

Putting People 1st

Staff Severance & Settlement Agreements Policy Ref S.18

Reviewed

27 April 2023

Date next due for review:

April 2023

27/01/22 – Committee approved change to review date.

This policy document can be produced in various formats, for instance, in larger print or audio-format; and it can also be translated into other languages, as appropriate.

Our equality and diversity policy statement describes our key equality commitments that we use to develop all organisational services; this includes employment services and services to tenants and other customers.

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The Scottish Housing Regulator Reg. No: HAC231; Registered Scottish Charity No: SC038237; FCA Reg. No: 2375R(S); Property Factor Reg. No: PF000151

Risk and Financial Implications

- Regulatory engagement and associated costs of non-compliance.
- Employment claim / tribunal costs if no effective management system.

Linkage to Internal Management Business Plan and Regulatory Standards

- Business Plan:
Section 3: Vision, Mission, Values and Objectives
Section 9 – Risk Management
- Regulatory Standards:
Standard 5 - The RSL conducts its affairs with honesty and integrity.

Terms of Reference

- Equality Act 2010
- Employment Rights Act (ERA) 1996
- UK General Data Protection Act (UK GDPR)
- Terms and Conditions of Employment
- ACAS Code of Practice 4
- Settlement Agreements (under section 111A of the Employment Rights Act 1996)
- EVH Information Note Pre Termination Discussions & Settlement Agreements (Feb 2023)

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1. Introduction

Pineview has approved an Entitlements, Payments & Benefits Policy which is applicable to all staff and board members, which sets out:

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

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

The purpose of this policy is to outline when and how the Association will use Severance and settlement Agreements

2. Voluntary Severance Payments

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

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

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 Pineview 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. Nature and use of Settlement Agreements

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

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.

Settlement Agreements are normally used to bring an employment relationship to an end in a mutually agreed way, for instance when Pineview may feel that it has lost trust and confidence in a senior member of staff, or an employee feels that their relationship with Pineview 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.

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 Pineview's disciplinary and grievance policies and procedures contained in the terms and conditions of employment.

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.

If the committee wish to initiate such discussions with the Director, the Chair and/or any other committee member, supported, if appropriate, by an employment advisor, after prior authorisation from the full management committee, will undertake them.

Where such discussions are initiated by the employee, the Director must seek guidance from the committee (by decisions between meetings 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.

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 Pineview'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 – EVH recommends ten working days is allowed for the employee to consider the offer.
- For further details see ACAS guidance.

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.

Although not absolutely required to do so, Pineview 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 Pineview. The length and style of reference agreed will have regard to the circumstances in which the employment contract is being terminated.

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 a solicitor 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. Pineview may make a contribution towards the costs of obtaining this independent advice. (£250 plus vat).

Pineview 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.

A Pineview 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

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.

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.

Any offer of voluntary redundancy made to any groups of staff should indicate that a Settlement Agreement will need to be entered into between Pineview 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 Pineview may meet the reasonable costs of taking such advice.

Pineview 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 Pineview 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

Where either Pineview 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 Pineview, the following 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 committee must accept that any dispute or breakdown in relationship with Pineview, 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 Pineview to make such a payment and enter into a Settlement Agreement.

- *Payment is approved by the Committee*

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.

- *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 Pineview 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 a written statement of opinion from our specialist employment adviser – either EVH, provided that they are prepared to make such a statement, or a suitably experienced and qualified employment lawyer – that the proposed payment is within the levels of potential cost that Pineview is at risk of incurring should a relevant 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, 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.

- *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.

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

5. Review

This protocol was first approved by the management committee in April 2019. This policy will be reviewed every three years to ensure it continues to meet legislative and organisational needs or where EVH issues a revised Model Policy, whichever is sooner.

Any amendments will be communicated to all staff and relevant stakeholders.

6. Regulatory Requirements

This policy is prepared to support the Association in achieving the following Regulatory Standards effective from 1st April 2019:

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.

For the avoidance of doubt should this policy relate to the Director then the Chairperson or another nominated member of the Committee (nominated by the Committee) supported by the Association's legal advisers and or employment advisers currently Employers in Voluntary Housing (EVH) will fulfil the role of the Director outlined above.

7. UK General Data Protection Regulations

The Association will treat your personal data in line with our obligations under the current data protection regulations and our own Data Protection Policy. Information regarding how your data will be used and the basis for processing your data is provided within the "How We Will Use Your Personal Information" statements.