

**NHS TDA GUIDANCE  
FOR NHS TRUSTS  
ON  
MUTUALLY AGREED  
RESIGNATION SCHEMES (MARS)**

**June 2014**

## **Mutually Agree Resignation Scheme (MARS)**

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## Mutually Agree Resignation Scheme (MARS)

### Introduction

1. As set out in AFC s20 a “Mutually Agreed Resignation Scheme (MARS) is a form of voluntary severance and has been developed with the aim of increasing the flexibility to organisations as they address periods of change and service redesign...” Its key purpose is to create job vacancies which can be filled by redeployment of staff from other jobs or as a suitable alternative for staff facing redundancy and in so doing to minimise the need for any future redundancies during periods of change and service redesign.
2. The TDA has delegated authority from HM Treasury to manage MARS in NHS Trusts. Any MARS in NHS Trusts therefore require NHS TDA approval as do certain individual MARS applications.

### Definition

3. AFC s20.5 describes a MARS as “a scheme under which an individual employee, in agreement with their employer, chooses to leave employment in return for a severance payment. MAR is not a redundancy or a voluntary redundancy, which would currently be covered by Section 16. Severance payments should not be made where the circumstances entitle an employee to a contractual redundancy payment or redundancy benefits under the NHS Pension Scheme Regulations.”

### Criteria for MARS

4. If an organisation wishes to run a local scheme, terms which mirror, or are no more favourable than the previous national scheme (set out at Annex 1 below) are recommended and such a scheme is more likely to secure approval from NHS TDA.
5. Schemes should include the following criteria:
  - that there is a sound business case for the scheme that demonstrates value for money;
  - that the scheme is affordable - no extra money is available and Trusts must still reach their agreed planned financial position;
  - that the application period is time limited and does not overlap with any redundancy consultation;
  - that nobody is allowed to leave under a MARS that potentially puts the Trust at any risk or who should otherwise be managed under the NHS Trust’s performance or capability procedures;

- that the scheme will operate in line with the equal opportunities principles as set out in equality legislation including an Equality Impact Assessment of their MARS and having appropriate monitoring in place;
- that posts vacated by MARS leavers will be ring fenced initially to at risk staff.

### Approval processes for MARS and cases

6. Organisations wishing to run a MARS should note the following approval process:
  - a. After approval of the scheme by the NHS Trust's Remuneration Committee, a business case should be presented to NHS TDA HR team as set out in Annex A along with a copy of the MARS for review by NHS TDA Remuneration Committee. Advance notice of submission of a scheme should be given to the NHS TDA HR team.
  - b. If the MARS is approved by the NHS TDA Remuneration Committee applications will be reviewed by the employer and details of those applicants they wish to support should be sent to NHS TDA for review (on spreadsheet at Annex D). Confirmation of approval or rejection will be provided by the NHS TDA within five working days.
7. In addition to b. above, applications from Chief Executives or Directors will need formal approval from NHS TDA's remuneration committee as will applications from other staff that cost more than £100k. In these circumstances, copies of the application forms at Annex C should be provided to NHS TDA for approval. Confirmation of approval or rejection will be provided within five working days by the TDA.
8. At the end of the process the NHS Trust will need to ensure that the reason for leaving is noted on ESR as local MARS so that this can be picked up by the new employer, whose responsibility it will be to ensure the appropriate steps are taken for claw back and to ensure that there is no double counting of reckonable service if the individual takes MARS or is redundant in the future.

### Contact for further advice and submission of scheme / cases

9. Advice is available from the HR team at NHS TDA on any aspect of this guidance; please send an email to [ntda.executivehr@nhs.net](mailto:ntda.executivehr@nhs.net) and a member of the team below will contact you with one working day. Submission of cases should be sent to the same email address.
10. Details of the names / roles of TDA HR team can be found at the end of the *Introduction to guidance on NHS TDA role in HR issues in NHS Trusts*
11. Further written advice and FAQs are available on NHS Employers website.

## Mutually Agreed Resignation Scheme (MARS) template (based on previous national MARS)

### 1. Introduction

- 1.1. The MARS has been designed to support the flexibility to address periods of rapid change and service re-design.
- 1.2. The purpose is to create job vacancies which can be filled by redeployment of staff from other jobs or as a suitable alternative for those facing redundancy.
- 1.3. Posts vacated by MARS leavers should be ring-fenced and advertised initially to at risk staff.
- 1.4. If the post remains unfilled once an employee has left, there may be a risk that this shows that the business can function without the post and in effect the post is redundant. The MARS must not be used as a "disguised redundancy."

### 2. Definition

- 2.1. MARS is a time-limited scheme under which an individual employee, in agreement with their employer, chooses to leave employment in return for a severance payment. A MARS is not a redundancy<sup>1</sup> or a voluntary redundancy, which would currently be covered by Section 16 of the NHS terms and conditions of service handbook.

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<sup>1</sup>The definition of redundancy given by Section 139 of the Employment Rights Act 1996 states:

"... an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is attributable wholly or mainly to:

- the fact that his employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed by him, or has ceased, or intends to cease, to carry on that business in the place where the employee was employed or
- the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where he was so employed, have ceased or diminished or are expected to cease or diminish"

### 3. Individual applications

- 3.1. Any application under MARS must demonstrate that the departure of an employee on voluntary terms would be in the financial and operational interests of the organisation.
- 3.2. The application should be clear about the reasons for offering the MARS payment, ensuring transparency and providing evidence that this is not a "disguised redundancy". The business case should be clear about the necessity for the vacated post to be filled and that it will be ring-fenced and advertised initially to staff at risk.
- 3.3. The business case supporting any application to leave under MARS will need to demonstrate:
  - a) why the severance payment is in the public interest;
  - b) why it represents value for money;
  - c) how it represents the best use of public funds
  - d) that it will not affect the organisation's financial targets.

### 4. Eligibility

- 4.1. It is for employers working in partnership with local staff side to determine the local eligibility criteria for a MARS. The criteria should be drawn up in a way that closely supports the business case for the scheme. They should not give rise to unlawful discrimination and should address the need to maintain the balance of the workforce.
- 4.2. To be eligible staff must have a minimum service of 12 months continuous service (continuous service being defined as NHS service with no break of greater than a week).
- 4.3. The following groups would not normally be allowed to leave under this scheme:
  - an employee who has already formally given notice of their intention to resign/retire, prior to the date when applications are formally being sought;
  - an employee who has already secured employment with another employer;
  - an employee who has been notified of the date of the termination of their contract of employment for any other reason;

- an employee undergoing a performance management procedure to address poor performance;
  - an employee undergoing a conduct procedure;
  - employees whose posts have been identified as likely to be redundant and are subject to consultation;
  - employees currently in a selection pool identifying them for potential redundancy;
  - employees in shortage or hard to recruit to posts;
  - employees in posts where delivery of service would be put at risk by their departure.
- 4.4. Any MARS will be time-limited for the deadline for applications and the latest date for resignations to be effective.
- 4.5. Each application made in accordance with MARS will be considered on its own merits. The employer reserves the right to determine whether or not an application will be approved and there will be no right of appeal on the part of those employees whose applications are not successful.
- 4.6. MARS is entirely voluntary from the employer's and employee's perspective and there is no legal obligation on the part of the employing organisation to accept any individual application.
- 4.7. To mitigate against potential discrimination, e.g. fixed-term workers, it is advisable to offer the MARS in principle to everyone in a particular staff group and then consider each application individually on its merits as set against the business criteria. (If there is an intention to renew a fixed-term contract then the employee would need to be made aware of this prior to submitting an application. If the post is not being renewed then redundancy may be the appropriate exit route).
- 4.8. Leaving dates must be mutually agreed as the risk otherwise is that it could add to any later argument that the resignation was in fact a redundancy. However, the scheme details should make it clear the date by which resignations would be expected to take place.

## 5. Re-employment

- 5.1. Employees who leave under MARS would not be re-employed under normal circumstances by the NHS in England, in the same or a different post, before

a period of one month has elapsed. If an individual does return to the NHS within one month they would be required to repay any MARS payment in full.

- 5.2. Where an employee returns to work for the NHS in England within six months and before the expiry date of the period for which they have been compensated (as measured in equivalent months/part-months' salary), then they would be required to repay any un-expired element of their compensation. This would be reduced to take account of any appointment to a lower grade post or reduced hours basis and reflect net salary. The settlement agreement should specify the requirement to repay monies in such circumstances.
- 5.3. As part of the settlement agreement employees will be required to warrant that they had not secured another job in the NHS at the time of leaving.

## **6. Settlement agreement**

- 6.1. Employees who decide to proceed with a MAR will be issued with a settlement agreement to sign, which will set out the financial and other terms under which the employment relationship will end. A template settlement agreement is at Annex E for use by NHS Trusts.
- 6.2. The NHS Trust must ensure that such agreements are drafted in such a way as not to prevent proper public scrutiny either by NHS TDA, DH or external auditors. Particular attention should be paid to:
  - the advice in Health Service Circular 1999/198 which states that “NHS Trusts should prohibit the use of “gagging” clauses in contracts of employment and settlement agreements which seek to prevent the disclosure of information in the public interest.”
  - NHE Employers guidance on “the use of settlement agreements and confidentiality clauses” December 2013.  
<http://www.nhsemployers.org/case-studies-and-resources/2013/12/the-use-of-settlement-agreements-and-confidentiality-clauses>. This includes a model clause regarding confidentiality at Annex A which employers are encouraged to use. Settlement agreements should as a minimum include the recommended clause from the NHS Employers guidance:

“For the avoidance of doubt, nothing in this Agreement shall prejudice any rights that the Employee has or may have under the Public Interest Disclosure Act 1998 and/or any obligations that the Employee has or may have to raise concerns about patient safety and care with regulatory or other appropriate statutory bodies pursuant to his or her professional and ethical obligations including those obligations set out



in guidance issued by regulatory or other appropriate statutory bodies from time to time.”

- 6.4 Independent legal advice will need to be obtained by the employee before signing the Settlement Agreement. The NHS Trust may contribute up to a maximum of £400.00 inclusive of VAT towards the cost of this legal advice.

## 7. Payment rate

- 7.1. MARS payments can be calculated using the model below or an alternative rate. The payment rate must reflect value for money for the public sector with a clear rationale for sustainable cost savings. When determining payment rates, employers should take into consideration the relative costs of alternatives to a MARS.
- 7.2. No provision will be made for payment of any notice period. Successful applicants will be expected to terminate their employment at an early date to be mutually agreed and within the time frame agreed when the MARS was approved. Notice not worked will not attract payment in lieu of notice.

<b>Reckonable Service (complete years)</b>	<b>Scale of Payment</b>
1 year's continuous service (organisation/NHS)	3 months' basic salary
2 years' continuous service (organisation/NHS)	3 months' basic salary
3 years' continuous service (organisation/NHS)	3 months' basic salary
4 years' continuous service (organisation/NHS)	3 months' basic salary
5 years' continuous service (organisation/NHS)	3 months' basic salary
6 years' continuous service (organisation/NHS)	3 months' basic salary
7 years' continuous service (organisation/NHS)	3 ½ months' basic salary
8 years' continuous service (organisation/NHS)	4 months' basic salary
9 years' continuous service (organisation/NHS)	4 ½ months' basic salary
10 years' continuous service (organisation/NHS)	5 months' basic salary
11 years' continuous service (organisation/NHS)	5 ½ months' basic salary
12 years' continuous service (organisation/NHS)	6 months' basic salary
13 years' continuous service (organisation/NHS)	6 ½ months' basic salary
14 years' continuous service (organisation/NHS)	7 months' basic salary
15 years' continuous service (organisation/NHS)	7 ½ months' basic salary
16 years' continuous service (organisation/NHS)	8 months' basic salary
17 years' continuous service (organisation/NHS)	8 ½ months' basic salary
18 years' continuous service (organisation/NHS)	9 months' basic salary
19 years' continuous service (organisation/NHS)	9 ½ months' basic salary

20 years' continuous service (organisation/NHS)	10 months' basic salary
21 years' continuous service (organisation/NHS)	10 ½ months' basic
22 years' continuous service (organisation/NHS)	11 months' basic salary
23 years' continuous service (organisation/NHS)	11 ½ months' basic
24 years' + continuous service (organisation/NHS)	12 months' basic salary

Note: continuous service is defined as service with no break of greater than a week.

- 7.3. In some cases, severance payments are not subject to deductions in accordance with the Income and Corporation Taxes Act 1998, but the individual circumstances of each case will need to be considered. As a guide, however, current legislation can allow for voluntary severance payments to be paid without deduction of tax and national insurance up to a maximum of £30,000. Any payment made above this amount will be subject to tax and national insurance.

## 8. Reckonable service

- 8.1. Reckonable service means continuous full-time or part-time employment with present or any previous NHS employer where there has been a break of service of 12 months or less, as at the time of leaving. Employment that has been taken into account for the purposes of a previous redundancy or loss of office payment by an NHS employer, will not count as reckonable service.
- 8.2. For the purpose of MARS, employers have discretion to take into account any period or periods of employment with employers outside the NHS, where these are judged to be relevant to NHS employment and have previously been agreed as reckonable service.
- 8.3. Any severance payment made will be offset against any subsequent payment made for the purposes of any future calculation of redundancy payments in subsequent employment. This would apply where the period of employment covered by the severance payment is taken into account in calculating the redundancy payment.
- 8.4. The severance payment would be subject to the employee having not secured another job in the NHS at the time of leaving.
- 8.5. An employee accepting a MARS severance payment and resigning from the organisation may find alternative employment elsewhere in the NHS subject to the conditions set out in section 5 above. In the event that any future NHS

employer intends to make the employee redundant, the employer will be notified via ESR of this provision of MARS.

- 8.6. The employee's proposed leaving date will be subject to negotiation and mutual agreement between the employer and employee but must be within the time frame set out at the launch of the scheme.

## **9. Pensions**

- 9.1. Staff whose application under MARS is accepted, and who have reached their 'normal pensionable retirement age', will also be eligible to claim their NHS pension benefits. This will not involve the organisation in incurring additional costs related to the payment of pension benefits. For members of the 1995 Section of the NHS Pension Scheme, normal pension age is 60 (55 for members of the 'special classes'). For members of the 2008 Section of the NHS Pension Scheme, normal pension age is 65.
- 9.2. Staff whose application under MARS is accepted and who have reached their minimum pension age, may also wish to apply for Voluntary Early Retirement with reduced pension benefits. For members of the 1995 Section of the NHS Pension Scheme, minimum pension age is 50 for most but 55 for some members who first joined or returned on or after 6 April 2006. For members of the 2008 Section of the NHS Pension Scheme, minimum pension age is 55.
- 9.3. Please note that no guarantee can be given about the timing of the payment of such benefits in line with any MARS payments and applications for pension benefits will need to be made in the normal manner by submission of a leaver form.
- 9.4. Further information about the NHS Pension Scheme is available at [www.nhsbsa.nhs.uk/pensions](http://www.nhsbsa.nhs.uk/pensions)

## **10. Application procedure**

- 10.1. Following agreement of the MARS by the NHS Trust and approval by NHS TDA, the procedure for applications will involve the following stages:
  - an expression of interest made by an employee on application form (Annex C), after considering the full details (including the content of the settlement agreement).

- applications will be reviewed by the employer and details of those applicants they wish to support will be sent to NHS TDA for review. Approval or rejection of any application will be provided by NHS TDA within 5 working days.
  - applications from Chief Executives or Directors or payments in excess of £100,000 will need formal approval from NHS TDA's Remuneration Committee. Approval or rejection of any application will be provided by NHS TDA within 10 working days.
- 10.2. If the application is to go ahead, the date of exit will be mutually agreed, i.e. not imposed by the employer but should not be later than the latest date for resignations agreed when the scheme was launched.
- 10.3. For full details on the applications procedures please refer to Annex B (to be completed to reflect local processes).

## **11. Equality statement**

- 11.1. Employers must ensure that equality commitments are met and that no employee should receive less favourable treatment on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation, or on the grounds of trade union membership.
- 11.2. Appropriate equality monitoring should be undertaken in line with the employer's relevant policies.
- 11.3. An equality impact assessment should be undertaken for the final policy.

## **12. Support for Staff**

- 12.1. When considering applying for voluntary severance under MARS, employees will need to understand the consequences of their decision. A MAR is viewed as being a voluntary resignation on the part of the individual employee, in return for a severance payment. As there may be significant financial and life-style implications for the employee, employers should support the decision-making process by assisting individuals with understanding these implications.
- 12.2. Some of the implications for employees to consider when resigning would include, for example:
- the possible loss of entitlements to welfare benefits
  - mortgage protection insurance policies not covering resignations

- any possible impact on pensions
- lease car penalties
- multi-post contracts

Some of the supportive measures to consider are listed below, but are entirely at the discretion of the NHS Trust, there is no obligation to provide them:

- priority on in-house courses
- outplacement support, which may include
  - personal coach
  - job search
  - on-line support
  - use of office facilities to support finding alternative employment
- a re-training allowance
- a mutually agreed, comprehensive reference
- buy-out of any lease car penalties
- signposting staff to the following sources of information:
  - NHS Pensions: [www.nhsbsa.nhs.uk/pensions](http://www.nhsbsa.nhs.uk/pensions)
  - Benefits website: <https://www.gov.uk/browse/benefits>
  - Citizens Advice Bureaux: <http://www.adviceguide.org.uk/>

12.3. Employers are not legally authorised under the Financial Services Act to give pensions or other financial advice to individuals. Therefore, employees should be encouraged to seek further independent financial advice. The following websites may be of assistance.

- IFA Promotion: [www.unbiased.co.uk](http://www.unbiased.co.uk)
- The Personal Finance Society: [www.thepfs.org](http://www.thepfs.org)

### **13. Further Information**

FAQs regarding MARs are available on the NHS Employers website at <http://www.nhsemployers.org/PayAndContracts/Mutually-Agreed-Resignation-Scheme/Pages/FAQs-Mutually-Agreed-Resignation-Scheme.aspx>

## ANNEX A

### Business case to run a MARS (for submission to NHS TDA)

Name of NHS Trust	
The reason for running the MARS	
The estimated cost savings from running the scheme	
Confirmation that the scheme is affordable and will not impact on reaching planned financial position	
Time scale for running the scheme including <ul style="list-style-type: none"> <li>• closing date for applications</li> <li>• latest termination date</li> <li>• confirmation that there is no timescale overlap with a redundancy consultation</li> </ul>	
Confirmation that no-one will be allowed to leave that potentially puts the service at any risk	
Confirmation there are no staff leaving under the scheme who should otherwise be managed under the organisation's performance/capability procedures	
Confirmation that EQIA on the scheme and appropriate monitoring will be undertaken	
Confirmation that the roles vacated will create job vacancies which can be filled by redeployment of staff from other jobs or as a suitable alternative for staff facing redundancy	
Confirmation that audit scrutiny of applications will take place either pre or post payment	
Confirmation that staff leaving will be covered by a settlement agreement that will include claw back and an express clause stating that the individual has not prejudiced any of their rights under PIDA 1998.	
Date of NHS Trust Remuneration Committee approval of scheme	

Attach copy of scheme and highlight any terms and conditions outside of the national scheme as set out in annex 1.

Signed:..... (CEO)

Name: .....

Date:.....

**MARS APPLICATION PROCEDURE- To be adapted for local use.**

1. Employees who wish to apply for MARS should discuss their case with their line manager in the first instance. Informal discussions will be confidential and not make a binding commitment on either party. The Human Resources (HR) team will also be available to provide advice on the scheme. Please note the line manager will be asked to indicate their support or otherwise for the application by completing the attached form (see Annex C), outlining the potential financial savings and payback time along with reassurance as to how the business needs of the organisation will continue to be met.
2. Members of staff should submit their application for MARS by **date**, using the application form in Annex C. This must be submitted to the **Director of Human Resources (for local discretion)** who will arrange for their application to be acknowledged within **5 days (for local discretion)** of receipt, the information submitted will then be verified and the potential MARS payment calculated.
3. Once an application is submitted, it will be dealt with in strict confidence by all those involved with the process.
4. Applications will be submitted to a MARS Panel comprising the **Director of Human Resources, Director of Finance plus one additional Executive/Non-Executive Director(for local discretion)**. [NHS Trusts are strongly encouraged to include a Non-Executive Director on the panel in accordance with good governance processes].
5. Applications approved by the MARS panel must also be approved by the NHS Trust Remuneration Committee.
6. Details of applications the panel wishes to support should be sent to NHS TDA for review, on the template at Annex D. Confirmation will be provided from NHS TDA within 5 working days (unless further information required).
7. Applications from all Chief Executives and Directors and those other staff with payments in excess of £100,000 which are supported by the employer will also require approval from NHS TDA Remuneration Committee. Confirmation will take up to 10 working days.
8. Successful applicants will be advised that their application has been approved, confirming the MARS payment, a mutually agreed leaving date and requesting acceptance or rejection of the offer within a prescribed timescale.

9. Where the individual intends to accept the offer they will then be issued with a settlement agreement to discuss with a legal adviser. Once the signed settlement agreement is received by HR this will indicate the final acceptance of the offer.
11. Where the application is not approved, the **Director of Human Resources (for local discretion)** will write to the member of staff advising that their application has not been successful and why it has not been possible to approve the application at this time.
12. At the end of the process the NHS Trust will need to ensure that the reason for leaving is noted on ESR as local MARS so that this can be picked up by the new employer, whose responsibility it will be to ensure the appropriate steps are taken for claw back and to ensure that there is no double counting of reckonable service if the individual takes MARS or is redundant in the future.



**MUTUALLY AGREED RESIGNATION SCHEME APPLICATION FORM**

(To be adapted for local use)

**For Completion by Employee**

Directorate/dept:			
Full Name:		Date of Birth:	
Job title:		Pay Band/Grade:	
NI Number:		Gross Annual Salary (before deductions):	
Assignment No:- (from payslip)		NHS continuous employment start date:	
Preferred Contact Details:	E-mail:		
	Phone:		
	Address:		
I wish to apply for the Mutually Agreed Resignation Scheme. I understand that the information above will be validated and the outcome of my application will be communicated to me in writing.			
Signed:		Date	

To be completed by the line manager/HR Department

Details required of how recurrent cost savings can be made through skill mix/redeployment:	
1. Why is the employee being considered for voluntary severance?	
2. Savings to be delivered as a result of agreeing a MARS payment (recurrent and non-recurrent). How does this represent value for money and the best use of public funds?	
3. Voluntary severance costs	
4. Does this application create job vacancies which can be filled by redeployment of staff from other jobs or as a suitable alternative for staff facing redundancy	
<b>I do/do* not support this application</b> <i>(*Delete as appropriate)</i>	<b>Reason:</b>
<b>Signed:</b>	<b>Line Manager</b>
<b>Date:</b>	

PLEASE FORWARD ALL COMPLETED FORMS TO THE DIRECTOR OF HUMAN RESOURCES

**Authorisation from HR Director**

This application **has/has not** been approved by the NHS Trust MARs panel (*delete as applicable*)

This application **has /has not** been approved by the NHS Trust Remuneration Committee (*delete as applicable*)

Signed:

Date:

For Completion by HR/Payroll Team

Basic Annual Salary:		Organisation Start Date:	
MARS Payment Calculation:	Leaving Date:	Completed Years:	
Completed by: _____			
Date _____			