



STAFF SEVERENCE AND SETTLEMENT POLICY

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Regulatory Compliance	Standard 5: The RSL conducts its affairs with honesty and integrity
Financial Impact	Medium
Risk Assessment	Medium

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1.0 Introduction

1.1 Abronhill Housing Association has an approved Payments & Benefits policy which is applicable to all staff and Management Committee members and sets out:

- Obligation to declare any interests that you, or someone closely connected to you, may have which are relevant to Abronhill HA's business.
- Entitlements, payments and benefits to which staff and Management Committee members are entitled.
- What kinds of payments are not permitted.

1.2 Many of the interests that are required to be declared can be classed as entitlements, payments and benefits.

1.3 The purpose of this policy is to outline when and how the Association will use severance payments and settlement agreements.

2.0 Voluntary Severance Payments

2.1 Any staff that are made redundant are entitled to a redundancy payment in accordance with their contract of employment.

2.2 In some circumstances we may wish to offer a voluntary severance payment that is outside the terms of the contract of employment. The Management Committee must always approve such a payment in advance.

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:

- The payment arises directly from a decision to terminate the employee's contract of employment.
- The payment is specifically approved by a full meeting of the Management Committee.
- The total sum of the 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 us 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 .

3.0 Nature and Use of Settlement Agreements

- 3.1 A settlement agreement is a legally binding contract entered into between Abrohill HA on the one hand, and an employee, or former employee (or in exceptional circumstances, an unsuccessful job applicant who feels they were discriminated against) on the other hand, when they agree to settle a potential employment tribunal claim, or other court proceedings. Such an agreement can only be signed by two parties: the person to whom a payment is proposed to be made, and the Association. It cannot be signed, for instance, by a group of employees.
- 3.2 Such agreements will waive the employee's rights to bring any potential claims covered by the agreement, effectively in return for the payment that is agreed to be made under the agreement. The terms of such agreements are mutually agreed through discussion and negotiation, and are normally confidential, so that if agreement is not reached following discussion, and an employment tribunal or other court proceedings follow, the negotiations are not normally admissible as evidence in these hearings.
- 3.3 Settlement agreements are normally used to bring an employment relationship to an end in a mutually agreed way, for instance when we may feel that it has lost trust and confidence in a senior member of staff, or an employee feels that their relationship with us has broken down, and a clean break is desirable. They can provide a swift and dignified end to an employment relationship that is not working, and avoid the time, cost and stress involved for both parties in a tribunal claim.
- 3.4 Only the Director, after receiving prior authorisation from the Management Committee, may initiate discussions with an employee about a possible settlement agreement. Settlement agreements are not to be proposed as an alternative to effective staff management and good practice in resolving disputes with employees. Poor performance, inappropriate behaviour or workplace disputes are expected to be dealt with by effective performance management by the line manager. This will include regular one-to-one supervision meetings between the employee and their line manager, and appropriate use of our disciplinary and grievance policies and procedures contained in the terms and conditions of employment.
- 3.5 Entering into discussions about such agreements is not without risk, including payment of what might be regarded as excessive costs; risk to the ongoing employment relationship with the individual concerned if settlement is not agreed; and risk to employment relations in the wider workforce if used inappropriately or as a substitute for good management. The Management Committee will have regard to such risks when considering whether they wish to authorise such an approach.
- 3.6 If the Management Committee wishes to initiate such discussions, the Director will undertake them, supported, if appropriate, by an employment advisor.
- 3.7 Where such discussions are initiated by the employee, the Director must seek guidance from the Management Committee. Potential cost of settlements and other parameters would be agreed before entering into such discussions. If the

date of the next Management Committee meeting would result in undue delay, procedures for decisions between meetings would be implemented.

3.8 In arranging and conducting such discussions, and confirming any agreements in writing, the Director should have regard to the guidance set out in the ACAS publication, "Settlement Agreements: A guide", and to any requirement for specific advice from Abronhill HA specialist employment advisors. At the start of any such meeting, it should be made clear that such discussions are confidential and "without prejudice" and are expected to be inadmissible in any subsequent legal that may occur. Any potentially "unambiguous impropriety", which would invalidate the "without prejudice" nature of the discussions, should be scrupulously avoided. This includes:

- All forms of harassment.
- All forms of discrimination.
- Victimisation (e.g. as a result of utilising whistle-blowing processes).
- Physical assault and other criminal behaviours.
- Putting undue pressure on the employee to make a decision (for instance, not giving the employee sufficient time to consider any offer – seven days would normally be appropriate).

3.9 Where such discussions are through face-to-face meetings, the employee may be accompanied by a work colleague or trade union representative, should they so wish.

3.10 Although not absolutely required to do so, we will provide an agreed reference for the employee as part of the settlement agreement. The Director has delegated authority to agree a suitable reference on behalf of Abronhill HA. The length and style of reference will take into account the circumstances in which the employment contract is being terminated.

3.11 If the result of discussions is to conclude a settlement agreement, a formal written agreement will be required. External specialist professional advice must always be taken about the form of such agreements (either from EVH or a solicitor). In order to be valid, the employee must have received their own independent legal advice; this adviser must be named in the agreement and have current indemnity insurance covering the risk of a claim by the employee. We will make a contribution towards the costs of obtaining this independent advice.

3.12 A settlement agreement should always contain confidentiality clauses. If such provisions are not honoured, the remedy is usually to claim breach of contract and damages in the Sheriff Court.

4.0 Process for Making Voluntary Severance Payments

4.1 Voluntary redundancy

4.1.1 Where a proposed staff restructure or other efficiency measures will result in potential redundancy, the Director will, in the first instance, submit a business case proposal to the Management Committee, and seek approval to commence the necessary consultation process. Thereafter the EVH redundancy policy, set out in

its statement of terms and conditions of employment, will be followed in order to seek to avoid any compulsory redundancy, including, where appropriate, offering the opportunity for voluntary redundancy.

- 4.1.2 The offer of voluntary redundancy may include enhanced payments above the contractual level set out in the EVH terms and conditions of employment, and/or payment in lieu of notice (PILON). The terms of any such offer require prior Management Committee approval before it is made to staff.
- 4.1.3 Any offer of voluntary redundancy made to groups of staff should indicate that a settlement agreement will need to be entered into between Abronhill HA and the employee prior to payment of any agreed voluntary redundancy settlement being authorised. It should also indicate that employees will be required to take their own independent legal advice, and that we may meet the reasonable costs of taking such advice.
- 4.1.4 Abronhill HA must take specialist professional advice about the terms of the settlement agreement to be completed. Provided this has been done, and the terms agreed are within the offer level approved by the Management Committee, the Director has delegated authority to complete the agreement on behalf of Abronhill HA with the agreement signed by an authorised signatory. The outcome and the final details of any payment must be reported back to the Management Committee at the first opportunity.

4.2 Other Voluntary Severance Payments

- 4.2.1 Where either Abronhill HA wishes to discuss and agree a voluntary severance payment with an employee, or an employee, or former employee wishes to discuss such a payment with Abronhill HA, a number of conditions must be met:

- *It arises directly from a decision to terminate the employee's contract of employment*

Prior to any formal discussions taking place, the Management Committee must have agreed that it wishes the result to be the termination of the employee's contract of employment. The Management Committee must accept that any dispute or breakdown in relationship with Abronhill HA, perceived poor behaviour or performance, is best dealt with by sound management and application of agreed policies and procedures. Such discussions may take place before, during or after any serious disciplinary process involving the employee, and, in exceptional circumstances, after dismissal has taken place, provided it is clearly in the best interests of Abronhill HA to make such a payment and enter into a settlement agreement.

- *Payment is approved by the Management Committee*

Discussions around voluntary severance payments and entering into a settlement agreement will always take the form of negotiation. Regardless of whether the negotiation is conducted by the Chief Executive, Management Committee members who are part of a disciplinary process, or via solicitors, once an agreed outcome is reached, it must be approved by the Management Committee. On every occasion

when a voluntary severance payment is proposed, it can only be paid as part of a settlement agreement.

- *The total sum of any non-contractual payment and benefit does not exceed (in the opinion of our employment adviser) the total cost of a successful application by the employee to a court or tribunal. This will include both the likely level of award and associated costs to Abnonhill HA of participation in the hearing.*

The Management Committee report seeking approval to enter into a settlement agreement must include a written statement of opinion from our specialist adviser (either EVH or a solicitor). This statement would confirm that the proposed payment is within the levels of potential cost that Abnonhill HA is at risk of incurring should a court or tribunal hearing go ahead.

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

The proposed severance payment in compensation for loss of employment must not exceed the current annual salary of the employee. The Director must specifically confirm that this is the case when submitting a report proposing approval of the payment.

- *The payment is instead of (rather than additional to) any redundancy entitlement*

If a redundancy payment would otherwise have been payable in the circumstances of the termination of the contract of employment, it will be relevant for the contractual amount (that would have been payable) to be reported to the Management Committee. The Director must ensure that the proposed payment is not calculated as including any sum in respect of redundancy entitlement. Other payments related to contractual entitlement e.g. outstanding leave or notice period can be made in addition to the proposed severance payment.

5.0 Regulatory Requirements

5.1 This policy aims to support the association in achieving the following Regulatory 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 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.

6.0 DATA PROTECTION

- 6.1 Abrohill Housing Association will treat employees' personal data in line with its obligations under the current General Data Protection Regulation and its own Privacy Policy. Information regarding how employees' data will be used and the basis for processing data is provided in the Association's Privacy Notice.

7.0 EQUAL OPPORTUNITIES

- 7.1 The Association will seek to ensure that in implementing this policy that no group, organisation or individual will receive less favourable treatment or be discriminated against regardless of their race, colour, ethnic or national origin, language, belief, age, sex, sexual orientation, gender realignment, disability, marital status, pregnancy or maternity. We will positively endeavour to achieve fair outcomes for all.

8.0 Policy Review

- 8.1 This policy will be reviewed every three years or sooner if circumstances require it.