



Voluntary Early Release Scheme

Guidance for Staff 2018

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Appendix A – Voluntary Early Release Scheme Procedure

1. Introduction

NHS Wales is entering a challenging period of profound and sustained change. “Together for Health” describes the nature of these changes and the accompanying Workforce & OD framework highlights the challenges facing the workforce and its leaders in moving to new patterns of service delivery.

It is clear that such moves will require substantial and rapid changes to take place to the number, location, working patterns and skill mix of staff.

This scheme has been designed as an enabling tool to support the flexibility of NHS Wales organisations in addressing the demands of rapid change and service re-design.

It is not intended to replace existing terms and conditions or policy agreements but rather to supplement the range of options open to individual members of staff and their organisations in meeting the changing circumstances ahead.

The Voluntary Early Release (VER) Scheme has been designed to assist staff in taking a personal decision regarding their future employment and enable staff who may wish to leave their employment with NHS Wales to do so with an appropriate compensatory payment.

2. Nature of the VER Scheme

VER is a scheme where it is of mutual benefit, to both an employee and their organisation, for an individual to voluntarily choose to leave their employment, with the agreement of that organisation, in return for a severance payment.

VER is not a contractual entitlement and is not a redundancy, compulsory or voluntary, as covered by section 16 of the NHS Terms and Conditions of Service handbook.

3. Scope of the Scheme

- Access to the Scheme is at the discretion of the relevant employing NHS organisation
- Employees do not have a right to access the Scheme.
- Subject to the above and the eligibility criteria in section 4, application to the scheme may be made by any member of staff.
- The employing NHS organisation is responsible for the costs associated with any agreed compensatory severance payments.
- The Scheme is entirely voluntary and there is no legal obligation on the part of the employing NHS organisation to accept any individual application, nor any obligation for any employee to apply for the scheme or accept voluntary early release.

- Each application will be considered on its own merits and there is no guarantee that voluntary early release will be approved.
- The Scheme is open until further notice but may be withdrawn at any time.
- VER is a scheme under which an individual employee, in agreement with their employer, chooses to leave employment in return for a severance payment.
- As there may be significant financial and lifestyle implications for the employee, NHS organisations should support the decision making process by assisting individuals with their understanding of these factors. However, employers are not in a position to offer independent financial advice to their staff.

4. Eligibility

To be eligible for a compensatory payment under this Scheme, applicants must have been employed within the NHS in Wales for a minimum of one year, and:

- have not resigned or have accepted another post within NHS Wales or DHSSC at the time of application.
- have not given formal notice of their intention to retire prior to the date when applications are formally sought
- have not been notified of the date of termination of their contract of employment for any other reason
- must not be under notice of a Capability Hearing into their performance
- must not be under notice of a Disciplinary Hearing into their conduct

5. Compensatory Payment

The compensatory payment is a **'one off'** payment and will be calculated as follows:

- One month's pay for each completed year of reckonable service with the NHS, with a maximum of 12 months' pay.
- The calculation of an employee's reckonable service for the purposes of a VER payment, is calculated on the basis of the service up to the leaving date, and will comprise continuous full-time or part-time employment with the present or any previous NHS employer but with the following additions:
 - where there has been a break in service of 12 months or less, the period of employment prior to the break will count as reckonable service;

- at the UHB's discretion, any period or periods of employment with employers outside the NHS can be included in reckonable service, where this or these can be judged to be relevant, and can be considered as being associated with the provision of NHS services. Such consideration will be subject to the break in service considerations as noted above.

The following employment will not count as reckonable service:

- any employment that has been taken into account for the purposes of a previous redundancy, or loss of office payment by an NHS employer;
 - previous NHS service, which has already been recognised for payment of a redundancy payment, or compensatory payment
- This payment may be increased by up to three months to take into account any notice period agreed under paragraph 6 below, subject to an overall total of not more than 15 months' pay.
 - The maximum annual salary that may be taken into account for calculation purposes is £150,000.
 - A month's pay will be defined as the current net substantive basic salary, including any contractual elements of pay, excluding pension. Any Salary Sacrifice contributions will be deducted from the substantive basic salary to derive a month's pay i.e. if an employee earns £2,000 per month and pays £500 per month towards a salary sacrifice scheme, the month's pay is deemed to be £1,500.
 - The salary will be the average calculated over the previous 4 months prior to the date of application. An employee's seconded salary will only apply if they have been seconded in that role for more than 4 continuous years.
 - The first £30,000 of any compensatory payment will be tax free, and any remaining amount will be subject to tax and national insurance deductions.
 - Where, however, such payment includes an element of pay in lieu of notice, this will be separately identified and netted off from the compensation calculation and will be subject to tax and national insurance deductions.

6. Notice

- Any early release will mean that employment will come to an end by mutual agreement and the employee will be expected to work their contractual/statutory notice (whichever is the greater).
- If an employee wishes to leave before the end of their notice, they are able to do so but would forego any remaining paid notice.

An employee's proposed leaving date will be subject to negotiation and mutual agreement between the employer and employee.

7. **Approval Process**

Governing Principles

In considering individual applications for early release, organisations must:

- employ robust corporate governance principles
- be mindful of the need to show responsible use of public monies
- be able to demonstrate value for money
- take into consideration the impact, in both the short and long term, on the effectiveness of the organisation and its remaining employees.

Developing the case for early release

A business case must be made for each application, demonstrating:

- how the work undertaken by the applicant can be redesigned, re-assigned, or undertaken in a different way, and
- that the saving from the post, or an equivalent amount, will be removed on a recurrent and auditable basis
- that the cost of the individual's release will be recovered through a payback period of no more than one year.
- that consideration is given to the risk of the loss of skills and experience, and to the potential impact on remaining employees
- that patient safety, quality and efficiency can be maintained or enhanced as a consequence of the release.

A business case which includes a payback period of longer than one year may be submitted providing there is a clear demonstration that approval of such VER payment or payments would facilitate wider workforce redesign and/or skill mix change. The business case must include a cost benefit analysis to demonstrate the profile and timescale during which savings will be realized.

The approval process

Once an application for release has been jointly considered by the Clinical Board and Finance and the business case has received their support, it must be approved by the UHB Remuneration and Terms and Conditions Committee. Where, however the Chair of the Audit Committee is not a member of that committee, the endorsement of the Audit Committee should also be sought.

Obtaining Welsh Government Approval for ex-gratia payments

Payments under a VERS scheme are classified as 'ex gratia' payments and they therefore need to be managed in accordance with the losses and special payments procedure detailed in a Welsh Office Health Department document, Manual of Guidance (Wales) produced in December 1998. Under this guidance payments currently over £50,000 require Welsh Government approval. This must be obtained prior to the employee being notified of the outcome of their application.

8. Settlement Agreement

By agreeing to early release, employees will be required to waive all rights to redundancy or compensatory benefits associated with redundancy, premature retirement, or any other employment related claims through the courts or an Employment Tribunal and must, therefore, enter into a Settlement agreement drawn up by a suitably qualified independent adviser. The Agreement will set out the financial and all other terms on which the employment relationship will end.

Where the employee seeks such advice from an independent and qualified legal adviser, the NHS organisation will meet reasonable costs, up to a maximum of £250 plus VAT, provided a valid Settlement Agreement is entered into.

9. Access to Pension following compensatory payment

This Scheme is voluntary and, where the employee has opted to receive a compensatory payment, they may, subject to the relevant pension scheme rules, seek access to their pension. The NHS organisation will **not** be responsible for the payment of any pension enhancements. It is recommended that individuals wishing to explore any such options seek advice from the NHS Pensions Agency and/or the relevant Payroll Department.

10. Re-employment

It is a condition of any early release that successful applicants will not seek to return to employment within the NHS (in Wales) or the DHSSC, Welsh Government within a period equal to the duration of the compensatory payment plus three months, subject to a minimum period of 4 months.

Examples: 4 months after 1 year of service
5 months after 2 years' service
6 months after 3 years' service
7 months after 4 years' service, increasing thereafter

up to **15 months** after 12 years' service.

Employment within NHS Wales or the DHSSC will be deemed to include:

- employment with a primary care contractor
- services provided by the employee as a bank, locum or agency worker or independent contractor.
- the provision of consultancy services to the NHS or DHSSC

Any compensatory payment must be declared by an employee to any future NHS employer.

11. **Appeal**

There is no right of appeal against the decision not to grant Voluntary Early Release.

VOLUNTARY EARLY RELEASE SCHEME

PROCEDURE

How do I apply?

Contact your Directorate Manager/Head of Department and arrange to meet.

How will the decision be made on whether to support my application?

The Directorate Manager/Head of Department will need to consider the following issues:

- The payback period is no more than one year.
- Either the post will be permanently removed or a restructuring of other posts will enable equivalent funding to be removed on a recurrent basis.
- The overall reduction in staffing costs is sustainable.
- That applications are weighted against the impact of the loss of the skills and experience of the individual concerned.
- That there is no detrimental effect on patient safety, quality or efficiency

How is the Compensatory Payment calculated?

The Compensatory Payment is a 'one off' payment and is based on one month's pay for each completed year of reckonable service with the NHS, up to a maximum of 12 months' pay.

A month's pay is deemed to be the employee's net basic salary, together with any contractual elements of pay.

Will the Compensatory Payment be affected if I am in a Salary Sacrifice Scheme?

Yes, the Compensatory Payment will be affected if the employee is in a Salary Sacrifice Scheme. The Compensatory Payment is based on the employee's net basic pay. The net basic pay is the amount **after** any salary sacrifice contributions have been deducted.

Are there any other implications of being in a Salary Sacrifice Scheme?

In any VER application, the employee is asking to voluntarily leave the NHS and, as such, they would then need to pay any early termination fees associated with the Salary Sacrifice Scheme in which they are a member.

What happens if my application is not supported?

Where the Directorate Manager/Head of Department does not support the case, you will have this clearly explained and the case will progress no further. However, if you are a member of the NHS Pension Scheme, you may, if you are eligible, wish to apply for Early Voluntary Retirement. You would need to contact your manager in the first instance

What happens if my application is supported?

The Voluntary Early Release application form must be completed in full and will need to be signed off by you, your line manager, the Clinical Board Head of Finance and the Clinical Board Director of Operations or Executive Director. The completed form must be forwarded to the Workforce Governance Team.

What happens if I decide I do want to proceed?

You and your Directorate Manager/Head of Department will complete an application form which will be signed off within your Clinical Board and then considered by the Remuneration and Terms of Service Committee.

What are the deadlines for applying?

All applications should be submitted as soon as they have been signed off by the Clinical Board

Who makes the decision?

All cases involving Compensatory Payments of less than £75,000 will be discussed with the Deputy Finance Director prior to the submission of the business case to the Welsh Government (see below) and/or to the Remuneration and Terms of Service Committee.

All cases involving Compensatory Payments between £75,000 and £124,999 will be discussed with the Finance Director prior to the submission of the business case to the Welsh Government (see below) and the Remuneration and Terms of Service Committee.

All cases involving Compensatory Payments between £125,000 and the £150,000

maximum annual salary that may be taken into account for calculation purposes will be discussed with the Chief Executive prior to the submission of the business case to the Welsh Government (see below) and the Remuneration and Terms of Service Committee.

Following the internal scrutiny, each application will be assessed by the Remuneration and Terms of Service Committee in line with the Welsh Governments rules.

What happens if the Remuneration and Terms of Service Committee does not approve my application?

Where the Remuneration and Terms of Service Committee is not satisfied that the eligibility criteria are met and does not approve a case, the case will not proceed any further.

You will be informed of this decision as soon as possible.

What happens if the Remuneration and Terms of Service Committee approves my application?

You will be informed of this decision as soon as possible and will be asked to confirm if you wish to proceed with the application. You will also be asked, if appropriate, whether you wish to access your NHS Pension

Full details of the Voluntary Early Release Scheme arrangements will be set out and you will be given contractual notice of termination. The notice will be based on 1 week's notice for each completed year of service up to and including a maximum of 12 weeks' notice after 12 years of continuous employment.

The expectation will be that all successful applicants will work their required notice. However, in exceptional circumstances, it *may* be possible for staff to leave before the expiry of their notice but in doing so, they will only be paid for the notice they actually work. Any request for staff to leave before the expiry of their notice period must be discussed with the Head of Workforce Governance.

If you do confirm that you wish to proceed, a Settlement Agreement setting out the terms of your early release, will then be drawn up and sent to you for you to sign. This must also be signed off by a Solicitor.

It is important to note that the offer of Voluntary Early Release is conditional on acceptance of the terms of the Settlement Agreement. Either party may withdraw from this arrangement up until the signed Settlement Agreement is returned.

No monies will be paid until the Settlement Agreement is fully signed off.