

# Guidance on Decisions Taken about Severance Payments in HEIs

1. There is significant student and public interest in the remuneration of heads of higher education institutions (HEIs) and in the severance payments and packages received by those vacating such positions. Student interest has grown as the funding of higher education (HE) has moved increasingly from government grants to tuition fees. There is also considerable press interest in these matters, with HEIs and other charities being challenged and held to account for the levels of pay for their chief executives. This interest poses questions over the proper use of funds and assets and may impact on the reputation of individual HEIs and the HE sector as a whole.
2. In response, the CUC has published an HE Senior Staff Remuneration Code. This document sets out guidance to support governing bodies in their determination of remuneration and severance payments to heads of institutions (Hols) and staff earning over £100,000.
3. For those HEIs that are also charities, the governors (who are the trustees of the charity) must use charitable funds and assets only to further the charitable purposes of their HEI. This duty applies to trustees' stewardship of all of the charity's funds and assets – not just those that derive from public funds.
4. Appropriate severance payments require three key elements – namely that there is:
  - I. a reasonable, appropriate and justifiable amount;
  - II. procedural fairness; and
  - III. transparency and accountability.

Each of these elements are underpinned by several supporting principles.

## **Element I – A reasonable, appropriate and justifiable amount**

5. In making severance payments, institutions must meet their contractual obligations and be able to explain the reasons for any payments made. HEIs will need to carefully consider any advice that is available from regulators. Remuneration Committees have specific responsibilities in this area: in particular, ensuring that contracts agreed with senior post holders are fair, reasonable and justifiable and do not expose the institution to significant potential liabilities. For example, HEIs must be able to explain notice periods of more than six months.
6. Severance payments must consider matters of equality, diversity and inclusion with a view to ensuring that there are no biases based on gender, or other protected characteristics with regard to any payments made.
7. An HEI considering severance payments needs to ensure that it is being fair and equitable in its decision making about different groups of staff.
8. Enhancements to severance packages should not as a rule be provided out of public funds. For those HEIs that are charities, governing bodies must be mindful that non-public funds are assets of the charity and should therefore ensure that the use of these assets to make severance payments is in accordance with the use of charitable funds only to further the HEI's charitable purposes.
9. Governing bodies may also wish to consider the outcomes of the government's consultation on reforms to public sector exit payments.<sup>1</sup>
10. When a severance arises following poor performance on the part of an individual, payment should be proportionate, and there should be no perception that poor performance is being rewarded. Final-year salaries should not be inflated to boost pension benefits.

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<sup>1</sup> HM Treasury (2016) [Reforms to public sector exit payments: response to the consultation](#).

## **Element II – Procedural fairness**

11. Procedural fairness requires severance payments to be set through a process that is based on competent people applying a consistent framework with independent decision making using appropriate evidence. No individual can be involved in deciding his or her own severance payments.
12. The actions of those taking decisions about severance payments and those potentially in receipt of such payments should be governed by the standards of personal conduct set out by the Committee on Standards in Public Life (the seven Nolan Principles):
  - a) selflessness;
  - b) integrity;
  - c) objectivity;
  - d) accountability;
  - e) openness;
  - f) honesty; and
  - g) leadership.
13. Governing bodies must establish Remuneration Committees; these should be composed primarily of independent members of the governing body (and include the Chair of the governing body) but may co-opt external members to ensure it has the appropriate experience available. The Remuneration Committee must review any severance packages for post holders within its remit and, if needed, seek legal advice before making its recommendation to the governing body or exercising its delegated powers.
14. The Remuneration Committees, if considering HoI severance, must be chaired by a lay governor who is not Chair of the board.
15. Negotiations about severance packages and payments should be informed, on both sides, by appropriate legal advice as necessary.

## **Element III – Transparency and accountability**

16. The process for determining severance payments must be transparent.
17. The decisions about severance payments should be made in such a way as to ensure the accountability of those making the decisions as well as those in receipt of such payments.
18. Severance payments to senior staff should be disclosed in the Annual Remuneration Report to the governing body.
19. Confidentiality clauses can require both sides not to disclose the terms of the agreement or the circumstances leading up to the severance. In the private sector this is thought to be a cost-effective way of resolving disputes to the satisfaction of both sides and allowing the organisation to move on. HEIs and their outgoing staff may also need these protections, but this must be balanced by requirements for accountability and openness.
20. Therefore, compromise agreements for senior staff that include confidentiality clauses are acceptable, but they should be the exception rather than the norm. Any confidentiality clause should not prevent the wider public interest being served, and any undertakings about confidentiality should leave severance transactions open to adequate public scrutiny by the National Audit Office (NAO) and Public Accounts Committee. This means that both sides in a severance agreement should understand that any information covered by a confidentiality clause will need to be disclosed, if required, to the appropriate regulator or the NAO.