



Unite the Union response to the MHCLG consultation: Reforming local government exit payments

This submission is submitted by Unite the Union. Unite is the largest trade union in Britain and Ireland with 1.3 million members across the private and public sectors. The union's members work in a range of industries including all the manufacturing and transport sectors, financial services, print, media, construction, local government, education, health and not for profit sectors.

Executive summary

- Unite continues to strongly oppose the regulatory change to cap and restrict public sector exit payments. These punitive changes are being introduced with no basis in evidence, and are part of a continued erosion of public sector terms and conditions. They are already leading to unintended consequences as councils try to respond to the funding crisis in these uncertain times.
- Unite believes that compensation schemes should be agreed through collective bargaining rather than arbitrary imposition by the government.
- These changes will not just impact the higher paid, but will impact on long-serving public service workers earning annual salaries as low as £25,000 per year.
- The implications for local authority staff is substantially compounded, due to the inclusion of pension strain costs within the calculations. Given that the cap has become law without giving the LGPS time to implement changes to its rules it has also left a legal contradiction where the pension scheme rules are at odds with the Exit Cap Regulations.
- In reality these changes will make it harder for the public sector to reorganise their workforce and will lead to lower morale and poorer industrial relations and potentially higher costs.
- As an absolute minimum any caps put in place must be indexed to inflation so that they do not decline in value overtime and there must be a salary floor to prevent inclusion of people on low to middle pay.
- The regulations in their current form are unworkable, and conflict with existing employment protections. Unite is investigating a legal challenge and are calling for the regulations to be withdrawn.

Introduction

- i. Unite has strongly opposed the changes to public sector exit payments including the statutory cap that have now entered law. The changes will impact workers on pay as low as £25,000 a year and are part of the ongoing ideological erosion of public sector terms and conditions of employment that is damaging our economy, society and public services.
- ii. Many local authority workers are rightly fearful for their jobs as council finances continue to be subject to huge levels of uncertainty during these unprecedented times. It is deeply concerning therefore that the proposals, currently under consultation, to implement these changes in local authorities, are likely to extend the impact of the cap to even greater numbers of lower paid council workers.
- iii. The changes have set a dangerous precedent, with the government imposing significant changes to workers' contractual terms and conditions. Unite continues to argue that this is the proper domain of negotiations between the workforce and their employers.
- iv. It is also clear that there is no evidence behind the need for these changes and that the government has pushed ahead based on simplistic comparisons with the private sector which do not stand up to scrutiny.
- v. Irrespective of this, the changes are unlikely to save the taxpayer money as they add additional bureaucracy, costs, and unintended consequences. It is particularly galling for hard working public sector workers to be targeted at this time, when this government has been wilfully wasting billions of pounds of public money on unfulfilled private sector contracts without due process or accountability¹.
- vi. The policy of attacking public sector terms and conditions is making the public sector increasingly uncompetitive with the private sector and will potentially lead to significant recruitment and retention problems in the future. Public sector workers have experienced more than 10 years of below inflation pay caps and freezes which has led to many losing around a sixth of their real terms income. It is an intolerable way to treat hardworking and committed public sector workers, who in some cases have literally put their lives on the line to keep our communities safe and together during the pandemic.
- vii. Agreement was reached in local government in 2006 on pensions and exit payments with the view to a long-term settlement and it therefore shows significant levels of bad faith for the government to impose new changes arbitrarily in this way.
- viii. The proposed changes appear vindictive and the inclusion of pension's strain payments means that the cap will potentially cover many long-serving low-to-medium earners rather than just high paid public servants. LGPS members will also no longer be entitled to payment of statutory redundancy pay or discretionary severance pay in excess of the pension strain

¹ <https://www.theguardian.com/world/2020/nov/09/uk-government-fails-to-publish-details-of-4bn-covid-contracts-with-private-firms>

payments employers are required to make to the scheme when members aged 55 or over are made redundant.

- ix. While each case would be different, workers on wages significantly below the UK average (e.g. less than £25,000 per year) could be covered. This would depend on their length of service and pension choices that they have made.
- x. For example, Unite estimates that members working in local authorities, on as low as NJC pay point 23, could potentially be covered. These are far from senior roles and would include single trade jobs such as joiners and plumbers. Others potentially included could be long-serving electricians and gas engineers, as well as vital professional jobs such as housing officers, social workers and youth workers.
- xi. This was confirmed by the Government Actuary Department (GAD) that found that of the local government employees made redundant between 2013 and 2016, 86% would have lost money under the new rules². The GAD found the average local government worker, aged 59 with 19 years' service and currently paid £29,000 per year, would find her benefits on redundancy reduced by around 37%. The average loss to members would be around £13,000, while around 10% stand to lose almost half (47.5%) of their current redundancy package. The typical profile of such members is slightly above average earners on around £30,000, with slightly below average service - 18.2 years. A worker made redundant at 55 after 25 years who is on £80,000 would find their benefits reduced by 61%.
- xii. Since there is currently no index link to the cap, the numbers covered would steadily increase year on year with the salaries affected decreasing in real terms to cover more of the low grades.
- xiii. Government-imposed changes to exit payments are restricting the flexibility and freedom for public sector employers and unions to manage change at a time of large scale restructuring. Unite members report that these proposals are already creating bogus incentives for employers to rush redundancies and there is a risk that these will end up in costly court cases due to the current ambiguity.
- xiv. On the other hand the caps could lead to longer-serving staff to stay in their jobs rather than retire early in order to protect their pension. This will make it less likely that staff will take voluntary redundancy schemes and could therefore result in many more compulsory redundancies taking place and younger workers blocked from job opportunities. Such an approach would seriously affect staff morale and severely damage public sector productivity.
- xv. Unite believes that the government should focus on effective redeployment schemes, the absence of which is leading to inefficiency and duplication across the public sector and the needless loss of skilled and experienced staff.
- xvi. The Local Government Pension Scheme Advisory Board (SAB) and others are raising serious concerns about the potential risks these proposals will have, including legal challenges and

² <https://www.lgcplus.com/politics/workforce/bombshell-hits-almost-9-10-recent-redundancies-would-have-lost-out-under-exit-cap-28-10-2020/>

tribunals, the creation of post code lotteries in pensions benefits and the overly bureaucratic process leading to wasteful decisions and costs to the taxpayer.

- xvii. The chaos caused by the implementation of the cap legislation before the consultation has been completed is imposing a heavy demand on the pension scheme, including the impact on actuaries, payroll providers and others, as well as consequential regulatory changes required.
- xviii. Unite is concerned about the lack of clarity on the waiver process and the poor guidance on many outstanding issues including exits already in progress and transitional arrangements.
- xix. Unite believes that these reforms should be halted and scrapped, and is considering legal options to challenge them.

Consultation Questions:

1. Are there any groups of local government employees that would be more adversely affected than others by our proposed action on employer funded early access to pension? - If so, please provide data/evidence to back up your views? - How would you mitigate the impact on these employees?

- 1.1 Unite does not support these proposals. They go way beyond targeting the higher paid and will impact on long-serving low and middle income local authority workers.
- 1.2 Unite is also concerned that there does not appear to have been a comprehensive equality impact assessment carried out.
- 1.3 These policies are likely to heavily impact on women that make up two thirds of the public sector workforce and also BAME colleagues. Analysis of the proposals under consultation shows that many relatively low paid public sector staff with long service would be significantly disadvantaged by these changes. This includes potential for discrimination within the waiver procedures that are as yet unclear.
- 1.4 If the government ignores Unite's and others' calls to drop the £95k exit payment cap then Unite believes that the government should implement a pay floor protection for low to middle paid workers, so they are exempt from any exit payment cap.

2. What is the most appropriate mechanism or index when considering how the maximum salary might be reviewed on an annual basis?

- 2.1 Unite does not support the cap but if implemented as an absolute minimum any caps put in place must be indexed to RPI inflation (from 2015) so that they do not decline in value over time and there must be a salary floor to prevent inclusion of people on low to middle pay.
- 2.2 The absence of any indexation of the £95,000 figure means that over time, more people with salaries below the UK average will be affected. E.g. the £95,000 (suggested in 2015) is, in 2020 now valued at over £106,000.

3. Are there any groups of local government employees that would be more adversely affected than others by our proposed ceiling of 15 months or 66 weeks as the maximum number of

months' or weeks salary that can be paid as a redundancy payment? - If so, please provide data/evidence to back up your views? - How would you mitigate the impact on these employees?

3.1 Clearly this will adversely affect those workers who have long service and are approaching retirement age. This issue can be mitigated by not implementing the changes.

4. Are there any groups of local government employees that would be more adversely affected than others by our proposal to put in place a maximum salary of £80,000 on which an exit payment can be based? - If so, please provide data/evidence to back up your views? - How would you mitigate the impact on these employees?

4.1 This will impact on senior figures within local authorities including important roles such as Directors of Public health. Again the best way to mitigate the impact on these employees would be to not implement the changes.

5. Do you agree with these proposals? If not, how else can the Government's policy objectives on exit pay be delivered for local government workers?

5.1 No, Unite does not agree with these proposals. The government's policy objectives are flawed and unhelpful and should be rejected.

6. Do you agree that the further option identified at paragraph 4.8 should be offered?

6.1 Unite is opposed to the introduction of the changes within this consultation. They are unworkable and should not be introduced.

7. Are there any groups of local government employees that would be more adversely affected than others by our proposals?

7.1 It is vitally important that whistleblowers continue to be exempted from these regulations including those reporting health and safety issues.

8. From a local government perspective, are there any impacts not covered at Section 5 (Impact Analysis), which you would highlight in relation to the proposals and/or process above?

8.1 These moves will damage the local authorities' ability to recruit staff compared to the private sector. Unite directly negotiates with many private sector employers for example in manufacturing and finance and there are significant examples of companies that not only provide comparable exit payments arrangements to the public sector but in some cases they are better. Such a situation is complicated because, unlike in the public sector, private sector employers tend to keep exit payment terms secret as a condition of them being offered.

9. Are these transparency arrangements suitably robust? If not, how could the current arrangements be improved?

9.1 Unite is concerned that no burden costings have been produced on these new regulations and their impacts. Unite believes that the added bureaucracy and ambiguity will lead to substantial additional and unnecessary administrative, legal and actuarial costs.

10. Would any transitional arrangements be useful in helping to smooth the introduction of these arrangements?

10.1 Unite is in favour of clear and transparent pay policies within but does not support the government's exit cap reforms.

11. Is there any other information specific to the proposals set out in this consultation, which is not covered above which may be relevant to these reforms?

11.1 If the government continues to push through changes despite Unite's opposition they must do so in a clear and orderly way, giving local authorities and their employees sufficient time to prepare for the changes and their implications.

12. Would you recommend anything else to be addressed as part of this consultation?

12.1 Changes to contractual terms and conditions of staff are the domain of negotiations between the workforce and their employer and if the government is looking to make changes that is the appropriate approach.

12.2 Unite does not believe that there is sufficient evidence to justify reducing the terms and conditions that public sector staff expect and have a right to. This will also be counter-productive for public sector employers as it reduces their flexibility to reform their workforce in a positive and collaborative way, with an increased likelihood of industrial disputes and reduced productivity.

12.3 Unite strongly urges the government to drop these proposals and leave negotiations to collective bargaining structures between public sector employers and their recognised trade unions.

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