

Pay Circular (AforC) 3/2010

National Mutually Agreed Resignation Scheme (MARS) for England

Changes to NHS Terms and Conditions of Service Handbook (amendment 18):

To: All NHS employers

Summary

This pay circular informs employers of:

1. The publication of a national time limited Mutually Agreed Resignation Scheme (MARS) for England. This national scheme is available to all NHS organisations to run, should they wish to, from mid-September to the end of October.
2. A set of principles for England agreed by the Staff Council to cover the development of future local MARS, outside of any nationally agreed schemes. These are to be added to the NHS Terms and Conditions of Service Handbook as a new section 20.

Action

National Mutually Agreed Resignation Scheme for England

1. The national scheme has been commissioned by the Department of Health and developed in partnership with the Social Partnership Forum. It does not constitute a collective agreement. It is anticipated that those non-Foundation Trust employers in England that wish to run a MARS from mid-September to the end of October will work in partnership with their local staff side representatives to implement this scheme.

Section 20: Mutually Agreed Resignation Scheme Principles

2. Section 20 sets out, for employers in England, the principles agreed by the NHS Staff Council upon which any future local MARS would be based and applies in full with effect from 1 September 2010.

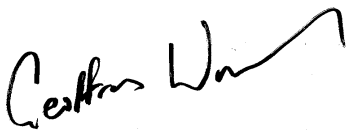
Effect of this Amendment

3. Annex A of the circular contains the national Scheme.
4. Annex B of the circular contains the principles underpinning mutually agreed resignations schemes. This will form part of the NHS Terms and Conditions Handbook.

Enquiries

5. Employees must direct personal enquiries to their employer.
6. Employers should direct enquiries to: pay&negotiations@nhsemployers.org
7. Copies of this circular can be downloaded from: www.nhsemployers.org
8. A copy of the NHS Terms and Conditions of Service Handbook can be downloaded from the NHS Employers website at the following web address:
www.nhsemployers.org/PayAndContracts/AgendaForChange/Pages/Afc-AtAGlanceRP.aspx
9. Prior to the establishment of NHS Employers in November 2004, responsibility to inform the NHS of changes to pay and allowances for staff on Agenda for Change contracts rested with the Department of Health. Changes were published in Advance Letters. Copies of previous Advance Letters going back to 1995 may be obtained from the Department of Health website at the following address:
www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/Advancedletters/index.htm

Issued by



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Annex A

Pay circular (AforC) 3/2010

National Mutually Agreed Resignation Scheme

This is an interactive document.

For the PDF version please hover over the red question marks to reveal the additional information.

For the Word version please place your cursor over the word 'Guidance' in red to access the additional information. If you wish to print the document with the comments visible you will need to select 'Show Revisions in Balloons' under the Review tab in Word.

Mutually Agreed Resignation Scheme

Standard national Scheme and employer guidance for England – September/October 2010

Foreword

In the coming years the NHS in England faces financial challenges to do “more with less”. This national scheme, together with the supporting information, has been developed as a tool for organisations to help them meet some of these challenges, including management cost and workforce reductions, service redesign and other efficiency needs. The policy outlines the eligibility, scope and financial considerations of the scheme and provides some practical advice for employers in implementing the scheme locally. The Annexes contain some proposed application forms for organisations to use and adapt to suit local circumstances.


This national scheme has been developed in partnership with the Social Partnership Forum. It does not constitute a collective agreement. It is anticipated that employers in England would work in partnership with their local staff side representatives to implement the policy.

The duration of this scheme would be from mid-September 2010 until the end of October 2010, subject to Strategic Health Authority (SHA) agreement, with participation down to individual employer requirements. During this timeframe no other Mutually Agreed Resignation Scheme (MARS) would be available although, with SHA approval, current schemes which are in operation may continue.

Locally developed schemes should make use of the principles agreed by the NHS Staff Council.

The payment rate under this scheme is fixed at ½ month’s salary for each full year of service, up to a cap of 12 months salary, with a minimum payment of 3 months salary for 1 – 5 years reckonable service.

1. Introduction

- 1.1. The Mutually Agreed Resignation Scheme (MARS) has been designed to support the flexibility of the organisation to address periods of rapid change and service re-design.
- 1.2. The purpose of the MARS is to create job vacancies which can be filled by redeployment of staff from other jobs or as a suitable alternative for those facing redundancy. **Guidance** 

2. Definition **Guidance**

- 2.1. MARS is a scheme under which an individual employee, in agreement with their employer, chooses to leave employment in return for a severance payment. A Mutually Agreed Resignation (MAR) 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.

3. Business case **Guidance**

- 3.1. 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.
- 3.2. The business case to leave under MARS will need to demonstrate:






¹ *The 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"


- a) why the severance payment is in the public interest;
- b) why it represents value for money;
- c) how it represents the best use of public funds
- d) that it will not affect the organisation's financial targets.

4. Eligibility Guidance

- 4.1. It would be for an employer working in partnership with local staff side to determine the eligibility criteria for a MARS. Guidance 
- 4.2. However, the following groups would not normally be allowed to leave under this scheme:
 - where an employee has already formally given notice of their intention to resign/retire, prior to the date when applications are formally being sought;
 - where an employee has already secured employment with another employer;
 - an employee has been notified of the date of the termination of their contract of employment for any other reason;
 - an employee is undergoing a performance management procedure to address poor performance; Guidance 
 - an employee is undergoing a conduct procedure; Guidance 
 - employees are currently in a selection pool identifying them for potential redundancy. Guidance 
- 4.3. The national MARS will be time-limited from mid-September to the end of October 2010. Any extension to this timescale must be authorised by the SHA. Outside these timeframes MARS would remain closed. Guidance 
- 4.4. Each application made in accordance with MARS will be considered on its own merits. The organisation 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.

- 4.5. MARS is entirely voluntary from the employer's and employee's perspective and there is no legal obligation on the part of the employing NHS organisation to accept any individual application.
- 4.6. 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 (please see annex B). Employees may wish to augment this by seeking advice from a regulated financial advisor.

5. Re-employment Guidance

- 5.1. Employees who leave the NHS 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. If an individual does return to the NHS within one month they would be required to repay any MARS payment in full.
- 5.2. Where an employee returns to work for the NHS in England within six months and before the expiry date of the period for which they have been compensated (as measured in equivalent months/part-months salary), then an employee 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 and reflect net salary. The compromise agreement should specify the requirement to repay monies in such circumstances and may provide for a period of repayment. Guidance 

6. Compromise agreement




- 6.1. Employees who decide to proceed with a MAR will be issued with a Compromise Agreement to sign, which will set out the financial and other terms under which the employment relationship will end.
- 6.2. Independent legal advice will need to be obtained by the employee before signing the Compromise Agreement. The organisation will contribute up to a maximum of £400.00 inclusive of VAT towards the cost of this legal advice.

7. Payment rate Guidance

7.1. MARS payments will be calculated using the model below.

Reckonable Service (complete years)	Scale of Payment
1 year's continuous service (organisation/NHS)	3 months' basic salary
2 years' continuous service (organisation/NHS)	3 months' basic salary
3 years' continuous service (organisation/NHS)	3 months' basic salary
4 years' continuous service (organisation/NHS)	3 months' basic salary
5 years' continuous service (organisation/NHS)	3 months' basic salary
6 years' continuous service (organisation/NHS)	3 months' basic salary
7 years' continuous service (organisation/NHS)	3 ½ months' basic salary
8 years' continuous service (organisation/NHS)	4 months' basic salary
9 years' continuous service (organisation/NHS)	4 ½ months' basic salary
10 years' continuous service (organisation/NHS)	5 months' basic salary
11 years' continuous service (organisation/NHS)	5 ½ months' basic salary
12 years' continuous service (organisation/NHS)	6 months' basic salary
13 years' continuous service (organisation/NHS)	6 ½ months' basic salary
14 years' continuous service (organisation/NHS)	7 months' basic salary
15 years' continuous service (organisation/NHS)	7 ½ months' basic salary
16 years' continuous service (organisation/NHS)	8 months' basic salary
17 years' continuous service (organisation/NHS)	8 ½ months' basic salary
18 years' continuous service (organisation/NHS)	9 months' basic salary
19 years' continuous service (organisation/NHS)	9 ½ months' basic salary
20 years' continuous service (organisation/NHS)	10 months' basic salary
21 years' continuous service (organisation/NHS)	10 ½ months' basic salary
22 years' continuous service (organisation/NHS)	11 months' basic salary
23 years' continuous service (organisation/NHS)	11 ½ months' basic salary
24 years' + continuous service (organisation/NHS)	12 months' basic salary

8. Reckonable service

- 8.1. Reckonable service means continuous full-time or part-time employment with present or any previous NHS employer where there has been a break of service of 12 months or less, as at the time of leaving. Employment that has been taken into account for the purposes of a previous redundancy or loss of office payment by an NHS employer, will not count as reckonable service.
- 8.2. 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.
- 8.3. Any severance payment made will be offset against any subsequent payment made for the purposes of any future calculation of redundancy payments in subsequent employment. This would apply where the period of employment covered by the severance payment is taken into account in calculating the redundancy payment.
- 8.4. The severance payment would be subject to having not secured another job in the NHS at the time of leaving. **Guidance** 
- 8.5. 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 of this provision of MARS. **Guidance** 
- 8.6. The employee's proposed leaving date will be subject to negotiation and mutual agreement between the employer and employee. **Guidance** 

9. Pensions **Guidance**

- 9.1. 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.

- 9.2. 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.
- 9.3. Please note, however, that we are unable to guarantee 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 leave form.
- 9.4. Further information about the NHS Pension Scheme is available at www.nhsbsa.nhs.uk/pensions

10. Application procedure Guidance

- 10.1. The procedure should include the following:
- a) an expression of interest made by an employee after considering the full details (including the content of any compromise agreement);
 - b) their application is considered by the employer;
 - c) if the application is to go ahead, the date of exit is mutually agreed, i.e. not imposed by the employer. In addition it must not be retrospective.


11. Equality statement Guidance

Employers can set out their equality commitments expressing 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’.

Annex A

Application procedure Guidance

A suggested structure is set out below for section 10 – to be adapted as required to meet local circumstances.

- 1.1. Employees who wish to apply for MARS should discuss their case with their line manager in the first instance. Informal discussions will be confidential and not make a binding commitment on either party. The Human Resources (HR) team will also be available to provide advice on the scheme. Please note your line manager will be asked to indicate their support or otherwise for your application by completing the attached form (see annex **XX**), outlining the potential financial savings and payback time along with reassurance as to how the business needs of the organisation will continue to be met.
- 1.2. Members of staff should then submit their application for MARS by the notified closing date, using the application form in **annex XX**. This must be submitted to the **Director of Human Resources (for local discretion)** who will arrange for their application to be acknowledged within **5 days (for local discretion)** of receipt, the information submitted will then be verified and the potential MARS payment calculated.
- 1.3. Once an application is submitted, it will be dealt with in strict confidence by all those involved with the process.
- 1.4. Applications will be submitted to a MARS Panel comprising the **Director of Human Resources, Director of Finance plus one additional Executive/Non Executive Director (for local discretion)**. The panel will make the final decision on whether to accept or reject an application.
- 1.5. Where the MARS Panel approves an application, the **Director of Human Resources (for local discretion)** will write to the member of staff confirming that their application has been approved, confirming the MARS payment, a mutually agreed leaving date and requesting their acceptance or rejection of the offer within a prescribed timescale. Guidance 
- 1.6. Where the MARS Panel does not approve an application, the **Director of Human Resources (for local discretion)** will write to the member of staff advising that their application has not been successful and why it has not been possible to approve the application at this time.

Mutually Agreed Resignation Scheme – supporting staff

1. When considering applying for voluntary severance under the Mutually Agreed Resignation Scheme (MARS), employees will need to understand the consequences of their decision. Employers can support employees in a number of ways, both with understanding the implications of their decision and the transition involved with leaving an organisation.
2. Some of the supportive measures to consider might be:
 - 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.
3. 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.
4. Sign-posting staff to the following resources:
 - NHS Pensions: www.nhsbsa.nhs.uk/pensions
 - Benefits website: www.direct.gov.uk/en/MoneyTaxAndBenefits/index.htm
 - Citizens Advice Bureaux: <http://www.adviceguide.org.uk/>
5. 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
 - The Personal Finance Society: www.thepfs.org
 - Money made clear: www.moneymadeclear.fsa.gov.uk

Annex C

Suggested template, to amend according to local need.

Mutually Agreed Resignation Scheme – Application Form

For completion by the employee.

Division & Ward/Department			
Full Name:		Date of Birth:	
Job title:		Band/Grade:	
Assignment Number/Payroll Number			
NI Number:		Gross Annual Salary	
NHS Start Date		Organisation Start Date:	
Preferred Contact Details:	E-mail:		
	Phone:		
	Address:		
I wish to apply for the Mutually Agreed Resignation Scheme. I understand that the information above will be validated and the outcome of my application will be communicated to me in writing.			

Date:	
Signed:	

To be completed by the line manager/HR Department

Details required of how recurrent cost savings can be made through skill mix/redeployment:

1. Why is the employee being considered for voluntary severance?

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2. Savings to be delivered as a result of agreeing a MARS payment? (recurrent and non-recurrent)

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3. Voluntary severance costs?

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4. Does this application create an opportunity for another displaced member of staff?

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I do/do* not support this application <i>(*Delete as appropriate)</i>	Reason:
Signed: Signed: Date:	Line Manager General Manager

PLEASE FORWARD ALL COMPLETED FORMS TO THE DIRECTOR OF HUMAN RESOURCES

<p>Authorisation from HR Director</p> <p>This application has/has not been approved</p> <p>Signed:</p> <p>Date:</p>
--

For Completion by HR/Payroll Team

Basic Annual Salary:		Organisation Start Date:	
MARS Payment Calculation:	Leaving Date:	Completed Years:	
<p>Completed by: _____</p> <p>Date: _____</p>			

Advice on Creating a Compromise Agreement

Legal Advice is that it would be advisable for employers to create a Compromise Agreement for employers and employees leaving under MAR to sign. A Compromise Agreement limits ability of an employee to appeal to a Tribunal in regards to the terms of their resignation.

The following clauses are suggested as suitable content to be included in any Compromise Agreement. Employers should take their own legal advice in regard to what should be included in an agreement:

Standard Clauses to include in a Compromise Agreement

- definition of terms
- termination of employment
- accrued salary and benefits
- secrecy and confidentiality
- return/retention of company property
- expenses
- restrictive covenants
- legal fees
- full and final settlement

Specific Clauses relating to the content of MARS that must be included in the Compromise Agreement

The legal advice we have received is that the following clauses need to be explained very carefully in the Compromise Agreement in order for them to be legally binding. Suggested wording that would be suitable for inclusion in the Compromise Agreement has therefore been included for each of the clauses.

Examples have also been included in some instances so that the meaning of each clause is fully understood by anyone who may be required to create a Compromise Agreement.

The final clause in relation to Use of Data must be worded carefully in order to follow best practice around use of information.

Clawback (Repayment)

Suggested Wording

“Where the employee returns to work for the NHS in England within 6 months and before the expiry date of the period for which they have been compensated (as measured in equivalent months/part-months salary), then the employee will be required to repay any un-expired element of their compensation. This will be reduced to take account of any appointment to a lower grade and reflect net salary. The compromise agreement should specify the requirement to repay monies in such circumstances and may provide for a period of repayment.”

Worked Example 1

An employee leaving under MARS is paid basic salary of £60,000 per annum Gross of (£5,000 per month). They have 24 years of reckonable service (so qualify for a payment of 12 months basic salary), which gives them a Gross total payment of £60,000 (£5,000 x 12). After allowing for tax their Net payment is £48,000.

After three months they return to the NHS in a new job that pays £2,500 a month net of tax. They are therefore required to repay the unexpired element of their compensation (this is the number of months payment they received minus the number of months where they were not working for the NHS). This repayment is adjusted to reflect the employee's new salary and is therefore £2,500 x 9, giving them a total net repayment requirement of £22,500.

Worked Example 2

An employee leaving under MARS is paid £60,000 per annum (£5,000 a month). They have 8 years of reckonable service, which means that they receive a total payment of £20,000 (four months pay).

After four months they return to the NHS in a new job and are not required to repay any of the money they received as part of their MARS payment. This is because the unexpired element of their compensation that they are required to repay (the number of months payment they received minus the number of

months where they were not working for the NHS) is £0, as they received a four months MARS payment and they were out of the NHS for four months.

Note: In all instances, any employee returning to employment in the NHS after 6 months is not required to repay the money they received under MARS.

Any Future Redundancy Payment

Suggested Wording

"If the employee becomes entitled to a redundancy payment in any future period of NHS employment, the MARS payment will be offset against any future redundancy payment, where the period of employment covered by the MARS payment is taken into account in calculating the future redundancy payment. The employee understands their responsibility to inform any future NHS employer that they have received a MARS payment and consequently that any possible over payment following a redundancy settlement will be recovered".

Worked Example

An employee receives a gross payment under MARS of £60,000 for 24 years service.

The employee leaves under the scheme on 31/10/2010

They return to the NHS in a new job on 31/06/2011

They are then made redundant in their new job on 31/06/2013

They have returned to the NHS within a year at the same salary of £60,000 so their previous 24 years reckonable service is valid, and rolls over in terms of calculating their redundancy payment. Because they are 2 years into their new job these two years are added to their previous years of service to give them a total of 26 years. Only the most recent 24 years count.

If they had not received a MARS payment, they would receive a redundancy payment of £120,000 in order to reflect their 24 years of service in the NHS.

However, as they have received a MARS payment the amount of their redundancy payment is reduced by 22/24ths of the £60,000 they have already received (ie £55,000). This gives them a total redundancy payment of £65,000.

Use of data

Suggested Wording

“The employee understands that data about their payment will be submitted to [relevant name] SHA and to the Department of Health. They agree that this personal data can be used to track whether they re-enter NHS employment within six months of leaving and understand that anonymised data will be used by the Department of Health to evaluate the scheme.”

Annex B

Pay circular (AforC) 3/2010

NHS Terms and Conditions of Service Handbook

The changes made effective by this circular are:

New Title Page:

The reference to “Amendment number 17” is changed to “***Amendment number 18***”

The reference to “Pay circular (AforC) 2/2010” is changed to “***Pay circular (AforC) 3/2010***”

New List of Contents:

Section 20 has been added to the list of contents. The reference to “Section 20 to 24 (Unallocated)” has been changed to read “***Section 21 to 24 (Unallocated)***”

Section 20:

Section 20 is a new entry to the Handbook.

The page which says “Section 20 to 24 (Unallocated)”

Has been changed to read: “***Sections 21 to 24 (Unallocated)***”

NHS terms and conditions of service handbook

Amendment number 18
Pay Circular (AforC) 3/2010

THE NHS STAFF COUNCIL
WORKING IN PARTNERSHIP

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Section 20: Mutually Agreed Resignation Scheme – Principles

Introduction

- 20.1. A Mutually Agreed Resignation Scheme (MARS) is a form of voluntary severance and has been developed with the aim of increasing the flexibility to organisations as they address periods of change and service redesign, in light of the financial circumstances in which they operate. The following set of principles has been developed and agreed by the NHS Staff Council in partnership to support the service in England in operating the scheme. Local partners are asked to use these principles in developing local schemes.
- 20.2. MAR schemes support employers by creating job vacancies which can be filled by redeployment of staff from other jobs or as a suitable alternative job for those facing redundancy.
- 20.3. The NHS Staff Council feels that the following good practice principles will support NHS employers in developing local MARS which will help to minimise the need for any future redundancies during periods of change and service redesign.
- 20.4. These guidelines refer to England only and further details of any arrangements in Scotland, Wales and Northern Ireland can be obtained from the respective Health Departments/Directorates.

Definition

- 20.5. Mutually Agreed Resignation (MAR) is a scheme under which an individual employee, in agreement with their employer, chooses to leave employment in return for a severance payment. MAR is not a redundancy¹

¹ The 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".

or a voluntary redundancy, which would currently be covered by Section 16 of the NHS Terms and Conditions of Service Handbook. Severance payments should not be made where the circumstances entitle an employee to a contractual redundancy payment or redundancy benefits under the NHS Pension Scheme Regulations.

- 20.6. There may be a risk of a future redundancy claim if an employee is paid under MARS when their post is in fact redundant.
- 20.7. 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 implications for the employee, employers can support the decision making process by assisting individuals with understanding these implications. Employees may wish to augment this by seeking advice from a regulated financial advisor.
- 20.8. 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

Eligibility criteria

- 20.9. It would be for an employer working in partnership with local staff side to determine the eligibility criteria for a MARS.
- 20.10. Careful consideration will need to be given to the eligibility criteria and these should be drawn up in a way that closely link to the business case for the scheme. Criteria must not give rise to unlawful discrimination.
- 20.11. MARS is entirely voluntary from the employer's and employee's perspective and there is no legal obligation on the part of the employing NHS organisation to accept any individual application. Often a MAR is not an option, either because it does not suit individuals' personal circumstances or because it is important to retain a member of staff in the organisation. However, in some situations a MAR may be a useful opportunity for both the organisation and the individual, dependant upon the time specific savings that can be achieved and the employee's personal circumstances.
- 20.12. The final decision as to whether to accept an employee's application would be at the employer's discretion, depending upon their organisational needs, and there is no guarantee that an application to be considered under

a MARS will be automatically approved. When making a decision regarding an application, an organisation will need to be able to demonstrate that there is a sound business case for the MAR and that it has acted fairly, in line with its own equal opportunities policy.

- 20.13. Application periods for a MARS should be time limited and not be an open ended exercise overlapping with a redundancy consultation. It would be expected that an organisation's application process would incorporate the values of confidentiality as embodied in the relevant organisation's policies.
- 20.14. It is important that an employee's proposed leaving date will be subject to mutual agreement between the employer and employee.
- 20.15. MARS should not be seen as a substitute for addressing poor performance, disciplinary matters, unwelcome publicity or reputational damage. Where appropriate poor performance and conduct issues should be addressed via the organisation's relevant policies and procedures.

Re-employment

- 20.16. Employees who leave an employer under the MARS would not be re-employed under normal circumstances by the same employer, in the same or a different post, before a period of time has elapsed. This is to ensure that public monies are spent appropriately and due consideration is given to all the alternatives available to an organisation when assessing the business case for any application under a MARS.
- 20.17. An employee, who secures another job within the NHS within a short period of time, may be required to repay a proportion of their compensation to the employer that made the payment. If the job is at a lower salary then the repayment would be reduced accordingly. The compromise agreement should specify the requirements for repayment in such circumstances.
- 20.18. Any severance payment made will be offset against any subsequent payment made for the purposes of any future calculation of redundancy payments in subsequent employment, where the period of employment covered by the severance payment is taken into account in calculating the redundancy payment.

Financial Case

- 20.19. The employer is responsible for the costs associated with any severance payment agreed under a MARS.

20.20. When deciding on a MARS, the employer will need to have a clear financial rationale that can justify a severance payment using public monies. In line with current good practice, consideration will need to be given to whether an employer is able to demonstrate:

- a) Why the severance payment is in the public interest
- b) Why it represents value for money
- c) How it represents the best use of public funds

20.21. It is recommended that appropriate good practice corporate governance principles² are in place and followed when undertaking the process of approving severance payments.

20.22. Any locally agreed MARS will require approval from HM Treasury and the local Strategic Health Authority.

20.23. Severance payments will require certification from the Accountable Officer stating:

- a) The scheme is affordable and within control totals;
- b) There are no staff leaving under the scheme who should otherwise be managed under the organisation's performance/capability procedures;
- c) The time limits applied to the scheme.

Compromise Agreement

20.24. It is advised that any severance payment under the MAR scheme will be formalised by means of a compromise agreement. This would set out the financial and all other terms on which the employment relationship will end.

20.25. The NHS organisation will meet reasonable costs for the independent legal advice taken by an employee who signs a compromise agreement.

Payment Rate

² For NHS employers in England:

- For SHAs, PCTs and NHS Trusts:
<http://webarchive.nationalarchives.gov.uk/+www.dh.gov.uk/en/Managingyourorganisation/Workforce/Leadership/Governance/index.htm#dhJumpLinks>
- For NHS Foundation Trusts: <http://www.monitor-nhsft.gov.uk/home/our-publications/browse-category/guidance-foundation-trusts/mandatory-guidance/code-governance->
- NHS Financial Manual:
http://webarchive.nationalarchives.gov.uk/+www.dh.gov.uk/en/Managingyourorganisation/Financeandplanning/DH_4015846

- 20.26. The payment rate must reflect value for money for the public sector with a clear rationale for sustainable cost savings (see section 5. Financial Case). When determining payment rates employers should take into consideration the relative costs of alternatives to a Mutually Agreed Resignation. The amount should be sufficiently attractive to incentivise applications for the scheme, taking into account the level at which the minimum rate is set. Payments will need to be consistent and transparent and reflect the needs and objectives of the organisation.
- 20.27. In some cases, severance payments are not subject to deductions in accordance with the Income and Corporation Taxes Act 1998, but the individual circumstances of each case will need to be considered.

Equality Principles

- 20.28. In line with good practice, any local MAR scheme will need to operate in line with the equal opportunities principles as set out in Equality legislation.
- 20.29. 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.
- 20.30. Employers will need to undertake an Equality Impact Assessment of their MAR scheme and put into place the appropriate monitoring in line with their relevant policies, as developed in partnership with their local staff organisations.

Sections 21 – 24
(Unallocated)

