



Craigdale
HOUSING ASSOCIATION

SETTLEMENT AGREEMENT POLICY

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Craigdale Housing Association can provide this document on request, in different languages and formats, including Braille and audio formats.

1.0 INTRODUCTION

Craigdale Housing Association (Craigdale) expects that its existing range of employment policies will be able to successfully resolve the majority of workplace disputes. It is acknowledged that there may be exceptional occasions when settlement agreements can be considered where these may be in the best interests of the organisation and the employee(s).

The purpose of the settlement agreement is to effectively close off any potential claim by employee(s) and/or employer in an agreed, clear and conclusive manner. In the majority of cases, there is likely to be a financial component contained therein.

Where settlement agreements are used, conditions contained within them will be restricted to those necessary to deal with the employee relations, business requirements and employment law issues concerned. Where a severance payment is accompanied by a settlement agreement, this will not be used to limit public accountability or whistleblowing.

In presenting a settlement agreement case for approval, value for money will be a key consideration in any agreement(s) Craigdale concludes. As part of this value for money assessment, professional legal advice will be sought and considered fully before entering into a settlement agreement.

In all cases, any agreement reached must be entered into voluntarily by the employee(s), and that an employee(s) affected must also have received suitable advice from an appropriately qualified and indemnified person.

Settlement agreements may be reached with employees who are preparing to leave Craigdale's employment, or who have already left Craigdale's employment and feel they have a residual dispute with or claim against Craigdale. They may also be reached with remaining employees as a means of settling a dispute or contractual change.

2.0 REGULATORY AND LEGAL CONTEXT

The following regulatory requirements or legislation relates to this policy:

This policy supports the Scottish Housing Regulator's [SHR] Regulatory Guidance on Notifiable Events, published in February 2019* and the appended note specifically relating to the Registered Social Landlord [RSL] entering into "settlement agreements" with employees.

* <https://www.scottishhousingregulator.gov.uk/for-landlords/statutory-guidance/notifiable-events>

In reaching any settlement agreement, Craigdale will take full account of the Entitlements, Payments and Benefits Policy and the Scottish Housing Regulator's Regulatory Framework and in particular, the requirements under Standard 5 [5.7] that:

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.

The following are also relevant:

- Trade Union and Labour Relations (Consolidation) Act 1992
- Employment Rights Act 1996
- Employment Tribunals Act 1996
- National Minimum Wage Act 1998
- Income Tax (Earnings and Pensions) Act 2003
- Equality Act 2010
- Working Time Regulations 1998 (SI 1998/1833)
- Enterprise and Regulatory Reform Act 2013
- ACAS Code of Practice on Settlement Agreements
- SSSC Code of Practice for Social Service Workers and Employers

This Policy will achieve compliance, mitigate and monitor associated risk of non-compliance as follows:

3.0 PRINCIPLES

The following principles govern the operation of this policy:

- Be clear and understood by all employees
- Be fair, equitable and non-discriminatory
- Reflect the needs of our diverse organisation
- Reflect statutory requirements and best practice
- Be flexible and adaptable to changing needs

4.0 OBJECTIVES

The objectives of this policy are to:

- To provide a framework for managing settlement agreements fairly, consistently and in accordance with regulatory requirements, employment legislation and good practice
- To provide a mechanism to effectively close off any disputes between employees and Craigdale in an agreed and clear manner.
- To inform employees of their statutory and contractual rights

5.0 APPROACH AND METHOD

The Craigdale Board in its formal approval of the policy acknowledges that it accepts full responsibility for its implementation. Day-to-day responsibility for the operation of this policy lies with the Chief Executive Officer (CEO) of Craigdale. All relevant employees have a responsibility to ensure that this policy is applied as instructed.

The policy will be implemented using the following approaches:

5.1 Without Prejudice Discussions and Protected Conversations

Discussions which take place in order to reach a settlement agreement in relation to an existing employment dispute may be undertaken by either party on a 'without prejudice' basis. This means that any statements made during a 'without prejudice' meeting or discussion cannot normally be used in a court or tribunal as evidence.

In some circumstances where an employment dispute does not exist, either party may still be able to initiate a discussion regarding a settlement agreement on a confidential basis by holding a 'protected conversation'. However, such conversations must be entered into cautiously since a court may determine that they are admissible as evidence in a tribunal if the employee has a claim for discrimination or automatic unfair dismissal (e.g. due to an alleged breach of statutory rights). Additionally, conversations will not be protected where there has been 'improper behaviour', for example, bullying or harassment.

The CEO should always seek advice and guidance from our Lawyer and have secured the required approvals in accordance with governance arrangements (see 5.3 Approvals below), prior to engaging in any discussions about a potential settlement agreement.

5.2 The Agreement

Where a dispute results in the employee leaving Craigdale's employment (or a similar issue with a former employee resulting in their waiving any rights to approach an employment tribunal or other relevant court), the main tool in settling the matter will generally be to pay an agreed financial sum to the employee. In this regard, such payments will be reasonable in the circumstances of the case.

It will be specified within any agreed financial settlement, the requirement to pay contractual elements as may be due, such as notice pay and outstanding holiday pay. Any agreement reached will separate the above contractual 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.

From time to time, and in the light of particular circumstances faced, it may be considered appropriate to include other "one-off" components within an agreement. For example, waiving Craigdale's right to reclaim training costs made on behalf of the employee concerned. In all cases, the realistic value of such items will be taken into account (and form a part of) the overall limits set out above.

A factual reference will be appended to the settlement agreement were asked to do so. Such a reference will state the start and end dates of employment; the post(s) held; and the range of duties included within the post(s), with limited factual commentary as appropriate. However, employees should note that, as a social service employer, Craigdale has an obligation to provide accurate and appropriate employment references to share information relating to a person who undertakes regulated work's suitability to work in social services. Therefore, the information provided on a reference may not be restricted to that detailed above and may include information relating to a worker's fitness to practice.

The agreement 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 terms. Such provisions will be included to cover those matters that are normally confidential within an employee relations framework; or those that are otherwise specifically contained within the spirit of the General Data Protection Regulations framework.

It will not include restrictions on disclosing matters where there is a legal right of protection – particularly such issues that are undeniably of wider public interest/whistleblowing.

The agreement will normally contain a ‘non-disparagement clause’, which prevents an employee from making any derogatory or disparaging comments about Craigdale, its stakeholders (including but not limited to its employees, customers and Board members). Craigdale will be bound by a similar clause in relation to the employee. However, as noted above, this does not supersede any requirement to make a legal disclosure, or a referral to a regulatory body if there are concerns about a worker in a regulated role’s fitness to practice.

5.3 Approvals

All settlement agreements authorised by the CEO is subject to appropriate Board approvals, in accordance with the relevant Standing Orders and Entitlements, Payments and Benefits Policy.

Lawyer, in conjunction with the CEO, will lead any such discussion and the development of a settlement proposal.

Only on approval in principle will a settlement proposal be offered for consideration.

Craigdale will seek legal assistance to conclude the agreement on its behalf where it has been established that there is an outline agreement to be concluded, following appropriate Board approval having been secured.

5.4 Concluding Agreements

Normally, a minimum of 10 calendar days is allowed to enable either party to consider the proposed formal written terms of a settlement agreement and to receive independent advice, unless the parties agree otherwise.

No settlement agreement may be reached unless the employee(s) concerned have received advice from a suitably qualified and indemnified adviser¹. Craigdale will not permit the employee to use any adviser who is also acting for us as this would represent a clear conflict of interests. Where the adviser charges the employee a fee, Craigdale will cover that cost up to the value of £500 plus VAT. Where the fee is higher than this, the employee will be responsible for paying the balance. Such sum as Craigdale pays in this regard will be over and above the overall limits set out above.

¹ An independent adviser can be a qualified lawyer, a certified and authorised official, employee or member of an independent trade union or a certified and authorised advice centre worker. They must have a current contract of insurance or professional indemnity insurance covering the risk of a claim by the employee in respect of loss arising from that advice.

5.5 Costs Involved

Aside from the value of any payments made to employees, value for money will be sought in the cost involved in executing any agreement. Where the matter has reached ACAS Pre-Employment Tribunal conciliation, Craigdale will use the (free) ACAS service in concluding any agreement, normally through a COT3 (sets out the terms of a settlement agreement), – unless the matters are so complex as to warrant substituting an agreement drafted by Craigdale’s legal advisers.

As part of the approvals process, Craigdale will include a value for money test in relation to the cost of the settlement agreement proposal(s) against likely costs of a successful court/tribunal claim each time a Settlement Agreement is executed.

5.6 Notifying the Scottish Housing Regulator

Information provided will always seek to balance the regulatory requirement for assurance and individuals’ rights under data protection legislation.

Craigdale will fulfil the requirement to notify SHR of the conclusion of any settlement agreement via the SHR portal. Given the non-confidential nature of the portal, limited information be provided and will be supplemented with follow-up correspondence to our Regulation Manager detailing the following:

- a) Employee reference number
- b) Outline of the reason for the agreement
- c) The elements of risk which were managed in reaching the agreement
- d) An assessment of value for money
- e) Confirmation that:
 - Governing Body reporting requirements were met in accordance with the relevant Entitlements, Payments and Benefits Policy and Standing Orders.
 - The requirements of sections 5.7 and 5.8 of the Regulatory Standards were adhered to.
 - Legal advice was sought on the proposed settlement and was taken account of in deliberations. The agreements were drafted by our legal advisers and these closed off a potential claim.
 - The agreements did not ask the employee to waive any rights on public disclosure or whistle blowing.

6.0 EQUALITIES IMPACT

An equalities impact assessment accompanies this policy. We do not envisage any adverse impact based on the nine protected characteristics defined in the Equality Act 2010 and will monitor this on an annual basis. However, in seeking to avoid an adverse impact, 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(s) concerned.

In applying this policy, Craigdale will take account of the need to present a settlement agreement option to employees by explaining legal terminology in an accessible way.

7.0 MONITORING OF THE POLICY

Any matter which demonstrates a serious failure of internal controls should be reported immediately to the Chief Executive. This policy will be monitored as follows;

- Annual reporting to the Scottish Housing Regulator

8.0 COMPLAINTS AND APPEALS

Craigdale recognise employees may have issues or concerns about their work, the environment or working relationships that they may wish to raise and have addressed. Employees are encouraged to raise a concern, in the first instance, with their line manager to try and resolve the matter informally. Should this course of action prove unsatisfactory, however, then an employee may raise a formal grievance. Further information can be found in the Grievance Policy.

9.0 POLICY AVAILABILITY

A summary of this policy can be made available in other languages and formats on request.

10.0 POLICY REVIEW

Craigdale undertake to review this policy regularly, at least every 3-5 years, with regard to:

- Applicable legislation, rules, regulations and guidance
- Changes in the organisation
- Continued best practice

11.0 DATA PROTECTION IMPACT ASSESSMENT SCREENING

Carrying out a Privacy Impact Assessment [PIA] will be useful to any project – large or small – that:

- Involves personal or sensitive data about individuals
- May affect our customers' reasonable expectations relating to privacy
- Involves information that may be used to identify or target individuals

A Data Protection Impact Assessment [DPIA] (also known as Privacy Impact Assessment [PIA]) must be completed if the policy involves one or more of the following (please tick each that apply to this policy):

evaluation or scoring	
automated decision-making with significant effects	
systematic monitoring	
processing of sensitive data or data of a highly personal nature	✓
processing on a large scale	
processing of data concerning vulnerable data subjects	
innovative technological or organisational solutions	
processing that involves preventing data subjects from exercising a right or using a service or contract	
use systematic and extensive profiling or automated decision-making to make significant decisions about people	
process special-category data or criminal-offence data on a large scale	
systematically monitor a publicly accessible place on a large scale	
use innovative technology in combination with any of the criteria in the European guidelines	
use profiling, automated decision-making or special category data to help make decisions on someone's access to a service, opportunity or benefit	
carry out profiling on a large scale	
process biometric or genetic data in combination with any of the criteria in the European guidelines	
combine, compare or match data from multiple sources	
process personal data without providing a privacy notice directly to the individual in combination with any of the criteria in the European guidelines	
process personal data in a way that involves tracking individuals' online or offline location or behaviour, in combination with any of the criteria in the European guidelines	
process children's personal data for profiling or automated decision-making or for marketing purposes, or offer online services directly to them	

process personal data that could result in a risk of physical harm in the event of a security breach	
there is a change to the nature, scope, context or purposes of our processing	
If a DPIA is not carried out, please summarise the reasons below:	

12.0 EQUALITY IMPACT ASSESSMENT SCREENING

Will the implementation of this policy have an impact on any of the following protected characteristics?

Age	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Disability	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Gender reassignment	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Marriage and Civil Partnership	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Pregnancy and Maternity	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Race	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Religion or belief	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Sex	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Sexual orientation	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>

If you have answered 'Yes' to any of these points, please complete a full Equality Impact Assessment. If you have answered 'No', you need take no further action in completing an Equality Impact Assessment.