



Public Sector Exit Cap

Response from the Association of Local Authority Chief Executives (ALACE) to the government's consultation dated 31 July 2015

ALACE (the Association of Local Authority Chief Executives and Senior Managers) is a duly registered trade union whose 300+ members comprise the heads of paid service and other senior managers in local authorities throughout the UK. The Council of ALACE forms the staff side of the Joint Negotiating Committee for Chief Executives, the body responsible for the salary and terms/conditions of employment for chief executives. The Association also represents the interests of its members in responding to draft legislation and regulations which affect the roles of the head of paid service and other senior officers, together with issues such as the reorganisation of local government. Membership has been extended to other agency chief executives associated with local government.

Summary of ALACE's response

ALACE's response will fall into four related sections:

1. Points of Principle
2. Practical Issues
3. Transitional Arrangements
4. Specific Consultation Questions (and answers)
5. Consultation Timetable

1. POINTS OF PRINCIPLE

a) Exemptions and inclusions

Figures from government show that local government is the least of the problem – less than half of the average exit cost of the civil service. Other public corporations being even higher still. Against that backcloth, the list of proposed exemption is most revealing:-

- The BBC – where exit payments following the Jonathan Ross and Russell Brand debacle caused public concern – are to be exempt.
- MP's – do parliamentarians really want to provide another example of bringing forward proposals that they will apply to others but will not comply with themselves?
- The Banks – !!
- The Pension Protection Fund – it is ironic that proposals seek to rob people of pension entitlements will not apply to the Pension Protection Fund.

Any organisation or individual, who cares about the continued decline in trust for parliament, can only be concerned at how ill-considered these proposals are.

These proposals will only further the feeling that there is one rule for hard working families and another for MP's, Bankers and bodies favoured by government.

b) Impacted Groups

Calculations done by local government employer groups and by employee representative's show that many loyal longer serving employees (earning sums

as modest as £30,000 per year) will be caught by these proposals. That illustrates how poorly thought out these proposals are.

c) Trespass into an employment relationship

It is not for government to trespass into the employment relationship between local councils and their staff. The last time that was done was the Shoemith case and it cost the tax payer dearly.

Local Government is independent of central government and has under various localism initiatives been encouraged to be more independent and entrepreneurial. These proposals fly in the face of that.

Democratically elected autonomous councils have every right to make any staffing arrangements they are comfortable being locally accountable for.

d) Fetters the discretion of Local Authority – to introduce changes

In recent years there has been major reshaping in local government. New models of leadership have emerged and are emerging. These often involve significant change across senior leadership tiers. These proposals will fetter the capacity of councils to make such changes in a smooth and efficient way. These proposals will inevitably result in litigious disputes, corrosive relationships and a breakdown of trust between employees and employers. We suspect they will be equally unwelcome by employers.

e) Age Discrimination

These proposals will be discriminatory on the grounds of age. Someone who has reached pensionable age will be treated differently to those who have not.

f) Already transparent and open

Local government already has some of the most transparent and onerous arrangements of any part of the public sector – certainly more so than central government. Transparency, disclosure and positive decision making already exists in respect of:-

- Conforming to maxima for exit payments set by Parliament
- The publishing of policies on severance for chief officers
- The publishing of policies on discretionary compensation for relevant staff in the event of redundancy
- A local council's Full Council meeting voting on all severance payments in excess of £100,000
- Disclosure of details of severance payments to senior employees in their annual statement of accounts.

g) Encourages other independent corporate employment routes

These proposals fall most heavily on those who have been loyal, long serving employees. In particular, those who do not seek more innovative tax-efficient ways to earn a living, via for example, corporate service companies and/ or other forms of self-employment.

These proposals only serve to provide another incentive for the use of these alternative employment status routes which government seeks to discourage.

h) Discourages Talent Transfer

There is a severe shortage of talent at the top of local government – Social Care and Education being just two examples. The health integration agenda and other attempts to encourage fresh talent from other sectors into local government will suffer as a result of these proposals.

The application of the proposals only to those in the public sector may be ideologically attractive to some, but it does not satisfy any reasonable definition of fairness. Indeed, it could be argued that the contrary is true when the proposals are considered in conjunction with other recent changes that have impacted disproportionately on higher-paid public servants (e.g. changes to national pension legislation and to local government pension contribution rates, and proposals to recover exit payments in certain circumstances).

i) Unfairness of Pension Calculations

In the next section of this response (Section 2 – Practical Issues), ALACE strongly make the point that pension costs are not an exit payment and should not be included in any proposals that may come forward. As a matter of principle, pension strain is not something that an employee has any control over, it is largely determined by the historical performance of an individual pension fund (its investment decisions and management thereof). If an employee is subject to compulsory redundancy and is at least 55 years old, the fact that there may be a

theoretical calculation of actuarial strain carried out does not mean that those costs are directly associated with the decision to make somebody redundant – they exist largely because of the historical performance of the pension fund. It would be grossly unfair to penalise an employee for the past performance and management of a pension fund. The decision to make an employee redundant is the decision of an employer - as such they should take on the costs.

There is also the principle of equity and fairness to consider here. There could be a scenario where two individuals who have the same length of service and same salary, are made compulsorily redundant on the same day – due to the different historical performance of their respective pension funds the calculation of pension strain could vary significantly, accordingly it would not be equitable or fair to consider including pension costs in the operation of any cap.

Summary on Points of Principle

ALACE is opposed in principle to the government's proposals for the reasons set out above.

These proposals are also at odds with existing statutory pension schemes which have only just been revised! They also propose breaking contract law.

Alace has grave misgivings about the legal soundness of these proposals and will be seriously exploring – potentially in conjunction with other trade unions, the scope for Legal action, including Judicial review.

2. PRACTICAL ISSUES

a) Differential treatment depending on the nature of the pension scheme and its funding

ALACE does not support these proposals as a matter of principle. There are also a number of practical points which support the view they are unworkable.

The inclusion of pension issues is a particularly troubling feature of these proposals. The Prime Minister made a number of statements when a whole host of public sector pension changes were being made. On many occasions, he gave very explicit assurances that existing pension benefits already earned would not be diluted or removed; furthermore, that any changes could only, and would only, be to future benefits. If these proposals proceed, they have the impact of reaching back decades and removing pension benefits intentionally, and legally, preserved.

We believe that including pension issues would be at odds with the statutory obligations employers face as well as being already the opposite of the personal assurances that the Prime Minister gave on a number of occasions.

b) Leave/ Flexibility/ Elections

These proposals currently include contractual payments that are unrelated to exits, e.g. pay in lieu of notice , accrued holiday pay. These are not exit

payments. They existed contractually. Apart from the doubtful legal basis, they will massively reduce employees' willingness to show flexibility.

It would be irrational for an employee to agree to roll over holiday or defer a payment otherwise due, for fear it might in effect be lost in the event of redundancy.

Very often, employees show this type of flexibility – for example, in the run up to an electoral event. The last few months of the leave year (often to 31 March) usually coincide with electoral events. Similarly, bank holidays and school Easter holidays fall in this period. Typically, flexibility is needed around this time. It would be deeply unfortunate to have proposals that limit the 'give and take' that is essential for effective business management.

c) Non exit payments

The current list of payments included is not a list of exit payments:

- Pay in Lieu
- Holiday Pay
- Pension Entitlements

These are not exit payments.

Redundancy **is** an exit payment; all the others are obligations that pre-existed prior to exit.

We strongly suspect our employers will also not recognise sums other than redundancy as exit payments. Similarly, the whole premise of this consultation, and figures therein, are flawed if no distinction has been made between exit payments and pre-existing contractual and pension obligations.

Practical Issues - Summary

- I. The consultation document invokes the principal of fairness. It is difficult to see why it is fair that someone losing their job (often against their will) should be further penalised by the imposition of a restriction (arbitrarily set at £95,000)
- II. The inclusion of pension entitlements in that arbitrary figure.
- III. The inclusion of legally binding contractual obligations in that arbitrary figure

If an employer makes a decision, it should meet the costs that arise from that decision.

3. TRANSITIONAL ARRANGEMENTS

ALACE is wholly opposed to the arrangement proposed and strongly suggests they are unworkable. If government persists then it must consider the following:-

- Any employee who has already been made redundant but has not yet left service (often at the employer's request) will be outside any proposals. *This approach was very sensibly taken recently when new DIP (Designated Independent Person) provisions were introduced. All cases currently live were considered under the previous regime. The new regime only applied to new cases.*
- Any local authority which has a multiple staff restructure in process must be allowed to complete it on the same terms for all affected employees.
- All preserved pension entitlements must be excluded, i.e. the 80th and 60th service.

4. SPECIFIC CONSULTATION QUESTIONS

Question 1

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

Alace does not support the introduction of a cap.

If one were to be introduced it should only apply to 'proper' exit payments which is only redundancy payments.

Please refer to the points made in section 2 – practical issues.

Question 2

Do you agree that the Government should introduce a cap on the value of public sector exit payments on the basis set out above [see page 10 of consultation document].

No – please refer to the above answer.

Question 3

Do you agree that the payments listed above should be subject to a cap on exit payments under the terms set out above? If you believe certain payment types should be excluded please provide a rationale and examples.

No – please refer to the points made in section 2 – practical issues.

Question 4

Are there further payments the Government should include?

No

Question 5

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.

Alace does not support the introduction of a cap.

No rationale is given in the Consultation paper about

why £95,000 has been chosen nor why there is perceived to be a problem with exit payments in local government – please refer to the points made in section 1 and 2.

Question 6

Are there other ways to ensure such arrangements are consistent with the cap on lump sum payments?

Please refer to the answer to questions 1 to 4.

Question 7

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

No, Alace does not agree with this approach.

The calculation that is 'pension strain' should not form part of any cap (as previously outlined).

If the employer makes a decision, the employer should meet the costs of that decision.

Question 8

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

No, the basis for the proposal is un-necessary (local employment policies work well) poorly conceived (the evidence to justify the proposals has not been made) and does not sit comfortably in a legal sense.

If a cap system were introduced, it could have the effect of stifling the introduction of new ways of efficient working being able to be introduced in an agreeable and smooth fashion.

Please refer to earlier points made in section 1 and 2.

It is unacceptable to have more rules for everyone except Banker's and MP's.

Question 9

How do you think the Government should approach the question of employees who are subject to different capping and recovery provisions under TUPE rules following a transfer to (or from) the private sector and whether there should be consistency with public sector

employees in general.

Alace does not support the introduction of a cap. It is inequitable that two individuals might be treated differently, purely on the basis of issues such as these – they are outside the employee's control, as is for example whether their pension scheme is or is not funded, or does not have a deficit.

Question 10

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

Covered in previous comments and in the points made in section 1, 2 and 3.

Question 11

Are there other impacts not covered above which you would highlight in relation to the proposals in this consultation document?

Alace anticipates these proposals will be detrimental to flexibility in its workforce.

- Employees will no longer be willing to defer leave or other payment benefits for fear they will, in effect, reduce any redundancy payment if they are unfortunate to be made redundant. This could have a serious detrimental impact since staff are asked not to book leave at busy times, such as in the run up to a Major Election event.
- Workforce restructuring in a smooth 'business as usual' way will become more difficult to advise. Performance and efficiency could easily suffer.

Question 12

Are you able to provide information and data in relation to the impacts set out above?

Covered in previous points that have been made in this response.

5. Consultation Timetable

Failure to comply with cabinet office 'Consultation Principles Guidance'

ALACE also wishes to object to the short consultation period (four weeks) and the timing thereof (wholly within the summer holiday period), as these – especially when considered together – are fundamentally at odds with the cabinet office 'Consultation Principles Guidance' issued in July 2012.