body corporate in which—

- (i) the charity trustee has a substantial interest,
 - (ii) any person with whom the charity trustee is connected by virtue of paragraph (a), (b), (c) or (e) has a substantial interest, or
 - (iii) two or more persons falling within sub-paragraph (i) or (ii), when taken together, have a substantial interest
 - (e) a Scottish partnership in which one or more of the partners is—
 - (i) the charity trustee, or
 - (ii) a person with whom the charity trustee is, by virtue of paragraph (a) or (b), connected.
- (3) For the purposes of subsection (2) a person who is—
- (a) another person’s stepchild, or
 - (b) brought up or treated by another person as if the person were a child of the other person,
- is to be treated as that other person’s child.