



**Comptroller and Auditor General  
Special Report**

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**Management of Severance Payments in  
Public Sector Bodies**



# Report of the Comptroller and Auditor General

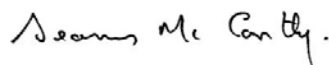
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## Management of Severance Payments in Public Sector Bodies

I have, in accordance with the provisions of Section 9 of the Comptroller and Auditor General (Amendment) Act 1993, carried out an examination of the management of severance payments in public sector bodies.

This report was prepared on the basis of information, documentation and explanations obtained from the bodies and persons named in the report. The Department of Public Expenditure and Reform was asked to review and comment on the report. The Central Bank of Ireland, the Department of Foreign Affairs and Trade, the Houses of the Oireachtas Service, the Department of Education and Skills and certain other public sector bodies were asked to review and comment on relevant parts of the draft report. Where appropriate, the comments received were incorporated in the final version of the report.

I hereby submit my report for presentation to Dáil Éireann in accordance with Section 11 of the Act.



**Seamus McCarthy**  
**Comptroller and Auditor General**

23 December 2015



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## Summary

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# Summary

In certain circumstances, termination agreements that provide for severance payments and end an existing employment contract may be in the best interests of both the employer and the employee.

Some schemes of employment include specific provision for severance payments and in those cases, the eligibility requirements and the amount of the payments are prescribed in the rules of the scheme.

Severance payments may also arise outside formal schemes, in circumstances where the employee's capacity to perform the role is perceived to be limited, or where the employment relationship has broken down irreconcilably. A characteristic of such discretionary severance payments is that the amount is over and above what the employee is contractually or legislatively entitled to.

Apart from the rules set out in schemes that provide for severance, the Department of Public Expenditure and Reform has not issued any general guidance to public sector bodies in relation to management of proposed severance payments. However, it has stated that all departments should be aware that such payments require its sanction.

## Severance Schemes

Based on the payments identified during this examination, the estimated total value of severance awarded between 2011 and 2013 under six public sector schemes was €17.9 million. Nearly 62% (€11 million) of that figure relates to non-cash elements in the form of pension enhancements.

The review found broad compliance with scheme rules in most cases, with the exception of the scheme for chief executives of State bodies. Notwithstanding an instruction issued in 2010 by the Department of Public Expenditure and Reform that proposals for the award of added pension years to chief executives of State bodies should be submitted to it for consideration, it was found that added years had been awarded by two entities without prior approval. The estimated cost of pension enhancements awarded in those two cases amounted to a total of over €1 million.

Other key findings included

- three of the schemes do not provide for maximum amounts payable
- rules do not adequately cover movements by employees between related schemes
- payments were generally not disclosed in financial statements
- there were deficiencies in documentary evidence in relation to one scheme.

## **Discretionary Severance**

The report proposes a good practice framework for public sector bodies making discretionary severance payments, based on the principles of accountability, integrity and fairness (see Figure 3.2).

The examination found that there had been limited recourse to high-value (in excess of €50,000) discretionary severance payments in the public sector during the period under review. Fourteen high-value payments, amounting to nearly €1.5 million, were identified between 2011 and 2013. Enhanced pension terms were not granted in the settlements identified.

### ***Central Bank of Ireland***

The report notes that the Central Bank had more frequent recourse to termination agreements and severance payments during the period under review than the other public bodies examined. Six discretionary severance payments, amounting to €384,000, and with related legal costs of nearly €157,000, were made by the Central Bank in the period 2011 to 2013.

It was found that the Central Bank did not adopt a standard approach for assessing and determining severance payments. In addition, the payment of severance was approved at varying levels within the organisation and there was no formal delegated authority to make such agreements.

Four of the cases, with a total cost of approximately €342,000, are noteworthy. They involved an individual that had not yet commenced employment with the Bank, two employees each of whom had less than two years' service and a long-term contractor who had never been an employee of the Bank.

In response to the findings of the examination, the Central Bank has made a number of amendments to its procedures to incorporate the good practice framework presented.

### ***Other entities***

External sanction (by parent department and/or the Department of Public Expenditure and Reform) for the payment of severance was not obtained in the cases reviewed. A number of the entities noted the absence of official guidance available to them in circumstances where the option of severance was being considered.

Confidentiality clauses were a feature in every agreement underpinning the payment of a severance. A confidentiality clause should acknowledge statutory override of confidentiality terms and should not interfere with employees' rights or prevent the employer from fulfilling its accountability obligations. Two of the five entities examined had used confidentiality clauses that did not comply with good practice standards.

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## **Management of Severance Payments in Public Sector Bodies**

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# 1 Introduction

- 1.1 A termination agreement between an employer and an employee may provide for a severance payment, in circumstances where the principal outcome of the agreement is to end the existing employment contract.
- 1.2 Some schemes of employment include specific provision for severance payments, often reflecting the nature or expected duration of the work. For example, severance arrangements can facilitate public bodies in recruiting for posts to which fixed time periods apply. In those cases, the circumstances under which severance payments are appropriate and the amount of the payments are prescribed in the rules of the scheme.
- 1.3 Outside formal schemes, severance payments may also arise in a number of situations, including cases where the employee's capacity to perform the role is or has become limited, or where the employment relationship has broken down irreconcilably. In such circumstances, severance payments may represent the most practical and cost-effective way of resolving an unsatisfactory or unworkable situation, and may be in the best interests of both the employer and the employee. A characteristic of such discretionary severance payments is that the amount is over and above what the employee is contractually or statutorily entitled to.
- 1.4 Severance payments can include cash amounts, non-cash elements (e.g. added years for pension purposes) or both. In the case of discretionary severance payments, the payment is usually the result of negotiations between the parties, or their legal representatives. Confidentiality agreements are a frequent feature of such settlements.

## Managing Severance Payment Risks

- 1.5 Widespread use of severance payments in the public sector could result in appreciable outflows of public money so it is important that there are clear policies and procedures around the decision-making process and that it is managed effectively. In the absence of such controls, there is a risk that State funds may be used inappropriately, or that agreements are put in place that may incentivise employees not to raise issues of public interest. There is also a risk that severance payments may be incurred as a result of poor management.
- 1.6 On the other hand, reluctance to use severance arrangements in appropriate circumstances could result in the retention of employees who are not contributing to the goals of the organisation and who may pose a significant risk to it. The overall objective should be to achieve an appropriate balance between the risk of inappropriate expenditure on severance payments and that of allowing ineffective employment relationships to continue.

- 1.7 Appropriate risk management procedures for severance payments should ensure that
- there is clear rationale for the payments
  - available alternative options are considered
  - legal costs are kept to the minimum level necessary to ensure legally sound agreements
  - the amounts paid comply with the rules of the scheme (if applicable)
  - payments are authorised at an appropriate level
  - payments are appropriately disclosed in the employers' financial statements.

## Roles and Responsibilities

- 1.8 The Department of Public Expenditure and Reform has general responsibility for policy on allocating public funds. It also has responsibility for policy on public sector pay, and employment terms and conditions. Individual departments are responsible for ensuring that expenditure is managed by them and the State agencies they oversee in line with their allocations, and in compliance with public pay policy.
- 1.9 It is the responsibility of each public sector entity entering into a termination agreement involving a severance payment to maintain proper records of the case. The records should include a risk assessment of the situation and details of any external advice obtained. The reason for the payment and evidence of the appropriate authorisation should be clearly documented.
- 1.10 The Department of Public Expenditure and Reform's *Public Financial Procedures* states that 'special' payments must be sanctioned by it and that any such payments in excess of €10,000 should be noted in the appropriation account of the relevant department/office. The types of payments that are classified as special include
- extra-contractual payments
  - compensation payments
  - extra-statutory and extra-regulatory payments
  - *ex gratia* payments.
- 1.11 In general, State bodies are required to consult with their parent departments before entering into any commitment to make a special payment. It is the responsibility of the parent department to ensure that entities comply with the requirements relating to special payments. While severance payments are not specifically referenced in *Public Financial Procedures*, the Department of Public Expenditure and Reform has stated that all departments should be aware that such payments require its sanction.
- 1.12 Apart from rules set out in relation to specific approved severance schemes, the Department of Public Expenditure and Reform has not issued any general guidance to public sector entities in relation to severance payments.
- 1.13 A small number of public bodies are not required to seek external sanction for termination agreements and severance payments. For example, the Central Bank of Ireland is statutorily independent and is required under various EU treaties to have autonomy in relation to staff matters.

## Scope of the Examination

- 1.14** The aim of this examination was to
- ascertain the level of recourse to severance payments in the public sector during the period 2011 to 2013 and to review the approval process used for such payments
  - determine the level of compliance with the terms pertaining to severance payments included in certain schemes and with disclosure requirements
  - review the governance and oversight arrangements in place in respect of discretionary severance payments made by public sector entities.
- 1.15** The examination did not include an assessment of the circumstances giving rise to individual termination agreements and severance payments. Results are presented at a level of detail that does not identify individuals. The report's emphasis is on how cases were handled, not on who received what payments.
- 1.16** A number of temporary redundancy arrangements were in operation within the public sector (e.g. targeted voluntary redundancy in parts of the health, education and agriculture sectors) during the timeframe considered by this examination. Because of the temporary nature of those schemes, they were not included within the scope of the examination.

## Examination Methodology

- 1.17** The operation of schemes that include provision for severance payments was reviewed by selecting a sample of payments made under each scheme between 2011 and 2013 and assessing the level of compliance with the rules of the scheme.
- 1.18** Discretionary severance payments were identified through the annual financial audit process and by enquiry to public bodies. Identified high-value payments (in excess of €50,000)<sup>1</sup> made during the period 2011 to 2013 were reviewed. The review included consideration of the guidance available and an assessment of the procedures followed by each entity. The approval process within the entity was also examined, along with any external approvals obtained.
- 1.19** A consultant actuary was engaged to provide valuations for added years of service awarded for pension purposes, and/or for early commencement of pension payments. Appendix A outlines the methodology used and assumptions made by the actuary.

## Structure of the Report

- 1.20** Chapter 2 reviews the operation of six separate schemes which include provision for severance payments. Chapter 3 deals with discretionary severance payments. It provides details of payments made and considers what action could be taken to improve control and oversight over these types of payment.

<sup>1</sup> For three of the payments reviewed, the actual severance payment was less than €50,000 but, with the employee's legal costs, the total cost to the entity concerned was greater than €50,000.



## 2 Severance Schemes

2.1 A number of schemes across the public service include provision for a severance payment at the end of a period of employment, subject to certain conditions being met. For the period examined – 2011 to 2013 – schemes were in place for

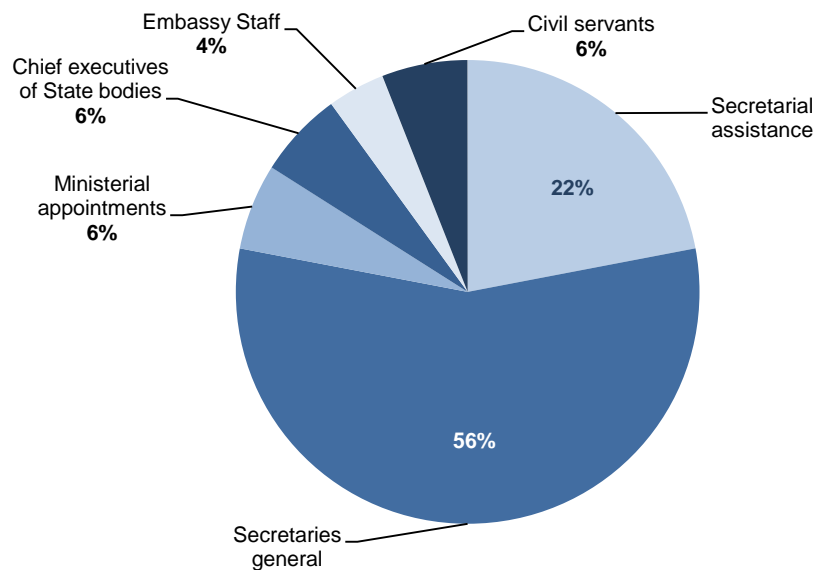
- civil servants, under the Superannuation and Pensions Act 1963 (as amended)
- secretaries general of government departments
- chief executives of State-sponsored bodies
- ministerial appointments
- secretarial assistance in the Houses of the Oireachtas
- embassy staff.

2.2 The estimated total value of severance payments awarded under those public service schemes between 2011 and 2013 was €17.9 million.<sup>1</sup> The cost identified, by scheme, is shown in Figure 2.1. Figure 2.2 (over) sets out a summary of the payments under each scheme.

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**Figure 2.1 Value of severance payments by scheme, 2011 to 2013**

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Source: Analysis by the Office of the Comptroller and Auditor General.

2.3 The scheme for secretaries general was terminated for new appointees in November 2011. Payments made under the scheme accounted for around 56% of the total value of severance payments made between 2011 and 2013. Nearly 90% of the cost for that scheme relates to non-cash elements, comprising added years for pension purposes, and the early commencement of pensions with no actuarial reduction in the benefits paid.

<sup>1</sup> The total value of severance awarded includes cash amounts, the cost of awarding added years for pension purposes and the cost of allowing staff to retire early without an actuarial reduction to their pensions.

**Figure 2.2 Severance payment by scheme, 2011 to 2013**

Scheme	Cash amount	Added years <sup>a</sup>	Early pension <sup>a</sup>	Total severance payment	No. of recipients	Average payment
	€000	€000	€000	€000		€000
Civil servants	—	454	665	1,119	1	1,119
Secretaries general	1,149 <sup>b</sup>	3,153	5,717	10,019	11	911
Chief executives of State bodies	—	671	374	1,045	2	523
Ministerial appointments	1,074	—	—	1,074	41	26
Secretarial assistance	3,910	—	—	3,910	186	21
Embassy staff	696	—	—	696	54	13
<b>Aggregate</b>	<b>6,829</b>	<b>4,278</b>	<b>6,756</b>	<b>17,863</b>	<b>295</b>	

Source: Analysis by Office of the Comptroller and Auditor General.

Notes: a The values of added years granted and the early commencement of pensions were calculated by a consultant actuary. The methodology and assumptions used are set out in Appendix A.  
b One retiree waived entitlement under the scheme to a cash payment of nearly €127,000.

2.4 During the examination, a sample of payments under each scheme was selected and reviewed for compliance with scheme rules and other requirements. An overview of the results is presented at Figure 2.3.

**Figure 2.3 Overview of findings, by scheme**

Scheme	Compliance with scheme rules	Disclosure in accounts	Appropriate approval processes applied	Maximum amount payable stipulated
Civil servants	✓	✗	✓	✓
Secretaries general	✓	✗	✓	✓
Chief executives of State bodies	✗	✗	✗	✓
Ministerial appointments	✓	✗	✓	✗
Secretarial assistance	✓	✓	✓	✗
Embassy staff	✓	✓	✗	✗

Source: Analysis by the Office of the Comptroller and Auditor General

Note: "✓" indicates that the rule or other requirement was complied with in the majority of cases.

## Civil Servants

- 2.5 The Superannuation and Pensions Act 1963 (as amended) allows for the award of added years of notional service and severance payments, at the discretion of the Minister for Public Expenditure and Reform, where an established civil servant retires or is removed from the civil service
- as a consequence of the abolition of his/her post
  - for the purpose of facilitating greater efficiency or economy in the department to which s/he is attached.
- 2.6 In the period 2011 to 2013, there was only one severance agreement under the 1963 Act.

### Summary of Scheme Rules: Civil Servants

Under section 6 of the Superannuation and Pensions Act 1963 (as amended), the Minister may add notional service not exceeding

- ten years, where the civil servant has served in an established position for 20 years or more
- half of the existing service, where s/he served in an established position for between ten and 20 years
- five years, where s/he served in an established position for less than ten years.

Under section 7 of the Act, the Minister may grant a severance payment not exceeding the lesser of

- one half of the employee's annual salary
- the aggregate of the payments of salary which would have been made had the employee remained in position until the age of 65, or in case s/he would, on retiring on a date not later than three months after turning 65, have one more year of service reckonable in computing a superannuation allowance than s/he would have had on retiring on attaining the age of 65, the age which s/he would attain on that date.

- 2.7 The arrangements agreed in this case consisted of 7.66 added years (to bring total service up to 40 years), resulting in increases to the pension lump sum and annual pension.
- 2.8 The provision for added years was approved by the Minister for Public Expenditure and Reform. The increase in added years afforded to the civil servant was not disclosed in the appropriation account for the relevant department in 2012.

## Secretaries General

- 2.9** Appointments to the role of secretary general of a government department are made by Government on the basis of recommendations by a top level appointments committee (TLAC). Appointments are for a standard period of seven years.

### Summary of Scheme Rules: Secretaries General

In the past, secretaries general were entitled to retire or to be appointed to an equivalent grade in the public sector, on completion of the seven year term. On retirement, the entitlement under the scheme was

- added years of service for pension purposes, up to a maximum of ten years or balance of service to age 65, and further capped to ensure that pension does not exceed half of their salary (equivalent to 40 years service)
- immediate payment of pension and lump sum, without any actuarial reduction, if under the age of 60
- a severance payment equivalent to half a year's salary.

A Government decision of October 2011 set new arrangements in respect of secretaries general appointed since November 2011. Under the revised arrangements

- no pension is payable prior to the minimum pension age (60 or 65, as applicable) and there are no added years for pension purposes
- an alternative post will be offered where a secretary general, prior to appointment was a civil servant, does not have 40 years service and has not reached minimum pension age
- a severance payment of up to one year's salary will be available where a person is not of minimum pension age and has not been offered an alternative post
- no severance payment will be made where a person refuses an offer of an alternative post.

### *Review of Payments*

- 2.10** The severance deals agreed with five (out of a total of eleven) secretaries general whose terms came to an end between 2011 and 2013 were selected for review, to assess compliance with the terms of the scheme relating to that grade. In all cases reviewed, it was found that the pension lump sum, added years and severance payment had been calculated correctly and in accordance with the terms of the scheme applicable at that time.
- 2.11** Payments to secretaries general are made from the appropriation account of the relevant Vote. Prior to 2012, the annual instructions issued by the Department of Public Expenditure and Reform in relation to appropriation accounts did not make specific reference to a need to disclose severance payments. Since 2012, the instructions specify that severance/redundancy payments should be disclosed, where material. The instructions do not specifically state that both severance payments made under approved schemes and discretionary severance payments are included in this category.

- 2.12** Of eleven severance deals made to secretaries general between 2011 and 2013, ten involved a cash payment. Of these, five pre-dated the specific requirement for disclosure in appropriation accounts. Of the other five, only one of the payments was disclosed in an appropriation account.

### **Chief Executives of State Sponsored Bodies**

- 2.13** In two 1998 letters to all heads of departments, the Department of Finance indicated that severance payments or early retirement terms could be incurred for chief executives of State bodies, within maximum limits and without requiring the approval of the Department.<sup>1</sup> That authority was provided to the heads of departments in recognition that situations may arise where it is in the best interests for the efficiency and effectiveness of the State body to terminate or not to renew the contract of an incumbent chief executive. The application of the scheme is conditional on the individual not being re-employed by the body or another public body in the same sector.

#### **Summary of Scheme Rules: Chief Executives of State Bodies**

A person may not receive more added years than required to reach retirement age e.g. a person retiring at 63 may not receive more than two added years service, and added years awarded may not result in a person having more than 40 years service.

The maximum limits are

- one added year of pensionable service for each year in excess of 15 years service in the public sector, subject to a maximum of five added years for those aged 55 who have served at least six years in the chief executive role
- actuarially-reduced benefits to be available to chief executives before reaching the age of 55 – this requires that the cost of providing the benefits at the earlier age are entirely offset by a reduction in the amount of benefits payable
- a severance payment of four weeks pay per year of continuous service, up to a maximum of 26 weeks pay where an immediate pension is not payable. Where the pension becomes payable within 26 weeks of retirement, the amount of severance should be reduced to the amount of salary which would have been payable between the date of retirement and commencement of pension.

- 2.14** Notwithstanding the benefits available under the scheme, the board of a State body is free to apply lesser benefits or not to apply early retirement benefits at all. In all cases that avail of enhancement based on the terms of the 1998 letters, the employee must indicate in writing that it is in full and final settlement of all of his/her claims.
- 2.15** In a letter to all personnel officers in February 2010, the Department withdrew the delegated authority to heads of departments for making severance payments and adding years for enhanced benefits. The letter stated that the matter of added years was under review and that all cases for the awarding of added years should be sent to the Department of Public Expenditure and Reform for consideration.

<sup>1</sup> The letters were issued on 26 May 1998 and 4 June 1998.

### **Review of Payments**

- 2.16** The Department of Public Expenditure and Reform is aware of two severance payments awarded between 2011 and 2013 under the terms of the 1998 letters.
- 2.17** In the first case, the chief executive received just over 3.8 added years for pension purposes. The term of office of the chief executive had been coming to an end at the time the added years were agreed.<sup>1</sup> In the second case, the chief executive received ten added years in total. This comprised five professional added years provided for under the contract of employment and five years under the terms of the 1998 letters. No actuarial or other reduction was applied in respect of retirement before age 60.
- 2.18** In both cases, the Department of Public Expenditure and Reform gave consent, but noted its dissatisfaction that it had no alternative but to consent as the deals had already been agreed between the bodies and the chief executives.
- 2.19** The Department of Public Expenditure and Reform asked the parent departments to ensure that all boards of agencies understand that they have no authority to give assurances in relation to added years entitlements without referring the matter to the governing department and where required, obtaining prior written sanction from the Department of Public Expenditure and Reform.
- 2.20** The increased benefits awarded were not disclosed in the accounts of either of the entities concerned.

### **Ministerial Appointments**

- 2.21** Ministers and Ministers of State can make appointments to certain posts in order to support them in their roles. The posts involved include special advisor, personal assistant, personal secretary and civilian driver. The term of employment for ministerial appointments ends on the date that the relevant Minister ceases to be a Minister of the Government. In the case of a Minister of State, the term ceases on the date of expiration of the assignment of the Minister of State to the department/office in question.
- 2.22** The terms and conditions applying to severance payments for ministerial appointees are set down in a Department of Public Expenditure and Reform instruction to personnel officers.<sup>2</sup>

<sup>1</sup> A limit of ten years service applied to the chief executive post.

<sup>2</sup> Issued in December 1994 by the Department of Finance. The Department of Public Expenditure and Reform assumed responsibility for this area on its establishment.

#### **Summary of Scheme Rules: Ministerial Appointments**

Ministerial appointments require the sanction of the Minister for Public Expenditure and Reform and also approval from the Taoiseach, if the person is recruited from outside the civil service. The terms of the scheme relating to severance payments apply to personnel who have not been recruited by way of secondment or leave of absence from other employments and therefore do not have jobs to return to.

The severance payment allowable is the more favourable of

- two months pay
- four weeks pay per year of service (with part years being reckoned on a pro-rata basis).

The severance payment is in addition to any entitlement of the employee under the Minimum Notice and Terms of Employment Acts 1973 to 2005 and the Redundancy Payments Acts 1967-2014.

- 2.23** While not covered by the original instructions for the scheme, the Department of Public Expenditure and Reform subsequently informed departments of an additional option available to staff who had worked as a secretarial assistant for the same member of the Oireachtas prior to appointment as ministerial staff. This entitled eligible staff to an additional one third (capped at 28 weeks) enhancement to their severance package, with the amount of the payment being based on the salary the person would be receiving had they remained as a secretarial assistant.
- 2.24** Payments to ministerial staff are made from the appropriation account of the relevant Vote. Since 2012, there has been a specific requirement for severance payments, where material, to be disclosed in appropriation accounts.

### ***Review of Payments***

- 2.25** In order to review compliance with the terms of the scheme, a number of departments were contacted and a list of payments requested. A sample of 24 payments across six departments was selected for review.
- 2.26** In the sample reviewed, payments were in line with the provisions of the scheme. However, there is no standard approach across departments to administering the scheme and no standard template for calculating payments. For example, some departments calculated two months salary by dividing annual salary by six whereas others multiplied weekly pay by eight. One department used a calculation to determine the abatement amount relating to the Redundancy Payments Acts that was different to other departments.
- 2.27** Figure 2.4 sets out details of a case where a severance payment was made under the ministerial appointments scheme to a person that was subsequently appointed as a secretarial assistant.

#### **Figure 2.4 Case A – Hiring of a former ministerial appointee as a secretarial assistant**

In one case reviewed, a former Minister rehired an individual under the secretarial assistance scheme, five days after employment had ceased under the ministerial appointments scheme. Initial instructions to the relevant department indicated that a severance payment was not due as the individual was re-employed by the Oireachtas. This was subsequently reversed and the Department of Public Expenditure and Reform determined that the person had been made redundant and was therefore entitled to a severance payment. The value of the severance payment to the individual in that case was about €8,000.

- 2.28** Two of the payments reviewed during this examination were made in the years 2012 and 2013. The payment made in 2013 was correctly disclosed in the appropriation account of the relevant department. The payment made in 2012 was immaterial and therefore not disclosed.

## Secretarial Assistance

- 2.29** The Houses of the Oireachtas Commission (the Commission) regulates the provision of secretarial facilities to members of the Houses. Secretarial facilities include staff employed under a scheme for secretarial assistance. Assistants employed by members of the Oireachtas under the scheme are paid by the Commission. The Minister for Public Expenditure and Reform has authority to set the terms and conditions of employment under the scheme.

### Summary of Scheme Rules: Oireachtas Secretarial Assistance

The secretarial assistance scheme provides for a voluntary early retirement and redundancy package that includes an element of severance.<sup>1</sup> The general rules of the scheme are

- a package is available to staff under the age of 65 who do not secure a contract of employment in the Dáil or Seanad, following a general election
- the amount payable is based on four weeks salary per year of service, plus a supplement of one-third, which cannot exceed the equivalent of 28 weeks salary<sup>2</sup>
- the package available comprises a pension lump sum and an element of severance pay
- acceptance of the package removes an individual's right to any future pension lump sum – a form to that effect must be signed before payment is made
- an individual that is subsequently re-employed under the secretarial assistance scheme must repay the severance element of the package, plus any compound interest accruing.

- 2.30** Since a Labour Relations Commission ruling in 1997, the Commission has allowed secretarial assistants to avail of a voluntary early retirement and redundancy package in three scenarios
- voluntary basis – employee chooses not to renew contract
  - contract not renewed – employer (Deputy or Senator) does not wish to offer another contract
  - post no longer exists – employer no longer holds a seat in the Dáil or Seanad.

### Review of Payments

- 2.31** In the period 2011 to 2013, a total of €5.8 million was paid to secretarial assistance staff following the end of their employment. The amount of the severance payments was €3.9 million with the remaining €1.9 million relating to standard pension payments. The average severance payment was €21,000. A sample of 25 payments was reviewed for compliance with the terms of the scheme.

<sup>1</sup> The rules of the scheme are set out in a booklet issued by the Commission in March 2011.

<sup>2</sup> The rules specify that service subsequent to formation of the 31st Dáil (i.e. after 26 February 2011) is not reckonable for the purpose of calculating the supplement.

- 2.32** Payments were made in line with the general provisions of the scheme. In all cases reviewed, the required form was on file recording the employee's acceptance of the condition in relation to non-entitlement to future pension lump sums. No instances were noted of individuals being re-employed under the scheme during the 2011 to 2013 period or of anyone receiving a severance package in excess of entitlement. The scheme rules do not set a maximum limit on the amount payable under the scheme.
- 2.33** Figure 2.5 sets out details of a case of long service where the severance payment to an individual employed under the scheme for secretarial assistance was compliant with the scheme conditions.

**Figure 2.5 Case B – An individual with long service employed under the scheme for secretarial assistance**

In one case reviewed, an employee aged 62 chose not to renew a contract of employment under the scheme, after nearly 29 years service. The total package awarded amounted to over €255,000, comprising a severance payment of €151,000 and a pension lump sum payment of €104,000. Due to the size of the payment, the Commission consulted with the Department of Public Expenditure and Reform, which confirmed that there was no reason why the payment could not be made.

**Embassy Staff**

- 2.34** The Department of Foreign Affairs and Trade sometimes makes severance payments to staff working in Irish embassies abroad. Embassy staff can either be employed by the embassy (chancery staff) or directly by the Ambassador (residence staff). The circumstances under which severance payments may be made include
- closure of the embassy
  - resignation/termination of employment
  - end of contracts (usually those employed by an Ambassador).
- 2.35** The Department of Foreign Affairs and Trade monitors and oversees the employment of embassy staff. The Department issues circulars and guidance to embassies when employing staff. The guidance indicates that contracts for locally recruited staff are generally governed by local law, but where Irish statutory minimum standards exceed local standards, Irish standards will apply.
- 2.36** The Department of Foreign Affairs and Trade provides the embassies with draft contracts of employment. In addition, contracts must be reviewed by a local legal advisor to ensure compliance with local law. Neither the contracts provided to staff nor the guidance on employing local staff, issued by the Department to embassies, makes specific provision for severance payments. The Department maintains a subscription to Employment Conditions Abroad International which provides advice on international employment law.
- 2.37** When processing severance payments, embassy staff generally request the human resources section in the Department of Foreign Affairs and Trade to approve the amount to be paid. Given the geographical dispersion, this request is usually via email and generally does not include supporting documentation. The approval provided is also by email.

### **Review of Payments**

- 2.38** A sample of 17 severance payments made between 2011 and 2013, with a combined value of €402,000, was reviewed to ensure the amount paid was in compliance with local law and relevant advice and that approval had been obtained at an appropriate level. Included among the sample were some payments made in respect of the closure of embassies during that period.
- 2.39** The payments were supported by advice about relevant employment law of the State in question or advice from employment consultants engaged by the Department.
- 2.40** While severance payments are a regular occurrence in the case of embassy staff, the Department of Foreign Affairs and Trade does not have a documented procedure to follow when making the payments. Reliance is placed on the embassy calculating the amount and determining eligibility. There is little evidence on file of the Department centrally verifying the information provided or documenting the approval for the payment.
- 2.41** The examination found no evidence of consultation or discussion with the Department of Public Expenditure and Reform in relation to any of the cases. The Department stated that it has not, as a rule, sought sanction from the Department of Public Expenditure and Reform for severance payments, as such payments represent contractual or legislative entitlements, do not meet the definition of special payments and fall within general sanction limits.
- 2.42** Figure 2.6 outlines a case included in the sample where the individual received an enhanced payment.

#### **Figure 2.6 Case C – Payment of an enhanced amount to a staff member**

An embassy worker was paid €67,000 as part of an agreed settlement that resulted in the termination of the employee's contract. The amount paid was €13,000 more than the employee was entitled to. In addition, legal costs associated with the settlement amounted to just over €10,000. The Secretary General of the Department of Foreign Affairs and Trade approved the payment.

As part of the settlement, the employee was requested to sign a confidentiality declaration before payment was made. The declaration contained clauses that required the employee to maintain absolute confidentiality regarding information known to the employee as a result of his/her employment. The declaration also states compensation will be due from the employee, independent of other judicial actions, if the terms of the declaration are violated.

## Conclusions and Recommendations

- 2.43** A number of schemes operated by public service bodies that provide for severance payments were reviewed to determine the level of compliance with scheme rules and other requirements. There was broad compliance with scheme rules in most cases. The exception was the scheme for chief executives of State bodies.
- 2.44** In February 2010, the Department of Public Expenditure and Reform informed departments that all proposals for the award of added years should be submitted to it for consideration. This instruction was not complied with in the case of severance payments agreed between 2011 and 2013 for two chief executives of State bodies.

### Recommendation 2.1

The Department of Public Expenditure and Reform should remind all State bodies of the requirement to refer to it any matters relating to severance payments or added years before a deal is offered to chief executives.

#### Response of Secretary General, Department of Public Expenditure and Reform

The Department is very conscious of the need to preserve the capacity, as part of best human resource management practice, to allow for severance arrangements in cases where the best interests of the organisation are served. In that context, necessary reporting arrangements need to preserve the scope for appropriate negotiation and confidentiality. The 2015 draft update of the *Code of Practice for the Governance of State Bodies* includes a requirement for State bodies to publish in their annual report and accounts aggregate details of the compensation of their key management level (i.e. those employees with authority and responsibility for planning, directing and controlling the activities of the State body), broken down by

- salaries and short term employee benefits
- post-employment benefits
- termination benefits.

This draft has not yet been finalised and may be subject to further refinement.

- 2.45** The Department of Public Expenditure and Reform has set out rules in relation to severance payments for secretarial assistance and ministerial staff but the amounts actually paid depend on how the rules are interpreted. Credit may be given under the ministerial appointments scheme for prior service under the secretarial assistance scheme. In one case, a severance payment was made under the ministerial appointments scheme to an individual that was rehired under the secretarial assistance scheme five days after the end of their contract. In other schemes, recoupment of severance/redundancy is provided for where employment in related areas is secured within specified periods.

### Recommendation 2.2

The Department of Public Expenditure and Reform should issue revised guidance in relation to severance payments for secretarial assistance and ministerial staff to ensure consistency in application of the terms of the schemes. In particular, the guidance should clarify the rules that apply in relation to employment movements between the two schemes. The use of calculation templates should also be considered.

### Response of Secretary General, Department of Public Expenditure and Reform

Agreed. The Department is reviewing guidance in this area with a view to establishing the extent and nature of update that may be necessary.

- 2.46 Severance payments can result in appreciable outflows of public money, both in the form of upfront cash payments and longer term benefits such as added years for pension purposes. It is important that the full cost of severance packages is calculated and taken into consideration.

### Recommendation 2.3

The Department of Public Expenditure and Reform should review the need to include a maximum amount payable for individual severance packages under the schemes in place that provide for such payments at the end of a period of employment, subject to scheme conditions being met.

### Response of Secretary General, Department of Public Expenditure and Reform

Agreed in part. The Department is happy to review this area in relation to standardised exit schemes - under the *Collective Agreement: Redundancy Payments to Public Servants* (June 2012), severance is related to years of service subject to a maximum cap. Such an approach would not be appropriate where individual severance awards may be based on legal advice specific to the circumstances of the case and the best interests of the organisation are served. However, prior sanction should be sought in each case where an *ex-gratia* element exceeds €10,000 and in the case of a Government department, the total amounts paid should also be the subject of a note in the department's appropriation account.

- 2.47 Disclosure of severance payments has been required in appropriation accounts since 2012, but has not been required in the annual financial statements of State bodies. In a number of cases, severance payments were not disclosed as required.

### Recommendation 2.4

The Department of Public Expenditure and Reform should remind all government departments of the requirement, under *Public Financial Procedures* and annual circulars, to disclose material severance payments in their appropriation accounts. In determining materiality, both upfront cash payments and longer term pension benefits should be taken into account. The same principle should apply in relation to severance payments in other public sector agencies.

### Response of Secretary General, Department of Public Expenditure and Reform

Agreed. The Department of Public Expenditure and Reform will, in the context of its circular for the Appropriation Accounts 2015, issue a reminder to all Government departments of the need for appropriate disclosure of material severance payments in their appropriation accounts. The issue of the same principle applying in relation to severance payments in other public sector agencies is addressed in the response to Recommendation 2.1 above.

- 2.48** In the Department of Foreign Affairs and Trade, the process to be followed when making a severance payment to locally employed staff based in Irish embassies is not documented. The level of central oversight and approval was not always evident on the files reviewed.

#### **Recommendation 2.5**

The Department of Foreign Affairs and Trade should ensure that all severance payments made to embassy staff are processed and approved in a consistent manner, with documented evidence on file of verification and recalculation of the amount paid.

#### **Response of Secretary General, Department of Foreign Affairs and Trade**

Agreed. I welcome the findings of the report. Given the nature of our work and the fact that we operate across more than seventy international jurisdictions with many variations in employment legislation, severance payments are an ongoing facet of our operations. The Department is committed to ensuring that the rights of our locally engaged staff are upheld and also to ensuring that we meet our obligations under the various public financial procedures. Our procedures for processing and approving severance payments have been enhanced since 2014, including measures that address the issues raised in this report.



### 3 Discretionary Severance Payments

- 3.1 Discretionary severance payments may be agreed following negotiations between employers and employees on a case-by-case basis and are not based on the terms of a contract or a prescribed scheme.
- 3.2 This chapter reviews high-value discretionary severance payments made by public sector entities between 2011 and 2013.
- 3.3 Figure 3.1 summarises the identified high-value discretionary severance payments made by bodies within the scope of this examination. During that period, fourteen high-value severance payments made by six public sector entities were identified, amounting to nearly €1.5 million.

**Figure 3.1 High-value discretionary severance payments, 2011 to 2013**

Sector/entity	Total severance amounts €000	Number of cases	Average severance amount per case €000
Central Bank	384	6	64
Non-commercial State bodies <sup>a</sup>	293	4	73
Education sector <sup>b</sup>	635	3	212
Health sector	158	1	158
<b>Total</b>	<b>1,470</b>	<b>14</b>	

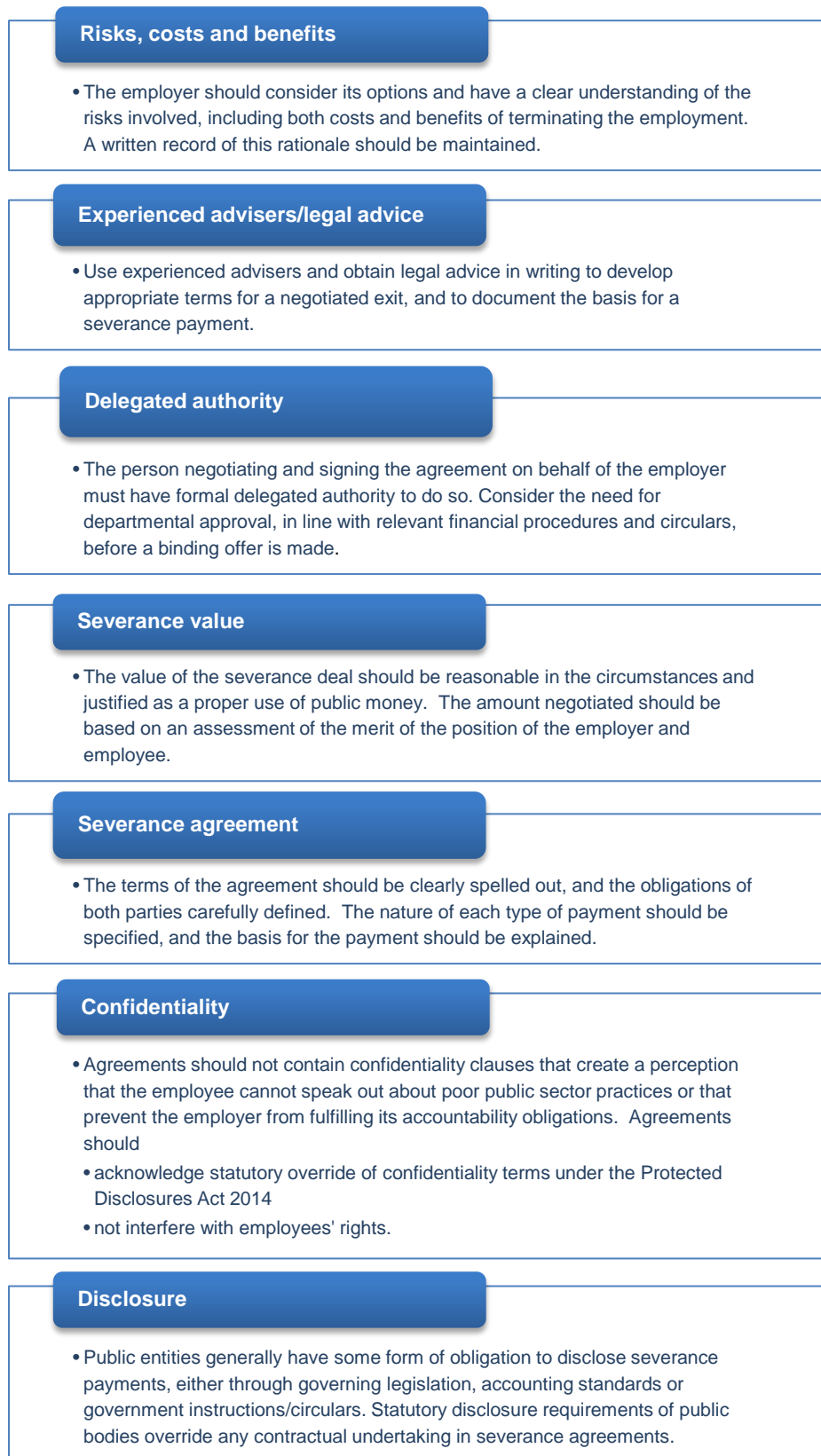
Source: Analysis by Office of the Comptroller and Auditor General

Note: a Payments by two non-commercial state bodies were identified.

b Payments by two third level education bodies were identified.

#### Good Practice Framework

- 3.4 Figure 3.2 sets out a good practice framework for public bodies making discretionary severance payments, based on the principles of accountability, integrity and fairness.

**Figure 3.2 Good practice framework when severance payments are proposed**

## Central Bank

- 3.5** Six severance payments, amounting to €384,000, made by the Central Bank in the period 2011 to 2013 were reviewed as part of this examination. The Central Bank made at least one severance payment in each of the years under review.
- 3.6** The length of service of the employee, the circumstances giving rise to the payment and the amount paid varied between cases. Summary details of the severance payments made are set out in Figure 3.3.

**Figure 3.3 Central Bank severance payments, 2011 to 2013**

Length of service of employee	Number of cases	Severance amount €000	Legal costs incurred		Total cost €000
			Central Bank's costs €000	Employee costs €000	
More than five years <sup>a</sup>	2	186	35	10	231
One to five years	3	166	50	21	237
Less than one year <sup>b</sup>	1	32	16	25	73
<b>Total</b>		<b>384</b>	<b>101</b>	<b>56</b>	<b>541</b>

Source: Central Bank of Ireland

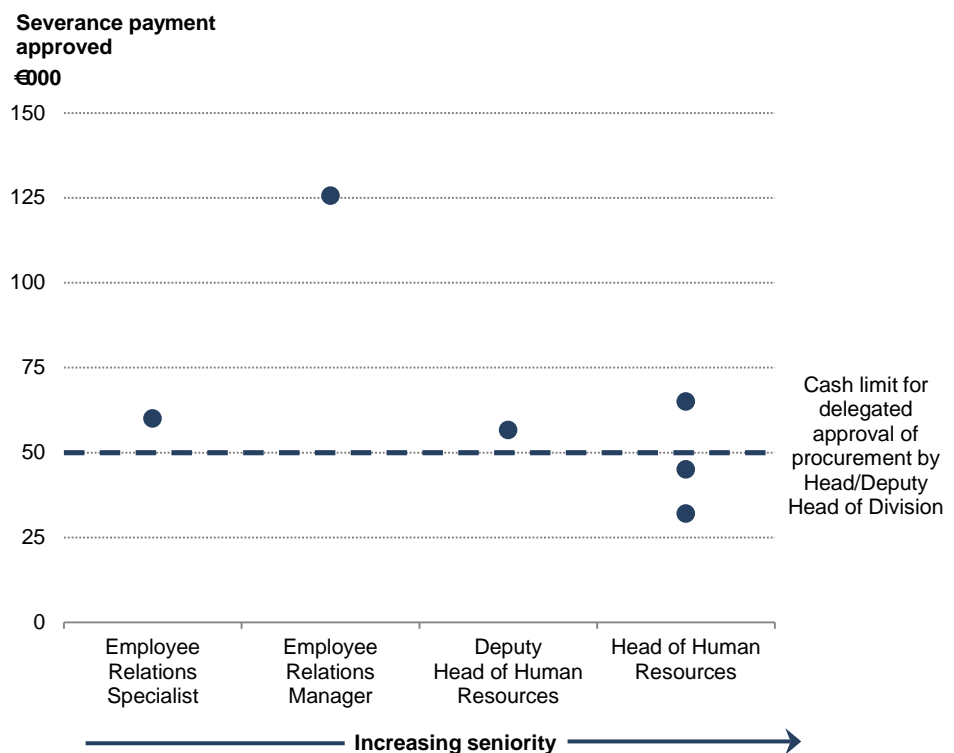
Notes: a Includes a severance payment to a long-term contractor who was not an employee of the Central Bank.

b In this case, the individual did not, in fact, commence employment with the Central Bank.

- 3.7** The average cost per case was approximately €90,000, including legal costs incurred. Four of the cases are noteworthy.
- Costs of just over €73,000 were incurred in a case where the individual involved was recruited by, but did not commence employment in, the Central Bank.
  - Two individuals who each had less than two years' service received settlements averaging around €61,000 each.
  - €60,000 was paid to a contractor who had worked with the Central Bank for more than five years but had never been an employee.
- 3.8** Legal costs were incurred by the Central Bank in all cases and legal costs of the employee were paid by the Bank in all but one case. However, details of the legal advice received were not documented on file in some cases. The Central Bank had no written policy or guidelines for dealing with termination agreements and severance payments. The process usually involved advice being provided by either an external legal advisor or the employee relations section within the Bank.
- 3.9** In three of the six cases reviewed, there was no evidence on file that a review of all the options, risks and costs involved had been undertaken before a decision was taken to pay severance.

- 3.10** The Bank's approval process for severance payments was not formalised. While each case had an agreement on file that was signed by a representative of the Bank, it was not clear if the terms and amount of the settlement were approved at an appropriate level before the agreement was signed. The Bank had set approval limits by grade for certain categories of expenditure, but settlement agreements were not among the categories listed. For example, heads and deputy heads of divisions were not permitted to approve procurement of goods or services to a value of greater than €50,000. As illustrated in Figure 3.4, the level at which the agreements were signed within the Central Bank varied from case to case.

**Figure 3.4 Approval level for severance payments, 2011 to 2013**



Source: Central Bank of Ireland

- 3.11** The examination found no close correlation between the level at which agreements were signed and the value of the settlements. The three agreements signed by the Central Bank's head of human resources ranged in value from €32,000 to €65,000. An employee relations manager signed an agreement with a value of over €125,000. The Central Bank has advised that the terms of the agreements were set in the full knowledge of the head of human resources and/or the chief operating officer, but this was not obvious from the review of the files.
- 3.12** No evidence was found during the examination of any formal delegated authority in place in relation to the approval of severance agreements.
- 3.13** Five of the agreements signed included confidentiality clauses requiring both the Central Bank and the employee to keep the facts and terms of the agreement strictly private and confidential. All the clauses acknowledge a statutory override.

- 3.14** The Central Bank's financial statements for 2011 did not contain a disclosure in respect of severance payments. The Bank disclosed the total value of settlements made in its financial statements in 2012 and 2013 with prior year comparative figures also provided. The disclosures referred to three settlements with a value of €69,000 in 2013, seven settlements amounting to €264,000 in 2012 and three with a value of €107,000 in 2011.
- 3.15** Figure 3.5 shows an assessment of compliance with good practice, as outlined in Figure 3.2, for the severance payments made by the Central Bank.

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**Figure 3.5 Compliance with good practice, Central Bank**

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**Key good practice requirement**

Documented consideration of the options/rationale	✘
Documented legal advice obtained (internal or external)	✘
Terms of settlement agreed at the correct level of delegated authority	✘
Signed agreement	✓
Appropriate confidentiality clause included in the agreement	✓
Disclosure in financial statements	✓

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Source: Analysis by the Office of the Comptroller and Auditor General

Note: "✓" indicates that the good practice requirement was met in respect of four or more of the six cases.

**Conclusions and Recommendations — Central Bank**

- 3.16** In the period 2011 to 2013, the Central Bank did not adopt a standard approach for assessing and determining severance payments. The approach adopted, the level of information on file and the approval obtained, varied from case to case.

**Recommendation 3.1**

The Central Bank should formulate and adopt standard procedures in relation to the negotiation and approval of severance payments and the associated records that should be maintained. Limits for delegated authority should be specified to ensure that severance payments are authorised at an appropriate level.

**Response of Governor, Central Bank of Ireland**

Agreed. We welcome the inclusion of the good practice framework in the report. We have adopted a formal procedure on individual discretionary severance payments in response to this recommendation. The procedure, which incorporates the good practice outlined in the report, was approved by the Budget and Remuneration Committee of the Central Bank Commission in July 2015.

- 3.17** It is evident that, during the 2011 to 2013 period reviewed, the Central Bank had more frequent recourse to termination agreements and severance payments than the other public sector bodies examined. The frequency of payments could imply weaknesses in the Central Bank's procedures for managing performance or addressing other human resource issues. In particular, the severance payment to one individual who had yet to commence employment and another two payments to staff members whose lengths of service were less than two years suggest that the Central Bank needs to review its procedures for managing recruitment and probation.

### Recommendation 3.2

The Central Bank should review the circumstances that have led to severance payments and assess whether improvements are required to the human resources processes to ensure less recourse to severance payments in the future.

#### Response of Governor, Central Bank of Ireland

Agreed. The cases referred to arose in a period of both unprecedented renewal and growth of the Bank where staff numbers grew by approximately one third between 2009 and 2013. The Bank has already introduced a number of related improvements, including strengthening the policy to protect its independent status in 2012, changing its probationary policy in 2013 and updating its performance management system in 2014.

## Non-commercial State Bodies

- 3.18** In the period under review, four large severance payments were identified in two non-commercial State bodies. Figure 3.6 outlines the value of the payments. The average cost per case identified was €87,000, inclusive of legal costs.

**Figure 3.6 Non-commercial State body severance payments, 2011 to 2013**

Length of service of employee	Number of cases	Severance amount €000	Legal costs incurred €000		Total cost of severance €000
			Entity costs	Employee costs	
More than five years	3	218	21	15	254
One to five years	1	75	7	11	93
<b>Total</b>		<b>293</b>	<b>28</b>	<b>26</b>	<b>347</b>

Source: Non-commercial State bodies

- 3.19** A public body (A) made three severance payments in the period with a combined value of €254,000.<sup>1</sup> The severance element of two cases was paid without deduction of tax as a result of approval received by the public body following correspondence with Revenue. Notwithstanding that the reason for termination of employment in the third case was the same, tax was deducted from the severance payment in that case.
- 3.20** The public body obtained legal advice in relation to two of the cases. It did not obtain legal advice in the third case because it deemed that the advice previously obtained could be applied, due to similarities between the cases.
- 3.21** While the accounts in 2013 disclosed the fact that two individuals received termination payments in the year, the amounts paid were not disclosed. The accounts in 2012 did not disclose the relevant termination payment.
- 3.22** A documented consideration of the options, costs and benefits in terminating the employment was not evident in each case. The agreements signed contained confidentiality clauses that acknowledge a statutory override. Approval was not obtained from the parent department or the Department of Public Expenditure and Reform for the payments.

<sup>1</sup> The public body received €35,000 from its insurance company towards the cost of one of the severance agreements.

- 3.23** The examination identified a second public body (B) that paid a severance payment amounting to nearly €75,000 and incurred legal costs of €18,400. Prior to entering into the severance agreement, the case was considered by the head of human resources, the chief legal advisor and the chief executive. External legal advice was also obtained in relation to the case. The advice obtained from the external legal team was documented on file along with a detailed rationale for the settlement agreement. Approval at the level of chief executive was documented and retained on file.
- 3.24** The terms of the agreement stipulate that the termination payment is in full and final settlement. The agreement also includes a confidentiality clause that restricts both parties from disclosing the agreement, except where it is necessary to do so as required by law. The agreement was signed by the head of human resources, the chief executive and the employee.
- 3.25** Figure 3.7 shows an assessment of compliance with good practice for the severance payments made by the two non-commercial State bodies.

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**Figure 3.7 Compliance with good practice, selected non-commercial State bodies**

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Key good practice requirement	Body A	Body B
Documented consideration of the options/rationale	x	✓
Documented legal advice obtained (internal or external)	x	✓
Terms of settlement agreed at the correct level of delegated authority	✓	✓
Prior approval received from the parent department and/or the Department of Public Expenditure and Reform, to the extent required	x	✓
Signed agreement	✓	✓
Appropriate confidentiality clauses included in the agreement	✓	✓
Disclosure in financial statements	✓	x

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Source: Analysis by the Office of the Comptroller and Auditor General

Note a "✓" indicates that the good practice requirement was met in two or more of the three cases in Body A.

## Education Sector

- 3.26** The Department of Education and Skills has confirmed that there is no approved scheme of severance in the education sector. The Department regards severance payments as remuneration, and as such, prior approval is required from the Minister for Education and Skills, with the agreement of the Minister for Public Expenditure and Reform.
- 3.27** The examination identified three severance payments made by two bodies in the third level education sector. Summary details of the payments made are set out in Figure 3.8. The average cost per case, including legal costs, was €236,000.

**Figure 3.8 Education sector severance payments, 2011 to 2013**

Length of service of employee	Number of cases	Severance amount	Legal costs incurred		Total cost of severance
			Entity costs	Employee costs	
		€000	€000	€000	€000
More than five years	3	635	72	1	708
<b>Total</b>		<b>635</b>	<b>72</b>	<b>1</b>	<b>708</b>

Source: Education sector bodies

- 3.28** In one case, a third level education institution (C) paid an employee just over €183,000 as part of a severance agreement. Prior to entering the agreement, the institution consulted a guidance note published by the Higher Education Funding Council for England.<sup>1</sup> It stated that, in its view, there was no relevant Irish guidance or circulars applicable to it. It further stated that it did not consult the Department of Education and Skills in relation to the matter because its legal understanding was that it is not required to formally consult or seek approval before negotiating and paying a settlement.
- 3.29** Following the termination agreement and payment of the severance, the Department of Education and Skills requested the institution to provide details of the payment and indicated that the payment may be in breach of legislation. The institution disputes that interpretation of the legislation and noted that the payment was paid from commercial income it had generated rather than from public funds. The Department of Education and Skills provided retrospective sanction for the settlement. The institution has committed to consulting with the Department of Education and Skills prior to entering into any similar agreements in the future. The Department of Public Expenditure and Reform was not consulted or informed of the payment.
- 3.30** In addition to the severance payment in that case, legal costs of approximately €71,000 were incurred bringing the total cost of the severance to just over €250,000. The legal advice received before the settlement was that any disciplinary action would be lengthy and costly with an uncertain outcome. The governing body of the institution was made aware of the case and was informed that it was a matter for the president of the institution to decide. The settlement terms and amount paid were agreed and approved by the president of the institution. Following the signing of the agreement, the governing body was informed of the outcome of the case.
- 3.31** The settlement agreement was drawn up by the institution's solicitors and includes a confidentiality clause preventing the disclosure of the existence and terms of the agreement, except as required by law.

<sup>1</sup> *Severance payments to senior staff in higher education institutions*, circular letter issued by the Higher Education Funding Council for England, March 2009.

- 3.32** Another third level education institution (D) made two separate severance payments during the period. The Department of Education and Skills has stated that it had not been aware of those payments prior to receiving a draft copy of this report. The institution was of the view that a termination agreement represented the most economic and efficient course of action in both cases. Legal advice obtained by the institution indicated that it was appropriate to enter into agreements with both individuals whereby they would cease employment and receive a severance package. The total legal cost incurred relating to the cases was €1,640.
- 3.33** The institution has stated that the terms agreed in both cases were based on the provisions of a voluntary redundancy scheme announced by the Minister for Health for HSE staff in 2010 and agreed at a senior level in the institution's finance and human resources departments. The institution did not discuss the agreements with or obtain approval from the Department of Education and Skills or the Department of Public Expenditure and Reform.
- 3.34** The Department of Education and Skills, after becoming aware of the payments, has sought assurances from the third level institution that it now clearly understands that severance payments should not be made without prior written sanction from the Department, and that the necessary sanction should be obtained prior to making such payments in the future.
- 3.35** After receiving further information from the institution in respect of the cases included within the scope of this report, the Department has stated its view that both of the severance payments made by institution (D) were significantly at variance with the terms of the HSE scheme, as they exceeded one of the limits provided for within that scheme i.e. one-half of the salary payable to preserved pension age.
- 3.36** Figure 3.9 shows an assessment of compliance with good practice for the severance payments made in the education sector.

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**Figure 3.9 Compliance with good practice, education sector**

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Key good practice requirement	Body C	Body D
Documented consideration of the options/rationale	✓	✓
Documented legal advice obtained (internal or external)	✓	✓
Terms of settlement agreed at the correct level of delegated authority	✓	✓
Prior approval received from the Department of Education and Skills or the Department of Public Expenditure and Reform	✗	✗
Signed agreement	✓	✓
Appropriate confidentiality clauses included in the agreement	✓	✗
Disclosure in financial statements	✓	✓

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Source: Analysis by the Office of the Comptroller and Auditor General

Note "✓" indicates that the good practice requirement was met in both cases in Body D.

## Health Sector

- 3.37** A severance payment of nearly €158,000 was agreed between an entity (E) in the health sector and an employee in 2012.<sup>1</sup> In addition, legal fees of €6,000 were incurred by the entity and it made a contribution of €200 towards the employee's legal costs. The employee's length of service was more than ten years. A signed agreement set out the agreed payment and resulted in the termination of the employee's contract.
- 3.38** Prior to discussing and offering the severance payment, the chief executive of the organisation made unofficial contact with various individuals, including Department of Health officials, to seek advice on how to deal with the matter. However, the organisation stated that it was not able to identify relevant official guidelines or circulars.
- 3.39** The organisation stated that in the absence of guidance, legal advice was sought. The advice obtained indicated that an acceptable negotiated settlement was the best option open to the entity. The chief executive discussed the matter with the chairperson of the board. The board subsequently delegated authority to the chief executive to proceed with the necessary action.
- 3.40** The agreement underpinning the payment was signed by the chief executive and includes a confidentiality clause that prevents the facts and terms of the settlement being discussed. The clause does not acknowledge any statutory obligation override.
- 3.41** No external sanction was sought or obtained in respect of the severance payment. The board and the chief executive were of the view that they had the authority to take the course of action taken and that it represented best use of public money in all the circumstances involved.
- 3.42** Figure 3.10 shows an assessment of compliance with good practice for the severance payment made in the health sector.

**Figure 3.10 A health sector body's compliance with good practice**

Key good practice requirements	Body E
Documented consideration of the options/rationale	✓
Documented legal advice obtained (internal or external)	✗ <sup>a</sup>
Terms of settlement agreed at the correct level of delegated authority	✓
Prior approval received from the Department of Health or the Department of Public Expenditure and Reform	✗
Signed agreement	✓
Appropriate confidentiality clauses included in the agreement	✗
Disclosure in financial statements	✗

Source: Analysis by the Office of the Comptroller and Auditor General

Note: a Legal advice received at the time was not documented. Following the commencement of this examination, the entity's solicitors confirmed in writing that there had been engagement (through meetings and telephone conversations) with the solicitor through the process.

<sup>1</sup> The organisation receives funding from more than one department. For the purposes of this report, the entity is classified as being in the health sector.

## Conclusions and Recommendations

- 3.43** Between 2011 and 2013, there was limited recourse to high-value discretionary severance payments in the public sector.
- 3.44** Only a small number of bodies (such as the Central Bank) have autonomy with respect to severance payments. However, none of the bodies making payments we examined that required departmental sanction had sought or received it. In some cases, the body in question did not consider that such sanction was necessary.
- 3.45** For those bodies that are required to seek external sanction, a number noted the absence of guidance available to them when circumstances arise where the option of severance is considered. In one case, a third level education institution resorted to a UK guidance note on severance payments.

### Recommendation 3.3

The Department of Public Expenditure and Reform should issue written guidelines setting out the process to be followed by public sector entities when a severance payment is being considered. In particular, the guidelines should include a checklist of the supporting documentation that should be retained on file and clear instructions in relation to the external sanctions that are required before an entity can enter into a severance agreement.

#### Response of Secretary General, Department of Public Expenditure and Reform

Agreed. Discretionary severance payments can arise in a number of circumstances and it is considered unwise to be unduly prescriptive as to the steps to be taken in individual cases. However, the Department will consider the potential usefulness of a checklist and will issue guidelines if the results of its consideration indicate that this is warranted.

- 3.46** In all cases, a confidentiality clause was included in the agreement signed by the organisation and the employee. In some cases, the clause appears unduly restrictive. While there may be valid reasons for confidentiality clauses being included in agreements, they should not attempt to circumvent a statutory disclosure requirement or to prevent employees from speaking out.

### Recommendation 3.4

The guidance issued by the Department of Public Expenditure and Reform should refer specifically to the appropriate use of confidentiality clauses. Entities entering into severance agreements should include a provision in the agreement stating that nothing can prevent the disclosure of the payment where it is required by law. In particular, confidentiality clauses should not seek to restrict an employee from making a public interest disclosure under the Protected Disclosures Act 2014.

### **Response of Secretary General, Department of Public Expenditure and Reform**

Agreed. It is clear that entities considering severance payments tend to seek legal advice which will extend to the drafting of the severance agreement. In addition, section 23 of the Protected Disclosures Act 2014 provides that any provision in an agreement will be void where it attempts to restrict an employee's rights under the Act.

- 3.47** The Department of Public Expenditure and Reform issues circulars annually to government departments setting out the requirements for the preparation of appropriation accounts. Included in this circular is a requirement to disclose severance payments where material. This requirement does not extend to other public sector entities.

### **Recommendation 3.5**

Detailed disclosure requirements for severance payments should apply to all public sector entities.

### **Response of Secretary General, Department of Public Expenditure and Reform**

Agreed. The 2015 draft update of the *Code of Practice for the Governance of State Bodies* includes a requirement for State bodies to publish in their annual report and accounts aggregate details of the compensation of their key management level (i.e. those employees with authority and responsibility for planning, directing and controlling the activities of the State body), broken down by a number of categories including termination benefits. This aggregate reporting respects the need to preserve the capacity to allow for severance arrangements in cases where the best interests of the organisation are served and for necessary reporting arrangements to preserve the scope for appropriate negotiation and confidentiality.

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## **Appendix**

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## Appendix A Actuarial Methodology and Assumptions

A consultant actuary was engaged to calculate, for certain of the individual cases reviewed during this examination,

- the cost of awarding added years for pension purposes
- the cost of providing pension benefits early, with no actuarial reduction.

### **Methodology**

In calculating the capital cost of awarding added years for pension purposes, the methodology and assumptions used were those set out in *Prescribed Guidance in Relation to Section 34 of the Pensions Act 1990, Version 1*, issued by the Pensions Authority.

In determining the capital costs of providing pension benefits early with no actuarial reduction, the standard actuarial reduction factors appropriate to each individual's benefit in the public sector were used.

### **Assumptions**

The key assumptions made are that

- the rate of future investment returns is 4.5% per annum
- the rate of future pension increases is 3.5% per annum
- each individual will receive pension increases in line with pay levels
- each individual received the maximum pension and cash benefits
- mortality is based on 62% of PNML00 for males and 70% of PNFL00 for females with an annual compound increase of 0.39% to the annuity value for each year between 2008 and the year of retirement <sup>1</sup>
- the capital value is multiplied by a factor of 1.324 to reflect current economic conditions
- there is a spouse's pension on death in retirement payable in respect of each individual.

<sup>1</sup> PNML00 and PNFL00 are codes used in mortality tables produced for the purpose of actuarial calculations.