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STAFF SEVERANCE & SETTLEMENT AGREEMENTS POLICY

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1) **INTRODUCTION**

Milnbank Housing Association's (MHA) position is that generally they will not use severance payments and settlement agreements.

It is, however, recognised that there may be occasions where MHA will use severance payments and settlement agreements. The remainder of this policy is to outline when and how MHA may use them.

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 MHA may wish to offer a voluntary severance payment that is outside the terms of the contract of employment provided the following conditions are met:

- The payment arises directly from a decision to terminate the employee's contract of employment.
- The total sum of the payment/benefit does not exceed, in the opinion of MHA employment advisor, the total cost of a successful application by the employee to a Court or Tribunal (including the likely level of compensation and associated tribunal costs).
- Payment does not exceed the equivalent of one year's salary.
- The payment is instead of (not additional to) any redundancy entitlement.

The Management Committee must always approve such a payment in advance.

3) **NATURE and USE OF SETTLEMENT AGREEMENTS**

A settlement agreement is a legally binding contract used to bring an employment relationship to an end in a mutually agreed way. They are entered into, and signed by both MHA and the employee or former employee and have the effect of settling any potential employment tribunal claim, or other court proceedings. Such confidential agreements, will effectively allow an employee to waive their rights to bring any potential claims in return for the agreed payments to be made.

Entering into discussions about such agreements is not without risk, (e.g. including payment of what might be regarded as excessive costs; the ongoing employment relationship with the individual concerned if settlement is not agreed; and 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.

4) PROCESS FOR MAKING VOLUNTARY SEVERANCE PAYMENTS

Please refer to Appendix A

5) REGULATORY STANDARDS REQUIREMENTS

This policy aims to support MHA in achieving SHR Regulatory 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.*

6) POLICY REVIEW

This policy will be reviewed by the Management Committee every three years or sooner if circumstances require it.

PROCESS FOR MAKING VOLUNTARY SEVERANCE PAYMENTS

Delegated Authority

- Only the Director, after receiving prior authorisation from the Management Committee, may initiate discussions with an employee about a possible settlement agreement.
- If the Management Committee wishes to initiate such discussions, the Director will undertake this, supported, if appropriate, by Mentor Employment Advisor.
- Where such discussions are initiated by the employee, the Director must seek guidance from the Management Committee. Potential cost of settlements and other parameters would be agreed before entering into such discussions. If the date of the next Management Committee meeting would result in undue delay, the Office Bearers will be consulted with a full report presented at the next scheduled committee meeting.

Discussion with the employee

- In arranging and conducting such discussions, and confirming any agreements in writing, the Director will review ACAS guidance publication, "Settlement Agreements: A guide", and to take regard of specific advice from Mentor Employment Advisors.
- At the start of the meeting, it will be made clear that the parties are meeting to have a protected conversation so the discussions are confidential and "without prejudice" and are expected to be inadmissible in any subsequent legal action 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 (e.g. not giving sufficient time, usually 10 days, to consider any offer).
- Where such discussions are through face-to-face meetings, the employee may be accompanied by a work colleague or TU representative, should they so wish.

Issuing a Settlement Agreement

- If the result of discussions is to conclude a settlement agreement, a formal written agreement will be required. Mentor Employment Advisors

will always prepare such agreements for MHA. 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. MHA will make a contribution towards the costs of obtaining this independent advice.

- Although not absolutely required to do so, MHA 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 MHA. The length and style of reference will take into account the circumstances in which the employment contract is being terminated.
- A settlement agreement will 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.