CONSULTATION ON REFORMS TO PUBLIC SECTOR EXIT PAYMENTS (FEBRUARY 2016)

JOINT REPONSE FROM PUBLIC SECTOR TRADE UNIONS

Introduction

1. This is a joint response from the following unions: ALACE (Association of Local Authority Chief Executives and Senior Managers), FDA, GMB, MiP (Managers in Partnership), and UNISON. Between us, we represent hundreds of thousands of public sector workers in hundreds of organisations and at all levels within the workforce.

2. The unions will submit their own separate responses, as there are detailed points to be raised relating to particular parts of the public sector or groups of staff within them. This joint response demonstrates the range of significant issues where we share a common view.

3. 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.

4. The Manifesto assertion that "we value our outstanding public servants" will 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.

5. 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

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

7. 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, whether applying to whole parts of the public sector such as the NHS or as a result of changes made by individual employers (such as individual 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 to waive the limit.

8. It cannot be fair for the Government to keep introducing layer on layer of further restrictions, the net impact of which is to make retirement planning by individuals and workforce planning by employers all but impossible.

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 may have made future plans based on the reforms introduced in the last 5-10 years and whose contribution to reducing 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 5-10 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 with 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 are not persuaded that these matters have been factored into the Government's consideration of 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 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 <u>either</u> 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, <u>or</u> 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.

Direct and indirect discrimination in the proposals

16. 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 call on the Government's to make known its justification for treating these groups of staff less favourably than other groups, and further call for publication of a full equality impact assessment if the Government decides to push ahead with changes.

17. 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.

18. 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.

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

19. We strongly 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.

20. 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) as this is unnecessary and contrary to the majority of custom and practice in this area.

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

22. 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.

23. 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.

24. In the local government context, 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 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.

25. In the Civil Service, access to unreduced pension in cases of voluntary redundancy was agreed as fair and sustainable as part of the Civil Service Compensation Scheme reforms agreed between the then Minister, Francis Maude, and a number of civil service unions, including the FDA and GMB. These reforms were presented as a "lasting settlement", and we have not seen any evidence presented by the Government that warrants reneging on this agreement.

26. 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!

27. 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.

Need for transitional arrangements if changes are introduced

28. 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 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 redundancy and pension terms, to avoid difficulties in succession and workforce planning and to achieve an orderly transition.

29. 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.

30. Finally, the Government should also encourage and give credit for the redeployment and retraining arrangements made by many public sector employers and ensure such arrangements are introduced where they are absent. 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.

31. We look forward to full consultation with the relevant Government departments if the Government decides to press ahead with changes.

Michel Saminaden, Honorary Treasurer, ALACE

Dave Penman, General Secretary, FDA

Justin Bowden, National Officer, GMB

John Restell, Chief Executive, MiP

Cliff Williams, Assistant General Secretary, UNISON

29 April 2016