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| **Confidentiality Clauses** **Application for approval from Minister to the Cabinet Office**  |
| *Please read the Cabinet Office Guidance on the use of Settlement Agreements, Special Severance Payments on Termination of Employment and Confidentiality Clauses before completing this form.* Departments must seek the prior approval of their departmental Minister and then the Minister for the Cabinet Office for the use of confidentiality clauses which meet any of the following criteria: 1. involves any member of the Senior Civil Service;
2. is high visibility or is likely to be contentious (at any grade);
3. has a proposed payment of £100,000 or more (at any grade);
4. has a confidentiality clause that deviates, in respect of whistle blowing or protected disclosures, from the standard wording attached at Annex A to the

Cabinet Office Guidance (at any grade); 1. where a staff member has made allegations of bullying, harassment or discrimination (at any grade); or
2. where a decision to dismiss an employee based on disciplinary, performance or attendance issues has been overturned on appeal, but the employer wishes to terminate the employment contract (at any grade).
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| *This template is to be used for confidentiality clause cases which are required to be submitted to MCO for approval. We will only be able to give approval if all aspects are answered.* *Please send the completed form to* civilservicepay@cabinetoffice.gov.uk |
| **Contact in Department:**  |   |
| **Name of organisation:**  |   |
| **Initials of individual:**  |   |
| **Job/role title of individual:**  |   |
| **Grade of individual:**  |   |
| **Date case is submitted:**  |   |
| **Date decision is needed and why:**  |   |
| **Confidentiality Agreement**  |

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| **Reason for proposal to include a confidentiality clause.** Why is a Confidentiality Clause needed in this case? Who is the confidentiality clause protecting? What are the circumstances in which it has arisen? Include a brief case history insofar as this is relevant to the need for confidentiality. Please bear in mind that confidentiality clauses should not be used to cover up either organisational or individual failure or allegations of bullying, harassment or discrimination. |
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| **Content of the confidentiality clause** Is the clause concerning the existence, negotiation and terms of the settlement agreement? Does the clause preclude one or both parties from making derogatory comments about the other after the employment has ended? Has legal advice been sought? Please bear in mind that the confidentiality clause must not override the obligation on departments to disclose appropriate details in relation to a department’s essential business needs or those of Government.  |
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| **Other Useful Information**  |
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| **Lessons learnt from this case** Explain what lessons have been learned and how management systems have been/will be improved to avoid future occurrences of similar cases.  |
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| **Please confirm that the confidentiality clause leaves severance transactions open to adequate public scrutiny, including by the NAO and the PAC.**  | **Yes/No**  |
| **Please confirm that the confidentiality clause includes an express statement to the effect that the agreement does not prevent the individual from making a protected disclosure in accordance with Part IVA of the Employment Rights Act 1996 (commonly known as “whistleblowing”).** *(Note: Part IVA ERA 1996 contains the provisions inserted by the Public Interest Disclosure Act 1998)*  | **Yes/No**  |
| **If applicable, please indicate why it is proposed not to use the standard wording regarding whistle blowing and why. Please set out the full wording of the confidentiality clause.**  |
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| **Please confirm that the confidentiality agreement is not being used to:** * **cover up individual or organisational failure;**
* **avoid taking appropriate performance/attendance management or disciplinary action;**
* **stifle or disable staff from raising concerns with a regulatory or other statutory body about wrongdoing or poor practice in the Department or allegations of bullying, harassment or discrimination.**
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| **Approvals**  |
| **Please confirm that your Minister is aware of and satisfied with the Confidentiality Clause.**  | **Yes/No**  |
| **Please indicate whether HMT is aware of and satisfied with any proposed special payment.**  | **Yes/No/No SSP**  |
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| ***FOR CABINET OFFICE USE:*** **Approval given: Y/N Date:** **Response Detail:**   |