



Bridgewater Housing Association Policy

Policy name	Settlement Agreement
Policy category	Corporate (HR)
Policy number	CS38
Date adopted	2023
Last review	2023
This review	2023
Next review	2028
Equalities impact assessment required	No
Links to other documents	<ol style="list-style-type: none"> 1. EVH Terms and Conditions 2. Entitlements, Payments & Benefits Policy 3. Equality and Diversity Policy 4. Scottish Housing Regulator Notifiable Event Guidance. 5. ACAS publication, "Settlement Agreements: A guide"
Consultation	No
Appendices	None

1.0 INTRODUCTION

- 1.1 Bridgewater HA 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 Bridgewater will permit, and to ensure that these arrangements demonstrate transparency, honesty, and propriety.
- 1.2 This policy applies to all Board members, and everyone who works for Bridgewater. All Bridgewater employees will be issued with a form of contract of employment when their employment commences. 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.
- 1.3 It is our policy that whenever a voluntary redundancy or other voluntary severance payment is proposed to be made, Bridgewater will require the employee, to whom the payment is proposed to be made, to enter into a Settlement Agreement with the Association, in order to protect its interests.
- 1.4 Bridgewater expects that its existing range of employment policies will be able to successfully resolve the vast 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 arise for which there is no policy. 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.
- 1.5 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. We will also seek value for money in any agreement(s) we conclude.
- 1.6 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.
- 1.7 In making decisions around the use of settlement agreements and severance payments the Association will act in accordance with the following legislation:
- Employment Rights Act 1996
 - The Trade Union and Labour Relations (Consolidation) Act 1992
 - Equality Act 2010

2.0 SHR STANDARDS OF GOVERNANCE AND FINANCIAL MANAGEMENT

- 2.1 This policy is intended to provide additional assurance to the Board of Bridgewater Housing Association that it is complying with:

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 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. And its primary focus is the sustainable achievement of these priorities.

Standard 4

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

Standard 5

The RSL conducts its affairs with honesty and integrity.

3.0 CONDITIONS FOR MAKING VOLUNTARY SEVERANCE PAYMENTS

- 3.1 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 the Finance and Corporate Services Sub Committee – this may be through electronic approval, and thereafter reported to a full meeting of the Board;
 - 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 Bridgewater 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.
- 3.2 More details of the process for ensuring that these conditions are met are provided in Section 4.

4.0 NATURE AND USE OF SETTLEMENT AGREEMENTS

- 4.1 A Settlement Agreement is a legally binding contract entered into between Bridgewater HA, and an employee, or former employee (or in exceptional circumstances, an unsuccessful job applicant who feels they were discriminated against), 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 Bridgewater HA.
- 4.2 Such agreements will waive the employee's rights to bring any potential claims covered by the agreement, effectively in return for the payment if that is part of the transaction, that is contracted 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.

- 4.3 Settlement Agreements are normally used to bring an employment relationship to an end in a mutually agreed way, for instance when Bridgewater may feel that it has lost trust and confidence in a member of staff, or an employee feels that their relationship with Bridgewater 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.
- 4.4 Settlement agreements can also be used to deal with other types of workplace issues Bridgewater may have from time to time, such as: changes to working patterns; introduction of new grading systems or similar. Bridgewater would expect its relevant HR policies/procedures, along with its local/national negotiating framework, to provide methods to deal with the majority of such matters.
- 4.5 However, without implying any sense of entitlement, Bridgewater does nonetheless reserve the right to resolve employment disputes using Settlement Agreements where it considers it sensible to do so and where none of the existing policies offer an obvious method to resolve the problem.
- 4.6 Only the Chief Executive 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.
- 4.7 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.
- 4.8 If the Board wish to initiate such discussions with the Chief Executive, they will be undertaken by the Chairperson and any other Board member, supported, if appropriate, by an employment advisor, after prior authorisation from the full Board.
- 4.9 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", and to any requirement for specific advice from Bridgewater'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 on disciplinary and grievance.

- 4.10 Where such discussions are through face-to-face meetings, the employee is entitled to be accompanied by a work colleague or trade union representative.
- 4.11 Where asked to do so, Bridgewater will offer a factual reference. Such a reference will state the start and end dates of employment with Bridgewater; 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.
- 4.12 If discussions end in agreement to conclude a Settlement Agreement, a formal written agreement will be required. External specialist professional advice must be taken about the form of such agreements (from our 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. Bridgewater will meet the reasonable costs of obtaining this independent advice up to the value of £350 plus VAT. Where the fee is higher than this, then the employee will be responsible for paying the balance. Any payment Bridgewater makes in this regard will be over and above the overall limits it has set out.
- 4.13 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.
- 4.14 A Settlement Agreement can only be signed by authorised persons following agreement by the Finance and Corporate Services Sub Committee to that effect.

5.0 PROCESS FOR COMPLYING WITH CONDITIONS FOR MAKING VOLUNTARY SEVERANCE PAYMENTS

5.1 Voluntary redundancy

- 5.1.1 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 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.
- 5.1.2 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-level approval prior to being made to staff.
- 5.1.3 Any offer of voluntary redundancy made to any groups of staff should indicate that a Settlement Agreement will need to be entered into between Bridgewater 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 Bridgewater will meet the reasonable costs of taking such advice up to the value of £350 plus VAT as outlined in 4.12.
- 5.1.4 Bridgewater 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 Finance and Corporate Services Sub Committee, the Chief Executive has delegated authority to complete the agreement on behalf of Bridgewater,

with the agreement signed by an authorised signatory. The outcome and final details of any payment must be reported back to the Board at the first opportunity.

5.2 Other voluntary severance payments

5.2.1 Where either Bridgewater 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 Bridgewater, 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 Employment Panel (Made up of members from Finance and Corporate Services Sub) must have agreed that it wishes the result to be the termination of the employee's contract of employment. The panel must accept that any dispute or breakdown in relationship with Bridgewater, or 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 clearly in the best interests of Bridgewater 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 Chief Executive, Board Members who are part of a disciplinary process, or via solicitors, once an agreed outcome has been reached, it must be referred to the other members of the Finance and Corporate Services Sub 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 Bridgewater of participation in the hearing*

As part of the report to the Finance and Corporate Services Sub 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 Bridgewater 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 Chief Executive 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 Sub Committee. 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. for outstanding leave entitlement, notice entitlement or long service awards) can be made in addition to the proposed severance payment.

- 5.2.2 The requirements of the process for entering into a Settlement Agreement, as set out in section 4 of this protocol, will be followed as part of the process of agreeing and making a voluntary severance payment.

6.0 EQUALITIES

- 6.1 Bridgewater 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.
- 6.2 We 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 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 concerned.
- 6.3 We 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)

7.0 NOTIFIABLE EVENT

- 7.1 All Settlement Agreements will be reported to the Scottish Housing Regulator as a Notifiable Event, providing necessary documentation as required of the decision and reporting to Board.

8.0 POLICY AVAILABILITY

- 8.1 This document can also be provided in large print, braille, audio or other non-written format and in a variety of languages, on request.

9.0 MONITORING AND REVIEW

- 9.1 This policy will be reviewed every five years, unless amendment is prompted by a change in legislation, operational requirements, or staff feedback.