



NHS Management Executive
St. Andrew's House
Edinburgh EH1 3DG
14 June 1996

Dear Colleague

CONDITIONS OF SERVICE FOR NHS GENERAL AND SENIOR MANAGERS: TERMINATION SETTLEMENTS

Summary

1. This letter introduces guidance about contractual compensation payments made on the early termination of fixed term contracts including short term rolling contracts of general and senior managers.
2. This letter also provides a Direction at Annex 1 made on behalf of the Secretary of State for Scotland. Paragraph 2 of the Direction when included in a contract makes provision for Health Boards, CSA, State Hospital, HEBS and SCPMDE (hereafter referred to as "Health Boards") to make a contractual payment to general or senior managers on early termination of employment.
3. All proposals must be referred to the Management Executive, or in the case of HEBS, the Public Health Policy Unit (PHPU), after due scrutiny by the employing authority to obtain a separate individual Direction to make the actual payment.
4. Advice on the Direction is given in Annex 2.
5. Trusts have the legal power to make termination payments to their employees without prior approval from the Management Executive. However, in determining such payments, they should follow the same principles as apply to Health Boards and similar bodies and in particular the requirements of paragraph 5 of Annex 2.
6. Health Boards and Trusts should include a period of notice in their general and senior managers' contracts.

Addressees

For action:

General Managers, Health Boards

General Manager,
Common Services Agency

General Manager, State Hospital

General Manager,
Health Education Board for Scotland

Executive Director,
Scottish Council for Postgraduate
Medical and Dental Education

Chief Executives, NHS Trusts

Enquiries to:

Mr G S Selkirk
Directorate of Human Resources
NHS Management Executive
Room 73
St Andrew's House
EDINBURGH
EH1 3DG

Tel: 0131-244 2474

Fax: 0131-244 2837

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7. Full details of all termination payments made to general and senior managers' in Health Boards prior to the date of this letter must be forwarded to the Management Executive to determine whether the payments have been made incorrectly and what action if any should be taken to recover such payments.

Action

8. Health Boards should:

8.1 incorporate into all general and senior managers' contracts of employment the provision set out in para 2 of the Direction at Annex 1;

8.2 seek to incorporate a period of notice into all existing general and senior manager contracts (paragraph 2 of Annex 2) and ensure inclusion in all new contracts.

8.3 obtain the necessary individual Direction from the Management Executive (or in the case of HEBS, the PHPU) **before** terminating a general or senior managers' contract (paragraphs 2.2 and 2.3 of Annex 2);

8.4 notify the Management Executive (or in the case of HEBS, the PHPU) of all termination settlements already agreed or paid to former general or senior managers between October 1986 and the date of this letter. **The information to be submitted as early as possible and certainly no later than 30 September 1996 see (Annex 3).**

9. NHS Trusts should:

9.1 note the advice (Annex 2) and set up arrangements for the proper calculation and scrutiny of termination payments under the oversight of the Trust's Remuneration Committee;

9.2 seek to incorporate a period of notice into all general and senior manager contracts;

10. The Management Executive plan to monitor the situation over coming months until it is clear that the principles and guidance are being followed.

11. Note that while inclusion of paragraph 2 of the Direction at Annex 1 enables a Health Board to make a termination settlement where appropriate, detailed guidance for the calculation of such payments is being considered and will be notified at a later date.

12. This letter should be copied to General Managers in DMUs and Directors of Finance of Health Boards and Trusts for action.

Yours sincerely



M R SIBBALD
Director of Human Resources

NATIONAL HEALTH SERVICE (SCOTLAND)**THE TERMINATION SETTLEMENTS FOR NHS GENERAL & SENIOR MANAGERS DIRECTION 1996**

The Secretary of State, in exercise of the powers conferred on him by paragraph 105(7) and paragraph 5 of schedule 1 and paragraph 7 of schedule 5 to the National Health Service (Scotland) Act 1978, hereby gives the following direction:

1. In this direction "a contract" means a contract of employment entered into between a general or senior manager with a Health Board on or after 9 October 1986, being a contract to which the direction at Annex 1 of Circular SHHD/DGM(1986)37 or the direction at Annex 1 of SHHD/DGM(1987)72 or the direction at Annex 1 of SHHD/DGM(1989)17 applies;

"Health Board" means a Health Board constituted under section 2 of the 1978 Act and also includes: a Special Health Board established under section 2A to which the provisions of paragraph 5 of schedule 1 apply; the Common Services Agency; and the State Hospital Management Committee.

"NHS employer" means any of the employers listed in the Employment Protection (Continuity of Employment of National Health Service Employees (Modification)) Order 1996 - SI 1996/1023.

2. Health Boards shall take steps to secure that contracts are amended to include the following terms:

2.1 Where the employee's contract is terminated by the employer with effect from a date falling before that on which this contract is to expire, the employer shall have discretion to pay to the employee such amount not exceeding that specified in paragraph 2.2 below, as the Secretary of State for Scotland may direct.

2.2 The maximum amount of compensation referred to in paragraph 2.1 above which the employer shall have discretion to pay to the employee, subject to the direction of the Secretary of State shall be calculated as follows:-

(i) To the extent that the contract comprises a notice provision and upon the basis that the contract were to be terminated by the employer without proper notice in terms of that provision, the maximum amount of compensation shall not exceed such sum as might be recoverable by way of damages by the employee in respect of any breach of contract arising from that failure to give proper notice, referable to salary accruing to the employee over the unexpired portion of the notice period.

(ii) To the extent that the contract does not comprise a notice provision allowing for termination before the expiry of the fixed term, the maximum amount of compensation shall not exceed such sum as might be recoverable by way of damages by the employee in respect of any breach of contract

arising from termination of the contract prior to the expiry of the fixed term, referable to salary accruing over the unexpired portion of the fixed term of the contract.

2.3 In any case in which the employee is dismissed in circumstances in which the Health Board has discretion to pay to the employee an amount specified in 2.2 above, and in which the employer has paid such an amount, then the employee shall, if he takes up employment with that employer or any other NHS employer, or contracts to supply services otherwise than under a contract of employment to any NHS employer, be liable to repay to the employer such proportion of the compensation paid to him as may be referable to the unexpired period of the terminated contract during which he is contracted to or employed by such other NHS employer or re-employed by the employer.

This direction is addressed to Health Boards, Special Health Boards, Common Services Agency and State Hospital Management Committee.

Signed on behalf of the
Secretary of State for Scotland

MR Sibbald

M R SIBBALD
NHS in Scotland Management Executive
Director of Human Resources

St Andrew's House
EDINBURGH
14th June 1996

ADVICE TO HEALTH BOARDS, CSA, STATE HOSPITAL, HEBS AND SCPMDE ON TERMINATION SETTLEMENTS FOR NHS GENERAL AND SENIOR MANAGERS

PAYMENTS ON TERMINATION OF EMPLOYMENT

1. Legal Advice

1.1 Legal advice has confirmed that Health Boards, CSA, State Hospital, HEBS and SCPMDE (hereafter referred to as "Health Boards") have powers to include provision for payments on termination of employment in contracts which carry a termination date, when so directed by the Secretary of State under powers conferred on him by paragraph 5 of Schedule 1 and paragraph 7 of Schedule 5 to the National Health Service (Scotland) Act 1978. A formal Direction enabling Health Boards to amend contracts of employment to incorporate such a provision is attached as Annex 1.

1.2 If the provisions of the Direction are not incorporated into the general or senior manager contract the Health Board will be unable legally to make any payment on early termination of the contract.

2. Direction

2.1 Paragraphs 2.1, 2.2 and 2.3 of the formal Direction at Annex 1 should be incorporated into general and senior manager contracts.

2.2 Paragraph 2.2(i) of the Direction applies to contracts with a 'notice' provision. This enables a Health Board to compensate a general or senior manager by a payment in lieu (see paragraph 3) for any breach of contract arising from any unexpired portion of the notice provided the Health Board applies for and receives a separate individual Direction from the Management Executive (or in the case of HEBS, the Public Health Policy Unit (PHPU)).

2.3 Where it is not possible to get agreement to include a notice period in a current contract, paragraph 2.2(ii) of the Direction enables the employer to seek an individual Direction from the Management Executive (or in the case of HEBS, the PHPU) which would allow the employer to compensate for the unexpired period of the contract. **Guidance on how to calculate termination settlements based on the unexpired period of contract payments is being considered.**

2.4 Health Boards and Trusts should include notice periods in all new contracts. For current contracts, notice periods should be included with the agreement of the particular general or senior manager. Notice periods longer than 6 months will require clear justification.

3. Payment in Lieu of Notice

3.1 Payments in lieu of notice are subsumed within and not additional to the settlements this guidance provides for. On dismissal for redundancy or for any other reason (other than voluntary resignation or disciplinary reasons) employees should be given the minimum

period of notice required by their contract of employment, and they should normally be expected to work until the end of the period of notice. In cases of voluntary resignation or early termination on disciplinary grounds, no payment should be made. In the case of termination on disciplinary grounds, employers should follow good practice in disciplinary procedures so as to avoid having to make a termination payment.

3.2 It is only if their employer prevents them from working until the end of the period of notice and requires the contract to terminate without the full period of notice, or alternatively if the employer genuinely cannot give the employee the full period of notice, that a compensatory payment in lieu of the unexpired period of notice may be made. In cases where a payment in lieu is appropriate, notice of termination should not be delayed in order to generate a cash payment in lieu, and it is unacceptable for a notice period to be lengthened to generate an additional cash payment over and above that which would be paid in respect of that notice period.

3.3 Offers of compensation as an inducement to secure the voluntary resignation of an individual should only be made in very exceptional circumstances which must be fully justified and the Management Executive's (or in the case of HEBS, PHPU) authority sought before offering such a payment. This may involve HM Treasury approval also.

4. Corporate Governance and Value for Money

4.1 An essential element of pay arrangements is the lead role of Chairmen of Remuneration Committees of Health Boards and Trusts to provide firm, clear and effective leadership through the principles set out in the NHS in Scotland Chief Executive letter of 11 October 1995 to Chairmen; and best practice as advocated by the report of the Greenbury Committee. Remuneration Committee decisions should at all times be soundly focused on:

- ensuring efficient and effective use of public monies in relation to managerial and executive pay.
- Ensuring that decisions on pay are fully supportable in front of the general public who will want assurances that the maximum level of resources goes into patient care.

4.2 Board Chairmen and General Managers, and Trust Chairmen and Chief Executives will be expected to have personally authorised all such payments and ensure that the proper procedures have been complied with. They will be required to justify these payments when necessary in person in support of the NHS Management Executive Chief Executive to Parliament. In the event of early termination of the contract of the Board General Manager or Trust Chief Executive, the Board Chairman or Trust Chairman respectively will be expected to exercise personal responsibility.

4.3 As an additional safeguard, Remuneration Committees should receive regular reports on the employer's policy on termination settlements and details of any individual settlements made to general and senior managers. These reports should initially be quarterly until Committees are satisfied that the principles have been understood. No commitment should be given to an individual employee, as to the level of settlement or the circumstances under

which it may be made, before reference is made to the Management Executive (or PHPU) as appropriate.

4.4 When seeking the individual Direction from the Management Executive (or PHPU), Health Boards must confirm that they are fully satisfied that their proposals are justified and represent value for money. In no circumstances can payment be regarded as an automatic entitlement. Employers must not rely on central scrutiny by the Management Executive or PHPU.

4.5 The Management Executive will carry out monitoring of all employers to confirm that management of termination settlements is adequate.

5. Mitigation and Re-employment

5.1 Employees should be advised that they are expected to mitigate their loss by taking reasonable steps to find suitable alternative employment as soon as possible after receiving notice of early termination of their contract.

5.2 Employees whose contract is terminated before the date of its expiry should not be made offers of further employment or consultancy work unless the employer formally judges that it represents the best value for money.

5.3 It is not appropriate for an employee to receive a termination settlement and a salary from another UK Health Service employer covering the same period both funded from public money. In such cases, any settlement should be made on the basis that the employee will inform either their old or new employers so that pro rata recovery arrangements can be made (Paragraph 2.3 of the Direction provides for this).

5.4 The issue of pension rights and employees approaching retirement age will require careful consideration to allow for any potential loss of pension rights. As this is a complex issue legal or independent professional advice may need to be sought.

6. Confidentiality

Any confidentiality clause in an employment contract should not be framed in such a way as to suggest that a settlement on termination would escape proper public scrutiny. Employers are required to disclose in a note to their accounts any payments for loss of office made to executive directors.

7. Enquiries

7.1 Enquiries on this advice should be addressed to Mr W G Welsh in Room 65 (0131-244 2492) St Andrew's House, Edinburgh, EH1 3DG together with any proposals for payments, details of the contract and calculation of the intended settlement and any professional advice obtained about the settlement.

7.2 Enquiries in the case of HEBS should be addressed to Miss M A Corbett, Room 14, St Andrew's House, Edinburgh, EH1 3DG (0131-244 2603).

NOTIFICATION BY HEALTH BOARDS OF PREVIOUS TERMINATION SETTLEMENTS

1. Health Boards, unlike NHS Trusts, do not have powers to make termination settlements to NHS general and senior managers unless so empowered by Directions issued on behalf of the Secretary of State.
2. If any termination payments have been made to any general or senior managers between the introduction of such contracts in October 1986 and the date of this Letter, they should be notified to the Management Executive (or in the case of HEBS from 1 April 1991, PHPU) as early as possible and certainly no later than **by 30 September 1996**. Notifications to the Management Executive should be made to Mr W G Welsh Room 65, St Andrew's House Edinburgh and in the case of HEBS to Miss M A Corbett Room 14, St Andrew's House, Edinburgh. **Nil returns are required.**
3. This notification should be accompanied by full details about
 - (a) the specific reasons for each termination;
 - (b) the basis of the calculation and amount; and
 - (c) any legal advice the Board may have received concerning that payment.