



Enquiries about distribution of DAO letters to:
Mangai.Rajasingham
Tel : 020 7270 5362
Fax : 020 7270 4311
mangai.rajasingham@hm-treasury.gov.uk¹
www.hm-treasury.gsi.gov.uk

Dear Accounting Officer

DAO (GEN)04/02
8 February 2002

SEVERANCE TERMS FOR STAFF

Purpose and scope of this letter

To advise departments about the arrangements for severance terms for staff employed by Non-Departmental Public Bodies (NDPBs); and to remind departments of the role of the NDPB's designated Accounting Officer in such cases. This letter reissues and supersedes the guidance given to departments in 1993 and 1994 (Brian Taylor's letters to Establishment Officers dated 13 January 1993 and 25 January 1994 respectively).

Action

2. Accounting Officers in departments are asked;
 - to ensure that departmental staff responsible for NDPB matters, and the Accounting Officers and Chairmen of the NDPBs which their Departments sponsor, are made aware of the terms of this DAO letter;
 - to note that this letter also applies to severance terms of their own employees;
 - to note that guidance on severance for Board members is covered in the note issued by the Treasury "Board members Pensions and Compensation Guidance note"
 - to note the following contacts;
 - o *Accountability:* Lorraine Constable, TOA, at the above address; phone 020 7270 5361; email lorraine.constable@hm-treasury.gov.uk;

¹ This DAO letter will shortly be published on the Treasury's GSI website at <http://www.hm-treasury.gsi.gov.uk/psd/dao/dao.htm>. Please email mangai.rajasingham@hm-treasury.gov.uk if you would like an electronic copy.



- o *Regularity and propriety of severance payments*: Ron Carpenter, TOA, at the above address; phone 020 7270 5364; email ron.carpenter@hm-treasury.gov.uk;
- o *Pensions and financial considerations for NDPB staff*: Gary Hansman, PSP, at Room35/G, HM Treasury, Parliament Street, LONDON SW1P, 3AG; phone 020 7270 4469; email gary.hansman@hm-treasury.gov.uk; (Gary Hansman can also provide copies of the “*Board members Pensions and Compensation Guidance note*”).
- o *Specific cases*: Departments are also advised to consult their normal spending team contact in respect of any specific cases.

Background

3. The Treasury wrote to departments in 1993 and 1994 in the wake of the criticism from the Public Accounts Committee about severance terms for senior staff in certain NDPBs and health authorities. At the time, the PAC recommended that the Treasury keep the terms under which NDPBs operate under review and take steps to ensure that the lessons learned are notified to and applied by all NDPBs. Similarly, the PAC in its Sixty-third Report on the Wessex Health Authority strongly criticised an unauthorised and irregular severance package which had been offered to one of the Authority’s employees. The PAC said the need was not for more rules but for effective systems of control and accountability between the NHS Management Executive and Health Authorities. The recommendation also applied to the arrangements between sponsor departments and their NDPBs.

4. In the light of recent cases coming to the Treasury on severance packages offered to senior staff in certain NDPBs, we consider that it would be appropriate to re-issue this guidance as an explanatory “Dear Accounting Officer” letter. In addition, this DAO letter clarifies the guidance in the booklet “*The Responsibilities of an NDPB Accounting Officer*” (which guides departments and NDPBs on NDPBs’ Accounting Officer responsibilities for regularity and propriety in the NDPB) and also clarifies how these should be discharged where a severance package needs to be negotiated for an NDPB’s Accounting Officer. The letter reminds departments that the guidance it contains applies to severance packages payable to their employees.

Points to take into account

5. In consideration of any severance package, departments should ensure that they take into account the following requirements:

- *Regularity, propriety and value for money*:
 - o public funds must not be used wastefully or to underwrite inequitable or over-generous conditions of service;
 - o notice of termination of appointments should not be delayed in order to generate compensation payments in lieu of notice;
 - o offers of further employment or of consultancy work should be exceptional and only made where they represent the best value for money;
 - o any undertakings which are necessary to protect commercial confidentiality are not framed in a way which suggests that severance

- arrangements are not open to proper public scrutiny
 - bodies should not normally seek to augment contractually agreed arrangements or go beyond the terms of their Financial Memorandum.
- *powers to incur expenditure:*
 - if the severance package relates to a person employed by an NDPB, the NDPB must ensure that it has the vires to act as proposed;
 - an NDPB must obtain any necessary proper and prior approval for any expenditure which is outside its existing delegated authorities;
 - the sponsor department must have or must obtain any necessary consent from the Treasury before discussing general proposals with individuals;
 - the sponsor department must obtain further consent before putting forward any detailed proposals which go beyond the general framework previously agreed.
 - *accountability and conflicts of interest:* personal responsibility for propriety and regularity must always be clear and transparent and avoid conflicts of interest. It would be improper if an NDPB's designated Accounting Officer was in a position where he or she had to negotiate his or her own severance package.

Regularity, Propriety and Value for Money

6. In addition to the four bullet points on regularity, propriety and value for money (vfm) set out at paragraph 5 above, the Cabinet Office's guidance on "*Model Code Of Practice For Board Members Of Advisory non-departmental Public Bodies*"² also advises NDPBs on these matters. The Model Code states that NDPB Board members should not participate in the discussion or determination of matters in which they have an interest, and should normally withdraw from the meeting (even if held in public) if:

- their interest is direct and pecuniary; or
- their interest is covered in specific guidance issued by this body or the sponsor department which requires them not to participate and/or to withdraw from the meeting.

Powers to incur expenditure.

7. The Guide for Departments on NDPBs makes clear that powers to make any superannuation and compensation arrangements for NDPBs should be subject to any necessary approval of the sponsoring Minister, given with the consent of the Treasury. These powers should be set out and agreed in the relevant Financial Memorandum. Any proposal which goes beyond approved arrangements and which has the support of the sponsoring Department must be submitted to the Treasury in good time for specific approval before any commitment or expectation is given to the individual(s) concerned. Where there is no detailed departmental control over pay, superannuation and other conditions of service, departments must nevertheless ensure that public funds are not used wastefully. Public funds must not, for example, be used to

² Available from : http://www.cabinet-office.gov.uk/central/1998/mcp_0998.htm

underwrite inequitable or over-generous conditions of service.

8. This stems from the general principles set out in Chapter 2 of *Government Accounting-2000*³ gives guidance on the authority which governs expenditure. No expenditure can properly be incurred without the approval of the Treasury. In practice, the Treasury delegates authority to departments to enter into commitments and to spend within defined limits. Therefore the sponsor department must ensure that it seeks any necessary Treasury consent as appropriate and that they must have arrangements in place designed to ensure that:

- NDPBs do not go beyond their delegated authorities in advance of seeking the necessary authority;
- NDPBs obtain approval for the proposal in the same way as any expenditure outside their existing delegated authorities.

9. These requirements apply to expenditure on pay and conditions of service (including superannuation and severance terms) as it does to any other expenditure and resource.

10. In relation to this, departments and NDPBs are reminded that compensation is not payable when someone resigns voluntarily. Exceptionally, circumstances may arise where it is highly desirable that an individual should leave, but the reasons are not sufficient to justify the individual's dismissal and it is judged acceptable to offer some financial consideration to secure the early voluntary resignation of the individual. However, such proposals are *novel* and *contentious* and therefore, as set out in chapter 2 of *Government Accounting 2000*, **must** be subject to the prior approval of the Treasury. In addition, the sponsor department and the NDPB (as appropriate) must weigh the circumstances and judge the value for money of such financial consideration before a case is made to the Treasury

Accountability and conflicts of interest

11. The essence of an Accounting Officer's role is a personal responsibility for the propriety and regularity of the public finances for which he or she is answerable. It follows that all Accounting Officers (ie those both in departments and those designated as NDPB Accounting Officers):

- must ensure that, in the consideration of proposals relating to the expenditure or income for which they have responsibility as Accounting Officer, all relevant financial considerations, including any issues of propriety, regularity or value for money, are taken into account; and that they
- should recognise that they cannot be acting properly or with regard to regularity if they advise the NDPB's Board on financial matters where they have a personal interest, eg in terms of their pay, allowances or severance terms.

12. Para 9 of "The Responsibilities of a NDPB Accounting Officer" requires the Accounting Officer to "ensure that conflicts are avoided, whether in the proceedings

³ available at www.government-accounting.gov.uk

of the Board or in the actions or advice of its staff, including yourself." Therefore, we would expect NDPB Accounting Officers to have set up mechanisms ensuring that the Board had access to independent advice when considering matters concerning them personally. For example the Board might receive advice directly from the NDPB's head of personnel or finance. Similarly we would expect the sponsor department to satisfy itself that such mechanisms were in place. Therefore the Treasury will want to be assured that the NDPB and the sponsor department has such systems in place before agreeing to any such expenditure.

13. Where his or her own severance pay, financial consideration or similar is under negotiation, the NDPB Accounting Officer must absent him or herself from discussions and designate someone else to take on responsibility for regularity, propriety and vfm in relation to that transaction. Such an arrangement fulfils the Accounting Officer's responsibilities. In addition, as Chief Executives are normally staff of the NDPB, it follows that any responsibility for dealing with any real or perceived conflicts of interest of staff members must, ultimately, rest with the Board. The Board has corporate responsibility for ensuring that high standards are maintained.

Staff of Government Departments

14. Departments are reminded that this guidance applies to severance terms of their own employees and therefore they must take into account: the need to observe regularity, propriety and vfm; to seek Treasury approval as appropriate; and to ensure that conflicts of interest are avoided

Glenn Hull
Second Treasury Officer of Accounts