



HM Treasury

# 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 taxpayers 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 and delegated limits for relevant special severance payments,
  - Set out the transparency and reporting 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 payment arrangements are fair, proportionate, and lawful.
- 1.5 References to an employee in this document include, where appropriate, a reference to an office holder. Public sector bodies should consult this guidance before making a special severance payment and ensure that the relevant processes outlined in this guidance are followed and properly documented.
- 1.6 Public sector bodies, including departments, can provide additional material on the application of this guidance for their responsible bodies. Additional information should comply and be read in conjunction with this guidance. We will review and update this 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 made on termination of employment which do not correspond to an established contractual, statutory, or other legal right. The types of payments that fall under this category will vary according to an employee's individual circumstances, and therefore the examples below are illustrative only. Where there is any doubt as to whether a payment constitutes a special severance payment, departments should contact their spending team or the Workforce, Pay and Pensions Team at the Treasury. 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.
- 2.3 The following types of payments are likely to constitute special severance payments:
- a) Any payments made 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.
- 2.4 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,
- c) Payments covering legal fees included within a settlement agreement.

2.5 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 usually novel, contentious and potentially repercussive. Such payments can appear to reward failure and set a poor example for the public sector generally. Departments must always consult the Treasury in advance when considering a special severance payment unless the payment is within the delegated limit outlined below.
- 3.2 Departments should not use special severance payments as an easy alternative to proper management action, e.g., to avoid difficult decisions, disciplinary processes, unwelcome publicity, or reputational damage.

### Delegated Limits

- 3.3 Departmental Accounting Officers (AOs) have the authority to approve special severance payments under £100,000 for employees, except where the payment involves:
- A member of the Senior Civil Service,
  - Special Advisor,
  - Board level individual of an Arm's Length Body
  - Anyone earning over the senior pay threshold.
- 3.4 Arm's Length Bodies (ALBs) should seek approval from the AO of their sponsor department.
- 3.5 However, Treasury approval is still required if the payment is novel, contentious or repercussive, regardless of value. Examples of circumstances which will be considered novel, contentious or repercussive include:
- a) Lawyers have assessed the chances of HMG successfully defending the matter in a court or tribunal as more than 50%.
  - b) The payment is not affordable to the department or organisation. Any payments made must not add unfunded pressure to departmental in year spending budgets.
  - c) It is likely to set a precedent or have implications for wider government policy or other settlements. For example, where payment terms differ markedly from previous cases, this could shape future departmental decisions on exit arrangements.

- d) It has high visibility or is likely to be contentious (at any grade). Contentious would include, but is not limited to, cases likely to attract public attention, involving a senior member of staff, and/or high payments.
- e) The settlement agreement contains a confidentiality clause. Cabinet Office guidance can be found here: [Cabinet-Office-guidance-on-settlement-agreements-special-severance-payments-on-termination-of-employment-and-confidentiality-clauses.pdf](#)
- f) A payment is made to an employee (at any grade) who is dismissed or has their contract terminated outside of formal conduct, capability, retirement, redundancy or voluntary exit scheme procedures.
- g) It is a payment that can be seen as rewarding failure or poor performance on the part of the individual or employer.
- h) Payments that do not represent value for money.

- 3.6 If departments are not sure if a special severance payment is covered by the above delegation, they should contact their HM Treasury spending team or the Workforce, Pay and Pensions Team.
- 3.7 Departmental Accounting Officers have the authority to approve early severance cases connected to an upcoming redundancy programme. Arm's length bodies (ALBs) should seek approval from the AO of their sponsor department. This will allow departmental AOs to approve payments below a contractual redundancy entitlement where an individual is leaving prior to a formal voluntary or compulsory redundancy payment process, even if they exceed the £100,000 general delegation threshold. For all payments over £100,000, departments must notify HMT. If the payments comply with contractual limits, no further approval is required. This does not include voluntary exit schemes.
- 3.8 Where employers have existing special severance payment delegations, these should be reviewed and brought in line with this guidance. Irrespective of delegations, departmental guidance should reflect that employers should consult the Treasury about any cases which meet any of the novel, contentious, and repercussive criteria outlined in paragraph 3.5.
- 3.9 The Chief Secretary to the Treasury should be consulted before special severance delegations are renewed or additional special severance delegations are agreed.

## Process for Approval

- 3.10 To support earlier engagement and improve the efficiency of the approvals process, departments should notify the Treasury at the

earliest opportunity where a special severance payment may be appropriate.

- 3.11 This allows departments to obtain an early indication of whether a proposed payment is likely to be considered appropriate before submitting a full business case.
- 3.12 Any special severance payment which is £100,000 or more or meets any of the novel, contentious or repercussive criteria set out in paragraph 3.5 must be approved by HM Treasury. It is important to ensure that Treasury approval is sought before any offers outside of the above delegations, 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).
  - Approval from the Chief Secretary to the Treasury will be required 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 £174,000. This is because payments of this nature and size are particularly novel, contentious, and repercussive. Spending teams have discretion to seek ministerial approval for any other case as they deem appropriate.
- 3.13 Notification on the outcome of the case will be made in writing to the sponsoring department.
- 3.14 Departments are responsible for ensuring that special severance payments to all staff are transparent and negotiated avoiding conflicts of interest.
- 3.15 HM Treasury approval must be sought in good time to allow reasonable consideration of the case. Authority to enter into settlement negotiations must also be secured prior to any engagement.
- 3.16 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. HM Treasury approval must be

confirmed in writing, even when initially given orally, and cannot be implied.

- 3.17 Departments and their ALBs are also required to seek ministerial approval (including the approval of Cabinet Office Ministers) of confidentiality clauses in certain circumstances. 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.pdf](#).

## Criteria for the assessment of cases

- 3.18 Departments must ensure that all their sponsored bodies are aware of the below criteria for assessment of cases.
- 3.19 Departments must routinely apply these criteria when assessing every special severance case.
- 3.20 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).

### **Box 1: Criteria for the assessment of cases:**

#### Circumstances of the case

- Overview of the organisation, including:
  - a) Key deliverables
  - b) Size of workforce
- The terms of employment and any contractual clauses relevant to the proposed special severance payment.
- The business reason for the proposed special severance payment(s) e.g., to settle a grievance or employment tribunal claim.
- Key dates on decisions that led to the need of a special severance payment.
- The total cost of exit, clearly stating special severance amounts separately.
- Where appropriate, the wider government priorities associated with the special severance payment(s).

#### Financial Considerations

- 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.
- Where relevant legal assessment of an organisation's chances of winning or losing an employment tribunal claim and potential scale of the award.
- Evidence that 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 other measures to prevent the exit, including full efforts made to make any necessary reasonable adjustments or where relevant, redeployment.
- Number of other special severance cases pending/agreed in the last 12 months.

### Repercussive Risk

- 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

- 3.21** 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, unless covered by the delegation limits outlined above.
- 3.22** 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.

3.23 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 or claim 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.

3.24 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.

3.25 HM Treasury will consider the merits of any special severance payment for the Exchequer as a whole, rather than simply for the body concerned.

# Chapter 4

## Reporting and Transparency

- 4.1 Employers should continue to follow existing relevant guidance on reporting exit payments and special severance payments. Public sector authorities 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+. They must also publish specific details on special severance payments, including the number of such payments made, the total amount paid out, and the highest, lowest, and median values of payments in the previous financial year.
- 4.2 Departments/organisations are required to report all special severance payments paid within a financial year, regardless of value, to the Workforce, Pay and Pensions Team in HM Treasury within three months of the financial year's end. The information that should be reported is as follows:
- Summary of special severance payments. This should include department, organisation, total number of payments made, total expenditure, a combined summary of lessons learned and how these have been applied.
  - A detailed breakdown including the grade of the recipient, reason for exit, the value of each payment including contractual and non-contractual elements, total payment cost, and if the payment was within the delegated limit.
- 4.3 The reporting template can be found here: [Public Sector Exit Payments Guidance on Special Severance Payments - GOV.UK](#) and should be used to provide the above information.
- 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 in accordance with department's data retention policies. Departments are expected to assure themselves that their arm's length bodies 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, revocation of the delegations outlined in this guidance, 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 outside of the delegation arrangements listed in paragraph 3.5,
  - Paying an amount which is in excess of what has been approved,
  - Not complying with the reporting requirements outlined in Chapter 4,
  - Not complying with any aspect of this guidance.
- 5.4 Financial sanctions for breaching this process are at the discretion of the Chief Secretary to the Treasury. 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 Chief Secretary to the Treasury 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.

# 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	
<b>Is this within the delegated limit and NCR?</b>	
<i>Please provide how this payment could be seen as Novel, Contentious or Repercussive.</i>	
<b>Overview of the Case and Organisation</b>	
<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>	
<b>Terms of employment</b>	
<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>	
<b>Breakdown of proposed exit payment</b>	
<i>Please list each type of payment separately e.g. Statutory redundancy, pay in lieu of notice, Special Severance Payment. This should include both contractual and non-contractual elements.</i>	
<b>Proposed ways of proceeding</b>	
<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	
<b>The value for money consideration underlying the proposed payment</b>	
<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.</i>	

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.

## **Non- Financial Considerations**

### **Performance management**

*Specify if performance has been an issue for the individual. Provide details of performance management procedures followed if applicable.*

### **Management procedures**

*Specify measures taken to prevent the exit, including efforts to perform reasonable adjustments, resolve grievances or redeploy.*

## **Repercussive risk**

### **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.*

### **Wider impact and potential precedents**

*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.*

## **Any other useful information**



### **HM Treasury contacts**

This document can be downloaded from [www.gov.uk](http://www.gov.uk)

If you require this information in an alternative format or have general enquiries about HM Treasury and its work, contact:

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