



SHA Settlement Agreement Policy

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1. INTRODUCTION

- 1.1 Southside Housing Association (SHA) 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, which our policies do not directly provide for, arise.
- 1.2 SHA’s 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 value for money in any agreement(s) we conclude.
- 1.3 The Scottish Housing Regulator’s (SHR) Regulatory Framework incorporates the Standards of Governance and Financial Management which all registered social landlords in Scotland must comply with. There are two specific guidance points within Regulatory Standard 5 which relate to severance payments and settlement agreements. These are:

Regulatory Standard 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, and*

Regulatory Standard 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*

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.
- 2.3 SHA would 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.

- 2.4 However, without implying any sense of entitlement, SHA 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 using these as a further safeguard in cases of mass redundancies.
- 2.5 We may also consider the use of a settlement agreement 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 SHA's 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. ROLES AND RESPONSIBILITIES

3.1 MANAGEMENT COMMITTEE

- 3.1.1 Management Committee or its sub-committee as set out in the Scheme of Delegated Authority has a responsibility to monitor the use of settlement agreements to ensure that they represent value for money for the Association.
- 3.1.2 Management Committee or its sub-committee as set out in the Scheme of Delegated Authority also has the authority for approving a settlement agreement which exceeds contractual terms in exceptional terms, and where independent advice confirms that this is required. This is set out in Appendix 1 of the SHA Group Policy on Entitlements, Payments and Benefits.
- 3.1.3 Management Committee or its sub-committee as set out in the Scheme of Delegated Authority has responsibility for approval of the Settlement Agreement Policy and any revised versions of the Policy

3.2 SENIOR OFFICER AND LEADERSHIP TEAM

- 3.2.1 Members of the SHA Leadership Team have the delegated authority to initiate settlement agreement discussions with advice and assistance from the Association's Human Resources and Corporate Support Manager
- 3.2.2 Members of the Leadership Team also have the delegated authority to agree and authorise the terms of a settlement agreement involving payments up to the following thresholds set out in the SHA Group Policy on Entitlements, Payments and Benefits:
- Where the total sum of the 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 (including the likely level of compensation that might be awarded by a court or tribunal and associated costs to the organisation to participate in the tribunal), or;

- Payment is no more than one year's gross remuneration, if the employee has more than 10 years or more continuous service with SHA; or, if less than 10 years continuous service, payment is no more than one-tenth of one year's gross remuneration for each year of completed service. Where staff transferred into SHA under Transfer of Undertakings Protection of Employment Regulations (TUPE) total years' service can be used for this calculation.

- 3.2.3 Members of the Leadership Team also have responsibility for seeking independent legal advice in relation to a settlement agreement and preparation of reports and proposals for Management Committee when a settlement agreement involves payments which exceed contractual terms.
- 3.2.4 Reporting on settlement agreements to Management Committee or its sub-committee is delegated to the Leadership team as set out in the Scheme of Delegated Authority. This may practically be delegated to the Human Resources and Corporate Support Manager.
- 3.2.5 Members of the Leadership Team also have responsibility for ensuring that any settlement agreement is reported to the Scottish Housing Regulator (SHR) as a notifiable event in line with SHR Notifiable Events statutory guidance. This may practically be delegated to the Human Resources and Corporate Support Manager or the Corporate Compliance Officer.

4. INITIATING A PROTECTED CONVERSATION

- 4.1 A Protected Conversation is a discussion between an employer and an employee aimed at exploring the possibility of ending the employment relationship usually with a settlement agreement. A Protected Conversation is an 'off the record' conversation and the content of any discussion cannot be used as evidence in any subsequent legal proceedings such as an unfair dismissal claim.
- 4.2 A member of the Leadership Team may authorise a Protected Conversation with an SHA employee about a possible settlement agreement. Settlement Agreement are not to be used as an alternative to effective management of SHA staff. Poor performance, inappropriate behaviour or workplace disputes are expected to be managed effectively by the appropriate line manager, and where appropriate use of the relevant SHA disciplinary or grievance policies or procedures.
- 4.3 Where a discussion is initiated by an SHA employee, the Leadership Team must seek professional legal advice about whether to engage in a Protected Conversation and agreed parameters including potential cost settlements before entering into discussions.
- 4.4 In the event that the Management Committee wish to initiate a Protected Conversation with the Senior Officer, this will be undertaken by the Chair of The Finance and Corporate Services Sub-Committee in line with the SHA Scheme of Delegated Authority. The Chair of the Finance and Corporate Services Sub-Committee will be supported by professional legal advisors appointed by Management Committee.
- 4.5 Where the Senior Officer is the subject of a Protected Conversation then the SHR should be notified in advance of any discussion taking place in line with the SHR's statutory guidance on Notifiable Events.

5. CONTENTS OF ANY AGREEMENTS

- 5.1 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.
- 5.2 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).
- 5.3 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.
- 5.4 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.
- 5.5 Any agreement we enter into 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.
- 5.6 From time to time, and in the light of particular circumstances faced, SHA 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.
- 5.7 SHA 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.
- 5.8 SHA 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.

6. CONCLUDING AGREEMENTS

- 6.1 SHA 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.
- 6.2 Where the adviser charges the employee a fee, SHA will cover that cost up to the value of £400 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.
- 6.3 From an SHA perspective, we may use any resource whom we feel is best able to conclude the agreement on our behalf, for example our own internal HR team; an external HR service, an Advisory Conciliation and Arbitration Service (ACAS) official, or an employment lawyer.
- 6.4 SHA may also mix and match – for example our Human Resources and Corporate Support Manager may deal with the difficult “negotiations” stage before passing the matter onto another adviser/ACAS official/lawyer to write up the formal agreement paperwork.

7. COSTS INVOLVED

- 7.1 Aside from the value of any payments made to employees, SHA will seek value for money in the cost involved in our executing any agreement. Wherever possible we will have our Human Resources and Corporate Support Manager perform all required work. If we do not have internal capacity we will seek support from other external HR advisers, or from our lawyers.
- 7.2 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 goodwill built up with the employee/ACAS officials in getting to a “yes” position).
- 7.3 Due to the expected limited use, we will sense check likely costs involved each time we execute a Settlement Agreement. We are aware that Employers in Voluntary Housing (EVH), and others, may be able to offer information on what a variety of advisers typically charge.

8. EQUALITY AND HUMAN RIGHTS

- 8.1 SHA will 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.

- 8.2 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).
- 8.3 An Equality and Human Rights Impact Assessment (see Appendix 2) has been carried out as part of the review of this policy, in order to assess where the aims of this policy may have a positive, negative or neutral impact upon any of the nine Protected Characteristics set out in the Equality Act 2010.

9. DATA PROTECTION

- 9.1 SHA will treat employee personal data in line with our obligations under the United Kingdom General Data Protection Regulation. Information regarding how data will be used and the basis for processing an SHA employee’s personal data is provided in Southside Housing Association’s employee fair processing notice.
- 9.2 The right of an employee or former employee to access their personal data that the Association processes is a statutory right of access enshrined in Data Protection law. In line with the Information Commissioner’s Office guidance if a Settlement Agreement contains provisions which prevent an employee or a former employee from making a Data Subject Access Request then it is likely that this part of any Settlement Agreement will be unenforceable under Data Protection law

10. MONITORING AND REVIEW

- 10.1 The Management Committee or its sub-committee 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.
- 10.2 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 by no later than 30 June 2028.



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