WGHC

Our tenants are paramount in everything we do

SETTLEMENTS AND AGREEMENTS POLICY

This policy was approved by the Committee of Management on Wednesday 19th June 2024. It should be reviewed again no later than 31st May 2027.

The policy has been assessed through the organisational impact assessment process.

We can, if requested, produce this document in different formats such as larger print or audio-format. We can also translate the document into various languages, as appropriate.

SCOTTISH HOUSING REGULATOR STANDARDS

STANDARD 1
The governing body leads and directs the RSL to achieve good outcomes for its tenants and other service users.

STANDARD 2
The RSL is open about and accountable for what it does. It understands and takes account of the needs and priorities of Its tenants, service users and stakeholders. Its primary focus Is the sustainable achievement of these priorities.

STANDARD 3
The RSL manages its resources to ensure its financial well-being, while maintaining rents at a level that tenants can afford to pay.

STANDARD 4
The Governing body bases its decisions on good quality information Information and advice and identifies and mitigates risks to the organisation's purpose.

STANDARD 5
The RSL conducts its affairs with honesty and integrity.

STANDARD 6
The Governing body and senior officers have the skills and knowledge they need to be effective.

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1.0 INTRODUCTION

This policy is based on guidance issued by Employers in Voluntary Housing (EVH) and ACAS and complies with current legislation.

West Granton Housing Co-op 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, that our policies do not directly provide for, arise.

Our 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.

2.0 BACKGROUND

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 we may have from time to time, such as: changes to working patterns; disputes over overtime arrangements; introduction of new grading systems and similar.

2.1 Our Rights

However, without implying any sense of entitlement, we 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 our using these as a further safeguard in cases of mass redundancies. 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.

2.2 Committee

Where the use of settlement agreements is being considered the Committee must be consulted to give authority for the use of any such agreement. In urgent cases delegated authority may be given through the Chair, however a report outlining the situation will be presented to the Committee at their next meeting.

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.

3.0 PRE-TERMINATION DISCUSSIONS

A pre-termination discussion is a protected and confidential conversation during which an employee and employer can agree terms for terminating the employment relationship without the employee having any recourse at an employment tribunal.

A “without prejudice” conversation occurs where there is a genuine dispute between the employer and employee and the conversation is a genuine attempt to resolve this.

If both parties agree to the terms of terminating the employment, a settlement agreement can be drafted. A settlement agreement is a legally binding contract, in which the employee waives any rights to take their employer to court or employment tribunal on any matters listed in the settlement agreement (some exceptions apply, refer to ACAS guidance for further information).

4.0 CONTENTS OF ANY AGREEMENT

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.

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). 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.

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. Any agreement we strike 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.

4.1 ‘One off’ Components

From time to time, and in the light of particular circumstances faced, we 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.

4.2 Factual References

We will also offer a factual reference where asked to do so. Such reference will state:

- the start date of employment;
- the end date 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.

We 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 Data Protection Act 2018 or the UK GDPR.

We will not include restrictions on disclosing matters beyond – particularly such issues that are undeniably of wider public interest/whistleblowing.

5.0 CONCLUDING AGREEMENTS

We 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.
Where the adviser charges the employee a fee, we will cover that cost 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. Such sum as we pay in this regard will be over and above the overall limits we have earlier set out.

5.1 Best Resources

West Granton Housing Co-op will engage the services of any resource whom we feel is best able to conclude the agreement on our behalf, for example an external HR service, an ACAS official, Co-ops UK or an employment lawyer.

We may also use a combination of resources – for example our HR people may deal with the difficult “negotiations” stage before passing the matter onto another adviser/ACAS official/lawyer to write up the formal agreement paperwork. In all cases we will seek formal legal advice before concluding any Settlement Agreement.

6.0 COSTS INVOLVED

Aside from the value of any payments made to employees, we will seek value for money in the cost involved in our executing any agreement. 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 good will built up with the employee/ACAS officials in getting to a "yes" position). In all cases we will seek legal advice and support.

Due to the expected limited use, we will sense check likely costs involved each time we execute a Settlement Agreement. We are aware that EVH, and others, may be able to offer information on what a variety of advisers typically charge.

7.0 EVH INFORMATION NOTE – Appendix 1

West Granton Housing Co-op is a member of Employers in Voluntary Housing (EVH) and of Co-ops UK, both of whom offer HR advice.

Appendix 1 of this policy provides EVH's Information Note on Settlement Agreements. As members of EVH, WGHC will give full regard to this information. In addition, the EVH Information Note regularly refers to ACAS guidance which complements the various references to ACAS within this policy.

8.0 IMPLEMENTATION AND REVIEW

The CEO will ensure that the policy is implemented when necessary. The CEO will ensure that this policy is reviewed at least every three years by the Committee of Management

Appendix 1: EVH Information Note

Introduction & Background

The purpose of this information note is to provide guidance and information on pre-termination discussions and settlement agreements. HR policies and procedures support the management of employment issues e.g. informal/formal discipline and grievance, performance management, absence and attendance, entitlements and leave management.

However, on some occasions efforts to resolve situations fail. The Employment Relations Act 1996 Section111A provides scope for employers to have confidential pre-termination discussions with staff where the employment relationship is not working out. Contracts may be terminated by mutual agreement through discussions, which can reduce the substantial amount of management time and money paid on legal fees.

Pre-termination Discussions

A pre-termination discussion is a protected and confidential conversation during which an employee and employer can agree terms for terminating the employment relationship without the employee having any recourse at an employment tribunal. A "without prejudice" conversation occurs where there is genuine dispute between the employer and employee and the conversation is a genuine attempt to resolve this.

Unsuccessful pre-termination discussions cannot be used as evidence in most tribunal complaints related to unfair dismissal and constructive dismissal but, there are some exceptions to this:

- Automatically unfair dismissals.
- Anything said or done, which in the tribunal's opinion was improper.
- Issues relating to costs.
- Discrimination claims.

ACAS has provided detailed guidance on this topic. The guidance is not statutory and therefore, not legally binding. However, it is expected that employers follow ACAS guidance as best practice and employment tribunals will take this into consideration.

Actions by an employer that may be deemed as improper by a tribunal include: (this list is not exhaustive):

- All forms of harassment and discrimination.
- Physical assault and other criminal or wrongful behaviour. • Victimisation as a result of invoking a statutory right.
- Putting undue pressure on the employee to make a decision and agree to the terms. 'Undue pressure' is a very generic term. The ACAS guidance states that this will include actions such as:
- Not permitting an employee 10 calendar days within which to consider an offer (EVH recommend10 working days for the employee to consider the terms of the offer).
- Altering the terms of the offer during this period.

- Making clear before any disciplinary process that the employee will be dismissed if the offer is rejected.
- An employee threatening to undermine an organisation's reputation if the employer refuses to agree to their terms.

Settlement Agreements

If both parties agree to the terms of terminating the employment, a settlement agreement can be drafted. A settlement agreement is a legally binding contract in which the employee waives any rights to take their employer to court or employment tribunal on any matters listed in the settlement agreement.

For a settlement agreement to be legally binding, the following criteria must be met:

- It must be entered into voluntarily by the employee following advice from an appropriate independent advisor on the terms and implications of the agreement.
- The agreement must state the advisor's name and the name of their practice. The advisor must have relevant insurance in place covering a risk of a claim by the employee in respect of loss arising from the advice they provide.
- It must state the applicable statutory conditions regulating the agreement have been satisfied.
- It must be in writing and a hard copy signed in duplicate by the employee and an authorised signatory on behalf of the employer.
- The employee and employer each retain one copy of the agreement, signed by both parties.

In addition to the above ACAS also recommend the following:

- Settlement agreements usually include a payment being made by the employer to the employee and a reference.
- The employee may wish to bring a union representative with them to pre termination discussions for support and advice. There is no legal obligation to allow this but, having a companion may be beneficial for negotiations.
- Employees should be given a reasonable amount of time to consider the terms of the agreement – EVH recommends 10 working days.

Any payments under the terms of the settlement agreement made to the employee are exempt of Tax and National Insurance up to the value of £30,000. Any sum greater than £30,000 would be taxable and subject to national insurance deductions.

This sum does not include contractual entitlements such as any Payment in Lieu of Notice (known as PILON). Any PILON, payment for annual leave accrued but, not yet taken etc are subject to Tax and National Insurance.

Employers should be aware that the contents of a settlement agreement are highly confidential and should only be released if required by law. Releasing details to agencies or stakeholders out with the legal requirements is an immediate breach of the terms of the settlement agreement. After the initial protected conversation communication will be in written form if it is agreed to proceed with negotiations at this stage.

Who can authorise the terms of a settlement agreement?

Whilst the governing body (Committee of Management) would normally not be directly involved in negotiations regarding a settlement agreement, they should be aware if the employer is considering the use of a settlement agreement to terminate employment and the reason for this.

The employer must know what payment amount they are willing to pay prior to entering discussions. This figure must be authorised by the governing body (Committee of Management).

Negotiations will normally start at a lower figure than the maximum sum authorised. EVH would advise that the sum paid under a settlement agreement should not exceed the maximum payment which an employee would receive under their terms and conditions of employment should they be made redundant from their position.

This calculation would be based on their normal weekly pay rate. Often the sum agreed will be far less than this amount. A number of people can be responsible for negotiations on behalf of an organisation including HR professionals, employment lawyers and managers.

A union official or solicitor may liaise with the employer on behalf of the employee or the employee may liaise with the employer directly. If liaising with someone on behalf of the employee the employer should ask for explicit permission from the employee to do this.