



HM Treasury Consultation on a Public Sector Exit Payment Cap

UNISON Response July 2019

About UNISON

UNISON is the UK's largest public service trade union with 1.3 million members, 1 million of them women. Our members are people working in the public services and for private contractors providing public services including in the essential utilities. They include frontline staff and managers working full or part time in local authorities, the NHS, the police service, colleges and schools, the electricity, gas and water industries, transport, non-departmental public bodies and the voluntary sector. Whilst we have members at all pay levels across the sectors, many of our members are part time and low paid, working in traditionally low paid sectors like care, catering, security and cleaning.

Response Summary

As with the original legislation, UNISON still fundamentally believes that, in light of the extent of public service budget cuts and the proposed future cuts, these proposals to cap exit payments in the public sector are entirely punitive, representing yet another attack on public service workers and the services they provide. All at a time when the flexibility required by employers to negotiate redundancies could not be more acute.

UNISON fundamentally believes that the proposed cap is unnecessary. It places additional burden on employers and is inefficient in its stated aims. The damage done to industrial relations, both locally and nationally, and the impact on staff morale and the employers' ability to facilitate necessary change is too high a price to pay for what may amount to (after waiver process and the likely consequence of sub optimum reorganisations) very moderate savings to the government purse, if any.

These proposals tear up agreements negotiated in good faith between employers and staff. Agreements based on the understanding that staff were sacrificing other terms and conditions in favour of maintaining these redundancy and pension arrangements. If implemented, it is almost inevitable that these negotiations will be re-opened and lead to further distraction and discontent during an already heightened time of serious reform.

It is clear that the proposals, as they stand, will not only affect high earners as stated but will also knowingly impact on moderate earners such as nurses, midwives, social workers and librarians with long service.

Government is aware that public service workers often devote years of loyal service: the government's own evidence on sector comparators makes it clear that many professionals working in the public sector could earn greater salaries in the private sector.

The lack of adequate Equality Impact Assessment is particularly worrying. The light touch 'note' on equality in 2016 was not a full assessment, acknowledged that at least some inevitable unequal impact was likely and acknowledged that more data could be usefully looked at. Given the bodies not in scope appear to be ones that are more male dominated (Police Officers exempted but not Police Support Staff, Judiciary exempted but not Crown Prosecution Service etc) this is a serious concern for UNISON.

Combined with lack of index linking compared to other caps / thresholds that do attract index linking which potentially protect men more than women (e.g. pensions lifetime allowance), the current lack of an adequate assessment is unacceptable. UNISON, and other unions, believe the government would be leaving itself entirely open to an expensive and lengthy **Judicial Review** process if it does not commit to putting these proposals on hold pending a full Equality Impact Assessment.

Whilst the additional clarity is welcome, these regulations go further than previous drafts and go against previous reassurances regarding waiver process in particular and appear not to have taken on board the significant areas of difficulty outlined by so many responders to the consultation.

UNISON is left feeling that this whole endeavour is entirely a cosmetic exercise to appeal to the worst elements of the critics of public service spending. We hope we are wrong and that the detail of the consultation responses will be carefully considered and appropriately responded to.

The key points we raise in this response are as follows;

- Perverse impacts on workforce reform
- Impact of including pension strain payments including the unprecedented introduction the potential to force staff to take a reduced pension early
- The need for an exemption for lower paid staff as outlined in the original proposals
- Index linking the cap and any salary exemption threshold to ensure they rise with inflation and don't devalue every year
- Inadequate recognition of contractual notice periods
- New and unnecessary constraints on the proposed waiver process
- Impact of including most COT3 settlements but not Employment Tribunal awards
- Urgent need for an Equality Impact Assessment

Perverse impacts on necessary reorganisations at a time of severe budget cuts to services

Although this consultation is in relation to the regulations only, it would be remiss of us not to take the opportunity to reassert our position on the cap itself. We believe these proposals will place unnecessary burdens on employers and employees and will affect service planning and industrial relations in ways that the government may not have factored into their analysis.

Under these proposals, an individual's salary, length of service or age may impact on decisions made in relation to service planning that could lead to inefficient reorganisation plans.

The original consultation itself recognised that *"Exit payments are important in their ability to allow employers to reform and react to new circumstances. Employers will normally make every effort to find alternative employment for employees where their services are no longer required. However, where this is not possible, exit payments can facilitate reorganisation and reform while providing support for employees that helps bridge the gap to new employment."*

It then immediately proposed strict limits on enabling this to happen.

Employers in all sectors recognise and appreciate that incentivising voluntary exits is advantageous when seeking to change the size and shape of an organisation.

In changing the goal posts in the middle of an extended period of large scale reorganisation without consideration of an initial period of protection (particularly for staff currently over 50), the government is further limiting the opportunity for employers to fairly reconsider strategic and operational decisions made in previous reorganisations that may have been planned to be effected in stages while assuming current agreements and policies would apply.

Quite apart from the restrictions this will place on negotiated settlements and collective agreements regarding exit payments, by including pension costs of contractual entitlement to early retirement within the cap, these proposals instantly begin to affect employees on much lower salaries and also to affect an employer's ability to make decisions to reduce staff numbers based on efficiency alone.

Whilst fundamentally opposing the cap, we recognise that the regulations represent an opportunity to mitigate the effect of the Act.

Where pension strain costs need to be calculated, the inherent delay in establishing with actuaries whether someone is affected by the cap or not before making decisions is an unnecessary delay in already difficult and protracted discussions and agreements on painful workforce reform.

As we know, under these proposals, an individual staff member's length of service and age could become determining factors in employers seeking to avoid the complication of this arbitrary cap. We do not believe this is the government's intention.

Further, the waiver process as proposed for the non-mandatory section would mean a further, unspecified, delay while central government makes a decision, further to the very senior level (full council in Local Government) decision making process that would naturally be in place, before any final decisions can be made locally based on responses received from central government to waiver requests.

It is difficult to imagine, in the large scale and continuing reform currently required in public services, where the additional resource will come from to enable this protracted process. We would recommend a cost benefit analysis is undertaken to assess the potential savings envisaged against the cost of this additional layer of bureaucracy.

UNISON believes the implementation of this policy will fundamentally not achieve the stated aims or savings envisaged particularly when set against the considerable additional burdens and difficulties faced by introducing and administering them

Inclusion of Pension Strain Costs

Whilst we have previously demonstrated that staff on moderate incomes across public services could still be caught by this cap without the inclusion of pension strain payments (see attached appendix), by far the largest threat to lower and more moderately paid staff of introducing this cap is the inclusion of pension strain payments.

The cost of pension strain is not cash in an individual's pocket in the same way as a redundancy or compensation payment. Nor does it give anyone a pension that is higher than the entitlement they have earned.

In the National Health Service Pension Scheme (NHSPS) staff leaving due to 'Service Efficiency' who are past their minimum pension age will be affected on moderate salaries due to the inclusion of pension strain payments and long service. Without a lower earnings threshold, the pension strain payments combined with long service becomes the key indicator in both the NHSPS and the Local Government Pension Scheme of whether moderate earners will be affected or not.

It is clear that these regulations may disproportionately impact on local government employees simply as a result of successive collective agreements that have protected access to unreduced pension over increased redundancy tariffs.

This leads to questions of equality and fairness. Local Government is a predominantly female workforce and, without a lower earnings threshold, more of the low and moderately paid employees affected by these proposals (not the target group for the proposals) will be women.

Further, the proposals could potentially leave current employees, even on very moderate salaries finding themselves having to pay upfront costs to their pension scheme for the 'privilege' of losing their jobs at a time in their lives when they are going to find it very difficult to obtain employment elsewhere.

Any alternative arrangements will necessarily be extremely complex, easy to misunderstand in terms of technical application and likely to deter meaningful engagement from employers and employees alike.

Already, it should be noted that staff transferring into the LGPS with long service may already face a much higher "pension strain calculation" than established staff as they would not have protections on their Normal Retirement Age (NRA) and would have an NRA of 65 or more meaning a larger "strain payment" is required to cover early retirement.

As time goes on, and current pension protections reduce in value, staff on even lower salaries will be affected across the board. Staff on as little as £20,000 a year could be affected by this cap if they are over 55 when made redundant and their normal retirement age is 65 or over.

We note the response from Derek Mackay MSP, Cabinet Secretary for Finance, Economy and Fair Work entitled 'A Severance Policy for Scotland' where they have concluded that they;

' share the Trade Union view that including employer pension costs in any severance payment cap may unduly expose longer-serving and lower-paid employees to the cap, and have therefore decided to exclude these costs from the cap.'

Impact of the Local Government Pension Scheme Regulations and the 25 year deal

The original consultation acknowledges the specific entitlement within the Local Government Pension Scheme (LGPS) Regulations to an immediate and unreduced payment of accrued pension to those scheme members aged 55+ where employment terminates on the grounds of redundancy or efficiency. This has been an integral part of the LGPS Regulations which was retained in the last pensions settlement – and were supposed to provide certainty about pension rights with no need for change for twenty five years.

In not exempting strain payments, these proposals utterly disregard the “25 year guarantee” of no more interference on public sector pension scheme entitlements, recently agreed at the highest levels of government, entitling members to a pension unreduced by early retirement factors. If pension strain payments aren’t exempted some people will be in the unprecedented position of being forced to take their pension early and suffer an involuntary reduction in their pension entitlement.

The proposal states that employees would retain the right to take the unreduced pension immediately in such circumstances, but that the extra cost to the employer should not exceed the £95,000 cap (less any other termination payments that have been made). This is entirely unworkable. It is still unclear what would happen in circumstances where the cap was exceeded as a result of the “strain payment” to the LGPS where a statutory entitlement to immediate and unreduced benefits exists.

As mentioned earlier, it is no great leap to conclude that this will have significant impact on how staff are selected for redundancy and that this would hinder employers from determining the most efficient selection criteria for their planned reorganisations.

Urgent clarification is needed as to whether these proposals are expected to require a change to the LGPS regulations which would, in effect, immediately tear up the agreement to protect these arrangements for 25 years.

Inconsistency and planning delays in calculating pension strain

The matter is further complicated by the fact that the various funds use fund-specific factors which aim to give a better match to the cost to the particular fund. The value of these costs will be determined on a different basis, depending on which LGPS Fund (or indeed public service scheme) was involved.

We would potentially then have two measures for the same thing – the amount the employer is charged by the fund and how it is valued against the limit. A member would run the risk that the severance payment which is used to cut benefits is higher than the payment actually made by the employer which is clearly inequitable. The alternative of imposing central factors to all the funds would mean the cost of the strain payments would increase for many LGPS employers.

An individual strain payment calculation is materially affected by the demographics of an area as longevity of pensioners is taken into account. Two individuals who have the same length of service, the same salary, and are made compulsorily redundant on the same day could be penalised by different amounts of pension strain, depending solely on the average lifespan in the people in the area where they work.

Further, we do not believe that due consideration has been given to the delays caused by checking with the relevant actuary as to whether the individual pension strain calculations do or do not breach the cap prior to making service planning decision. This is unnecessarily onerous and may involve additional costs to the scheme for each new speculative calculation.

UNISON strongly urges the Treasury to adopt the same position as Scotland on this issue , to reconsider the inclusion of pension strain payments as part of these proposals.

The need for an earnings exemption threshold

When these proposals were first announced by Pritti Patel MP in 2015, she said lower earners would be exempt.

More recently, in introducing these regulations, Chief Secretary to the Treasury Liz Truss MP has said:

“we are capping exit payments to stop unacceptably large pay-outs for senior managers.”

Once again making it clear that the intention is to target senior manager exit payments yet the regulations still knowingly include pension strain cost for all earners including many on moderate salaries.

UNISON notes that the average full time salary in the UK is now £35,000 pa and that government will be aware from the previous consultation responses that people on or below that figure will definitely be affected by this cap.

By our calculations the measures, as currently outlined, clearly represent an attack on moderate earners, such as midwives, social workers, youth support workers, environmental officers and librarians, with long service particularly if they happen to be near retirement when their employment is terminated through no fault of their own.

In fact it is demonstrably true that despite stated intention, these proposals clearly affect employees on very moderate salaries who will have dedicated years of their life to public service **MORE** than highly paid staff with **short** service who will remain relatively unaffected.

In the LGPS, a member of staff aged over 55 with 35 years service earning £25,000 would be likely to breach the cap but a member of staff with only 5 years service and a salary of £90,000 is unlikely to be affected.

We are sure this is not the intention of this legislation. Government has stated that in its view, very few members on moderate salaries will be affected. In which case, a simple salary threshold exemption would seem not only fair but would also seem like a very small concession to make to ensure that no one on a moderate salary is affected.

UNISON once again urges government to re-consider this issue and implements, as part of these regulations, a lower earning exemption threshold to honour the statements still being made by relevant ministers responsible for this legislation.

Index linking and future proofing

The £95k cap proposal was introduced in 2015 – at that point the government were clear that this was where they felt fairness and proportionality lay. If properly index linked this would now be worth £103k to achieve the same proportional effect and relative savings.

If the cap, and any earning threshold exemption, is not index linked, they will begin to impact on staff on lower and lower salaries which would make any stated rationale of targeting high earners more and more meaningless.

The government has the power to change the value of the cap and to update it annually as it does with the pensions lifetime allowance (something that potentially predominantly benefits men as high earners – see our section on Equality Impact Assessment).

If these proposals come into force, at the very least we would need to see the cap and any earnings thresholds raised each year, and linked to average earnings growth or RPI, whichever is higher. Otherwise, these rules will simply become more and more punitive and unfair each successive year.

If the government's intention and rationale are to be trusted, and this is not just a punitive attack on public service workers, then index linking would at least preserve the intention and extent of the impact envisaged.

UNISON urges government to introduce a clear process for index linking both the cap and any lower earning threshold agreed.

Exemption for contractual notice periods

The regulations exempt up to 3 months of pay in lieu of notice. The government will know that some staff are contractually entitled to 6 months of notice.

Whilst UNISON recognises the need to avoid additional pay in lieu of notice above contractual minimums we see no reason to restrict this exemption below contractual minimums.

UNISON recommends that the regulations are changed to reflect contractual entitlement.

Waiver process

As mentioned in previous sections, we consider the waiver process is cumbersome and is likely to hinder decision making and prove more burdensome for central government than expected.

A chief concern is the move away from previous reassurances that, in Local Government a decision of a full council meeting, fully noted and reported to the treasury would be sufficient process.

The new move to have any discretionary waiver require approval by the treasury before implementation is a hugely disappointing retrograde step.

It is UNISON's strong view that local government full council meetings should have discretion about whether and how to exceed the cap, reflecting the autonomy of councils as directly-elected bodies and the Government's previous commitments on this issue.

Local government already has some of the most transparent and onerous arrangements of any part of the public sector. Transparency, disclosure and positive decision-making already exists in respect of policies on severance for chief officers, policies on discretionary compensation for relevant staff in the event of redundancy, an authority's full council vote on all severance payments in excess of £100,000 and the disclosure of details of severance payments to senior employees in their annual statement of accounts.

Whilst a commitment to full accountable transparency is understandable, and certainly not new, this new additional level of delegated powers is adding an additional layer of unnecessary work and bureaucracy.

The waiver process as proposed for the non-mandatory section would mean a further, unspecified, delay while central government makes a decision, further to the very senior level (full council in Local Government) decision making process that would naturally be in place, before any final decisions can be made locally based on responses received from central government to waiver requests.

As mentioned earlier, we would recommend a cost benefit analysis is undertaken to assess the potential savings envisaged against the cost of this additional layer of bureaucracy at both local and central government level.

Further, we are still unclear what the waiver process would be for LGPS members not employed directly by a Local Authority where there is no recourse to a “full council” waiver process. This will affect thousands of public service workers and would seem to be a huge disadvantage for those not employed directly by a Local Authority. Some further clarity on this is essential.

UNISON proposes a reversal to the original proposed requirement for a simple vote of the full council, in line with the procedure for mandatory exemptions relating to TUPE etc.

This enables the treasury to analyse and review without interfering with the delegated authority of the elected officials making the informed decisions on these matters at a meeting of the full council.

Settlement agreements including COT3 agreements

We are concerned that the decision not to include all COT3 settlements in the mandatory waiver as this will be a perverse incentive towards tribunals that government has specifically legislated to avoid via the introduction of mandatory early conciliation. There are many reasons why an employer may prefer to settle rather than go to tribunal and this would severely tie the hands of an employer in making such settlements. It needlessly exposes both the employer and the employee to the debilitating effects of the delay, stress and cost of a formal tribunal.

We are also unsure why discrimination cases are exempted but settlements related to Health and Safety are not – both have unlimited awards at tribunal.

UNISON urges the government exempt all COT3 settlements from the calculations

Urgent need for an Equality Impact Assessment

The lack of adequate Equality Impact Assessment is particularly worrying. The light touch ‘note’ on equality in 2016 was not a full assessment, but it acknowledged that at least some inevitable unequal impact was likely and that more data could be usefully looked at.

Exempted Bodies not in scope

Given the bodies not in scope appear to be ones that are more male dominated (Police Officers exempted but not Police Support Staff, Judiciary exempted but not Crown Prosecution Service etc) this is a serious concern for UNISON.

Equality impact of which benefits / allowances are index linked and which are not

If the cap is not revalued in line with inflation each year, an assessment of which allowances and thresholds are, or are not, uprated might also clarify any equality impacts as yet unconsidered.

Inclusion of pension strain payments impacting lower paid women more than lower paid men

Including pension strain impacts Local Government more than other public service areas. Local Government is a predominantly female workforce and, without a lower earnings threshold, more of the low and moderately paid employees affected by these proposals will be women.

Given the current lack of an adequate assessment UNISON, and other unions, believe the government would be leaving itself entirely open to an expensive and lengthy **Judicial Review** process if it does not commit to putting these proposals on hold pending a full Equality Impact Assessment.

UNISON strongly recommends delaying implementing these proposals until a full and meaningful Equality Impact Assessment is conducted and acted on.

Conclusion

UNISON believes the implementation of this policy, with the proposed regulations, will fundamentally not achieve the stated aims or savings envisaged particularly when set against the considerable additional burdens and difficulties faced by introducing and administering them.

All staff in the public sector have been faced with reduced budgets, fewer resources and increased workloads. It is well documented that public service workers currently feel overstretched and that their good will is being abused.

Despite stated intentions, it is demonstrably true that despite stated intention, these proposals clearly affect employees on very moderate salaries who will have dedicated years of their life to public service MORE than highly paid staff with **short** service who will remain relatively unaffected.

If these proposals come into force, at the very least we would need to see the cap and any earnings thresholds raised each year, and linked to average earnings growth or RPI, whichever is higher. Otherwise, these rules will simply become more and more punitive and unfair each year. If the government's intention and rationale are to be believed, and this is not just a punitive attack on public service workers, then index linking would at least preserve the intention and extent of the impact envisaged.

It is unacceptable that these proposals could potentially leave current employees, even on very moderate salaries, finding themselves having to pay upfront costs to their pension scheme for the 'privilege' of losing their jobs at a time in their lives when they are going to find it very difficult to obtain employment elsewhere.

It is UNISON' s strong view that the waiver process needs to be simplified in all areas but that in particular, local government full council meetings should have discretion about whether and how to exceed the cap, reflecting the autonomy of councils as directly-elected bodies and the Government's previous commitments on this issue.

These proposals come at a time when attacks on public service workers are being felt keenly by staff and it is no surprise that recruitment is beginning to be a key issue in some essential services such as social services and the ambulance service.

As outlined above, the equality impact implications are significant and, we believe, urgently need to be properly assessed and outcomes acted on.

UNISON believes the proposals, as they stand, require a great deal more thought and seem unworkable in some areas. If the cap itself is not removed then it falls to the regulations to mitigate against some of the worst impacts of the cap's implementation whereby an individual's length of service or age may impact on decisions made in relation to service planning that could lead to inefficient reorganisations.

We believe the proposals will affect service planning and industrial relations in ways that the government seem not to have anticipated.

UNISON fundamentally believes that the damage done to industrial relations, both locally and nationally, and the impact on staff morale and the employers' ability to facilitate necessary change is too high a price to pay for what may amount to (after waiver process and the likely consequence of sub optimum reorganisations) very moderate savings to the government purse, if any.

For more information please contact Michelle Singleton (m.singleton@unison.co.uk), Policy Unit or for issues relating to the pensions related aspects of this response please contact Glyn Jenkins (g.jenkins@unison.co.uk), Pension Unit.

Worked examples included in our ordinal consultation demonstrating potential impact on low to moderate earners

When looking at redundancy situations that trigger an entitlement to an unreduced early retirement, it is easy to demonstrate how this might affect people on moderate incomes as detailed below.

Assuming most of those over the age of 55 might well be entitled to the maximum statutory redundancy payment of just over £14k then that will only leave £81k for strain payments.

Example A: - For an employee with partial rule of 85 protection made redundant at 55 on £30,000 pa with 35 years service, the strain payment could vary depending on fund actuary between £67,750 to around £84,700. Plus the £14,000 statutory redundancy payment would put this member at risk of exceeding the cap based on the assumptions used by the fund actuary.

Example B: - An employee of the Environment Agency with partial rule of 85 protections on £25,000 pa after 35 years service using a strain payment at the lower range of £56,000 would still exceed the proposed cap. Based on the current VER scheme the member would get also be entitled to a redundancy payment of £38,942 (i.e. 81 weeks x £25000) in addition to the strain payment.

As time goes on it will catch more people as average critical retirement age increases and strain costs will increase.