



<b>Policy Title:</b>	Severance Payments and Settlement Agreements Policy
<b>Owner:</b>	Chief Executive Officer
<b>Date Approved:</b>	20 <sup>th</sup> January 2022
<b>Approved By:</b>	Board
<b>Next Review Date:</b>	January 2025
<b>Regulatory Standards:</b>	<ul style="list-style-type: none"> <li>▪ Regulatory Standard 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</li> <li>▪ Regulatory Standard 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</li> </ul>

## 1. Introduction

- 1.1. Cadder has approved an Entitlement, Payments & Benefits Policy which is applicable to all staff and board members. This policy sets out:
  - The obligation to declare any interests that you, or someone closely connected to you, may have which are relevant to our business.
  - Entitlement, payments and benefits to which staff and board members are entitled.
  - What kind of payments are not permitted.
- 1.2. In general terms, payments should not be made to employees or ex-employees unless the payment is a contractual entitlement. For example, employees who are made redundant are entitled to a redundancy payment in accordance with their contract of employment.

- 1.3. In some other circumstances Cadder may wish to offer a Severance Payment or Settlement Payment which is not contractually due. The purpose of this policy is to set out when and how this can be done.

## 2. Definitions

Cadder:	Cadder Housing Association Limited
Board:	References to Cadder's Board include references to any appropriately-constituted Audit & HR Sub-Committee
Severance Payment:	A payment made to an employee in connection with an agreed termination of employment, that payment not being contractually due
Settlement Payment:	A non-contractual payment made to an employee or ex-employee in other circumstances, to resolve a potential claim
Settlement Agreement:	A legally binding Agreement between Cadder and an employee or ex-employee whereby a Severance Payment or Settlement Payment is made

## 3. Background

- 3.1. Cadder expects that our existing range of employment policies will be able to resolve successfully most business challenges that we may face. For example, we have policies to address:
- Disciplinary investigations, hearings and appeals where there is a suggestion of misconduct by an employee
  - Grievance investigations, hearings and appeals in relation to concerns raised by employees
  - Performance management processes where there are concerns about an employee's performance
  - Policies for managing both regular short-term absence and long-term absence
  - Dealing with whistleblowing concerns that are raised by employees
  - Organisational change, restructure and redundancy
  - Support for employees who are experiencing difficulties such as suffering stress
  - Concerns regarding discriminatory treatment by the organisation or by colleagues
  - Concerns regarding bullying or harassing behaviour
- 3.2. This is not an exhaustive list.
- 3.3. The expectation is that these policies will be used by Cadder and where applicable by staff, to either resolve the issue that has arisen, or, where appropriate, lead to a decision to terminate employment
- 3.4. However, there are situations where a Severance Payment or Settlement Payment may be considered an appropriate and reasonable way forward. **This would only be**

**considered in exceptional circumstances and the general expectation is that such payments will not be made.**

- 3.5. Circumstances in which we may consider a payment include:
- Resolving an employment dispute on the basis that a Severance Payment is made and the employee agrees to leave Cadder's employment
  - In a redundancy/restructure situation, agreeing that an employee should leave with an enhanced payment (Severance Payment) – this should be unusual since the contractual entitlement is already enhanced beyond the statutory entitlement, but could be appropriate for example to avoid a prolonged process, or to encourage volunteers
  - Resolving an employment dispute with an employee by making a Settlement Payment to avoid, or to settle, litigation against Cadder
  - Resolving an employment dispute with an ex-employee by making a Settlement Payment to avoid, or to settle, litigation against Cadder
- 3.6. In all such cases such a payment must be approved in advance by the Board. If a payment is offered, it will be conditional on the parties entering into a Settlement Agreement (or similar settlement document), as further set out in this policy.

#### **4. Settlement Agreements**

- 4.1. Settlement Agreements are permitted in law as one way in which employers and employees (or former employees) can mutually agree to deal with disputes that may otherwise have potential to reach an Employment Tribunal (or other court); or where a claim has already been raised.
- 4.2. Settlement Agreements can be used to bring the employment relationship to an end, in a reasonable, conclusive and binding manner.
- 4.3. Settlement Agreements may be considered, for example, 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 satisfactorily.
- 4.4. We accept that in all cases any Settlement Agreement must be entered into voluntarily by the employee and that they must also have received suitable advice from an appropriately qualified person, usually a solicitor.
- 4.5. We are permitted, like any employer, to approach an employee on a confidential basis and initiate a "pre-termination discussion" about the possibility of the employee agreeing an exit from the organisation in return for a Severance Payment. Provided we do not act improperly, this will be off the record and cannot be referred to if there is subsequently an unfair dismissal claim.
- 4.6. We will take appropriate account of advice contained within the EVH 'Pre-termination Discussions & Settlement Agreements' Information Note (May 2019), as well as

information contained within the relevant ACAS Guide (December 2018) – or any updated guidance on this topic issued by EVH and/or ACAS.

## **5. Settlement Agreements Content**

- 5.1. The amount of a Severance Payment or Settlement Payment needs to be reasonable and proportionate to reflect the circumstances of the case, but justifiable and representing value for money to reflect that we are a not for profit and charitable organisation.
- 5.2. Cadder will need to have a clear rationale, based on independent expert legal advice on the matter, be satisfied that it is in Cadder's best interests in the circumstances, and that it provides value for money, before approving the use of our charitable funds to make a non-contractual payment to an employee. Due to the nature of any decision on severance, the final decision by Cadder must be made by the Board. Board should be consulted before any approach is made to an employee or ex-employee to discuss the possibility of a Severance Payment or Settlement Payment.
- 5.3. The following conditions apply to any payment:
  - a) We must have received legal advice that in all the circumstances the Severance or Settlement Payment appears to be in the interests of the organisation, taking account of:
    - Management time that will be involved in managing any internal process (for example, disciplinary, poor performance etc)
    - The costs of obtaining legal advice in connection with same
    - The potential for the employee or ex-employee to bring claims against the Association
    - The prospects of such claims succeeding
    - The value of any compensation the employee may be entitled to
    - The legal costs to be incurred in defending any claims (and whether these costs may be covered by any insurance Cadder has)
    - Management time likely to be involved in dealing with such claims
    - Potential reputational harm (but Settlement Agreements must not be used to avoid accountability or simply to ensure the Association is not held to account for any wrongful actions)
  - b) The manager proposing to the Board that such a payment is made must set out why he/she thinks the payment is in the interests of the organisation.
  - c) The Board must consider matters and be satisfied that the payment is in the interests of the organisation
  - d) The total sum of any non-contractual payment and benefit does not exceed the equivalent of one year's gross salary for the employee.

- 5.4. Any offer of a Severance or Settlement Payment will set out the sum being offered along with any contractual elements such as notice pay and outstanding holiday pay (where the employee is agreeing to leave our employment).
- 5.5. From time to time, and in the light of particular circumstances faced, we may consider including other 'one-off' elements 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 property Cadder 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.
- 5.6. We will also agree a reference where asked to do so. Our general policy is that such a reference will state the start and end dates of employment with us; the post title; the range of duties included within the post; and, the applicable salary range. However we may agree to depart from the standard reference in exceptional cases.
- 5.7. On occasions, negotiations may be conducted via an ACAS conciliator, as part of ACAS "Early Conciliation" or otherwise. Cadder will treat any payment and agreement proposed in an ACAS negotiation in the same way as a Severance Payment or Settlement Payment. As such, any non-contractual payment proposed in such a negotiation needs to meet the terms of this policy. Any reference in this policy to payment being conditional on a Settlement Agreement may also be satisfied by the parties entering into a legally binding ACAS "COT3" Agreement.

## **6. Concluding Settlement Agreements**

- 6.1. The Board must authorise Settlement Agreements.
- 6.2. The use of Settlement Agreements is considered by the SHR to be a notifiable event so all such Agreements will be reported. The Board will receive regular reports about the use of Settlement Agreements so that the Board can monitor their use, effectiveness, and value for money.
- 6.3. We acknowledge that a Settlement Agreement may only be entered into where the employee concerned has received advice from a suitably qualified and indemnified adviser – such as an authorised/certified trade union person, an authorised/certified advice worker, or a solicitor. The employee may not use any adviser who is also acting for us.
- 6.4. Where the adviser charges the employee a fee, we will cover that cost up to the value of £300 plus VAT. Where the fee is higher than this, then the employee will be responsible for paying the balance.
- 6.5. We may use those resources that we feel are best able to prepare and negotiate the Agreement on our behalf, and given the importance of the document this is likely to be a suitably experienced employment lawyer.

## **7. Costs Involved**

- 7.1. Aside from the value of any payments made to employees, we will seek value for money in the cost involved in the process. Wherever possible we will have our own staff perform required work in consultation with our employment lawyers as required. Where a matter has reached ACAS Pre-Employment Tribunal conciliation, we may use the free ACAS service in concluding any agreement.
- 7.2. We expect that our use of Settlement Agreements will be limited, but will review the costs involved on each occasion to provide assurance that these have been accurately calculated and represent value for money. We will account for such payments appropriately and charge expenditure against the relevant budget provision.

## **8. Regulatory Considerations**

- 8.1. Settlement Agreements are permitted in law and where used reasonably, sensibly and proportionately are a legitimate means of mutually agreeing to deal with employment disputes. Such agreements include provisions confirming that both parties will maintain suitable confidentiality in relation to the terms of the agreement and the requirement not to disclose these. The obligation of confidentiality will be subject to the employee's right to make protected disclosures or otherwise raise concerns with any regulator. The purpose of a Settlement Agreement is not to avoid accountability for our actions or to "gag" an employee.
- 8.2. However, as a registered social landlord and charity, we require to comply with the Scottish Housing Regulator's regulatory framework and charity law. As such, we will comply with provisions in relation to notifying the regulator where we have entered into Settlement Agreements.

- 8.3. This policy is prepared in compliance with the SHR's Regulatory Standards:

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.
- 8.4. The Board, in making any decisions in regard to matters set out in this policy, will be mindful of their overarching duties as charity trustees to act always in the interests of Cadder, acting in a manner that is consistent with Cadder's purposes, and with the care and diligence reasonably expected of people managing the affairs of another person.

## **9. Equalities Impact**

- 9.1. This policy will have no direct impact upon the 'protected characteristics' contained within the Equality Act 2010. We will nevertheless be mindful and reasonable in the way that we select cases for consideration as part of a Settlement Agreement.
- 9.2. We will also be aware of the way in which we present this option to employees and the language and process that we use when discussing any proposition with them. We will avoid making any assumptions that may be viewed as discriminatory, and/or taking actions, which in themselves could be perceived as victimising the employee concerned.