

## **Consultation on reforms to public sector exit payments**

### **Response from the Association of Local Authority Chief Executives and Senior Managers (ALACE) to the government's consultation dated 5 February 2016**

ALACE (the Association of Local Authority Chief Executives and Senior Managers) is a duly registered trade union whose approximately 300 members comprise 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 and 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 role 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.

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#### **Introduction**

1. ALACE (the Association of Local Authority Chief Executives and Senior Managers) welcomes the opportunity to respond to this consultation. The options raised in the consultation document could have adverse implications for our members personally, apart from creating difficulties for the multi-million-pound organisations that our members are responsible for leading and managing.
2. Our first question is: why is HM Treasury publishing proposals at all? There should be due autonomy for the various parts of the public sector, and employers should be able to decide appropriate arrangements, in consultation with unions, that meet their business needs. What is more, the Government does not have an electoral mandate for changes in this area beyond the manifesto commitment to “end taxpayer-funded six-figure payoffs for the best paid public sector workers”, which is being implemented through the Enterprise Bill. Yet the current proposals will affect many more than just the “best paid” staff. Indeed, employees with long service paid as little as around £23,000 could be caught.
3. The Manifesto assertion that “we value our outstanding public servants” may be called into question if the proposals in the consultation paper turn out to be a cynical attempt to reduce the cost of redundancies ahead of further rounds of significant job cuts. Furthermore, the options in the consultation paper will make

the process of implementing such changes through restructuring and downsizing much harder to manage.

4. While the Government has presented its paper as a consultation, we hope that other actions by the Government – such as the consultation document about the civil service compensation scheme, launched only one working day later – do not betray that the Government has already made up its mind on the thrust of its approach, regardless of the more general consultation to which we are responding now.

### **Lack of justification for the Government's proposals**

5. We do not believe that there is reasonable justification for further reform of exit payments.

6. There has been significant reform in recent years and in current legislation.

- Public sector pension schemes have been reformed, with major changes introduced in the last Parliament. This was explicitly on the basis that the reforms made the schemes affordable and that the reforms “can endure for at least 25 years and hopefully longer” – a clear Ministerial statement by the then Chief Secretary to the Treasury (2 November 2011).
- There have been significant reductions to redundancy schemes, as a result of changes made by most local authorities.
- Legal requirements have been introduced for higher earners in the public sector to repay severance payments in the event of re-employment within 12 months of the original departure.
- The Enterprise Bill introduces a limit of £95k on the value of public sector exit payments, subject to a power in certain cases for full council meetings to waive the limit.

7. It cannot be fair for the Government to keep introducing layer on layer of further restrictions, the net impact of which is to make planning for retirement all but impossible. In respect of local government, we note that going back over a longer timescale there have been very significant reductions in the terms that staff might receive on redundancy or on retirement on business efficiency grounds.

- Prior to October 2006, the 85 year rule was a feature of the pension scheme for all its members. Someone whose service plus age was 85 or more could retire, with the employer's consent, with an unreduced pension. The 85 year rule was removed in October 2006 for new scheme members. The transitional protections for existing members mean that,

from April 2020, only benefits earned prior to 6 April 2008 will be unreduced if those who satisfy the 85 year rule at the time they retire choose to retire before their normal pensionable age.

- Staff made redundant after the age of 50 previously received their unreduced pension automatically. This minimum age was increased to 55 from 1 April 2010.
- The limit on redundancy payments in local government has been 104 weeks' pay for many years. This was most recently set out in the Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2006. Most councils choose to base payments on actual pay rather than the Government's statutory figure. What is more, in recent years most councils have revised their redundancy schemes and significantly reduced the maximum number of weeks' pay that an individual can receive. Many councils now limit this to 30 or 52 weeks' pay.
- Powers to award additional pension benefits were limited to £6,500 pa (subject to index linking from April 2015) from 1 April 2014

8. We accept that the accrual rate has changed during this period, from 80ths to 60ths (2008) to 49ths (2014). However, this is of no value or comfort to any employee who faces redundancy beneath the age at which he or she can gain access to pension.

9. We do not believe that the Government's proposals will result in fairer, more modern and more consistent compensation terms. The objective appears to be simply to reduce the compensation terms, which is not fair to serving staff – particularly those who have made future plans based on the reforms introduced in the last five to ten years, and whose contribution to reducing council costs and seeking efficiency savings may have been more significant than those who departed some time ago. We believe that the changes recently introduced have already modernised compensation terms and that they already reflect the increase in longevity of the population and therefore of working lives.

10. The Government needs to do a better job in spelling out why the current arrangements need to be reduced for reasons of affordability (paragraph 7.9 of the consultation), especially in the light of the fact that the reforms and changes that have been introduced in the last five to ten years relied heavily on future forecasts of viability by the Government Actuary's Department.

11. The information provided by the Government in box 4.A of the consultation shows that the average redundancy payment in the public sector is a little higher than in the private sector. Much of this gap might be explained by the factors mentioned in box 4.A, namely the longer average service in the public sector.

However, we would also point out that, while individual settlements inevitably vary depending on a range of circumstances, the average redundancy payment is less than 60% of the annual average salary of £27k in the economy. This hardly smacks of over-generous treatment of those public sector workers who have lost their jobs.

12. Skilled and higher earners in the public sector are paid much less than equivalent workers in the private sector (see the Hutton Review of Fair Pay in the Public Sector, March 2011, commissioned by HM Treasury, and successive reports from the Senior Salaries Review Body), and this is also reflected in the lower exit payments that they receive compared to other parts of the economy.

13. We note that any reforms that reduce pensions paid to former public sector employees would lower their disposable income, thereby affecting the UK economy adversely and reducing tax income for the Government. We wonder if these matters and calculations have been factored into the Government's thinking on this topic.

**Lack of fairness for staff below a certain age compared with those who have left employment in recent years**

14. As a result of changes to public sector pension schemes and compensation schemes introduced in the last five years, current public sector workers will receive significantly less generous compensation for loss of employment than their recent predecessors. It is concerning that the Government thinks that these (already reduced) terms can fairly be reduced further. Such changes are likely to inspire either unhappiness, not to say anger, that staff born after a certain date are to be treated significantly less favourably than those born only a year or two earlier, or an early, mass departure of staff above a certain age who are able to access current arrangements. Neither outcome would be good for staff morale or, looked at from the perspective of public sector employers, sensible for succession planning. Such further changes could frustrate necessary restructuring to cope with continuing reductions in public spending.

15. Employees will have "signed up" to expectations at the start of their employment, for example the contributions they will make and the benefits they will receive, and also the severance payments they can expect if they are made redundant. The Government should be cautious about making changes which, in effect, dash those expectations. This is particularly relevant for staff who are nearer to retirement age and who may not have sufficient time to make alternative arrangements, such as additional savings or pension provision) and face greater challenges securing alternative employment.

16. That said, we would not necessarily oppose steps that made terms more consistent between different parts of the public sector – it seems that terms

available outside local government are often more generous and less transparent than those affecting council staff.

### **The impact assessment**

17. The assessment of impact set out in part 7 of the consultation paper is at best incomplete and at worst not fit for purpose.

18. While the Government says that it is “difficult” to estimate potential impacts on workforce behaviours (paragraph 7.2 of the consultation), it is simply not good enough to offer no estimate of the “significant future savings” beyond asserting that they could result in savings in the “hundreds of £millions over the course of this Parliament” (paragraph 7.4 of the consultation). We note that the consultation paper on potential changes to the civil service scheme quantifies many of the options, and we believe that a better effort should have been made to estimate the impact of the options in this consultation paper across the public sector.

19. The Government should also encourage and give credit for the redeployment and retraining arrangements made by many councils. These can represent effective ways of avoiding loss of employment, and can be significantly cheaper than redundancy or other payments that would otherwise be made. To conform to the new burdens protocol, the Government needs to identify what costs would arise for local government in dealing with the administrative consequences of changes to redundancy and pension arrangements, and demonstrate what savings would arise for local government employers from the changes before it can conclude that funding for the new burdens would not need to be provided.

### **Direct and indirect discrimination in the proposals**

20. We would support the analysis that the proposals are likely to be indirectly discriminatory against some groups with protected characteristics (paragraph 7.6 of the consultation). We agree with paragraph 7.7 in identifying that some of the proposals would be directly discriminatory, as they would be targeted against people of a particular age. We therefore look forward to the Government’s justification for treating these groups of staff less favourably than other groups, and publication of a full equality impact assessment if the Government decides to push ahead with changes.

21. It is harder for people over the age of 50 to obtain equivalent employment again if they are made redundant, and this is particularly the case for disabled workers over 50. We would make the point that some of the proposals are more likely to have an impact on the most senior public sector employees. In local government, and while the position may vary from council to council, it is generally the case that the most senior management roles are largely populated by white people over the age of 45 and the majority of them are male.

22. What is more, many aspects of the options raised in the consultation paper would have a greater impact on staff with longer service. We are particularly concerned that a legislative solution would engage human rights legislation and relevant provisions of EU law, and are exploring that aspect carefully.

**Opposition to proposals to reduce payments, in particular to reduce or remove employers' powers to meet the cost of actuarial reductions in pensions**

23. Generally we would oppose changes that further reduce exit payments as recent reforms, coupled with the proposed £95k cap in the Enterprise Bill, have already reduced the cost of such payments.

24. However we would not oppose the principle of setting a maximum tariff for calculating exit payments at three weeks' pay per year of service (paragraph 4.12 of the consultation). Few if any councils currently operate schemes that include elements more generous than that. However, if the Government is interested in consistency, we suggest that three weeks should be mandatory, and should apply across all public sector bodies. The Government's proposal as it stands could still result in significant variance between bodies and therefore not result in consistency.

25. Again, we would not oppose the principle of capping at 15 the maximum number of months' salary that could be used when calculating redundancy payments (paragraph 4.13 of the consultation) – we would oppose any lower figure. However we feel that, if the Government is keen to ensure consistency, this would be best achieved by having a mandatory scheme that applied to all public bodies.

26. While we understand the arguments for and against operating less generous schemes for compulsory redundancy where there is scope to encourage departures through voluntary redundancy, for many senior local government staff there is no alternative for them or their employers when their jobs are put at risk by restructuring. We would thus not support a mandatory scheme that routinely rewarded voluntary redundancy better than compulsory redundancy. The end result for the individual, and the reason why he or she should be compensated, are the same – the loss of employment – and therefore the level of compensation should be the same.

27. We oppose the use of a maximum salary figure for the calculation of exit payments (paragraph 4.14 of the consultation). It is reasonable to assume that an individual will have financial commitments that are aligned with his or her salary. We are not aware of any evidence that higher earners are able more swiftly to find alternative, equivalently remunerated employment than other staff who have lost their jobs; or that they are proportionately better able to reduce

their commitments; and that a lower level of compensation would therefore be necessary. Moreover we do not believe that there is a need to contemplate such a step when the Enterprise Bill introduces a cap of £95k on exit payments. That cap means that it does not matter whether an individual earns £30k, £200k or even £500k a year – he or she will not be able to secure an exit payment worth more than £95k. We would also suggest that proceeding with this option would be indirectly discriminatory because of the age/gender/race profile of senior managers in many public sector organisations.

28. We oppose tapering lump sum compensation on the grounds that an individual is close to the normal pension age (paragraph 4.15 of the consultation). Such a measure would be directly discriminatory. There is now no requirement to retire at a particular age. It is presumptuous to assume that someone who is older would not have reasons for wanting to maintain his or her income at a particular level. With remarriages, ever later parenthood, and the growing need to support offspring not just through university but into adult life (e.g. helping them to buy a first house, or paying grandchildren's care costs), people might intend to work into their late 60s or beyond. Why therefore should they have their compensation for redundancy reduced simply because they are a certain age, and with the implicit assumption that they will draw on and be happy with the level of income from their pension?

29. We oppose in the strongest terms the removal of, or any reduction in, the powers for local government employers to top up pensions in the event of redundancy (paragraph 4.18 of the consultation). We strongly oppose the options mentioned in the first, second, and third bullet points of this paragraph.

30. The nature of employee pension contributions made, and benefits received, over a long period in each case makes it manifestly unfair to take contributions from employees on the basis that certain benefits are part of the scheme, only for individuals to find the benefits have been abrogated (in part) by the time they retire. The principle of paying benefits which have already accrued has been respected in pension changes in the past, and it ought not to be disregarded as a part of these changes.

31. We would also point out that, despite opposition, the Government seems intent on including the cost of employer-funded pension top up payments within the £95k imposed by the Enterprise Bill. Depending on an individual's circumstances, and secondary legislation which the Government has yet to consult on, it could therefore be the case that what an individual receives will be reduced *even under existing powers*. We do not therefore feel that there is any rational case for seeking further changes or reductions in this area.

32. It has long been a feature of the local government pension scheme that, where an individual is made redundant above a certain age, he or she is entitled by statute to the accrued pension on an unreduced basis. We appreciate this has

a cost to the employer, but we would point out that this cost was adjudged proportionate and affordable as recently as 2013 when it was retained as part of the agreement reached between the Government, local government employers, and unions after very extensive negotiations on reforms to the pension scheme. This appears in regulation 30(7) of the Local Government Pension Scheme Regulations 2013. These arrangements were assessed by the Government only just over two years ago as being fair and affordable to the public purse. The economic situation of the country has not deteriorated since 2013 in a way that would warrant breaking an agreement reached so recently.

33. We strongly oppose limiting or removing employers' powers to top up pensions in the event of redundancy, because the result will be either that the actual pension in payment will be reduced or that the former employee will have to find a lump sum to buy out that reduction. We do not believe either of those options is acceptable. The former means less income in retirement and the latter that employees will have to pay up-front costs to their pension scheme for the privilege of losing their jobs!

34. However, we have to recognise that, if the Government goes ahead with changes in this area, the interests of individuals demand that they should have the ability if they wish to avoid some or all of the impact of the actuarial reduction by making a lump sum payment into the pension fund. It would be intolerable if the Government did not recognise the necessity of such a flexibility being introduced, although we would much rather that the situation that would require it did not arise in the first place. In that context, we welcome the Government's acknowledgement of the need for such flexibility in the second bullet point of paragraph 4.18 of the consultation.

35. In respect of the age at which an individual may receive an unreduced pension, we note that the gap between that age and the normal retirement age in the local government pension scheme has never been less than ten years. We would therefore oppose any proposal to increase the age at which an individual may receive an unreduced pension if that would result in the gap falling below ten years.

#### ***Local government pension scheme***

	<b>Minimum age at which unreduced pension payable on redundancy</b>	<b>Normal retirement age</b>	<b>Gap (B – A)</b>
Before 2008	50	65	15 **
2008-2014	55	65	10
2014 to present	55	68 (maximum)	13



\*\* In addition, the 85 year rule operated, which meant that someone could retire on an unreduced pension with the employer's agreement, so long as age plus service was equal to or greater than 85.

36. We would support the option mentioned in the fourth bullet point of paragraph 4.18 of the consultation if the minimum age specified for all schemes was 55 (which is the current provision in the local government pension scheme). We would reluctantly support setting a higher minimum age for *all* public sector schemes only if the age was not less than ten years lower than the normal retirement age in the local government scheme.

### **Need for transitional arrangements if changes are introduced**

37. If the Government decides to introduce changes, it will be essential that well-designed transitional arrangements form part of any package of changes. This is to avoid any "cliff edge" being created with large numbers of individuals above a certain age seeking to leave simultaneously in order to take advantage of current redundancy terms before they become unavailable. We are therefore extremely concerned by the statement in paragraph 4.20 of the consultation that the Government does not envisage transitional provision related to the age of individuals or their nearness to pension age. We believe such transitional provision will be essential if the Government introduces significant changes to local government redundancy and pension terms, to avoid difficulties in succession and workforce planning and to achieve an orderly transition.

38. In response to paragraphs 4.19 and 5.6 of the consultation, we strongly support the need for transitional provision to exempt any departures agreed before the date of implementation of legislation but taking effect after that date. Before any changes made by regulations or primary legislation come into force, organisations will be legitimately taking numerous decisions to approve exits as a result of (for example) restructuring, and down-sizing in the face of Government spending reductions. This is because notice periods are typically a minimum of three months for senior posts and sometimes longer.

39. This approach was very sensibly taken when new independent person provisions were introduced recently for processes relating to the dismissal of certain officers. All "live" cases at the point of the change were considered under the previous regime, as a result of regulation 3 of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 No 881. The new regime applied only to new cases.

40. We look forward to full consultation with the Department for Communities and Local Government if the Government decides to press ahead with changes affecting local government.

Approved by Amar Dave, Honorary Secretary, and Rob Tinlin, Chair, on behalf of the ALACE Council

29 April 2016