



# MUTUALLY AGREED EXITS

## Guidance for Employers

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### 2. Background

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1. To ensure a productive and efficient Civil Service, it is vital that organisations have the tools necessary to manage their workforce effectively. The Civil Service Management Code requires each department to have in place arrangements to this end. To ensure this is the case, organisations will have in place policies and processes, covering matters including performance, development, redeployment, conduct and discipline, attendance, and grievance management. The use of Mutually Agreed Exits (MAEs) may also be appropriate in exceptional circumstances, to complement existing processes or resolve certain situations where this represents the best interest of the individual, the employer, and the taxpayer.
2. A MAE is a form of Voluntary Exit (VE), under the terms of the Civil Service Compensation Scheme (CSCS). Voluntary Exits can be offered in the interests of workforce efficiency and where employers wish to reduce staff numbers, to support organisational changes, address promotion blockages and where there is limited efficiency.
3. Crucially, a MAE must be a mutual agreement between employee and employer. There is no compulsion on individuals to accept the offer; and undue pressure should not be applied to individuals to accept an offer. Should a MAE be declined, employment should continue, with no detriment to the individual, in accordance with existing policy and process.
4. Broadly, VE may be appropriate in the following circumstances:
  - a. **Bulk Voluntary Exit Schemes** where the department may open a scheme for a large number of people and invite individuals to apply. These are used to reduce the size of the workforce.



- b. **An Individual Voluntary Exit** which can be used in individual cases to avoid the need for voluntary or compulsory redundancy at a later stage, where there is the prospect of redundancy on the horizon.
- c. **A Mutually Agreed Exit** which can be offered on an individual basis, in the interests of workforce efficiency, to support organisational change and where there is limited efficiency. This broadly means where there are capability gaps, performance that is sub-optimal, but not necessarily considered poor or in cases of complex casework.

## 3. Scope

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- 5. As a MAE is a type of VE, the existing scope arrangements will apply. This means that MAEs may be used by all organisations that use the Civil Service Compensation Scheme (CSCS).
- 6. MAEs can be used for any grades, including the Senior Civil Service. There is no difference in how these should be managed or processed for any particular grade<sup>1</sup>.
- 7. To support workforce efficiency, organisational change and where there is limited efficiency, MAES can broadly be used in three categories:
  - a. Skills and Capabilities
  - b. Performance
  - c. Complex HR Casework
- 8. MAEs should be used in exceptional circumstances and existing processes should be thoroughly explored before considering a MAE. Further detailed considerations employers should explore when determining if a MAE may be an appropriate course of action are set out below.

### 3.1 Skills and Capabilities

- 9. Where employers judge that an employee does not have the necessary capabilities or skills needed for the role or department, offering a MAE may be appropriate.
- 10. Before a MAE is considered, it is expected that employers will give thorough consideration to all other options to support the individual to remain in the role. This could include, but is not limited to, consideration of:
  - a. Retraining the individual to enable them to develop the required skills to improve their capability
  - b. Redeployment of the individual to a suitable alternative role, if available, for which their skills and capabilities are a good match

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<sup>1</sup> With the exception of the approvals process for SCS pay band 3 Directors General, where the Directors General Remuneration Committee should be engaged, as is the case with all existing exits for Directors General under the terms of the CSCS.



- c. Any extenuating circumstances, as well as tailored support for the individual, including flexible working arrangements, occupational health assessments and other personal support available.

11. While still ensuring due consideration to the above has been given, the following non-exhaustive list, provides examples of when a MAE linked to skills and capability might be appropriate:

- a. When following, or in the absence of, a restructure of an organisation, or redesign of a role, an individual's skills are not aligned with the requirements of the role
- b. When significant investment is required to upskill the individual and the organisation cannot sustain this, or the employee is unable to retrain
- c. Where employers judge that the skills and capabilities the individual possesses will not be required in the role, or more generally in the future state of the organisation

12. A MAE would not be appropriate in the following circumstances:

- a. When the restructure of an organisation means that an employee's role is no longer available. This is likely to be a redundancy situation
- b. Where an employer has not implemented reasonable adjustments required to enable the employee to meet the capability requirements of their role
- c. When an employee has not engaged with reasonable training and development requests to enable them to meet the required standard. This could be a conduct issue and the relevant conduct or performance process should be followed.

## 3.2. Poor Performance

13. The Civil Service Management Code requires departments to have in place procedures for dealing with 'limited efficiency'. This will often mean through performance management, but there will be instances where poor performance processes may not be appropriate, offer value for money, or are unlikely to achieve a positive resolution. As a result, sub-optimal performance may be left unaddressed in the organisation, impacting on workforce efficiency. In these instances, a MAE may be the most appropriate route for the employer, the employee and the taxpayer.

14. Before a MAE is considered, it is expected that employers will give thorough consideration to other options to support the individual to remain in the role. This could include, but is not limited to:

- a. Guidance on managing dips in performance;
- b. Formal poor performance procedures;
- c. Learning and development needs, including any upskilling the organisation can provide;



- d. Reasonable attempts to redeploy into alternative roles, where the individual would be able to perform to a high standard, where there are roles available and subject to existing internal processes;
- e. Any extenuating circumstances, and support for the individual, including flexible working arrangements, occupational health assessments and other personal support available.

15. Once an employer feels they have considered all alternative solutions, and have determined that a MAE may be in the best interests of the employer, the individual and the taxpayer, and would support workforce efficiency, deliver organisational changes or would deal with limited efficiency, they may seek to utilise a MAE. Such scenarios may include, but are not limited to:

- a. Recurring periods of suboptimal performance, which improves when the individual is undergoing poor performance procedures with a significant amount of additional management time and support, but drops below the required standard once support returns to the usual level
- b. Performance in certain discreet aspects of a role, which is not practicable to manage using poor performance procedures, but is negatively impacting on delivery and efficiency
- c. When behaviours or leadership approaches do not align with expectations, and despite training, guidance and other support, the individual is not able to adapt to perform in the way expected
- d. When, despite various attempts and flexibility from the employer, the individual is unable to complete the necessary training required to enable them to perform to the required standard

16. When considering a MAE, there must be legitimate reasons for not taking formal action and following formal processes. As such, we would not expect MAEs to be used in the following circumstances:

- a. The first time an individual dips in performance, and before any attempt to support, develop, or performance manage them is considered
- b. If the sole reason for the exit is because the employer believes that existing processes take too long to complete
- c. If the individual is capable of performing to the required standard, but is refusing to engage in performance management processes, and there are no mitigating circumstances which may give reason for this. This could be a conduct issue and the relevant conduct or performance process should be followed.
- d. If the individual is unable to perform in their role because they require reasonable adjustments that have not been implemented by the organisation
- e. If the employer has not provided reasonable training and support to enable the individual to perform in their role



- f. If the underperformance is caused by short-term extenuating circumstances, e.g. a bereavement, illness, or caring responsibility.

### **3.3. In the management of complex and sensitive HR casework**

17. Exceptionally, there are instances which mean that over time an employer's and employee's relationship can become subsumed in a series of complex casework matters, without the prospect of the restoration of a productive employment relationship.
18. Before a MAE is considered, it is expected that an organisation will give thorough consideration to all other options to restore effective working relations. This could include, but is not limited to, consideration of:
  - a. Usual HR management processes, as per the department's policies and typical arrangements;
  - b. Efforts to rebuild relationships after the conclusion of formal processes, including through mediation;
  - c. Redeploying the individual into suitable alternative roles within the department;
  - d. Line management behaviours and development, whether there is learning or capability building required for the department;
  - e. Any extenuating circumstances, and support for the individual, including flexible working arrangements, occupational health assessments and other personal support available.
19. In light of this, employers may consider a MAE in circumstances where they can demonstrate that they have considered the above, and determined that a MAE may be in the best interests of the employer, the individual and the taxpayer, and would support workforce efficiency and organisational change. Such scenarios may include, but are not limited to:
  - a. If various casework issues (e.g. conduct, attendance, grievance) overlap, meaning that it becomes clear that these will not be able to be concluded within a reasonable timeframe to be tenable.
  - b. If successive grievances are submitted but not upheld, all appeal routes are exhausted, yet the individual remains aggrieved and unhappy in the organisation with no obvious recourse for resolution.
  - c. In very rare instances, where mitigating circumstances mean the individual isn't able to engage fully in usual casework processes and a MAE may be in the best interests of all parties.
20. MAEs should not be used to reward failure, and there must be legitimate reasons for not taking formal action. As such, we would **not** expect MAEs to be used in the following circumstances:
  - a. The first time, and automatically, when a casework issue arises, and before any attempt to investigate and resolve the issue is made.



- b. Where litigation is ongoing, and is the primary driver for a MAE. These cases should use the established HM Treasury Special Severance Payment route<sup>2</sup>.
- c. When usual policy and process may reasonably allow the issue to be resolved, and the employment relationship to be restored.
- d. In instances of breaches of the Civil Service Code.
- e. If the MAE is solely to resolve claims of bullying, harassment, discrimination or victimisation either by or against the individual, before proper investigation has concluded.
- f. If this is being used in response to, or to prevent, the individual from making a protected disclosure (known as whistleblowing).
- g. If the issue could be resolved through usual routes, but the individual is refusing to engage with reasonable management instruction and usual HR processes without good reason. This could be a conduct issue and the relevant conduct or performance process should be followed.
- h. If the individual has already resigned, or is due to exit under another form of exit (e.g. voluntary exit or redundancy scenario) imminently.
- i. If it is apparent that a primary cause of the issue is the need for reasonable adjustments, and the employer has not provided reasonable adjustments and support to enable the individual to perform in their role.
- j. If the issue is caused by short-term extenuating circumstances, e.g. a bereavement, illness, or caring responsibility.

## 4. Approvals Process

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21. In line with the Redundancy and Compensation Protocol, any exit under the terms of the CSCS, will be scrutinised by the Cabinet Office. As such, the process for MAEs is as follows:

- a. An individual is identified as being within the scope of a MAE, in light of the guidance above and if there is clear rationale that the exit will support workforce efficiency, ensure organisational change or deal with limited efficiency.
- b. A business case must be completed fully and submitted to the Cabinet Office for review. The business case is completed using the pro-forma for Voluntary Exits.
- c. The Cabinet Office will review the submitted documents and aim to provide a response within 10 working days. If the MAE is over £95k, or above the standard tariff, Ministerial approval is needed and the SLA is 2 months.
- d. If approval is received, the department can initiate a discussion with the individual.

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<sup>2</sup> Please see HMT guidance here - <https://www.gov.uk/government/publications/public-sector-exit-payments-guidance-on-special-severance-payments>



## 5. Frequently Asked Questions

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### 1) What payment may an individual receive under a MAE?

- a) A MAE is a form of voluntary exit, the voluntary exit tariff, under the 2010 Civil Service Compensation Scheme terms (CSCS) will apply.
- b) This means no less than statutory redundancy and no more than twice standard tariff.

### 2) When should a SSP be used rather than a MAE?

- a) This is not always completely clear. Broadly however, MAEs should only be offered where there is a case that the situation is impacting on the efficiency of the workforce to support organisational changes or where there is limited efficiency. If a department does not feel that the situation it is trying to solve meets this threshold, but they do still feel that the best course of action is the termination of employment with compensation, then a Special Severance Payment (SSP) may be the appropriate route.
- b) In addition to the above, if the organisation is involved in an employment tribunal with the individual, and wishes to settle the case rather than continue, then a MAE will not be appropriate, even if the organisation feels overall it does meet the criteria around workforce efficiency.

### 3) What does limited efficiency mean?

- a) Limited efficiency is defined in the Civil Service Management Code (CSMC) under paragraph 6.3.4. It states, "*This denotes performance which is not sufficiently poor to be considered inefficient, but:*
  - i) *No longer measures up to the requirements of the post; or*
  - ii) *Where the individual fails to carry out his or her full duties satisfactorily.*

### 4) Can an individual ask for a MAE or is it only the employer that can begin the process?

- a) An employer should be the one to offer a MAE and begin the process. There should be no formal process by which an individual can request the use of a MAE.

### 5) Should trade unions be involved in the process?

- a) Where departments are seeking to engage with an individual on a MAE, they should allow the individual the opportunity to include their trade union representative in discussions if they wish to. Trade unions will have an important part to play in discussions on individual cases.

### 6) Can a department use a settlement agreement / confidentiality clause?

- a) Yes, but it is for departments to determine when and should not be included by default. Only where it is necessary to do so. Departments should also ensure any use is in line with the Cabinet Office guidance on settlement agreements, special severance payments and confidentiality clauses. Departments may wish to take legal advice on the use of any settlement agreements or confidentiality clauses before they use them.

### 7) Can early access to pension be offered under a MAE?

- a) A MAE is a form of voluntary exit and so there is flexibility within the tariff to include employer funded pension top up.



## 8) Will the tapering apply to the overall MAE compensation package?

- a) Yes. A MAE is a form of voluntary exit under the 2010 Civil Service Compensation Scheme terms and so tapering will continue to apply in the circumstances it normally would.

## 6. Additional Resources

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- [\*\*MAE business case\*\*](#) - organisations should use this template to seek Cabinet Office approval under the Redundancy and Compensation Control, to proceed with a MAE.
- [\*\*MAE business case guidance\*\*](#)
- [\*\*Civil Service Management Code\*\*](#)
- [\*\*Annex 6F\*\*](#)
- [\*\*Civil Service settlement agreements, special severance payments and confidentiality clauses guidance\*\*](#)
- [\*\*Cabinet Office Efficiency Compensation guidance\*\*](#)
- [\*\*HMT Guidance on the use of Special Severance Payments\*\*](#)