



Solace Consultation Response: Restricting Exit Payments in the Public Sector

July 2019

Solace is strongly opposed to the draft regulations set out in the consultation 'restricting exit payment in the public sector'. The evidence and our views remain unchanged since the 'public sector payment cap' consultation undertaken in 2015. We believe that this move, particularly when combined with the cumulative impact of the Government's previous measures to constrain the pay and pensions of senior staff will:

- Create a significant regulatory barrier to the efficient transformation of the local government and other sectors by reducing the flexibility and mobility of the workforce;
- Place a significant restriction on the ability of councils to re-organise, slowing the transition to new ways of working and increasing costs to the taxpayer, and unjustifiably hinders currently and necessarily involved in reorganisation;
- Weaken the ability of the guardians of local government governance, standards and accountability within the officer team, principally but not exclusively, the Head of Paid Service, Section 151 and Monitoring Officer, to exercise their responsibilities due to diminished employment rights and less financial security;
- Risk an increase in the overall cost of exits to the UK taxpayer due to a significant increase in litigation and notice periods, gardening leave and protracted employment disputes;
- Exacerbate the existing difficulties of filling key public sector roles, particularly those where there are current shortages or substitute roles in similar sectors, for example in Adults and Children's Social Care, housing delivery, finance, ICT and transformation roles - especially in councils with significant challenges where recruitment is already difficult; and
- Likely be considered discriminatory in terms of age.

Solace is not a trades union and we would therefore leave it to Alace and others to make the case on the specific terms that should apply to employees working in local government and impacted by this policy. However, we have worked with Alace in this area and support their specific issues raised in their response to the consultation.

The Society believes that the draft regulations set out in this consultation would undermine the independent accountability of local government and fails to recognise the distinct openness and transparency of our local democratic system. Uniquely in the public sector, senior council employees are accountable to locally elected representatives and their terms and conditions of service are publicly reported and debated in full Council meetings.



It is recognised that a very small number of public sector exits have prompted calls for a cap on total payments. However, the Government should resist the arbitrary cash cap set out in the consultation and ensure that the sector is able to continue its transformation without these new barriers to change, risks to governance and additional uncertainty.

It is particularly important that any cap introduced does not include the pension strain element. This is the element that would prove most difficult to introduce due to the numerous pension schemes affected, impact on low paid employees, would create the most severe anomalies in the public sector employment market, and be considered discriminatory in terms of age.

Distorting the employment market

The employment market has been transformed in the last nine years. Local government, in particular, has reacted positively and flexibly to the changing fiscal and employment conditions during that time, and its current proportionate approach to exit payments is responsive and accountable. The previous consultation paper reveals that public sector exit payments over £100,000 has reduced by 47% between 2012/13 and 2013/14 which suggests that the sector has taken steps to ensure proportionality and value for money without the need for regulation, and there is no data to suggest this situation has changed in councils in the meantime.

This proposal is one element of a gradual erosion of terms and conditions for the highly skilled and experienced across the public sector, and in particular within local government. This has contributed to skills shortages across sector and most critically within both children's services and adult social care as recognised by Government action to address it in those professions. The Government's proposals merely add to the existing disincentives for high quality applicants to enter a middle or senior management career in local government or other public service covered by the proposal. It also creates perverse incentives that drive high quality new entrants and existing local government middle and senior managers towards agency roles, interim positions, self-employment through companies and other approaches that will increase costs to the taxpayer without the benefits of a stable commitment to an individual council.

Finally, and perhaps most importantly, for any organisation, payments associated with loss of employment including redundancy pay are essential in their ability to reform and react to new circumstances. The Government accepted this in the Treasury's own consultation paper on the recovery of public sector exit payments in 2014. They facilitate reorganisation and reform yet these proposals take the control of these important levers away from the democratically elected representatives and given them to Whitehall. During a period of considerable structural change, with new business models being developed and partnership between different sectors and tiers of Government so common, this proposal would place a significant handbrake on the change process. This would place additional and unnecessary costs on the taxpayer. For example, the removal of this tool would reduce the possibility of employers and employees reaching agreement on change. The process would be far slower, potentially impact negatively on the quality of service during the transition and led to a greater use of the courts to resolve disputes. The proposed exit cap is particularly penalising for those currently involved in local government reorganisation proposals made 'not out of a positive ambition for this radical structural change, but instead out of a pragmatic and responsible approach to



the Government's clearly-signalled direction of travel', such as councils in Northamptonshire, Such quests to deliver greater efficiency and prevent further Section 114 scenarios should be exceptions to the cap.

Instead, the Government should be doing more to attract high quality applicants from a broad range of sectors to senior roles within the public sector. The Government has regularly agreed that professionals from the private and third sector would make a positive contribution to providing more effective and efficient public service and that we need to do more to build the capacity and capability of those leading our public institutions. However, these proposed regulations are a significant retrograde step in this endeavour. The disincentives to move from the private to the public sector will be even greater.

Impacting across all levels of employee

The consultation paper implies that the proposal regulations are directed at very high earners, and that a cap of £95,000 is therefore appropriate to ensure the impact is focused on this group. However, the Government has not included any evidence to support this suggestion or detailed how the figure of £95,000 was arrived at. The impression given is that the figure is an attempt to chase newspaper headlines of "an end to six figure pay-outs." This may be good PR, but it is not good policy making.

Given this lack of detail it is difficult to properly assess the impact; however, some initial work indicates that in some circumstances, the new proposals could impact long serving members of staff on a final salary of less than £39,000 pa. It would therefore impact on an enormous number of public sector employees, and create an unnecessary barrier to the re-organisation of significant swathes of the sector.

The consultation paper also makes no reference to the review mechanism for the level of the cap, whether it would be index-linked, for example, or if the cap is time-bound. It is therefore difficult to assess its impact over time but unless the cap at least keeps pace with increases to average salaries we can assume the impact and cost to the taxpayer will only increase.

Experience tells us that when the state reaches for legislation or regulations, particularly when based on such limited evidence, the unintended consequences usually more than offset any advantage. There is also greater risk of costs incurred defending legal challenges and claims. Moreover, the consultation requests evidence and data to support any alternative proposals to achieve the Government's aims seems unreasonable given the paucity of evidence to support the Government's own proposals and the £95,000 figure itself.

Equalities

We are concerned that this and other elements of the proposal are likely to be discriminatory in terms of age. The possible consequence will be that staff aged over 55 previously open to seeking early retirement will now not leave voluntarily, and more staff under 55 will consequently be made compulsorily redundant. Given the scale of change and re-organisation that the sector continues, this risks a displacement of younger employees resulting in an even older age profile for public sector employees. The overall impact in terms of service delivery, the quality of the pipeline for senior staff and the viability of pension schemes will be highly negative. Any retrospective application of new Regulations would compound the perceived unfairness.



Moreover, reforms to the Local Government Pension Scheme were agreed and implemented by the Government in 2014. Therefore, it cannot be reasonably argued that the policy circumstances have significantly changed.

Scope

The Government's own figures¹ demonstrate that the proposal is badly targeted and unnecessary. The average cost of exit packages in local government is significantly lower than in both central government and public corporations. In 2012/13, the average cost of an exit package in local government was £18,516. The central government equivalent is more than twice as high at £37,361, while within public corporations the cost is even higher at £42,337 per exit.

Local Government as an autonomous, independent employer pays lower exit payments than other parts of the public sector. While other areas of the sector that the Government is considering excluding, due to their 'independence', have a record of higher payments. The evidence suggests that Government policy should, if at all, be targeted at the very areas funded by the taxpayer currently excluded from the proposals.

The consultation encompasses a broad range of the public servants all with very different terms and conditions of employment. For example, some public servants outlined in the paper receive severance payments even if they resign their own roles. However, it also includes many public servants who, due to an historical anomaly in how their organisation is governed, would sit outside the scope of this policy despite them still being paid for by the public purse, e.g. across the education sector. This will therefore create unintended consequences in how skilled workers are incentivised to work in different services paid for by the taxpayer. It will also exacerbate the existing skills shortages in some key areas including social care for example.

As previously outlined, the policy would also create a strong incentive that would drive high quality new entrants and existing local government middle and senior managers towards agency roles, interim positions, self-employment through companies and other approaches that will increase costs to the taxpayer.

The complexity of the public sector employment market will also make the introduction of the policy extremely problematic. The legislation will need to respect the individual contracts already agreed between employers and employees, and schemes such as the local government pension scheme will need to be renegotiated. When taken across the public sector, this is likely to be a long and drawn out process, with the likelihood of disruption to services as the transition takes place.

If the cap is introduced, it should make provision for all pipeline reorganisations and exits to be honoured so that existing change programmes can be continued without interruption, or delay.

¹ HM Treasury (June 2014) Recovery of Public Sector Exit Payments



NOTES:

Solace is the representative body for over 1600 individuals working in the public sector in the UK. We are committed to promoting public sector excellence. We provide our members with opportunities for personal and professional development, and seek to influence debate around the future of public services to ensure that policy and legislation are informed by the experience and expertise of our members. Whilst the vast majority of Solace members work in local government we also have members in senior positions in health authorities, police and fire authorities and central government.

For further information please contact:

Name Graeme McDonald

Title Managing Director of Solace

t: 0845 652 4010

e: graeme.mcdonald@solace.org.uk