

Policy for Settlement Agreements

Approved: August 2019
Next Review: August 2022



1. Introduction

- 1.1 Rosehill has adopted an Entitlements, Payments & Benefits policy based on the Scottish Federation of Housing Associations' model policy. This model policy is endorsed by the Scottish Housing Regulator (SHR) as meeting its requirements to have a policy that sets out what payments and benefits Rosehill will permit, and to ensure that these arrangements demonstrate transparency, honesty and propriety.
- 1.2 This policy applies to all committee members, and everyone who works for Rosehill. All Rosehill employees will be issued with a form of contract of employment when their employment commences.
- 1.3 Under this policy, all entitlements, payments and benefits arising from the contract of employment are permitted. Conversely, payments proposed to be made to employees that are outside the terms of their contract of employment are not normally permitted. Some such payments, such as voluntary severance payments, can be approved, provided that certain conditions are met.
- 1.4 It is Rosehill's policy that whenever a voluntary redundancy or other voluntary severance payment is proposed to be made, Rosehill will require the employee, to whom the payment is proposed to be made, to enter into a Settlement Agreement with Rosehill, in order to protect its interests.
- 1.5 Rosehill expects that its existing range of employment policies will be able to successfully resolve the huge majority of workplace disputes, and business challenges it may face. However, it also acknowledges that there may be occasions when Settlement Agreements can be considered when unique situations, that its policies do not directly provide for, arise. Rosehill's aim is to resolve disputes sensibly and thus minimise the use of Settlement Agreements. Where they are used, Rosehill 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. Rosehill will also seek value for money in any agreement(s) it concludes.
- 1.6 The purpose of this Policy is to make the process for agreeing and making payments, and for obtaining the necessary approvals, absolutely clear and thus avoiding any improperly authorised payments being made.

2. Conditions for making voluntary severance payments

2.1 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 non-contractual 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 Rosehill 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.

2.2 More details of the process for ensuring that these conditions are met are given in section 4.

3. Nature and use of Settlement Agreements

3.1 A Settlement Agreement is a legally binding contract entered into between Rosehill 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 Rosehill. 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

Rosehill may feel that it has lost trust and confidence in a senior member of staff, or an employee feels that their relationship with Rosehill has irretrievably 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 Settlement agreements can also be used to deal with other types of workplace issues Rosehill may have from time to time, such as: changes to working patterns; disputes over overtime arrangements; introduction of new grading systems and similar. Rosehill would expect its relevant Personnel policies/procedures, along with its local/national negotiating framework, to provide methods to deal with the majority of such matters.
- 3.5 However, without implying any sense of entitlement, Rosehill does nonetheless reserve the right to resolve employment disputes using Settlement Agreements where it considers it sensible to do so and where none of its existing policies offer an obvious method to resolve the problem.
- 3.6 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 or inappropriate behaviour or workplace disputes are expected to be dealt with by effective performance management by the Line Manager, including regular one-to-one supervision meetings between the employee and their line manager, and appropriate use of disciplinary and grievance policies and procedures.
- 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 Management Committee will have regard to such risks when considering whether they wish to authorise such an approach.
- 3.8 If the Committee wish to initiate such discussions with the Director, they will be undertaken by the Chair and/or any other committee member, supported, if appropriate, by an employment advisor, after prior authorisation from the full management committee.
- 3.9 Where such discussions are initiated by the employee, the Director must seek guidance from the committee (**under urgency procedures** if waiting

for a full committee meeting would result in undue delay) about whether to engage, and agreed parameters, including potential cost settlements, before entering into such discussions.

3.10 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 Rosehill's specialist employment advisors. In particular, 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 proceedings 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).

For further details see ACAS guidance.

3.11 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.

3.12 Rosehill will offer a factual reference where asked to do so. Such reference will state the start and end dates of employment with Rosehill; the job title; the range of duties included within the job; and, the applicable salary range. The reference will not allude to the level of performance, nor the reason the employment came to an end.

3.13 If discussions end in agreement 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 Rosehill's Solicitors in most cases). 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. Rosehill will meet the reasonable costs of obtaining this independent advice up to the value of £250 plus VAT. Where the fee is higher than this, then the employee will be responsible for paying the balance. Any payment Rosehill makes in this regard will be over and above the overall limits it has set out.

- 3.14 Settlement Agreements 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.
- 3.15 A Settlement Agreement can only be signed by authorised persons following a specific resolution of the Management Committee to that effect.
- 4. Process for complying with conditions 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 Committee-level approval before it is made to staff.
 - 4.1.3 Any offer of voluntary redundancy made to any groups of staff should indicate that a Settlement Agreement will need to be entered into between Rosehill 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 Rosehill will meet the reasonable costs of taking such advice.
 - 4.1.4 Rosehill 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 committee, the Director has delegated authority to complete the agreement on behalf of Rosehill, with the agreement signed by an authorised signatory. The outcome and 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 Rosehill 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 Rosehill, the following conditions must be met:

a) 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 Committee must accept that any dispute or breakdown in relationship with Rosehill, or perceived poor behaviour or performance is not 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 Rosehill to make such a payment and enter into a Settlement Agreement.

b) Payment is approved by the governing body

Discussions about agreeing a voluntary severance payment, and entering into a Settlement Agreement, will always be a form of negotiation. Regardless of whether this negotiation is conducted by the Director, Committee Members who are part of a disciplinary process, or via solicitors, once an agreed outcome has been reached, it must be referred to the Management Committee for prior approval of the proposed payment, and other terms of the proposed Settlement Agreement, before any such agreement is entered into and signed. On every occasion when a voluntary severance payment is proposed, it can only be paid as part of a Settlement Agreement.

c) 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, including both the likely level of award and associated costs to Rosehill of participation in the hearing

As part of the report to the Management Committee seeking approval to enter into a Settlement Agreement in order to make such a payment, the report must include confirmation from our employment adviser – either EVH, provided that they are deemed competent to make such a statement, or a suitably experienced and qualified employment solicitor – that the proposed payment is within the levels of potential cost that

Rosehill is at risk of incurring should a relevant Court or Tribunal hearing go ahead.

d) Payment does not exceed the equivalent of one year's salary for the employee.

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

e) 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 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. for outstanding leave entitlement, or notice entitlement) can be made in addition to the proposed severance payment.

4.2.2 The requirements of the process for entering into a Settlement Agreement, as set out in section 3 of this protocol, will be followed as part of the process of agreeing and making a voluntary severance payment.

5. Equalities Impact

5.1 Rosehill does not see this Policy as having any direct impact upon the protected characteristics contained within the Equalities Act 2010. It will, however, be mindful in the way it selects those unresolved disputes/business challenge issues to route via the Settlement Agreement method.

5.2 Rosehill will also be mindful of the way in which it presents this option to employees and the language it uses when discussing any proposition with them. By extension Rosehill 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 concerned.

5.3 Rosehill will also take account of the advice contained within the EVH "Pre-termination Discussions and Settlement Agreements" Information Note (May 2019); along with the information contained within the relevant ACAS Guide (December 2018)

6. Data Protection

- 6.1 On the 25th May 2018 the legislation governing data protection changed with the introduction of the General Data Protection Regulation (GDPR).
- 6.2 We hold a variety of Personal Data relating to individuals including tenants, waiting list applicants, factored owners, other service users, employees and Committee Members. Our Privacy Policy sets out the basis on which we can process and share such data with third parties, it also sets out how we will securely store individuals' data, whether electronically or in paper format. It also provides information on individuals' rights under GDPR including: to view personal data held about them by us; to request a restriction of processing of their data; the right to be forgotten and a right to object to us processing their data. In terms of the rights to be forgotten and to restrict or object to processing of Personal Data, any such requests will require to be considered on their own merits and legal advice will need to be obtained in some circumstances. We have the responsibility for accepting or refusing such requests and will do so in writing.
- 6.3 Under GDPR we are required to provide all customers whose Personal Data we hold with a Fair Processing Notice (also known as a Privacy Notice). The Notice sets out the Personal Data we process and the basis for doing so.
- 6.4 We will only keep and process Personal Data for the original purpose we gathered it for and we will not keep it for any longer than necessary. Attached to our Privacy Policy is a table of Retention Periods for Personal Data held and processed by us. We recognise that not all Personal Data can be processed and kept for the same period of time, and this will vary depending on the individual circumstances of each person whose Personal Data we hold.
- 6.5 The Privacy Policy sets out what should happen in the event of a Data breach e.g. does the breach require reporting to the Information Commissioner's Office and whether the individual affected should be notified. Timescales are set out for dealing with data breaches.
- 6.6 Full copies of our Privacy Policy are available upon request at our office or from our website www.rosehillhousing.co.uk

7. Risk Management

- 7.1 In all the key areas of our business we need to consider any risks which may arise. To this end we have in place a robust Risk Management Policy and from this flows our Risk Registers. We have identified our

Material Risks which are regularly monitored by our Management Team and Audit Sub-Committee.

- 7.2 The risks relating to the use of settlement agreements/severance payments fall under Governance and Compliance, and Reputation and Relationships. Key to the mitigation of these risks is having a clear and comprehensive Policy in place to govern the use and application of settlement agreements and severance payments.
- 7.3 To ensure we continue to manage the associated risks we will periodically review this Policy to ensure compliance with all legislative and regulatory requirements and best practice guidance.
- 8. Review
 - 8.1 This Policy was first approved by the Management Committee in August 2019, and will be reviewed at least by August 2022, or sooner if circumstances require it.