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| Policy Name | Settlement Agreement Policy |
| Policy Author | Director |
| Approved by Sub Committee | N/A |
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West Whitlawburn Housing Co-operative will provide this policy on request at no cost, in larger print, in Braille, in audio or other non-written format, and in a variety of languages. Please contact the office.



Registered with the Scottish Housing Regulator No. 203
Registered Charity No. SCO38737, VAT Registration No. 180223636
Registered society under the Co-operative and Community Benefit Societies Act 2014

1. Introduction

- 1.1 WWHC has adopted an Entitlements, Payments & Benefits Policy (EP&B Policy) based on the Scottish Federation of Housing Associations' model policy, which is endorsed by the Scottish Housing Regulator (SHR) as meeting its regulatory requirements.
- 1.2 The EP&B Policy applies to all staff and committee members. All WWHC employees are issued with a contract of employment when their employment commences. All entitlements, payments and benefits arising from the contract of employment are permitted.
- 1.3 WWHC expects that its existing range of employment policies will be able to resolve the majority of workplace disputes and business challenges it may face. However, we also acknowledge that there may be exceptional circumstances when settlement agreements can be considered where these may be in the best interests of the organisation.
- 1.4 WWHC's aim is to resolve disputes sensibly and thus minimise the use of Settlement Agreements. Where they are used, WWHC will ensure that conditions contained within them are restricted to those necessary to deal with the industrial relations, business challenge and employment law issues concerned.
- 1.5 WWHC will seek value for money in any agreement(s) it concludes.
- 1.6 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.

2. Regulatory Standards

- 2.1 This policy supports the Scottish Housing Regulator's [SHR] Regulatory Guidance 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.

- 2.2 Severance payment to and/or settlement agreement with a staff member is a Notifiable Event to the SHR.

3. Background

- 3.1 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).
- 3.2 Settlement Agreements can 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 workplace issue we may have from time to time, such as: changes to working patterns; disputes over overtime arrangements; introduction of new grading systems and similar.
- 3.3 WWHC would expect our existing policies: such as Redundancy, Grievance, Discipline, Company Sick Pay, Notice Provisions and similar; along with our local/national negotiating framework(s) - to provide methods to deal with the majority of such matters.
- 3.4 However, without implying any sense of entitlement, we do nonetheless reserve the right to resolve employment disputes using Settlement Agreements where we consider it sensible to do so. For example, we may include our using these as a further safeguard in redundancy situations. We may also consider their use 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.
- 3.5 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.

4. Roles and Responsibilities

- 4.1 Management Committee or the Staffing Sub Committee as set out in the Standing Orders has responsibility to monitor the use of settlement agreements to ensure that they represent value for money for WWHC.

4.2 Management Committee has the authority for approving a settlement agreement which exceeds contractual terms in exceptional terms, and where independent advice confirms that this is required. This is set out in Appendix A of the WWHC Entitlements, Payments and Benefits Policy:

We can make a voluntary severance payment to an employee, which is outside the terms of their contract of employment provided:

- It arises directly from a decision to terminate the employee's contract of employment
- Payment is approved by the Management Committee
- That the total sum of the 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 the likely level of compensation that might be awarded by a court or tribunal and associated costs to the organisation 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

4.3 Management Committee has overall responsibility for approval of the Settlement Agreement Policy and any revised versions of the Policy.

4.4 Senior staff have the delegated authority to initiate settlement agreement discussions with advice and assistance from EVH.

4.5 Senior staff also have responsibility for seeking independent legal advice in relation to a settlement agreement and preparation of reports and proposals for Management Committee.

5. Contents of any Agreement

5.1 Disputes in which employees are remaining in our employment may be settled with a variety of monetary and/or other provisions as are pertinent to the matters at hand – 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, and such like.

5.2 Where a dispute results in the employee leaving our employment (or a similar issue with a former employee resulting in their waiving any rights to approach an employment tribunal) the main tool in settling the matter will generally be to pay an agreed financial

sum to the employee. In this regard, we will always aim to keep such payments reasonably low (albeit keeping in mind the depth and complexity of the particular dispute).

- 5.3 In no circumstances will the total value of any payment exceed the upper limit achievable (weeks' pay basis) within our local arrangements on redundancy pay. That amount aside, we also acknowledge the additional need to pay contractual elements as may be due, such as notice pay and outstanding holiday pay.
- 5.4 Any agreement we strike will separate the various 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.
- 5.5 From time to time, and in the light of particular circumstances faced, we may consider including other "one-off" components 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 company property we 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 WWHC will also offer a factual reference where asked to do so. Such 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. Our reference will not allude to the level of performance, nor the reason the employment came to an end.
- 5.7 WWHC 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. 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 General Data Protection Regulations framework.
- 5.8 We will not include restrictions on disclosing matters beyond – particularly such issues that are undeniably of wider public interest/whistleblowing.

6. Concluding Agreements

- 6.1 WWHC acknowledge that no agreement may be struck unless the employee(s) concerned have received advice from a suitably qualified and indemnified adviser – such as an authorised/certified trade union person; an authorised/certified advice worker; or a lawyer. We will not

permit the employee to use any adviser who is also acting for us.

- 6.2 Where the adviser charges the employee a fee, we will cover that cost up to the value of £250 plus VAT. Where the fee is higher than this, then the employee will be responsible for paying the balance. Such sum as we pay in this regard will be over and above the overall limits we have set out earlier.
- 6.3 From a WWHC perspective, we may use any resource whom we feel is best able to conclude the agreement on our behalf, for example an external HR service, an ACAS official, or an employment lawyer.
- 6.4 WWHC may also mix and match – for example, our senior staff may deal with the difficult “negotiations” stage before passing the matter onto another adviser/ACAS official/lawyer to write up the formal agreement paperwork.

7. Costs involved

- 7.1 Aside from the value of any payments made to employees, WWHC will seek value for money in the cost involved in our executing any agreement. Wherever possible we will progress matters internally with appropriate advice. If we do not have internal capacity, we will seek support from other external HR advisers, or from our lawyers.
- 7.2 Where the matter has reached ACAS Pre-Employment Tribunal conciliation we will use the (free) ACAS service in concluding any agreement – unless we feel that the matters are so complex as to warrant our substituting our own agreement paperwork (bearing in mind that this may undo any good will built up with the employee/ACAS officials in getting to a “yes” position).
- 7.3 Due to the expected limited use, we 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.

8. Equalities Impact

- 8.1 We 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.
- 8.2 WWHC will also be mindful of the way in which we present this option

to employees and the language we use 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(s) concerned.

- 8.3 We will also take account of the advice contained within the EVH “Pre-termination Discussions & Settlement Agreements” Information Note (February 2023); along with the information contained within the relevant ACAS Code of Practice.

9. Monitoring and Review

- 9.1 The Management Committee will monitor the use of and payments associated with settlement agreements to ensure that payments represent value for money in line with the SHR’s Standards of Governance and Financial Management for RSLs.
- 9.2 This policy will be reviewed every 5 years, or sooner in the event of any legislative or regulatory changes.