



HM Treasury

Guidance on Public Sector Exit Payments:

Use of Special Severance Payments

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Guidance on Public Sector Exit Payments: Use of Special Severance Payments



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Chapter 1

Introduction

- 1.1 This guidance sets out the Government's position on the use of Special Severance Payments. Each year Special Severance Payments cost the government millions of pounds. Although they can be an important mechanism to allow employers to reform and react to new circumstances in the workplace, it is vital that they represent value for money and are fair to the taxpayer who fund them.
- 1.2 This guidance supplements the special severance guidance as outlined in [Managing Public Money, Annex 4.13](#). The purpose of this guidance is to:
- Set out the criteria employers should consider before making a Special Severance Payment,
 - Explain the control process for relevant Special Severance Payments,
 - Set out the transparency requirements for Special Severance Payments.
- 1.3 Employers have a responsibility to ensure that Special Severance Payments are only made when there is a clear justification for doing so. They should also ensure that all relevant internal policies and procedures have been followed and all alternative actions have been fully explored and documented.
- 1.4 When it is established that a Special Severance Payment must be paid, it is the responsibility of both individual employers and sponsoring departments to ensure their Special Severance Payments arrangements are fair, proportionate and lawful.
- 1.5 References to an employee in this document includes, where appropriate, a reference to an office holder. Public sector bodies should consult this guidance before making a Special Severance Payment and ensure the relevant processes outlined in this guidance are followed and documented.
- 1.6 Public sector bodies, including Departments, can provide additional guidance on the application of this guidance for their responsible bodies. Additional guidance should comply and be read in conjunction with this guidance. We will review and update this guidance regularly.

Chapter 2

Payments

- 2.1 Special Severance Payments are paid to employees, officeholders, workers, contractors and others outside of normal statutory or contractual requirements when leaving employment in public service whether they resign, are dismissed or reach an agreed termination of contract.
- 2.2 Special Severance Payments are any payments on termination of employment which do not correspond to an established contractual, statutory or other right. The types of payments which are Special Severance Payments will vary according to an employees' circumstances, and therefore the examples below are illustrative only. In the case of any doubt as to whether a payment constitutes a Special Severance Payment, approval should be sought.
- 2.3 Any payment in respect of which the right is disputed by the employer, in whole or in part, should be treated as a Special Severance Payment which requires approval.
- 2.4 The following types of payments are likely to constitute Special Severance Payments:
- a) Any payments reached under a settlement agreement;
 - b) The value of any employee benefits or allowances which continue beyond the employee's agreed exit date;
 - c) Write-offs of any outstanding loans;
 - d) Any special leave, such as gardening leave;
 - e) Any honorarium payments or gifts;
 - f) Any hardship payments;
 - g) Any payments to employees for retraining related to their termination of employment;
 - h) Compensation in lieu of notice (CILON);
 - i) Payments agreed as part of a judicial or non-judicial mediation.
- 2.5 The following types of payments may constitute Special Severance Payments, depending on the terms of the individual's contract, relevant statutory provisions, any non-statutory applicable schemes and other relevant terms and conditions:
- a) Pay in lieu of notice (PILON);

b) Pension strain payments.

2.6 The following do not constitute Special Severance Payments:

- a) Statutory redundancy payments;
- b) Contractual redundancy payments, whether applicable to voluntary or compulsory redundancy, and whether agreed by collective agreement or otherwise;
- c) Payment for untaken annual leave;
- d) Payments ordered by a court or tribunal.

Chapter 3

Control Process

- 3.1 Special Severance Payments when staff leave public service employment should be exceptional. They require Treasury approval because they are often novel, contentious and potentially repercussive. Such payments can appear to reward failure and set a poor example for the public sector generally. Departments should always consult the Treasury in advance when considering a Special Severance Payment.
- 3.2 Departments should not treat special severance as a soft option, e.g. to avoid management action, disciplinary processes, unwelcome publicity or reputational damage.

Process for Approval

- 3.3 It is important to ensure that Treasury approval is sought before any offers, whether oral or in writing, are made. The process required to seek approval is as follows:
- Organisation/department completes the form at Annex A.
 - Organisation/department gains approval of their Accounting Officer. Accounting Officers may delegate this approval.
 - Where relevant, organisation/department submits their case to the sponsoring department for clearance, who will seek approval from their Accounting Officer.
 - Sponsoring departments send approved cases to their HM Treasury spending team who will assess the case with the support of the Treasury Office for Accounts (TOA) and the Workforce, Pay and Pension Team (WPP).
 - Ministerial approval will be sought for Special Severance Payments where an exit package which includes a Special Severance Payment is at, or above, £100,000 and/or where the employee earns over £150,000. This is because payments of this nature are a significant payment out of public funds. Spending teams have discretion to seek ministerial approval for any other case as deemed appropriate.
- 3.4 Notification on the outcome of the case will be made in writing to the sponsoring department.
- 3.5 Where employers have existing Special Severance Payment delegations, these should be reviewed and brought in line with this guidance. Irrespective of

delegations, guidance should reflect that employers should consult the Treasury about any cases which:

- Involve important questions of principle;
- Raise doubts about the effectiveness of existing systems;
- Contain lessons which might be of wider interest;
- Might create a precedent for other departments; or
- Arise because of obscure or ambiguous instructions issued centrally.

- 3.6 The Chief Secretary of the Treasury should be consulted before special severance delegations are renewed or additional special severance delegations are agreed.
- 3.7 Departments are responsible for ensuring that Special Severance Payments to senior staff are transparent and negotiated avoiding conflicts of interest.
- 3.8 HM Treasury approval must be sought in good time to allow reasonable consideration of the case and negotiations mandates to settle must be sought in advance.
- 3.9 Departments should allow for a minimum of 20 working days for HM Treasury to assess and scrutinise individual cases. Where urgent approval is required, Departments should engage early with the relevant spending team.
- 3.10 HM Treasury approval must be confirmed in writing, even when initially given orally and cannot be implied.
- 3.11 Departments and their ALBs are also required to seek ministerial approval (including the approval of the Minister for the Cabinet Office) of confidentiality clauses in certain circumstances. Cabinet Office guidance on the use and approval of such agreements is also available.

Criteria for the assessment of cases

- 3.12 Departments must ensure that all their sponsored bodies are aware of the criteria for assessment of cases.
- 3.13 Departments must routinely apply these criteria when assessing every special severance case.
- 3.14 When cases are submitted to HM Treasury for scrutiny, the business case should clearly show how each of the following areas were considered (proforma in Annex A).

The circumstances of the case

- 3.15 Overview of the organisation, including:
- a) Key deliverables
 - b) Size of workforce
- 3.16 The terms of employment and any contractual clauses relevant to the proposed Special Severance Payment.

- 3.17 The business reason for the proposed Special Severance Payment(s) e.g. to settle a grievance or employment tribunal claim.
- 3.18 Key dates on decisions that led to the need of a Special Severance Payment.
- 3.19 The total cost of exit, clearly stating special severance amounts separately.
- 3.20 Where appropriate, the wider Government priorities associated with the Special Severance Payment(s).

Financial considerations

- 3.21 Evidence that the cost of the Special Severance Payment represents value for money including:
 - a) Efficiency savings from workplace reform;
 - b) Associated repercussive risks / conduct issues to the delivery of the organisation's objectives.
- 3.22 Where relevant, legal assessment of an organisation's chances of winning or losing an employment tribunal claim and potential scale of the award.

Non-financial considerations

- 3.23 Evidence that all options other than Special Severance Payments have been exhausted including:
 - a) Evidence that, where relevant, a performance improvement plan in line with internal performance management processes has been considered and not unreasonably discounted. Special Severance Payments should not be used to avoid performance management processes.
 - b) Evidence of good performance of the individual if exit is not performance related.
 - c) Evidence of other measures to prevent the exit, including full efforts made to perform reasonable adjustments or where relevant, redeployment.
- 3.24 Number of other special severance cases pending/agreed in the last 12 months.

Repercussive risk

- 3.25 Evidence that the case will not have a wider impact on public sector Special Severance Payments or set a precedent for future cases. For example:
 - a) Evidence that the Special Severance Payment represents a one-off cost (to resolve a specific issue)
 - b) Evidence of a lessons learnt exercise and measurable improvement plan (including dates) to prevent further exit payments in the organisation and wider public sector

Particular considerations for settlement agreements

- 3.26 Any payment proposed as part of a settlement agreement in excess of contractual, statutory and other entitlements is a Special Severance Payment and authorisation must be given in writing by HM Treasury before such a settlement is agreed.
- 3.27 Where there is a dispute between the employer and employee or ex-employee, employers should consider, at an early stage, the likelihood of an employment tribunal or other claim and seek legal advice on potential costs involved. Employers must first consider non-financial avenues to resolve disputes in collaboration with the parties involved.
- 3.28 Proposals for special severance settlements, should consider the following:
- a) Evidence of attempt to resolve grievance(s) before it escalates to an employment tribunal claim.
 - b) Precedents from other parts of the public sector may not always be a reliable guide in any given case;
 - c) Legal advice that a severance payment appears to offer good value for the employer may not be conclusive since such advice may not take account of the wider public interest;
 - d) Even if the cost of defeating an apparently frivolous or vexatious appeal will exceed the likely cost of that settlement to the employer, it may still be desirable to take the case to formal proceeding as:
 - Winning such cases will discourage frivolous or vexatious claims and demonstrate that the government does not reward such claims.
 - Where claims are genuine, this will ensure that prompt action is taken to ensure further grievances do not arise.
- 3.29 The Government's default approach is not to settle, and HM Treasury will closely scrutinise any such cases to ensure Special Severance Payments are only made in exceptional circumstances and represent value for money for the Government as a whole. Special Severance Payments in settlement agreements will only be considered if:
- Attempts to settle dispute(s) without Special Severance Payments have been made; and either
 - Legal advice has been sought and clearly recommends settling the claim; or
 - Where legal advice is finely balanced, there is a clearly evidenced value for money case not to adopt the Government's default approach and settling is clearly the best course of action.
- 3.30 HM Treasury will consider the merits of any Special Severance Payment for the Exchequer as a whole, rather than simply for the body concerned.
- 3.31 For additional guidance on the use of confidentiality clauses in settlement agreements please refer to [Cabinet Office Guidance on Settlement](#)

Agreements, Special Severance Payments on Termination of Employment
and Confidentiality Clauses

Chapter 4

Reporting and Transparency

- 4.1 Employers should continue to follow existing relevant guidance on reporting exit payments and Special Severance Payments. Employers are required to disclose in their annual accounts information about all exit payments paid during the financial year. This disclosure includes details about the number of exit payments paid in bands from £0-£25,000, £25,001-£50,000, £50,001-£100,000, £100,001-£150,000 and £150,000+.
- 4.2 Additionally, public sector authorities should also publish details of all Special Severance Payments in their annual accounts. At the end of the financial year, the responsible authority should publish a breakdown of:
- The number of Special Severance Payments made by the responsible authority in the previous financial year;
 - The total amount paid out, and
 - The maximum (highest), minimum (lowest) and median value of all payments made.
- 4.3 Departments, their ALBs and non-departmental public bodies are also now required to provide data on all exits and Special Severance Payments annually, as part of the Workforce and Pay Remit (WPR) application in OSCAR.
- 4.4 Evidence to support all exits should be collected and stored, so it is easily accessible and clear to understand. Records of the cases submitted for approval, and subsequent decisions made by Departments and HM Treasury should also be retained. Departments are expected to assure themselves that their arm's length bodies (ALBs) and non-departmental public bodies (NDPBs) are properly recording and holding information relating to Special Severance Payments.

Chapter 5

Compliance and Breaches

- 5.1 Accounting Officers are responsible for ensuring their relevant policies and procedures are updated in line with this guidance.
- 5.2 The Accounting Officer is responsible for ensuring a Special Severance Payment represents value for money and has the necessary approvals in place. Any payment that is not compliant with the process set out within this guidance is to be considered a breach of the controls, which may result in sanctions on the organisation or, if appropriate, on the sponsoring department, by HM Treasury.
- 5.3 Any breach of the control process may result in a deduction from the departmental budget or an increase in spending controls. Breaches include the following, but this list is not exhaustive:
 - Agreeing with an individual or entering any other potentially legally binding arrangement to pay a Special Severance Payment without HM Treasury approval,
 - Paying an amount which is in excess of what has been approved,
 - Not complying with any aspect of this guidance.
- 5.4 Financial sanctions for breaching this process are at the discretion of the Chief Secretary of the Treasury (CST). The maximum penalty is the highest out of five times the Special Severance Payment or £10,000.
- 5.5 When considering the severity of potential sanctions, the CST may consider mitigating circumstances, the value of the Special Severance Payment and previous compliance with controls.
- 5.6 Departments are responsible for ensuring their sponsored organisations follow the correct process and departments may be sanctioned for the non-compliance of sponsored organisations.
- 5.7 Departments can expect the severity of the sanction to increase incrementally if continuous breaches occur.
- 5.8 Sponsoring departments must inform HM Treasury, within 20 working days, of any potential breaches that they become aware of.

Annex A

Proforma for Special Severance Business Cases

Special Severance Business Case	
Contact in Sponsor Department	
Name of Requesting Organisation	
Date case is submitted	
Date decision is needed and why	
Accounting Officer who approved case	
Circumstances of the Case	
Overview of the Case and Organisation	
<i>Please provide a brief case history, with key dates, summarising how the situation has come about. Specify organisations key deliverables, size and previous use of severance payments</i>	
Terms of employment	
<i>What are individual's terms of employment (length of service, current salary, contractual notice period, type of contract (e.g. fixed term, part time)?</i>	
Breakdown of proposed exit payment	
<i>Please list each type pf payment separately e.g. Statutory redundancy, pay in lieu of notice, Special Severance Payment</i>	
Proposed ways of proceeding	
<i>What is the individual's contractual entitlement, and why do you propose to make a Special Severance Payment? What is the scope for reference to tribunal (incl. summary of the legal assessment of the chances of winning or losing the case, potential consequences)? Other options considered?</i>	
Financial Considerations	
The value for money consideration underlying the proposed payment	
<i>Set out break-down of costs, including legal costs; potential tribunal awards. Highlight efficiency savings from workplace reform and/or any associated repercussive risks e.g. conduct issues to the delivery of the organisation's objectives. Provide rationale for proposed level of settlement (with pay comparison i.e. x months' pay / y% of salary); costs of alternative options, and why a proposed settlement offers best (include best value for money) solution. When considering vfm, non-financial costs (i.e. effect on staff morale, achievement of business objectives) can also be considered.</i>	

Non- Financial Considerations
Performance management
<i>Specify if performance has been an issue for the individual. Provide details of performance management procedures followed if applicable.</i>
Management procedures
<i>Specify measures taken to prevent the exit, including efforts to perform reasonable adjustments, resolve grievances or redeploy.</i>
Repercussive risk
Lessons learnt from this case
<i>Explain what lessons have been learned and how management systems have been/will be improved to avoid future occurrences of similar cases.</i>
Wider impact and potential precedents
<i>Explain whether this case might have an impact on or set a precedent for other existing or future cases, both within own organisation, and for other public sector bodies.</i>
Any other useful information