

# SEVERANCE PAYMENT & SETTLEMENT AGREEMENT POLICY



DATE OF REVIEW: 10 DECEMBER 2024

DATE OF APPROVAL: DECEMBER 2027

DATE OF NEXT REVIEW: NOVEMBER 2027

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## Severance Payment & Settlement Agreement Policy

Purpose of the policy:	To set out the Association's policy on Severance Payments & Settlement Agreements for employees.
Guidance used for developing the policy:	EVH model Settlement Agreement Policy, August 2024 ACAS Settlement Agreements: A Guide, December 2018
Policy complies with the following Regulatory Standards:	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.”
Policy is linked to the following DPHA policies	<ul style="list-style-type: none"> <li>• Entitlements, Payments &amp; Benefits</li> <li>• Code of Conduct – Staff</li> <li>• Grievance</li> <li>• Discipline</li> <li>• Redundancy</li> <li>• Contract of Employment</li> <li>• Standing Orders</li> <li>• Rules</li> <li>• Notifiable Events</li> </ul>
Date policy last reviewed:	10 December 2024
Date revised policy approved by the Board (or P&P Sub-Committee if delegated):	Approved by P&P December 2027
Date policy is next due to be revised:	December 2027
Equality Impact Assessment carried out for policy:	Yes
Publish revised policy on the website:	No

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## **1.0 Introduction**

1.1 Dalmuir Park Housing Association (DPHA) has an approved Entitlements, Payments & Benefits Policy which is applicable to all employees and Board members and sets out:

- An obligation to declare any interests that employees or Board members, or someone closely connected to you, may have which are relevant to DPHA's business.
- Any entitlements, payments and benefits to which employees and Board members are entitled to.
- 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. Severance payments fall within this category.

1.3 The purpose of DPHA's Severance Payment & Settlement Agreement Policy is to outline when and how the Association will use severance payments and Settlement Agreements.

## **2.0 Voluntary Severance Payments**

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

2.2 In some circumstances DPHA may wish to offer a voluntary severance payment that is outside the terms of the contract of employment. The Board must always approve such a payment and value 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 Board.
- The total sum of the payment/benefit does not exceed, in the opinion of DPHA's 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 DPHA to participate in the tribunal).

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- 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 & Use of Settlement Agreements**

- 3.1 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). 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 DPHA 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 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.
- 3.2 However, without implying any sense of entitlement, DPHA does 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 redundancy situations 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. 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.
- 3.3 DPHA accepts 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.
- 3.4 Such Agreements will waive the employee's rights to bring any potential claims covered by the Settlement 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.
- 3.5 Settlement Agreements are also to be used in conjunction with voluntary severance payments.

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- 3.6 Only the Chief Executive, after receiving prior authorisation from the Board, 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 manager. This will include regular one-to-one supervision meetings between the employee and their manager and appropriate use of our disciplinary and grievance policies and procedures contained in the terms and conditions of employment.
- 3.7 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 Board will have regard to such risks when considering whether they wish to authorise such an approach.
- 3.8 If the Board wishes to initiate such discussions, the Chief Executive will undertake them, supported, if appropriate, by an employment advisor.
- 3.9 Where such discussions are initiated by the employee, the Chief Executive must seek guidance from the Board. Potential cost of settlements and other parameters would be agreed before entering into such discussions. If the date of the next Board meeting would result in undue delay, procedures for decisions between meetings would be implemented as detailed in the Standing Orders.
- 3.10 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” December 2018* and to any requirement for specific advice from DPHA’s 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 action 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.

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- 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).
- 3.11 Where such discussions are through face-to-face meetings, including ‘virtual’ meetings, the employee may be accompanied by a work colleague or trade union representative, should they so wish.
- 3.12 Although not absolutely required to do so, DPHA will provide a mutually agreed reference for the employee as part of the Settlement Agreement. The Chief Executive has delegated authority to agree a suitable reference on behalf of DPHA. The length and style of reference will take into account the circumstances in which the employment contract is being terminated. However, as a general rule references will be factual and include details relating to start and end dates of employment; 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.
- 3.13 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 (for example from one of the following, EVH, an external HR service or an employment 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. DPHA will not permit the employee to use any advisor who is acting for us. Where the advisor 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 DPHA pays in this regard will be over and above the overall limits we have earlier set out.
- 3.14 A Settlement Agreement should always contain confidentiality clauses. 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 with the spirit of the Data Protection framework. We will not include restrictions on disclosing matters beyond, particularly such issues that are undeniably of wider public interest/whistleblowing. If provisions within a Settlement Agreement are not honoured, the remedy is usually to claim breach of contract and damages in the Sheriff Court.
- 3.15 The Chief Executive must notify DPHA’s insurers at the earliest opportunity as to the possibility of a Settlement Agreement being entered into.
- 3.16 Settlement Agreements are Notifiable Events to the Scottish Housing Regulator. Reference should be made to our Notifiable Events Policy.

#### **4.0 Process For Making Voluntary Severance Payments**

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#### 4.1 Voluntary Redundancy

- 4.1.1 Where a proposed staff restructure or other efficiency measures will result in potential redundancy, the Chief Executive will, in the first instance, submit a business case proposal to the Board, and seek approval to commence the necessary consultation process. Thereafter the EVH redundancy policy, set out in DPHA's 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 Board approval before it is made to an employee.
- 4.1.3 Any offer of voluntary redundancy made to groups of employees should indicate that a Settlement Agreement will need to be entered into between DPHA and each 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 DPHA may meet the reasonable costs of taking such advice.
- 4.1.4 DPHA 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 Board, the Chief Executive has delegated authority to complete the agreement on behalf of DPHA with the agreement signed by an authorised signatory. The outcome and the final details of any payment must be reported back to the Board at the first opportunity and thereafter recorded in the appropriate register as per the DPHA's Rules.

#### 4.2 Other Voluntary Severance Payments

- 4.2.1 Where either DPHA 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 DPHA, 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 Board must have agreed that it wishes the result to be the termination of the employee's contract of employment. The Board must accept that any dispute or breakdown in relationship with DPHA, 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

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clearly in the best interests of DPHA to make such a payment and enter into a Settlement Agreement. In this regard DPHA will always aim to keep such payments reasonably low, albeit keeping in mind the depth and complexity of the particular dispute. From time to time and light of particular circumstances faced, we may consider including other 'one-off' components in the Agreement. For example, we may waive our right to reclaim training costs made on behalf of the employee concerned.

- *Payment is approved by the Board.* 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, Board members who are part of a disciplinary process, or via solicitors; once an agreed outcome is reached, it must be approved by the Board. 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 DPHA of participation in the hearing.* The Board report seeking approval to enter into a Settlement Agreement must include a written statement of opinion from our specialist adviser (either EVH, HR specialist or a solicitor). This statement would confirm that the proposed payment is within the levels of potential cost that DPHA 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 Chief Executive 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 Board. The Chief Executive 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 Data Protection**

- 5.1 We will treat personal data in line with our obligations under the current data protection regulations and our Privacy Policy. Information regarding how data will

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be used and the basis for processing data is provided in our Employee Fair Processing Notices.

## **6.0 Equality & Human Rights**

6.1 We are committed to promoting an environment of respect, understanding, encouraging diversity and eliminating discrimination by providing equality of opportunity for all. This is reflected in our Equality and Human Rights Policy.

## **7.0 DISSATISFACTION**

7.1 Any employee not satisfied with the implementation of this Policy can in the first instance raise their concerns with the Chief Executive (or the Chair if the employee is the senior officer). If the employee remains dissatisfied, they should refer to the Association's Grievance Policy and procedures.

## **8.0 Policy Review**

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

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