128 Theobald's Road
London
WC1X 8TN
Tel: 020 7611 2500
Fax: 0870 731 5043
www.unitetheunion.com

lgpensions@communities.gov.uk

August 2021

Dear Jeremy Hughes

Re. Consultation on New Best Value Statutory Guidance: Special Severance Payments

Unite welcomes the chance to respond to the New Best Value Statutory Guidance on 'special severance payments'.

It should be stressed from the start that Unite is supportive of monitoring and greater transparency in public spending decisions. Those decisions must be made with full transparency and integrity, embedding equality and fairness throughout.

Unfortunately the guidance under consultation does not meet those high standards, lacking clarity on basic definitions and procedure. Unite believes that this will leave the policy open to abuse as well as potential legal challenges for discrimination and unfairness.

As you will be aware Unite had serious concerns about the previous guidance capping exit payments that was published by the Treasury. Following a legal challenge from trade unions and other interested parties, that previous guidance has now thankfully been withdrawn.

Unite remains strongly opposed to the Government's policy of capping public sector exit payments. This is part of the continued erosion of public sector terms and conditions and has potential unintended consequences including unfairly targeting the lower paid.

While it is welcome that this latest guidance rolls back on the rigid, draconian plans to seize hard working local authority workers' pensions strain payment, there remains substantial ambiguity about how this policy will be implemented in future.

The new Treasury guidance, published in 27th May 2021 without consultation, contains substantial ambiguity and discretion for the Treasury over payments. While there is no explicit cap on exit payments, all payments now termed as 'special severance payments' must be monitored, recorded and importantly approved by the Treasury.

In essence Treasury officials will have the power to veto specific exit payments, but with no clarity on what the criteria for approval or rejection might be.

There is also no clarity about what a 'special severance payment' is. For example pension strain payments "may" be included, while other elements such as negotiated settlement agreements are "likely" to be included.

Unite believes that this level of ambiguity will leave the policy open to rampant discrimination, potential corruption and political manipulation. Rather than resolving Unite's concerns, this new guidance potentially leaves the public sector open to multiple claim of equality discrimination if payments are not clearly and transparently justified.

The Local Government Pension Scheme guidance under consultation replicates a lot of the ambiguity in the Treasury document. Importantly it states that pension strain cost arising from employer discretions to enhance standard pension benefits “may” be classed as ‘special severance payments’. While it is known that this will not cover strain costs arising where the member retires on redundancy or efficiency (age 55 or over) as this is a statutory right, it remains unclear if the regulations are referring to strain cost relating to:

- the employer choosing to waive early retirement reductions where the member retires voluntarily (Regulation 30(8) of the LGPS Regulations 2013);
- the employer awarding additional pension on redundancy or efficiency;
- the employer awarding or paying towards additional pension or AVCs whilst they are in employment but the member leaves within a certain time period.

Unite believes that this needs to be clarified in order to avoid costly legal challenges and further distress for hard working public sector workers already facing leaving their jobs.

The guidance also states that redundancy payments made in line with the Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2006 are not special severance payments. Again there is some ambiguity about this in the guidance and it needs to be explicitly confirmed that redundancy and severance payments made in accordance with the local authorities’ policy on severance pay are not covered.

Unite continues to believe that Government-imposed changes to exit payments are restricting the flexibility and freedom for public sector employers to manage change, in partnership with unions. Compensation schemes should be agreed through collective bargaining rather than arbitrary imposition from the Treasury.

Yours sincerely

Jim Kennedy
National Officer – Local Authority Sector