

Annex B - Cabinet Office guidance to employers on reviewing Voluntary Exits

Voluntary Exits (VE) provide a flexible means of facilitating the early departure of civil servants on the basis of agreement, and do not form part of a formal redundancy process - although they may sometimes be used as a redundancy avoidance measure. As such the terms only operate on the basis of agreement and there is no compulsion for a staff member to accept any VE offer.

Accordingly, there is a considerable amount of flexibility in VE terms. Subject to the separate £95K control process, the 2016 VE terms allowed for any offer between the equivalent of a statutory redundancy terms and the standard tariff, while the 2010 terms also offered some flexibility to exceed the standard tariff. The decision on what terms to offer under VE is at the discretion of the employer and there is no right to be offered specific terms.

Because of this flexibility, except in very limited circumstances relating to the underpin (see below), the amount of a VE payment made under the 2016 terms could also have been made under the 2010 terms. Our legal advice is therefore that, provided the employer is satisfied on a scheme by scheme basis that they would not have offered different terms had the 2010 terms been in place:

- it is lawful to continue with VE exits on terms that have already been agreed; and
- VE exits that have already been made are lawful.

Employers must review imminent exits where a quote/offer has been made on 2016 terms (categories 2 and 3 in the EPN). We will ask you to review any past exits made on 2016 terms shortly and provide further guidance.

Review

In reviewing a VE exit that has already been offered or agreed you will need to satisfy yourself as an employer that you would not have decided to pay more if the 2010 scheme terms had been in force rather than the 2016 scheme terms.

In reaching a conclusion on this you should ask two questions:

- What were the criteria that formed our thinking when we first made the decision on VE terms?; and
- Having identified those criteria and applying them again using 2010 VE terms as our reference, would we have come to the same or a different conclusions?

In undertaking this exercise you should apply the exit scheme business case considerations that you applied at the time of the original decision.

If your conclusion is that you would have offered different VE terms and you therefore decide to do so for an ongoing scheme, this will mean that it is treated as a new scheme, and fresh Cabinet Office approval will need to be sought. You

should also note that Cabinet Office will continue to apply the Ministerial scrutiny process of proposed exits with a cost of more than £95,000.

You should record the decision you have taken along with evidence of the reasons for taking it and should be prepared to disclose this information if the decision is challenged.

When we ask you to review past schemes since 2016, you should consider the same questions as above.

We would advise seeking your own legal advice as part of reconsidering exit schemes, but are very happy to provide any further guidance.

Impact of the lower paid underpin on VE schemes currently in train

One of the consequences of the judgment is that the lower paid underpin reverts to the 2010 level of £23,000 rather than the 2016 level of £24,500 and so employers must now apply an underpin of £23,000. However, for the large majority of VE exits, this does not mean that the VE offer itself needs to change (subject to the considerations above).

This is because the original VE offer will not be outside the framework of the 2010 scheme, if the overall payment does not exceed the maximum permitted by that scheme. The large majority of VE exits where the underpin is used will fall into this category.

However, for a small group of staff this approach will not be possible as they would always receive a greater amount than permitted under the 2010 scheme. This group consists of members who:

- Are aged over Normal Pension age
- Are entitled to the maximum 6 months of salary compensation under standard 2016 terms; and
- Have a salary of less than £24,500.

The Minister for Government Resilience and Efficiency has given a Ministerial instruction that this specific group of staff should have a retrospective underpin of £24,500 applied. This means that these individuals have received the correct amount, and there is no overpayment to recover.