Solace Consultation Response:

Public Sector Exit Payment Cap

August 2015

The Society of Local Authority Chief Executives and Senior Managers (Solace) is strongly opposed to the additional regulations set out in the consultation on a 'public sector payment cap'. We believe that this move, when combined with the cumulative impact of the Government's previous measures to constrain the pay and pensions of senior staff will:

- Create an unnecessary regulatory barrier to the 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;
- 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 senior roles, particularly those where there are current shortages or substitute roles in similar sectors, for example Directors of Children's Services- especially in councils with significant challenges where recruitment is difficult; and
- Likely be considered discriminatory in terms of age.

The Society also believes that such a move 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.

What other forms of exit payment do you think are relevant in this context?

None

Do you agree that the Government should introduce a cap on the value of public sector exit payments on the basis set out?

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 paper and ensure that the sector is able to continue its transformation without these new barriers to change and additional uncertainty.

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

The employment market has been transformed in the last five 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 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.

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. 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.

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 too great.

Are there any further payments that the Government should include?

No.

Do you agree that a cap on exit payments should be set at £95,000? If you think an alternative level would be more appropriate, please provide evidence and analysis to support your proposal

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 £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. Moreover, the consultation requests evidence and data to support any alternative proposals to achieve the Government's aims seems incredulous given the paucity of evidence to support the Government's own proposals and the £95,000 figure itself.

Do you agree with the proposed approach of limiting early retirement benefits with reference to the cost of the employer? What alternative approaches would you suggest and why?

No. 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 will not leave voluntarily, and in many cases staff under 55 will as a consequence be made compulsorily redundant. Given the scale of transformation and re-organisation that the sector is currently undertaking, 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.

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 changed.

Do you agree that the Government has established the correct scope for the implementation of the policy?

The Government's own figures[1] 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.

Do you agree with the proposed approach for waivers to the cap on exit payments?

Local Government already fulfils a requirement for payments of over £100,000 to be agreed by Full Council. This process is open, transparent and responsive. An additional cap and waiver process is unnecessary additional regulation.

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

Finally, it is also important to raise that the length of time given for this consultation is exceptionally short, wholly during the summer holiday period, and at odds with the Government's own recently published 'Consultation Principles: Guidance'. The consequence is that the responses to this consultation are unlikely to reasonably consider the full impact of the proposals, and that this creates significant risk of discrimination or other adverse unintended consequences not being recognised, exposing the sector to legal challenge if implemented.

NOTES:

Solace is the representative body for over 1300 senior strategic managers 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.

Solace is not the trade union that representatives Chief Officers in local government and we would therefore leave it to Alace and other unions to make the case on the specific terms that should apply to employees working in local government and impacted by this policy.

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