



Quality. Delivery. Sustainability.

**NHS TDA**

**GUIDANCE**

**FOR**

**NHS TRUSTS**

**ON PROCESSES FOR MAKING**

**SEVERANCE PAYMENTS**

**June 2014**

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# Guidelines for Agreeing Severance Payments

## 1. Purpose of this guide

- 1.1 This guide sets out the processes NHS TDA requires NHS Trusts to follow in agreeing severance payments. The guidance aims to ensure appropriate governance to protect the reputation of the NHS and ensure probity and value for money.
- 1.2 It describes the processes to be adopted and the governance framework for Chairs, Chief Executives, HR Directors and remuneration committee members of NHS Trusts to follow in making severance payments. It does not cover Foundation Trusts who should seek guidance from Monitor.
- 1.3 This guidance updates and replaces any earlier guidance issued by Strategic Health Authorities (SHAs) prior to April 2013 and the previous NHS TDA guidance dated June 2013.

## 2. Scope

2.1 This guidance applies to:

2.1.1 All severance payments (contractual or non-contractual) to Chief Executives and Directors of NHS Trusts. For these purposes, “Director” means any Director reporting to the Chief Executive whether or not an executive member of the Board.

2.1.2 Non-contractual severance payments to all staff (including to Chief Executives and Directors as defined in 2.1.1).

2.1.3 Contractual payments over £100,000 to all staff (including to Chief Executives and Directors as defined in 2.1.1)

2.2 Severance payments cover all payments made on the termination of employment, both contractual and non-contractual, and whether or not covered by a settlement agreement, that are greater than salary due and any unpaid annual leave at the point of termination. This therefore includes but is not limited to:

- contractual payments such as redundancy payments, early retirement provisions which include an employer payment (including early retirement in the interests of the efficiency of the service as set out in section 16.26-28 of AFC) and paid secondments as part of severance arrangements (where there are no non-contractual payments involved).
- non-contractual payments such as compensation payments, voluntary redundancy (where outside of AFC s16), garden leave/special leave, outplacement or training costs where undertaken after

termination, write off of any outstanding loans and any other financial arrangements agreed as part of termination arrangements.

- payments in lieu of notice which may be contractual or non-contractual, depending on the individual contract.
- any voluntary settlements proposed that are not under the legal obligation from a remedies hearing of an employment tribunal, or any other civil action claim arising from an employment relationship. This includes all types of alternative dispute resolution such as mediation or judicial mediation.

2.3 This guidance does not apply to staff who choose to retire early and access their NHS pensions without the requirement for the employer to enhance the pension in any way.

2.4 This guidance does not apply to contractual severance payments of less than £100,000 to staff below director level as the NHS TDA does not need to be involved in such cases. However, NHS Trusts need to ensure such cases are correctly approved by their local remuneration committee.

### **3. Background and key documents**

2.3 On 1 November 2007 David Nicholson wrote to Chairs and Chief Executives of NHS Trusts in England (letter at Annex A) clarifying the processes to be followed to terminate contracts of employment of Chief Executives and/or Directors. The role of SHAs in this letter has, since April 2013, been devolved to NHS TDA.

3.2 NHS TDA has the role of ensuring the best use of public money in NHS Trusts and of protecting the reputation of the NHS. Its Remuneration Committee remit in respect of severance payments is to approve any NHS Trust voluntary redundancy or Mutually Agreed Resignation Schemes (MARS) and to consider contractual payments including individual compulsory and voluntary redundancy cases and MARS cases for all CEOs and Directors and for non-VSM staff over £100k and to consider non-contractual payments for all staff prior to HM Treasury review. In so doing, to ensure consistency, equity and probity in use of the public funds and for the NHS TDA to take a system-wide view of the implications of such requests.

3.3 This guidance clarifies the processes NHS Trusts should follow in proposing severance payments to enable any severance cases to be reviewed by NHS TDA in a timely way. There is separate guidance relating to approval of MAR schemes and cases.

3.4 The following documents are also of relevance and should be considered:

- 3.4.1 The Code of Conduct for NHS Managers 2002  
[http://webarchive.nationalarchives.gov.uk/+www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/Browsable/DH\\_4097226](http://webarchive.nationalarchives.gov.uk/+www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/Browsable/DH_4097226)
- 3.4.2 Standards of Business Conduct for NHS Staff 1993  
[http://webarchive.nationalarchives.gov.uk/+www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/Healthserviceguidelines/DH\\_4017845](http://webarchive.nationalarchives.gov.uk/+www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/Healthserviceguidelines/DH_4017845)
- 3.4.3 HMT “Managing Public Money”  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/212123/Managing\\_Public\\_Money\\_AA\\_v2\\_-\\_chapters\\_annex\\_web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212123/Managing_Public_Money_AA_v2_-_chapters_annex_web.pdf)
- 3.4.4 Use of confidentiality and claw-back clauses in connection with the termination of a Contract of Employment HSC 2004/01  
[http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/@dh/@en/documents/digitalasset/dh\\_4069937.pdf](http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_4069937.pdf)
- 3.4.5 NHS Employers “Guidance for Employers within the NHS on the process for making severance payments to senior managers” April 2013  
<http://www.nhsemployers.org/Aboutus/Publications/Pages/Guidance-for-employers-within-NHS-on-process-for-severance-payments.aspx>
- 3.4.6 NHS Employers guidance - 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>
- 3.4.7 Department of Health Manual of Accounts – Losses and Special Payments.

#### **4. Principles for severance payments**

- 4.1 It is essential that robust corporate governance is followed and that NHS Trusts are able to demonstrate probity, and value for money in any proposed severance arrangements.
- 4.2 It is NHS TDA’s expectation that NHS Trusts will normally follow the relevant capability or disciplinary procedures and any payments will therefore be exceptional or related to a redundancy where there is no suitable alternative employment. In particular any performance issues should be handled in a timely manner rather than by a severance payment, other than in exceptional circumstances.
- 4.3 In normal circumstances notice periods should be worked to ensure the NHS receives benefit during the notice period. Therefore payment in lieu

of notice should only be paid in circumstances where it is not considered appropriate for notice to be worked, and must be supported by a clear business case to demonstrate the equity and cost effectiveness of the proposal.

- 4.4 Similarly it will not normally be acceptable to allow a period of garden leave when the individual is paid but not required to work; if in exceptional cases this is considered necessary a detailed business case must be provided.
- 4.5 There is a legal obligation to seek to avoid redundancy by trying to identify suitable alternative employment for any displaced staff and NHS TDA expects NHS Trusts to make every effort to redeploy staff whose posts become redundant. This includes searching for suitable alternative employment in the local health economy or wider as appropriate for the individual staff members. It is therefore not usual for payment in lieu of notice to be offered when terminating a contract on the grounds of redundancy as this foreshortens the period of search for suitable alternative employment.
- 4.6 Severance payments in excess of or outside of statutory or contractual entitlements or payments which are novel and/or contentious should be exceptional and require HM Treasury approval as well as NHS TDA approval. This is detailed in an extract from Annex 4.13 of Managing Public Money available at [http://www.hm-treasury.gov.uk/d/mpm\\_whole.pdf](http://www.hm-treasury.gov.uk/d/mpm_whole.pdf)
- 4.7 Examples of payments that may be considered novel or contentious include but are not limited to: payments in excess of contractual notice, compensation for loss of office payments, offers of paid consultancy work, outsourced training/course paid for by the NHS Trust and undertaken after termination. In some cases such arrangements may be less costly than the contractual entitlement and may represent good value for money but if non contractual will still require HM Treasury approval.
- 4.8 Employers should always take proper legal and audit advice to ensure that any proposals bear internal and external scrutiny and are compliant with both National Audit Office and HM Treasury guidance.
- 4.9 Where Remuneration Committee approval is required, this should not be substituted by Chair's action unless there are exceptional circumstances, which the NHS Trust should be able to evidence as required.
- 4.10 While value for money will be an important consideration, legal advice that a particular 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 and it may still be desirable to take the case to formal proceedings to demonstrate that the NHS does not reward failure, dishonesty, inappropriate behaviour or any form of misconduct. Performance management and robustly defending employment tribunal

claims may act as a deterrent or set a precedent to reduce future claims and costs.

4.11 While it is important to ensure all internal procedures are followed and appropriate advice taken it is also important to act in a timely way to avoid unnecessary delays which can lead to higher payments.

## **5. Governance arrangements for agreeing severance payments**

### **5.1 For Chief Executives and Directors**

5.1.1 NHS Trusts considering the termination of the employment of their Chief Executive or a Director can seek guidance from the NHS TDA and should contact NHS TDA's HR team at an early stage, prior to obtaining local approval, to ensure that all appropriate factors are considered.

5.1.2 All cases relating to severance of Chief Executives or Directors must first have been approved by the NHS Trust's remuneration committee, and appropriate legal advice obtained prior to referring any case to NHS TDA Remuneration Committee for approval, though cases should be discussed with the TDA HR team prior to seeking NHS Trust remuneration committee approval.

5.1.3 NHS TDA's Remuneration Committee will need to see clear evidence to support the case. If the case is a conduct or performance issue the evidence must demonstrate why local disciplinary or capability procedures are not appropriate vehicles for resolving the situation. Poor performance should not be rewarded and it is unlikely that such cases will be viewed favourably. Every case must demonstrate that it represents good value for money and is in the public interest.

5.1.4 Refer to Annex D for approval processes summary.

### **5.2 Non contractual severance payments**

5.2.1 All non-contractual severance payments for staff at any level should be referred to NHS TDA for prior approval. NHS TDA will then seek HM Treasury approval on the NHS Trust's behalf. No payment should be made prior to HM Treasury approval. Note that cases that are seen to be rewarding failure are unlikely to be approved as while rewarding failure may be value for money for individual cases, this may not be true when set in context of the wider public sector. For example, alternative options (such as performance management or robustly defending employment tribunal claims) may act as a deterrent or set a precedent to reduce future claims and costs.

- 5.2.2 Any non-contractual severance payments should include a provision requiring the repayment of the severance payment where an employee returns to work for the NHS in England within twelve months and/or before the expiry date of the period for which they have been compensated (as measured in equivalent months/part-months of salary). In such circumstances the employee would be required to repay any un-expired element of his/her compensation. This would be reduced to take account of any appointment to a lower grade post or reduced hours basis and reflect net salary.
- 5.2.3 Refer to Annex D for approval processes summary.

### **5.3 Contractual severance payments for staff**

- 5.3.1 Any contractual severance payments including compulsory or voluntary severance payments above £100k must be referred to NHS TDA Remuneration Committee for approval after NHS Trust Remuneration Committee approval has been obtained.
- 5.3.2 Refer to Annex D for approval processes summary.

### **5.4 Managing compulsory and voluntary redundancies and the search for suitable alternative employment**

- 5.4.1 When considering cases for compulsory or voluntary redundancy, the NHS TDA will be particularly concerned to see that a genuine search for suitable alternative employment has taken place. In addition to completion of annex C2/C2A, NHS Trusts are advised to ensure that individuals searching for suitable alternative employment and/or their HR advisers complete annex C3 in full. Where few or no posts have been identified for application, it is particularly important that a comprehensive account is given of the search that has been undertaken. In addition, individuals should continue to search for suitable alternative employment during any trial periods so that should the trial period fail, a search record can still be demonstrated.
- 5.4.2 To ensure that the criteria in section 16.17 of Agenda for Change handbook is met, NHS Trusts are advised not to make any redundancy payment until 4 weeks after the termination date and at that point only after receipt of written assurance from the individual that no suitable alternative employment has been offered before termination or commenced in the 4 week period since termination.
- 5.4.3 Where there are more than three redundancies from a NHS Trust requiring approval from NHS TDA at one time, the spreadsheet at annex C2A should be used in place of the individual templates at annex C2. In either case a copy of annex C3 for each individual should be included in the submission to the NHS TDA.



## **6. Voluntary redundancy schemes**

- 6.1 Voluntary redundancy applications can be sought through a voluntary redundancy scheme. The scheme should include all the necessary legal requirements relating to redundancy and the terms of AFC s16. Consultation should be undertaken and individuals should work out their notice period, during which time they should search for suitable alternative employment. Pay in lieu of notice should only be offered in exceptional circumstances so as to maximise the opportunity for finding suitable alternative employment, and in any case only where there is a contractual term allowing the NHS Trust to do so. Any scheme that acts outside of this will be non-contractual and require HM Treasury approval.
- 6.2 Voluntary redundancy schemes should ensure that the payback period on the redundancy payment does not exceed two years.
- 6.3 Schemes should include a requirement for the claw back of the redundancy payment where an employee returns to work for the NHS in England within twelve months and before the expiry date of the period for which they have been compensated (as measured in equivalent months/part-months salary). In such circumstances 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.
- 6.4 Approval to run a voluntary redundancy scheme should be sought first via completion of annex C4 and sent to NHS TDA for approval.
- 6.5 Where NHS Trusts believe there is any risk that an employee will apply for voluntary redundancy and subsequently raise an employment tribunal claim e.g. a discrimination claim, a settlement agreement should be entered into.
- 6.6 Submission of individual cases should be undertaken in accordance with Annex D.

## **7. Guidance on payments**

### **7.1 Approval processes**

- 7.1.1 These are summarised at Annex D.

### **7.2 Contractual payments**

- 7.2.1 Where payments proposed are contractual (e.g. redundancy, early retirement, salary in lieu of notice, and where no non-contractual

payments are involved) NHS TDA will be able to approve them without reference to HM Treasury if it is satisfied of the merits of the case. However, NHS Trusts should be aware that where payment of all or part of notice period is included in the proposal, notice periods in excess of 6 months for director level staff and 3 months for other staff will potentially be considered as novel and contentious. –This is because in 2008 a change to the NHS Health Service Act 2006: NHS Bodies Employment Contracts (Notice Periods) Directions 2008, restricted notice periods in new contracts to a maximum of 6 months. [http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/documents/digital\\_asset/dh\\_085223.pdf](http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digital_asset/dh_085223.pdf).

7.2.2 Where contracts include pay in lieu of notice clauses, these should be carefully worded to make clear that it is only the employee's salary that will be paid in lieu and not any other financial terms of employment.

7.2.3 Where redundancy payments are proposed, NHS TDA will require evidence of what steps have been taken to find suitable alternative employment as set out in section 5.4 and Annexes C2/3.

### **7.3 Non-contractual Payments**

7.3.1 Where payments proposed are non-contractual or “novel or unusual” as covered by the HM Treasury guidance “Managing Public Money”, HM Treasury approval is required once NHS TDA approval has been given. This includes payments to **all** staff not just executives. As set out in that guidance, extra-contractual payments on termination should be exceptional and made only where a payment is in the public interest and represents value for money. HM Treasury has made it clear that it “cannot approve special severance payments that reward, or will be seen to reward, failure, dishonesty or inappropriate behaviour”. HM Treasury guidance is available at [http://www.hm-treasury.gov.uk/d/mpm\\_whole.pdf](http://www.hm-treasury.gov.uk/d/mpm_whole.pdf). The template at Annex B should be completed in all cases, including a robust and detailed summary of lessons learnt in which HM Treasury are particularly interested. NHS TDA may wish to follow up on actions taken by the NHS Trust to address the lessons learnt.

7.3.2 Cases for non-contractual payments proposed by NHS Trust remuneration committees should be submitted to NHS TDA remuneration committee who, if satisfied with the case presented, will only be able to give approval subject to HM Treasury approval and will seek such approval on behalf of the NHS Trust. Note that NHS TDA is unlikely to approve cases that are seen to be rewarding failure for reasons outlined in section 5.2.1.

7.3.3 No non-contractual payments should be made until HM Treasury approval is received.

- 7.3.4 Any non-contractual payments made without the necessary approvals may result in the NHS Trust's accounts being qualified.
- 7.3.5 Refer to Annex D for approval processes summary.

## **7.4 Pay in lieu of notice**

- 7.4.1 Where payments for any part of the notice period, including salary in lieu of notice are proposed, settlement agreements should be agreed including a claw back clause for any work obtained in the NHS during what would have been the notice period.

## **7.5 Audit scrutiny of severance payments**

- 7.5.1 NHS Trust Boards/Remuneration Committees need to be assured that severance settlements are in strict accordance with contractual entitlements. It is expected that all cases will undergo audit scrutiny either pre or post settlement / payment.

## **8. Settlement agreements**

- 8.1 Where settlement agreements are proposed, the NHS Trust's remuneration committee must ensure that such agreements are justified and that they are drafted in such a way as not to prevent proper public scrutiny either by NHS TDA, DH or external auditors.
- 8.2 Particular attention should be paid to the advice in Health Service Circular 1999/1988 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."
- 8.3 Reference should also be made to NHS Employers guidance on "the use of settlement agreements and confidentiality clauses" December 2013. This includes a model clause regarding confidentiality at Annex A of that guidance which employers are encouraged to use. Settlement agreements should at 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."*
- 8.4 As set out in 7.4, where payments for any part of the notice period, including salary in lieu of notice are proposed, settlement agreements

must include a claw back clause for any work obtained in the NHS during what would have been the notice period.

## 9. Employment Tribunal settlements

- 9.1 The process above in s7.3 for managing non-contractual payments, includes any settlements proposed that are not under the legal obligation from a remedies hearing of an employment tribunal, or any other civil action claim arising from an employment relationship. If a NHS Trust loses an employment tribunal case any remedy ordered by the employment tribunal will not require HM Treasury approval. In the event that a settlement is agreed between the parties in the period between the employment tribunal judgment and the formal remedies hearing, any agreed settlement payment would still need HM Treasury approval
- 9.2 The process above in s7.3 should be used for any settlements made after termination but prior to employment tribunal and other types of alternative dispute resolution such as COT3 agreements which include non-contractual terms or mediation or judicial mediation.

## 10. Contact for further advice and submission of cases

- 10.1 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 1 working day. Submission of cases should be sent to the same email address.
- 10.2 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*

*From the Office of David Nicholson CBE  
Chief Executive of the NHS in England*



Letter to Chairs and Chief Executives of Primary Care  
Trusts and NHS Trusts in England

cc Directors of Human Resources of Primary Care  
Trusts and NHS Trusts in England

*Richmond House  
79 Whitehall  
London  
SW1A 2NS  
Tel: 020 7210 5142  
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[david.nicholson@dh.gsi.gov.uk](mailto:david.nicholson@dh.gsi.gov.uk)*

Gateway reference: 9028

1 November 2007

Dear Colleague

### **Process for Making Severance Payments to Senior Managers**

The purpose of this letter is to clarify the process to be followed when a NHS trust or Primary Care Trust (PCT) wishes to terminate the contracts of employment of its Chief Executive and/or Directors\*.

The need for a trust or PCT to terminate the contract of a senior executive will be very rare. At the same time, the issues associated with terminating contracts of employment can be very complex. Therefore, chairs and their remuneration committees in this position should seek guidance and support from their Strategic Health Authority (SHA) as soon as it becomes apparent that termination of contract is being considered.

Ultimately, of course, the termination arrangements will be a matter of consideration for you as the employer of the executive concerned. However, the expertise and support of the SHA should be sought at all stages to support your remuneration committee and your board in making decisions which will protect public confidence in the NHS and, where payments are being considered, represent the best use of public funds.

For these reasons, where termination payments are being considered by your own remuneration committee or board, these should also be approved by the remuneration committee of the SHA.

For these purposes, a termination payment is any payment made on the termination of employment that is greater than salary due and any unpaid annual leave at the point of termination. Executives who choose to retire and access their NHS pensions, without the requirement for the employer to enhance the pension in any way, are excluded from these arrangements.

Termination payment also means any severance payment, whether or not covered by a compromise agreement, pay in lieu of notice, garden leave, pension enhancements or redundancy payment.

In summary, if you are considering terminating the contract of a Chief Executive or Director, you should:

- Inform your SHA Chief Executive at the earliest opportunity
- Take advice from the SHA on governance processes to be followed
- Seek the approval of the SHA's remuneration committee where you are proposing to make a termination payment, including statutory and contractual payments

Please note that where 'novel or unusual payments' are proposed, approval is also required from HM Treasury. Further details can be found in 'Managing Public Money', issued by HM Treasury. However, you should not approach HM Treasury before informing your SHA and seeking approval from the SHA remuneration committee. As set out in the guidance, extra-contractual payments on termination should be exceptional and made only where a payment is in the public interest and represent value for money.

You will also want to be aware that the Secretary of State is proposing to issue directions to standardise notice periods to not more than 6 months for Chief Executives and Directors, as soon as possible. These would apply to all new contracts with immediate effect. The directions would not prevent you from offering employees notice periods of less than 6 months where you consider this appropriate, nor should you change notice periods if they are currently less than 6 months.

I hope this serves to clarify some points of process and provides some support for handling what I know can be difficult situations. If you have any queries about the content of this letter, please direct them to your SHA Chief Executive.

Kind regards

A handwritten signature in black ink, appearing to read 'D Nicholson', written in a cursive style.

**David Nicholson CBE**  
**NHS Chief Executive**

For the purposes of this letter, "Director" means any Director reporting to the Chief Executive, whether or not an executive member of the board.

### Template for HM Treasury approval for special severance cases

Please read Managing Public Money Annex 4.13 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/212123/Managing\\_Public\\_Money\\_AA\\_v2\\_-\\_chapters\\_annex\\_web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212123/Managing_Public_Money_AA_v2_-_chapters_annex_web.pdf) before completing the proforma. You should be aware that HMT cannot approve special severance payments that reward, or will be seen to reward, failure, dishonesty or inappropriate behaviour.

*This template is to be used for all special severance cases to be submitted to HMT for approval. Approval can only be given if all aspects are answered.*

<b>Contact in sponsor Department:</b>	
<b>Name of organisation:</b>	
<b>Initials/name/number of case:</b>	
<b>Date case is submitted:</b>	
<b>Date decision is needed and why:</b>	
<b>Case history &amp; details</b>	
Please provide a <b>brief</b> case history, with dates, summarising how the situation has come about. What are individual's terms of employment (age, length of service, current salary, contractual notice period, type of contract (e.g. fixed term, part time), whether member of PCS/PS)?	
<b>Management procedures</b>	
Explain what procedures have been followed; or why relevant procedures have not been followed.	
<b>Proposed ways of proceeding</b>	
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?	

**Value for money consideration underlying the proposed settlement**

Set out break-down of costs, including legal costs; potential tribunal awards. Provide rationale for proposed level of settlement (with pay comparison ie x months' pay / y% of salary); costs of alternative options, and why proposed settlement offers best (incl best value for money) solution. When considering vfm, non-financial costs (ie effect on staff morale, achievement of business objectives) can also be taken into account.

**Please confirm that any settlement agreements or undertakings about confidentiality leave severance transactions open to adequate public scrutiny, including by the NAO and the PAC.**

**Please confirm that any settlement agreement or any undertaking about confidentiality associated with the severance transaction includes an express clause to the effect that no provision in the settlement agreement or undertaking purports to prevent the individual from making a protected disclosure in accordance with Part IVA of the Employment Rights Act 1996.**

*(DN: Part IVA ERA 1996 contains the 'PIDA' provisions)*

**Please confirm that your Accounting Officer is aware of and satisfied with the proposed settlement.**

**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, or for other public sector bodies.

**Other useful information**



**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.

**FOR HMT USE:**

Approval given by:

Date:

Advice taken from (TOA/ WPP):

Rationale for approval and any conditions:

**Additional information for NHS TDA (if not already covered in HMT template)**

Name of individual

Job title of individual

Confirmation of audit scrutiny either pre or post settlement

Signed:.....

Name: .....

Job title:.....

Date of NHS Trust Remuneration Committee:.....

## Presentation of case to NHS TDA Remuneration Committee Proposed Severance Payments

In order to protect the reputation of the NHS and ensure best use of public funds, NHS TDA's Remuneration Committee has a key role to play in reviewing **any** proposed severance payments (contractual or non-contractual) to Chief Executives and Directors, any proposed non-contractual severance payments to other staff and any proposed contractual severance payments of £100,000 or above to staff below director level in NHS Trusts.

To review such proposals the NHS TDA Remuneration Committee requires evidence that the NHS Trust has:

- Taken legal advice where required (ie for all non-contractual payments and for contractual payments with capitalised costs of £250,000 or above).
- Demonstrated that any payment represents good value for money and is in the public interest.
- Evidenced why local disciplinary or capability procedures are not the appropriate vehicles for resolving the situation, if the case is a conduct or performance issue. [Note - poor performance should not be rewarded and it is unlikely that such cases will be viewed favourably]

Refer to annex D for a summary of the approval process

### Contractual Severance Payment Template

Please attach this form to your submission, summarising key points to explain the reason for termination.

<b>Name of NHS Trust</b>	
<b>Name of individual</b>	
<b>Job title of individual</b>	
<b>Reason for termination</b>	
<b>If this is a disciplinary or capability issue, why are local procedures not being used?</b> Note - poor performance should not be rewarded and it is unlikely that such cases will be viewed favourably	
<b>Proposed payment and how calculated.</b>	
<b>Confirmation of audit scrutiny either pre or post settlement.</b>	
<b>Demonstrate how the proposed payment represents value for money and is in the public interest.</b>	
<b>Confirm that any related settlement agreement includes an express clause stating that the individual has not prejudiced any of their rights under PIDA 1998 (see s8.2 of this guidance).</b>	

Signed and date (HRD).....

Date approved by NHS Trust Remuneration Committee.....

**Compulsory Redundancy template**  
**(to be completed by employing organisation)**

The NHS TDA Remuneration Committee will focus on the following points:

- The redundancy process has been followed in accordance with AFC s16.
- That the departure of an employee is in the operational and financial interests of the organisation – details of any business continuity arrangements and cost savings will support this.
- That every effort has been made to search for suitable alternative employment, including in neighbouring Trusts. Evidence of this should be provided on Annex C3 or a similar document . Employers are advised to review current vacancies on NHS Jobs to see whether there are redeployment opportunities available which individuals should be applying for.

**Also attach Annex C3**

Name of NHS Trust	
Name of individual	
Job title	
Date of birth/age	
Completed years NHS service	
Grade / band	
Proposed payment and how calculated – including PILON if proposed.	
Confirmation of audit scrutiny either pre or post payment.	
Reason for redundancy	
Date of leaving	
Evidence of job search/posts applied for	
Comments or further details	

Signed (HRD).....

Date approved by NHS Trust Remuneration Committee.....

## Job Search Record template (for compulsory and voluntary redundancy applications)

This template has been drawn up to capture the efforts made to seek redeployment. It should be completed by the individual and signed by their line manager or member of the NHS Trust HR team. The NHS Trust Remuneration Committee will be meeting on **DATE** to consider redundancy payments. Please complete the attached form and return it to **NAME** by **DATE**. Please add additional boxes to Sections 2 and 3 as required). If any assistance is required to complete the form please contact **NAME**.

### **1. Personal details:**

Name:	
Job title:	
Grade/band:	

Give details of how the search for suitable alternative employment has been undertaken including how frequently NHS Jobs has been accessed and the search criteria used; other search websites or journals/newspapers that have been reviewed; whether your CV has been sent to neighbouring Trusts; details of posts that have been considered as potentially suitable and why they subsequently deemed not suitable; what support has been provided and any related seminars/training that have been attended.

### **2. Posts in NHS Trust applied for:**

If no posts in NHS Trust have been applied for please provide details of what has been reviewed and/or considered as potentially suitable and why any posts were subsequently deemed not to be so	
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Posts applied for:	
1. Job title:	
Grade:	
Outcome, please tick	Not shortlisted:
	Interviewed, not appointed:
	Offered post, not accepted because not suitable alternative employment (SAE)

2. Job title:	
Job reference number:	
Grade:	
Outcome, please tick	Not shortlisted:
	Interviewed, not appointed:
	Offered post, not accepted because not suitable alternative employment (SAE)

### **3. Posts in wider NHS applied for (i.e. any other NHS posts within travelling distance from home):**

If no other posts in NHS have been applied for please provide details of what has been	
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reviewed and/or considered as potentially suitable and why any posts were subsequently deemed not to be so:	
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Posts applied for		
1. Job title:		
Name of organisation:		
Date applied:		
Grade:		
Outcome, please tick	Not shortlisted:	
	Interviewed, not appointed:	
	Offered post, not accepted because not suitable alternative employment (SAE)	

2. Job title:		
Name of organisation:		
Grade:		
Outcome, please tick	Not shortlisted:	
	Interviewed, not appointed:	
	Offered post, not accepted because not suitable alternative employment (SAE)	

Signed:.....(individual)

Date: .....

Signed: .....(line manager or HR team member)

Date: .....

**Business case to run a voluntary redundancy scheme**

Name of NHS Trust	
The reason for running a voluntary redundancy scheme	
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> </ul>	
Confirmation that all legal requirements for redundancies are being adhered to e.g. consultation and notice periods	
Confirmation that all the criteria of AFC s16 are included in the scheme e.g. that individuals will continue to search for sae	
Will any staff be offered PILON? If so, confirm that this a contractual term and explain why there is not an option to work the notice	
Confirmation that no-one will be allowed to leave that potentially puts the service at any risk	
Confirmation there will be 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 of audit scrutiny either pre or post payment.	
Date of NHS Trust Remuneration Committee approval of scheme	

**Attach copy of scheme**

Signed:..... (CEO)

Name: .....

Date:.....

**VOLUNTARY REDUNDANCY SCHEME APPLICATION FORM (for NHS TDA submission where applicants are directors or cost is above £100k)**

PART ONE - For Completion by Employee

Employer			
Full name:			
Job title:		Pay band/grade:	
NI number:		Gross annual salary (before deductions):	
Assignment no:- (from payslip)		NHS continuous employment start date:	
<p>I wish to apply for the Voluntary Redundancy Scheme.</p> <p>I wish/do not wish to be considered for Voluntary Early Retirement and understand this will only be possible to the extent that the cost is no higher than the VR payment. (Options are not binding at this stage but will enable figures to be calculated)</p> <p>.</p>			
Date:			
Signed:			



## **PART 2 TO BE COMPLETED BY MANAGER**

**Section A to be completed if the application is supported or section B if not supported. Applicants will see copies of the form**

### **SECTION A**

I support this application and confirm that it meets the following criteria: (please give brief answers to each of the following statements)

1. Why is the departure of the employee in the operational and financial interests of the organisation?
2. Why is the VRS in the public interest and how does it represent value for money?
3. Is there a demonstrably greater number of existing employees in the staff group than there are suitable jobs?
4. Why is it unlikely that the applicant could be redeployed in suitable alternative employment in the wider NHS?
5. Is the applicant known to be designated for a future transfer to another organisation?
6. Is the applicant from a staff group where there is a known shortage?
7. Will the applicant receive any pay in lieu of notice (PILON), if so why is s/he not working the full notice and is PILON a contractual term of the contract?
8. How will the voluntary redundancy be treated in accounting terms (ie in which years accounts?)
9. If a settlement agreement is being used, please confirm that it includes an express clause stating that the individual has not prejudiced any of their rights under PIDA 1998 (see s8 of this guidance).
10. Is annex C3 or similar form attached to demonstrate the search that has been undertaken for suitable alternative employment?

### **Financial Savings**

What savings will be delivered as a result of agreeing a VRS Payment (recurrent and non-recurrent)

**SECTION B**

I do not support this application for the following reasons:

**SECTION C**

Signed:

Director /CEO

Date:

**PLEASE FORWARD ALL COMPLETED FORMS TO HR BY **DATE****

**For Completion by HR:**

Basic Annual Salary:	Continuous service start date	Completed Years
VR Payment Calculation: :		Leaving Date

Please ensure the following documents are also attached to the application:

- Remuneration Committee Minutes
- Copy of completed Annex C3

For cases with capitalized costs of £250,000 or above also attach

- Legal Advice

Please forward paperwork to NHS TDA HR team at [ntda.executivehr@nhs.net](mailto:ntda.executivehr@nhs.net)

**NHS TDA Severance Payments Approval Process summary**

Payment Type	Amount (£)	Documentation required for submission to TDA	Approval required by:	Timing
Compulsory redundancy / early retirement (contractual)	<p>CEO and directors – all cases</p> <p>Other staff – where cost over £100k</p>	<p>TDA templates:</p> <ul style="list-style-type: none"> <li>• If less than 3 cases Annex C2</li> <li>• If 3 cases or more Annex C2A</li> </ul> <p style="text-align: center;">+</p> <p>Annex C3 for each case</p> <p>NHS Trust Remuneration committee minutes relating to the case</p> <p>Legal advice (if over £250k) to include consideration as to whether search for suitable alternative employment has been appropriate taking into consideration personal circumstances and role.</p>	<p>NHS Trust Remuneration Committee</p> <p>NHS TDA Remuneration Committee</p>	<p>So that cases can demonstrate an individual's search for suitable alternative employment (sae), cases should be reviewed by NHS TDA after notice has been given and no earlier than one month before the contract is due to end. (The obligation to continue to look for sae continues until the end of the notice period).</p> <p>Advance notification - to enable NHS TDA's remuneration committee to process referred redundancy applications speedily, NHS TDA HR team should be notified as soon as possible and time allowed for the team to review and advise on the case before it is submitted to NHS TDA Remuneration Committee.</p>

Payment Type	Amount (£)	Documentation required for submission to TDA	Approval required by:	Timing
Voluntary redundancy /early retirement (contractual)	<p>CEO and directors – all cases</p> <p>Other staff – where cost over £100k</p>	<p>Business case to run scheme (annex C4)</p> <p>For individual VR cases - TDA template (annexes C5/3)</p> <p>NHS Trust Remuneration committee minutes relating to the case</p> <p>Legal advice (if over £250k) to include consideration as to whether search for suitable alternative employment has been appropriate taking into consideration personal circumstances and role.</p>	<p>NHS Trust Remuneration Committee</p> <p>NHS TDA Remuneration Committee</p>	As above
Other contractual severance	<p>CEO and directors – all cases</p> <p>Other staff – where cost over £100k</p>	<p>TDA template (annex C1)</p> <p>NHS Trust Remuneration committee minutes relating to the case</p> <p>Legal advice (if over £250k)</p>	<p>NHS Trust Remuneration Committee</p> <p>NHS TDA Remuneration Committee</p>	Advance notification - to enable NHS TDA's remuneration committee to process referred severance cases speedily, NHS TDA HR team should be notified as soon as possible and time allowed for the team to review and advise on the case before it is submitted to NHS TDA Remuneration Committee.

Payment Type	Amount (£)	Documentation required for submission to TDA	Approval required by:	Timing
Non - contractual	All cases for all staff	<p>HMT template (annex B)</p> <p>NHS Trust Remuneration committee minutes relating to the case</p> <p>Legal advice</p>	<p>NHS Trust Remuneration Committee</p> <p>NHS TDA Remuneration Committee</p> <p>HM Treasury (TDA will seek HMT approval on behalf of the NHS Trust)</p>	<p>Advance notification - to enable NHS TDA's remuneration committee to process referred non contractual cases speedily, NHS TDA HR team should be notified as soon as possible and time allowed for the team to review and advise on the case before it is submitted to NHS TDA Remuneration Committee.</p>