

# **STAFF SETTLEMENT AGREEMENT** **POLICY**

TO:	Management Committee
PREPARED BY:	Linda Sichi (Deputy CEO)
SUBJECT:	Review of the Staff Settlement Agreement Policy
DATE OF MEETING:	08 October 2024
APPROVED BY:	Paul Martin (CEO)

LS/OCTOBER2024/REF: P78



0141 551 8131



0141 550 2060



admin@milnbank.org.uk



www.milnbank.org.uk



## **CONTENTS**

1. MHA's Strategic Objectives
2. MHA's Values
3. Regulatory & Legislative Compliance
4. Aim of the Staff Settlement Agreement Policy
5. Policy Principles
6. Contents of Settlement Agreement
7. Concluding Agreements
8. Costs Involved
9. Equality & Human Rights
10. Data Collection
11. Monitoring & Review of Strategy

## **1. MILNBANK HOUSING ASSOCIATION (MHA) STRATEGIC OBJECTIVES**

MHA's mission is to provide excellent homes and services in a thriving community. We believe that people living in the MHA community should:

- Have warm, safe, and affordable homes, and receive excellent services from MHA.
- Live in neighbourhoods that are clean and well cared for, with real community pride.
- Have access to opportunities and services that promote a good quality of life.

## **2. MHA's VALUES**

Working as 'One Milnbank' so that we offer the same quality of services, support and housing to all tenants and residents.

## **3. LEGAL & REGULATORY COMPLIANCE**

The Management Committee leads and directs MHA to ensure good outcomes for its tenants and other service users. The Scottish Housing Regulator's Regulatory Framework, 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 vfm. 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.*

## **4. AIM OF STAFF SETTLEMENT AGREEMENT POLICY**

Milnbank Housing Association (MHA) expects that its existing range of employment policies will successfully resolve most workplace disputes, and business challenges. However, it is also acknowledged there may be unique situations when Settlement Agreements can be considered when our policies do not directly provide for. MHA aims is to resolve disputes sensibly and minimise the use of Settlement Agreements. Where they are used, we will ensure that conditions within them are restricted to those necessary to deal with the industrial relations, business challenge and employment law issues concerned. We will also seek VFM in any agreement(s) concluded.

## **5. POLICY PRINCIPLES**

- 5.1 Settlement Agreements are one way in which employers and employees (or former employees) mutually agree to deal with local disputes and business challenge issues that may otherwise have had potential to reach an Employment Tribunal (or other court). They will often be used to bring the employment relationship to an end in a conclusive and binding manner. However, they can also be used to deal with other types of workplaces issue we may have from time to time, (e.g. changes to working patterns; disputes over overtime arrangements; introduction of new grading systems etc.) MHA expects our existing policies like Redundancy, Grievance, Discipline etc to provide methods to deal with most such matters.
- 5.2 However, without implying any sense of entitlement, we do reserve the right to resolve employment disputes using Settlement Agreements where MHA considers it sensible. (e.g. we may include our using these as a further safeguard in redundancy situations or 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.
- 5.3 MHA accept that in all cases any agreement must be entered into voluntarily by the employee(s), who must have received suitable advice from an appropriately qualified and indemnified person.

## **6. CONTENTS OF SETTLEMENT AGREEMENTS**

- 6.1 Disputes in which employees are remaining in MHAs employment may be settled with a variety of monetary and/or other provisions as are pertinent to the matters at hand (e.g. overtime pay rates may be altered; small monetary sums may be agreed to effect a change in working practices; changes to shift working patterns may be agreed etc.).
- 6.2 Where a dispute results in the employee leaving (or a similar issue with a former employee resulting in their waiving any rights to approach an employment tribunal) the main settlement will generally be to pay an agreed financial sum to the employee. MHA will always aim to keep such payments reasonably low (albeit keeping in mind the depth and complexity of the dispute) and any payment would not normally exceed the maximum payment an employee would receive (weeks' pay basis) within our local arrangements on redundancy pay. However, it is also acknowledged the additional need to pay contractual elements due, such as notice pay and outstanding holiday pay. The agreement will separate the various payments and will identify clearly those elements (and their value) which will be subject to income tax and NI contributions in the normal way.
- 6.3 There may be occasions where circumstances are faced, MHA may consider including other "one-off" components within an agreement. (e.g. waive our right to reclaim training costs made on behalf of the

employee; or an arrangement where the employee is not required to return company property MHA provided). This list is not exhaustive but, in all cases, the realistic value of such items will be considered (and form a part of) the overall limits we have set out above.

- 6.4 MHA will also offer a factual reference where asked to do so. This will state the employment start and end dates; post title; range of duties; and the applicable salary range. Our reference will not allude to the level of performance, nor the reason the employment came to an end.
- 6.5 MHA will 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. However, we will restrict such provisions to cover those matters that are normally confidential within an industrial relations framework; or those that are otherwise specifically contained within the spirit of the GDPR framework. MHA will not include restrictions on disclosing matters beyond, particularly such issues that are undeniably of wider public interest/whistleblowing.

## **7. CONCLUDING AGREEMENTS**

- 7.1 MHA acknowledge that no agreement may be agreed unless the employee(s) concerned have received advice from a suitably qualified and indemnified adviser (e.g. an authorised/certified TU person, advice worker or a solicitor. MHA will not permit the employee to use any adviser who is also acting for us. Where the adviser charges the employee a fee, MHA will cover up to the value of £500 plus VAT. Where the fee is higher than this, the employee will be responsible for paying the balance. The sum paid will be over and above the overall limits we have earlier set out.
- 7.2 MHA may use any resource that we feel is best able to conclude the agreement (e.g. CEO/Deputy CEO, external HR service, ACAS official or an employment lawyer). MHA may use a combination of the above (e.g. CEO/Deputy CEO may deal with the difficult negotiations stage before passing the matter onto another official to produce the formal agreement paperwork.

## **8. COSTS INVOLVED**

- 8.1 Aside from any payments made to employees, MHA will seek VFM in the cost involved in executing any agreement. Where possible MHA staff will perform all required work. Where this is not possible, MHA will seek support from other external HR advisers, or from our solicitors. Where the matter has reached ACAS Pre-Employment Tribunal conciliation, we will use the free ACAS service in concluding any agreement unless MHA feel that the matters are so complex as to warrant substituting MHAs agreement paperwork to ensure that the employee/ACAS officials agree to the position.

- 8.2 Due to the expected limited use, MHA will sense check likely costs involved each time we execute a Settlement Agreement. We are aware that EVH, and others, may be able to offer information on what a variety of advisers typically charge.

## **9. EQUALITY & HUMAN RIGHTS**

- 9.1 MHA is committed to equal opportunities, and we will respond to the different needs and service requirements of individuals, and we will not discriminate against any individual for any reason outlined in Equality & Human Rights Legislation.
- 9.2 Equalities Impact - MHA do not see this policy as having any direct impact upon the protected characteristics contained within the Equality Act 2010. We will however be mindful in the way we select those unresolved disputes/business challenge issues to route via the Settlement Agreement method.
- 9.3 We will also be mindful of the way, and the language used, when we present this option to employees when discussing any proposition. 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.
- 9.4 Finally, MHA will also take account of the advice contained within the EVH Pre-termination Discussions & Settlement Agreements Information Note August 2024 (APPENDIX 1); along with the information contained within the relevant ACAS Code of Practice.

## **10. DATA COLLECTION**

MHA will manage all personal data in accordance with our obligations under the GDPR regulations and the Association's Policy.

## **11. POLICY MONITORING & REVIEW**

The Staff Settlement Agreement Policy will be reviewed by the Governance Sub-Committee on a bi-annual basis in line with EVH updates, or as otherwise deemed necessary.

## Pre Termination Discussions & Settlement Agreements Information Note EVH HR Support Service

Issued: August 2024

### Introduction & Background

The purpose of this information note is to provide guidance and information on pre-termination discussions and settlement agreements.

HR policies and procedures support the management of employment issues e.g. informal/formal discipline and grievance, performance management, absence and attendance, entitlements and leave management. However, on some occasions efforts to resolve situations fail.

The Employment Relations Act 1996 Section 111A provides scope for employers to have confidential pre-termination discussions with staff where the employment relationship is not working out. Contracts may be terminated by mutual agreement through discussions, which can reduce the substantial amount of management time and money paid on legal fees.

### Pre-termination Discussions

A pre-termination discussion is a protected and confidential conversation during which an employee and employer can agree terms for terminating the employment relationship without the employee having any recourse at an employment tribunal. A "without prejudice" conversation occurs where there is genuine dispute between the employer and employee and the conversation is a genuine attempt to resolve this.

Unsuccessful pre-termination discussions cannot be used as evidence in most tribunal complaints related to unfair dismissal and constructive dismissal but, there are some exceptions to this:

- Automatically unfair dismissals.
- Anything said or done, which in the tribunal's opinion was improper.
- Issues relating to costs.
- Discrimination claims.

ACAS has provided detailed guidance on this topic, available to view at the following link; <http://www.acas.org.uk/index.aspx?articleid=4395>. The guidance is not statutory and therefore, not legally binding. However, it is expected that employers follow ACAS guidance as best practice and employment tribunals will take this into consideration.

Actions by an employer that may be deemed as improper by a tribunal include: (this list is not exhaustive)

- All forms of harassment and discrimination.
- Physical assault and other criminal or wrongful behaviour.
- Victimisation as a result of invoking a statutory right.
- Putting undue pressure on the employee to make a decision and agree to the terms.

'Undue pressure' is a very generic term. The ACAS guidance states that this will include actions such as:

- Not permitting an employee 10 calendar days within which to consider an offer
- Altering the terms of the offer during this period.
- Making clear before any disciplinary process that the employee will be dismissed if the offer is rejected.
- An employee threatening to undermine an organisation's reputation if the employer refuses to agree to their terms.

### Settlement Agreements

If both parties agree to the terms of terminating the employment, a settlement agreement can be drafted. A settlement agreement is a legally binding contract, in which the employee waives any rights to take their employer to court or employment tribunal on any matters listed in the settlement agreement.

For a settlement agreement to be legally binding, the following criteria must be met:

- It must be entered into voluntarily by the employee following advice from an appropriate independent advisor on the terms and implications of the agreement.
- The agreement must state the advisor's name and the name of their practice. The advisor must have relevant insurance in place covering a risk of a claim by the employee in respect of loss arising from the advice they provide.
- It must state the applicable statutory conditions regulating the agreement have been satisfied.
- It must be in writing and a hard copy signed in duplicate by the employee and an authorised signatory on behalf of the employer.
- The employee and employer each retain one copy of the agreement, signed by both parties.

In addition to the above ACAS also recommend the following:

- Settlement agreements usually include a payment being made by the employer to the employee and a reference.
- The employee may wish to bring a union representative with them to pre termination discussions for support and advice. There is no legal obligation to allow this but, having a companion may be beneficial for negotiations.
- Employees should be given a reasonable amount of time to consider the terms of the agreement – EVH recommends 10 working days is allowed for the employee to consider the offer.

Any payments under the terms of the settlement agreement made to the employee are exempt of Tax and National Insurance up to the value of £30,000. Any sum greater than £30,000 would be taxable and subject to national insurance deductions. Any additional payments which would include payment in lieu of notice (PILON), payment for annual leave accrued but, not yet taken etc are subject to Tax and NI deductions.

Employers should be aware that the contents of a settlement agreement are highly confidential and should only be released if required by law. Releasing details to agencies or stakeholders out with the legal requirements is an immediate breach of the terms of the settlement agreement.

After the initial protected conversation communication will typically be in written form if it is agreed to proceed with negotiations at this stage.

#### **Who can authorise the terms of a settlement agreement?**

Whilst the governing body would normally not be directly involved in negotiations regarding a settlement agreement, they should be aware if the employer is considering the use of a settlement agreement to terminate employment and the reason for this.

The employer must know what payment amount they are willing to pay prior to entering discussions. This figure must be authorised by the governing body. Negotiations will normally start at a lower figure than the maximum sum authorised.

EVH would advise that the sum paid under a settlement agreement should take account of the facts and risks associated with any individual situation. This amount would not normally exceed the maximum payment which an employee would receive under their terms and conditions of employment should they be made redundant. This calculation would be based on their normal weekly pay rate. Often the sum agreed will be far less than this amount.

A number of people can be responsible for negotiations on behalf of an organisation including HR professionals, employment lawyers and managers.

A union official or solicitor may liaise with the employer on behalf of the employee or the employee may liaise with the employer directly. If liaising with someone on behalf of the employee the employer should ask for explicit permission from the employee to do this.

#### **Further Information**

If you require any further information in relation to pre-termination discussions and/or settlement agreements, please contact EVH on 0141 352 7435.