

4 November 2015

Public sector exit payment cap – response to consultation

Purpose of the report

1. The purpose of this report is to update Staffing Policy Committee on the result of the consultation that has recently taken place on the government proposal to place a cap on redundancy or compensation payments to certain public sector employees when their employment ends.

Background

2. The conservative party set out plans to introduce a cap on redundancy payments as part of its general election manifesto in which they outlined concerns about the number of exit payments made to public sector workers that exceed or come close to £100,000 and the need to ensure payments are proportionate and provide value for money.
3. The new conservative government subsequently issued a consultation document on proposals to introduce an exit payment cap on the cost of redundancies in the public sector. Responses were invited from public sector organisations and in the case of local authorities responses were co-ordinated by the local government association (LGA), although authorities were also able to respond directly to H M Treasury.
4. The consultation invited responses to a number of key questions, including whether limiting exit payments to £95k was appropriate, and also what payments should be included in this figure. The government proposed that the following payments should be included: redundancy pay or any other compensation payment as a result of a voluntary exit, any payment in lieu of unworked notice, untaken annual leave or other outstanding allowances and the costs associated with early access to an unreduced pension.
5. Excluded from the government's proposal were ill health payments, compensation payments in respect of death or injury attributable to the employment, and any payments following litigation from unfair dismissal or breach of contract.
6. The consultation response from the LGA and from Wiltshire Council contained a number of issues with these proposals, the most significant being the inclusion of pension strain cost in the cap. The proposed cap of £95k on the total exit payment would result in a significant reduction in the redundancy payment element in some cases where there is early access to unreduced pension.
7. The LGPS legislation means that employees are not able to refuse receipt of their pension if they are made redundant at age 55 or over, so would have no choice over the inclusion of the associated pension strain cost in the exit payment. In addition employees would not be able to request for their pension to be actuarially reduced if being made redundant. This would have implications where applications for voluntary redundancy are invited and would therefore impact on the council's ability to retain the right staff.

The council also recommended in their response that payment in lieu of unworked notice and untaken annual leave are excluded from the cap as the inability to pay this could impact on the

speed in which decisions can be made and implemented.

8. The consultation on the proposed exit payment cap closed on 27 August 2015 and the government has now provided its response to the issues raised. This was published on 16 September 2015 and is included at appendix 1.

Main considerations for the council

9. The government received more than 4000 responses to this consultation exercise, despite there being a very short response window during the school holiday period.
10. The government has admitted that the proposals did not receive overwhelming support, but say that in the absence of any more acceptable proposals to limit six figure pay outs they will be going ahead with this legislation.
11. Despite a significant number of responses urging the government to remove pension strain costs from the exit payment cap, the government has decided to include this cost within the £95K cap.
12. The government has therefore stipulated that the cap will apply to the wide range of payments related to exit, including cash compensation redundancy payments, pay in lieu of notice, the cost to employers of early access to pensions and any other exit payments. They say that this approach will ensure the cap is fair and is not subject to avoidance through individuals taking early retirement or being offered other forms of payment.
11. The government does, however, accept the arguments made by respondents that it would be disproportionate and potentially counter-productive to include payments for untaken annual leave within the scope of the cap. These will therefore be excluded from the cap.
12. The legislation will include a “waiver process”. This means that full council can vote, in exceptional circumstances, to grant a waiver for some individuals from the exit payment cap. This process will, however, be scrutinised.
13. The cap will apply to all workers within the “*central and local government and non-financial public corporation sectors as determined by the Office for National Statistics for National Account purposes are in scope*”. Therefore all Wiltshire Council employees, NHS, police and fire service staff will be affected by this legislation.
14. Appendix 2 contains an illustration of the exit payment costs for a sample of employees aged 55 or over. As can be seen in some cases the 95K cap is exceeded by pension strain alone. The Head of Pensions has suggested that the LGPS regulations may need to be amended in order to allow employees to contribute to the strain costs so that they are able to be made redundant – otherwise the council may not be able to enforce their exit, and this could have significant impact on the council being able to retain the right staff.
15. Further details of how the cap may work in practice, including the waiver procedure (which could potentially be invoked if the pension strain costs exceed 95K), are still to materialise.

Timescales

16. The timescale for the introduction of this piece of legislation is currently unclear. However, it is known that the government will take forward these proposals by taking powers in primary legislation as part of the Enterprise Bill. The detail of the measures will be implemented through secondary legislation.
17. The exit payment cap will have significant implications for the council’s redundancy pay policy and the current voluntary redundancy procedure will also need to be reviewed. There is also

an expectation that nationally the LGPS will need to be reviewed and the early retirement regulations amended.

18. At the same time the government has announced it will be establishing nationally determined rules requiring highly paid employees (earning over £100K) that leave and re-join the same part of the public sector within a year to return some or all of any exit payments that they have received.
19. These proposals are due to be taken forward in primary legislation as part of the Small Business Enterprise and Employment Bill with the measures likely to be implemented in April 2016.

Environmental Impact of the Proposal

20. None

Equalities Impact of the Proposal

21. This piece of legislation is likely to impact more greatly on older employees who have significant length of service within the public sector. As a result these employees could have a reduced or even no redundancy payment (see appendix 2)

Risk Assessment

22. The introduction of the exit payment cap will clearly be unpopular with employees and the unions, who will view this as another example of the erosion of public sector terms and conditions. Therefore industrial action may well follow.
23. Employees will be keen to exit the council in advance of this new legislation should they be aged 55 and over. Whilst this may be beneficial in the current financial climate, expectations will need to be managed and difficult decisions may also need to be taken in order to retain experience and maintain service delivery.

Financial Implications

24. The council is likely to save money on the cost of redundancies as a result of the introduction of this legislation.

Recommendation

25. It is recommended that Staffing Policy Committee note the contents of this report, and that a further report is provided to Staffing Policy once the timescales for the introduction of this legislation and implementation procedures are confirmed.

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Appendix 1 – Public Sector Exit Payments - Government's response to the consultation
Appendix 2 – Illustration of exit payments costs across the council