

# A

## ANNEX 4.13 SPECIAL PAYMENTS

**This annex explains how public sector organisations should approach current transactions outside the usual planned range. It is often right, or essential, to consult the Treasury beforehand. In some cases, it is also important to notify Parliament.**

**A.4.13.1** In voting money or passing specific legislation, Parliament does not and cannot approve special payments outside the normal range of departmental activity. Such transactions are therefore subject to greater control than other payments.

**A.4.13.2** Departments should authorise special payments only after careful appraisal of the facts and when satisfied that the best course has been identified. It is good practice to consider routinely whether particular cases reveal concerns about the soundness of the control systems; and whether they have been respected as expected. It is also important to take any necessary steps to put failings right.

**A.4.13.3** Arm's length bodies should operate to similar standards as departments unless there are good reasons to the contrary, eg overriding requirements of the statutory framework for Companies Act companies. Departments should ensure that their oversight arrangements (see chapter 7) enable them to be satisfied that they arm's length bodies observe the standards.

### Dealing with special payments

**A.4.13.4** Departments should always consult the Treasury about special payments unless there are specific agreed delegation arrangements. So a department should seek Treasury approval, in advance, for any special payment for which it has no delegated authority, or which exceeds its authority. Similarly, NDPBs and many other arm's length bodies should consult their sponsor departments in comparable circumstances. In turn, the department may need to consult the Treasury.

**A.4.13.5** The special payments on which the Treasury may need to be consulted are summarised in box A.4.13A. The list is not exclusive. If a department is in doubt, it is usually better to consult the Treasury.

**A.4.13.6** In particular, it is important to consult the Treasury about any cases, irrespective of delegations, which:

- involve important questions of principle;
- raise doubts about the effectiveness of existing systems;
- contain lessons which might be of wider interest;
- might create a precedent for other departments; or
- arise because of obscure or ambiguous instructions issued centrally.

**box A.4.13A special payments**

- **extra-contractual payments:** payments which, though not legally due under contract, appear to place an obligation on a public sector organisation which the courts might uphold. Typically these arise from the organisation's action or inaction in relation to a contract. Payments may be extra-contractual even where there is some doubt about the organisation's liability to pay, eg where the contract provides for arbitration but a settlement is reached without it. (A payment made as a result of an arbitration award is contractual.)
- **extra-statutory and extra-regulatory payments** are within the broad intention of the statute or regulation, respectively, but go beyond a strict interpretation of its terms.
- **compensation payments** are made to provide redress for personal injuries (except for payments under the Civil Service Injury Benefits Scheme), traffic accidents, damage to property etc, suffered by civil servants or others. They include other payments to those in the public service outside statutory schemes or outside contracts.
- **special severance payments** are paid to employees, contractors and others beyond above normal statutory or contractual requirements when leaving employment in public service whether they resign, are dismissed or reach an agreed termination of contract.
- **ex gratia payments** go beyond statutory cover, legal liability, or administrative rules, including:
  - payments made to meet hardship caused by official failure or delay
  - out of court settlements to avoid legal action on grounds of official inadequacy
  - payments to contractors outside a binding contract, eg on grounds of hardship.

**A.4.13.7** The Treasury does not condemn all special payments out of hand. Each needs to be justified properly in the public interest against the key public sector principles set out in Chapter 1, box 1.1, with particular emphasis on value for money since there is no legal liability. Any proposal to keep a special payment confidential needs to be justified especially carefully since confidentiality could appear to mask underhand dealing. The Treasury's bottom line is usually to ask the department to establish that the responsible Accounting Officer(s) would feel able to justify the proposed payment in Parliament if challenged.

**A.4.13.8** Departments should also consult the Treasury about proposals for special payments above the relevant delegated limits. They should explain:

- the nature and circumstances of the case;
- the amount involved;
- the legal advice, where appropriate;
- the management procedures followed;
- an assessment of the value for money of the case
- any non-financial aspects;
- whether the case in question could have wider impact.

## Severance Payments

**A.4.13.9** Special severance payments when staff leave public service employment should be exceptional. They always require Treasury approval because they are usually novel, contentious and potentially repercussive. So departments should always consult the Treasury in advance when considering a special severance payment, whether or not the proposed amount falls within its delegated limit. Legal advice that a particular severance payment appears to offer good value for the employer may not be conclusive since such advice may not take account of the wider public interest.

**A.4.13.10** The Treasury adopts a sceptical approach to proposals for special severance settlements. Precedents from other parts of the public sector may not be a reliable guide in any given case. And even if the cost of defeating an apparently frivolous or vexatious appeal will exceed the likely cost of that particular settlement to the employer, it may still be desirable to take the case to formal proceedings. Winning such cases demonstrates that the government does not reward failure and should enhance the employer's reputation for prudent use of public funds.

**A.4.13.11** Departments should not treat special severance as a soft option, eg to avoid management action, disciplinary processes, unwelcome publicity or reputational damage. Box A4.13B sets out the factors the Treasury needs to evaluate in dealing with special severance cases. It is important to ensure that Treasury approval is sought before any offers, whether oral or in writing, are made. Any proposals for retrospective approval should contain the same level of detail as if the case had been brought to the Treasury in advance. A proforma for seeking Treasury approval is at [http://www.hm-treasury.gov.uk/psr\\_mpm\\_annexes.htm](http://www.hm-treasury.gov.uk/psr_mpm_annexes.htm).

### box A.4.13B Factors to consider in special severance cases

Any case for special severance put to the treasury should explain:

- the circumstances of the case
- any scope for reference to a tribunal, with its potential consequences, including the legal assessment of the organisation's chances of winning or losing the case
- the management procedures followed
- the value for money offered by the possible settlement
- any non-financial considerations, eg where it is desirable to end someone's employment without dismissal, perhaps because of restructuring
- whether the case could have wider impact, eg for a group of potential tribunal cases

**A.4.13.12** Particular care should be taken to:

- avoid unnecessary delays which might lead to greater severance payments than might otherwise be merited;
- avoid offering the employee concerned consultancy work after severance unless best value for money can be demonstrated;
- ensure any undertakings about confidentiality leave severance transactions open to adequate public scrutiny, including by the NAO and the PAC;

- ensure special severance payments to senior staff are transparent and negotiated avoiding conflicts of interest.

**A.4.13.13** Organisations seeking retrospective Treasury approval for special severance payments should not take it for granted that approval will be provided, since such payments usually appear to reward failure and set a poor example for the public sector generally. Requests for retrospective approval will be considered as if the request had been made at the proper time.

## Reporting

**A.4.13.14** As Parliament does not provide for special payments when voting Estimates or passing specific legislation, special payments should be brought to Parliament's attention, usually through a note in the organisation's resource account. Any special severance payments for senior staff will in any case be itemised in resource accounts.

**A.4.13.15** Notification is separate from accounting treatment, which will depend on the nature of the special payment. Special payments should be noted in the accounts even if they may be reduced by subsequent recoveries.

**A.4.13.16** Special payments should be noted in resource accounts where total losses exceed £250,000. Individual losses of more than £250,000 should be noted separately.