



Department for
Communities and
Local Government

Use of severance agreements and 'off payroll' arrangements

Guidance for local authorities



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Foreword

Since 2010, this Government has taken several steps to increase the transparency and accountability of local decisions on the pay and reward of staff. The actions that the Government has taken have helped create the conditions in which local decisions on senior pay are rightfully subject to significantly greater scrutiny, particularly from local taxpayers.

Local authorities are of course independent employers, and it is for their leadership to make decisions about the management of their workforces. However, the Government expects councils and fire and rescue authorities to achieve the same the standards as the rest of the public sector in the way they manage staff. This guidance therefore seeks to remind authorities of their responsibilities on the following key areas:

- **Use of severance agreements**
The Government has recently put in place new guidelines for central government departments and their Arms Length Bodies on the appropriate use of severance agreements. These guidelines establish important and clear principles including that agreements cannot be used to cover up examples of individual or organisational failure. I believe that, in line with the rest of the public sector, local authorities should also follow these guidelines to be more accountable on their use of severance agreements.
- **'Off-payroll' arrangements**
The Government has taken a strong stance on tax avoidance, including in public appointments. Departments have reviewed the use of personal service contracts in their workforces and where misuse has been found, the Government has taken swift action, including by terminating a number of contracts. I want to make sure local taxpayers can be reassured that local authorities are taking an equally robust stance on the issue.
- **Performance appraisal of senior staff**
It is more important than ever that local authorities can demonstrate to their communities that they have strong and effective arrangements in place for managing performance of their senior staff. Better performance management can make it easier to tackle performance issues quicker, which will improve services and can help avoid costly exit deals. Authorities should open up their performance appraisal arrangements to scrutiny and give the public the opportunity to have their say on the way the authority and its most senior staff are performing.

I believe that the best authorities will follow the principles in this guidance and, in doing so, will demonstrate that they put their taxpayers' interests first in the way they conduct every part of their business.

Rt Hon Eric Pickles MP
Secretary of State for the Communities and Local Government

Use of Severance Agreements and Confidentiality Agreements

1. Severance agreements – sometimes known as settlement agreements – are sometimes used in connection with termination of employment where the relationship is being ended by mutual agreement.
2. On 1 February 2015 the Government issued guidance on the use of such within central government departments and their Arms Length Bodies. This guidance applies to civil servants and non-civil servants employed in all Civil Service organisations and their Arms Length Bodies. A copy of the document can be accessed here [Settlement Agreements: Civil Service Guidance](#)
3. While this guidance does not apply to local authorities, Ministers believe that councils and fire and rescue authorities should abide by the same key principles in relation to the use of severance agreements as the rest of the public sector. Importantly, this includes the circumstances in which it is not appropriate to seek to enter into this type of agreement, in particular:
 - To cover up examples of individual or organisational failure
 - To avoid taking appropriate performance or disciplinary action.
 - To terminate a contract of an individual who has made a protected disclosure under the Employment Rights Act 1998 – which is often referred to as a Whistle-Blowing
 - To terminate a contract of an individual to prevent them from speaking out about wrong-doing in authorities.
4. In addition, the Government's guidance makes clear that confidentiality clauses should only be used in limited circumstances and not as a matter of course. Certainly, confidentiality clauses should not be used to stop, stifle or control individuals from raising concerns about the authority or any of its associated bodies.
5. Individuals who disclose information on matters such as wrong-doing in their current or former workforce are protected under Public Interest Disclosure Act 1998ⁱ. This means that the confidentiality clauses cannot be used to prevent or discourage these individuals from speaking out. To help ensure the appropriate use of confidentiality clauses the Government's guidance includes relevant wording that could be used in a severance agreement.
6. The Government has put in place new arrangements to ensure that the use of severance agreements in central departments is reported more regularly and can be monitored more easily. This includes requirements for departments to include information about severance agreements in their annual financial accounts.

7. Ministers believe that local authorities should also seek to be more transparent about the extent to which they enter into severance agreements. In line with practice across the rest of the public sector, authorities should consider reporting on their use in their statement of accounts. This will help to ensure that local taxpayers have access to the information they need to hold local members to account on how frequently severance agreements are used in their authorities. In the future, Ministers may be minded to require authorities to do so.
8. Authorities are also required under the Accounts and Audit (England) Regulations 2011ⁱⁱ to disclose certain details about senior remuneration including information on payments related to the termination of an individual's employment. Authorities are reminded that such payments cannot be protected from disclosure by the use of confidentiality agreements.

Use of 'Off Payroll' Arrangements

9. The Government is committed to tackling all forms of tax avoidance. This includes in the appointment of public sector staff. Public appointments that involve arrangements whereby savings in tax and National Insurance contributions are made may be at the expense of other taxpayers or other parts of the public sector.
10. In line with this, the Government reviewed the number and type of "off payroll" arrangements in the public sector, for example, where a person is engaged on a personal service contract rather than being employed direct. The Government decided that rules around the use of such arrangements needed to be strengthened. This led to new guidelines for central government departments and their Arms Length Bodies. These guidelines are set out in *Managing Public Money*ⁱⁱⁱ and included that the most senior staff must be on the payroll, unless there are exceptional, temporary circumstances. In addition, the Government said that departments would seek formal assurance regarding the income tax and National Insurance obligations of contractors with "off payroll" arrangements and would consider terminating any contract where such assurance is not provided. On 3 March 2015 the Chief Secretary announced that 125 of such contracts had been terminated or ended.
11. Local authorities are independent employers and it is for them to make appointments in the light of their local circumstances. However, the public have a right to expect that their interests are being protected when senior appointments are made, particularly where arrangements could be perceived as seeking to minimise tax payments by individuals.
12. Ministers have set out the Government's expectations on this matter including writing twice to the Local Government Association to ask them to consider how they can encourage the sector to follow the principles on the issue set out in *Managing Public Money*. In addition in guidance published under Localism Act 2011^{iv} Ministers specifically asked

authorities to review their approach to the terms of remuneration for their senior appointments, particularly where arrangements exist which could be perceived as seeking to minimise tax payments. Authorities should develop, and include within their pay policy statements, a local policy on the use of such arrangements within their workforces.

13. We do not think it sufficient for authorities to stay silent on this matter and the best authorities will already be following the existing guidance. The Government expects all authorities to so, and to take urgent steps review any off-payroll arrangements that they have in place, particularly if those arrangements have been in place for a long period of time. Local members will want to satisfy themselves that any arrangements they have entered into provide best value for local taxpayers and the wider public sector as a whole.
14. Authorities should also be transparent about where they do have staff engaged on an “off-payroll” basis, and why. Under the Transparency Code 2014^v, authorities are already required to publish details of payments of £500 or more to sole traders or contractors.
15. In addition, authorities are reminded that the provisions on senior staff in the Transparency Code 2014, Accounts and Audit (England) Regulations 2011 as well as pay accountability measures within the Localism Act 2011 apply equally to staff engaged via contract of services.
16. Central departments are required to publish summary details of the number of ‘off payroll’ arrangements in their annual accounts^{vi}. This includes specific disclosure of the number of individuals who are “board members and/or senior officials with significant financial responsibility” remunerated through ‘off-payroll’ arrangements along with “details of the exceptional circumstances that led to each of these engagements”. Ministers believe that authorities should do the same.

Transparency and consistency of performance management

17. The Government believes that increased accountability and transparency will continue to have an impact on local decisions on senior pay and rewards. Local taxpayers need to have access to the right information in order to hold authorities to account about the decisions they are making about the management of their senior staff. It is therefore essential that authorities are open about the arrangements they have in place for assessing the performance of their chief officers.
18. The Communities and Local Government Select Committee recently concluded that many councils have weakly developed and poorly articulated mechanisms for managing and assessing their chief officers' performance. In addition, a lack of consistency across the sector means comparisons between authorities cannot easily be made.

19. The Government believes that authorities should be more accountable and transparent to the public on their processes for assessing the performance of their chief officers.
20. The Localism Act 2011 requires authorities to set out their approach to a range of pay matters, in particular senior pay, in annual pay policy statements. These statements must be approved by full council and published on an authority's website. The Government believes that pay policy statements are also the best place for authorities to describe the way that they appraise their chief officers' performance.
21. In particular, authorities should clearly set out what processes are in place to appraise chief officers, including if those arrangements include provision to offer additional reward as a result of performance. Authorities should also describe what will happen if an individual is assessed as under-performing or if there is evidence of wrong-doing. Authorities should set out what happens in such cases and what the disciplinary action that could be taken.
22. Authorities should also ensure that their performance management arrangements are subject to appropriate scrutiny. As part of this, they should consider involving local taxpayers in reviewing performance of the authority and its senior staff. Authorities should also work together to establish more consistent practice across the sector. Ministers believe that where authorities are doing this effectively that it could greatly help allay concerns from the public whether poor performance is being addressed appropriately, and that any reward offered to senior staff can be justified.

Queries

23. If you have any queries on this guidance, please submit them using the details below.

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- ⁱ <http://www.legislation.gov.uk/ukpga/1998/23/contents>
<http://www.acas.org.uk/index.aspx?articleid=1919>
- ⁱⁱ http://www.legislation.gov.uk/uksi/2011/817/pdfs/uksi_20110817_en.pdf
- ⁱⁱⁱ <https://www.gov.uk/government/publications/managing-public-money>
- ^{iv} <http://www.legislation.gov.uk/ukpga/2011/20/section/38/enacted>
- ^v <https://www.gov.uk/government/publications/local-government-transparency-code-2014>
- ^{vi} <https://www.gov.uk/government/publications/public-expenditure-system-pes-guidance-2013-to-2014>