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

1. Introduction
	1. The MARS has been designed to support the flexibility to address periods of rapid change and service re-design.
	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 at risk of redundancy.
	3. Posts vacated by MARS leavers should be ring-fenced and advertised initially to “at risk” staff.
	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."

# Definition

* 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 redundancy1 or a voluntary redundancy, which would currently be covered by Section 16 of the NHS terms and conditions of service handbook.
	2. The MAR Scheme will launch on [*ENTER DATE]* and close on [*ENTER DATE] (*i.e. this will be the closing date for any applications)

*1The 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"

# Individual applications

* 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.
	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 of redundancy.
	3. The business case supporting any application to leave under MARS will need to demonstrate:
1. why the severance payment is in the public interest;
2. why it represents value for money;
3. how it represents the best use of public funds
4. that it will not affect the organisation’s financial targets.

# Eligibility

* 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.
	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 measured Sunday, to Saturday).
	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 potentially 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. Any MARS will be time-limited as per HMT guidelines.
	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.
	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.
	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, depending on the circumstances).
	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.

# Re-employment

* 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 from their termination date under MARS. If an individual does return to the NHS within one month they would be required to repay any MARS payment in full.
	2. Where an employee returns to work for the NHS in England within six months of their termination date under MARS 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.
	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.
	4. Re-employment includes working for the NHS in England via other mechanisms such as bank and agency.

# Settlement agreement

* 1. Employees who decide to proceed with a MARS 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.
	2. It will not be appropriate to include confidentiality clauses where a settlement agreement is used to formalise a mutually agreed resignation. Such agreements should be open and transparent, and employers must be able to demonstrate a sound business case for the scheme and that it has acted fairly. Contracts of employment should already contain a specific confidentiality clause preventing the use or disclosure of confidential information more generally (for example patient records) during and after employment. MARS should not be a substitute for addressing poor performance, disciplinary matters, unwelcome publicity, or reputational damage and therefore there should be no circumstance where a confidentiality clause (over and above what is already set out in an employment contract) is appropriate or necessary.
	3. The employer must therefore ensure that settlement agreements are drafted in such a way as not to prevent proper public scrutiny either by NHS England, DHSC 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 updated guidance on “the use of settlement agreements and confidentiality clauses”, 29 May 2024:

[The use of settlement agreements and confidentiality clauses | NHS Employers](https://www.nhsemployers.org/publications/use-settlement-agreements-and-confidentiality-clauses)

This states that whilst the use of confidentiality clauses is not prohibited, it is the view of NHS Employers that it is not appropriate to use confidentiality clauses because:

* The MARS process is open, fair and transparent with a sound business reason and therefore it is not necessary for the existence and terms of the agreement to be confidential;
* It is unlikely that the termination of employment under MARS will arise out of circumstances where the employer has a genuine cause for concern about the risk of the worker making derogatory statements about the employer.

In addition, 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 organisation may contribute up to a maximum of £400.00 inclusive of VAT towards the cost of this legal advice.

# Payment rate

* 1. MARS payments can be calculated using the model in Table 1 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.
	2. Individual payments will not be greater than £80,000 in respect of any individual. A salary cap of £80,000 will be applied i.e. for staff with total earnings of more than £80k, the figure used for calculating a MARS payment will be £80,000 (pro rata for part time staff).
	3. 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.
	4. If a successful MARS applicant has not worked their notice in full by the leaving date, some or all of the Severance Payment may be taxable as Post Employment Notice Pay in which case we will be required to deduct income tax and National Insurance at the appropriate rate in respect of any Post Employment Notice Pay.

**TABLE 1**

MARS payments will be calculated as set out in the table below (see paragraphs 8.1 and 8.2 for the definition of reckonable service).

|  |  |
| --- | --- |
| **Complete years of reckonable service** | **Scale of Payment** |
| 1 | 3 months’ basic salary |
| 2 | 3 months’ basic salary |
| 3 | 3 months’ basic salary |
| 4 | 3 months’ basic salary |
| 5 | 3 months’ basic salary |
| 6 | 3 months’ basic salary |
| 7 | 3 ½ months’ basic salary |
| 8 | 4 months’ basic salary |
| 9 | 4 ½ months’ basic salary |
| 10 | 5 months’ basic salary |
| 11 | 5 ½ months’ basic salary |
| 12 | 6 months’ basic salary |
| 13 | 6 ½ months’ basic salary |
| 14 | 7 months’ basic salary |
| 15 | 7 ½ months’ basic salary |
| 16 | 8 months’ basic salary |
| 17 | 8 ½ months’ basic salary |
| 18 | 9 months’ basic salary |
| 19 | 9 ½ months’ basic salary |
| 20 | 10 months’ basic salary |
| 21 | 10½ months’ basic salary |
| 22 | 11 months’ basic salary |
| 23 |  11½ months’ basic salary |
| 24 | 12 months’ basic salary |

# Reckonable service

* 1. Reckonable service means continuous full-time or part-time employment with their current or any previous NHS employer where there has not been a break of service of 12 months or more, as at the time of leaving. Employment that has been taken into account for the purposes of a previous redundancy payment or loss of office payment by an NHS employer, will not count as reckonable service.
	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.
	3. Any severance payment made will be offset against any subsequent payment made for the purposes of any future calculation of contractual redundancy payments in subsequent employment.This means that the period of employment covered by the severance payment is taken into account when calculating the redundancy payment.
	4. The severance payment would be subject to the employee having not secured another job in the NHS at the time of leaving.
	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.
	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.

# Pensions

* 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.
	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.
	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.
	4. Further information about the NHS Pension Scheme is available at: [www.nhsbsa.nhs.uk/pensions](http://www.nhsbsa.nhs.uk/pensions)

#  Application procedure

* 1. Following agreement of the MARS by NHS England, the procedure for applications will involve the following stages:
		+ an expression of interest made by an employee 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 England for review.
		+ applications from Chief Executives or Executive Directors will need formal approval from NHS England.
	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 leaving date for resignations agreed when the scheme was launched.

# Equality statement

* 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.
	2. Appropriate equality monitoring should be undertaken in line with the employer's relevant policies.
	3. An equality impact assessment should be undertaken for the final policy.

# Support for staff

* 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.
	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
		+ potential claw back of the payment should they return to NHS service

Some of the supportive measures to consider are listed below, but are entirely at the discretion of the organisation, 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: [www.gov.uk/browse/benefits](http://www.gov.uk/browse/benefits)
* Citizens Advice Bureau: [www.adviceguide.org.uk](http://www.adviceguide.org.uk/)
	1. 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/)

# Further information

FAQs regarding MARs are available on the NHS Employers website at:

Section 20 (NHS Terms and Conditions of Service Handbook)

[NHS Terms and Conditions of Service Handbook | NHS Employers](https://www.nhsemployers.org/publications/tchandbook#section-20-mutually-agreed-resignation-schemes---principles)