

Consultation on Exit Payment Cap

FBU response to the Treasury Consultation on a Public Sector Exit Payment Cap
27 August 2015

Introduction

This is the Fire Brigades Union's submission to the Treasury's Consultation on a Public Sector Exit Payment Cap, announced on 31 July 2015. The FBU is the authoritative, professional voice of firefighters across the UK. The union represents the majority of 50,000 firefighters in England, Scotland, Wales and Northern Ireland, including wholetime (full-time) and retained (part-time, on-call) operational firefighters and control staff.

The FBU is unhappy with the short duration of this consultation, taking place over the summer break for only four weeks and at the same time as several other substantial consultations. This hampers the capacity of many organisations to respond adequately. It diminishes democracy and means the government presses ahead with new regulations, without having understood the consequences.

The principal focus of the FBU response concerns early access to unreduced pensions, which the union believes should be exempt from these changes. The FBU is not convinced by the Treasury's case for action and has restricted our answers to the initial questions.

Question 1: What other forms of exit costs do you think are relevant in this context?

The FBU does not accept the premise of the question, which assumes that public sector exit costs are a significant problem. If the target is exit pay-offs to highly paid members of staff, why is the principle not applied in the private sector, where such pay-offs have also been reported.

Even in the public sector itself, the proposals appear to be using a sledge hammer to crack a nut, given the decline in the cost of such packages from 2011-12 to 2013-14. In 2011-12 there were 3,490 exit packages worth more than £100,000 and the year after there was 1,838.

In the fire and rescue service, the FBU is not aware of any cases of exit payments for chief fire officers or other principal managers of the type identified in other sectors. The union has other concerns about chief fire officers retiring after their full career, cashing in their pension and then returning to their old salaried post - sometimes with a slightly different title. However these practices are not covered by this particular consultation, nor should they be.

Question 2: Do you agree that the government should introduce a cap on the value of public sector exit payments on the basis set out above?

FBU members employed under the National Joint Council For Local Authority Fire and Rescue Services (The Grey Book) have no entitlement to an enhanced redundancy payment. There appears to be no objective justification for firefighters to be treated so differently to other public-sector workers in this regard. However it does mean that aside from getting early access to a pension (dealt with comprehensively elsewhere in this document), the vast majority of our members are not going to be entitled to a termination payment of more than £95,000.

However the FBU does have some members who are not employed under the Grey Book. These individuals will often have the right to an enhanced redundancy payment and other discretionary payments made on termination and therefore the imposition of a cap may impact upon them particularly in circumstances where pension payments are also factored in, even in circumstances where they are not on significant salaries. The FBU is concerned about this as it understands the purpose of this legislation was not to curtail the rights of those on modest salaries who have spent their lives working hard in the public-sector and it believes a net effect of these provisions may simply be a reduction in those willing to apply for voluntary redundancy and an increase in those who are made compulsorily redundant. In such circumstances the provisions will be a failure.

The FBU is further concerned by the fact that it is proposed to subject “special severance payments, special payments or ex-gratia payments” to the statutory cap. As set out in the Guidance, these payments may be made where an employee is dismissed or agrees the termination of their contract in a settlement agreement. On this basis it may include damages where an employee alleges they have been discriminated against on the basis of a protected characteristic or on the basis of trade union membership or trade union activities. Compensation in relation to such claims is unlimited at an Employment Tribunal. At present the only payments excluded from the cap are “*compensation payments in respect of death or injury attributable to the employment, serious ill health and ill health retirement*” and “*payments made following litigation for breach of contract or unfair dismissal*”.

Many potential discrimination claims could fall outside of this exemption. For example someone may have been bullied at work and harassed at work on the grounds of their sex or race. This may lead to a situation where an employee does not feel able to return to work even if they do not meet the definition of being in “serious ill health”. In such circumstances it may be considered the best thing to do is agree a termination package. The FBU contends that where someone has been discriminated at work on the basis of a protected characteristic or as a result of trade union membership or activities the bar should not apply to any termination package which is negotiated either prior to or after litigation has commenced.

The FBU notes that under exceptional circumstances it may be desirable to grant a waiver for public bodies and/or some individuals from the exit payment cap. It seems that in the case of a Fire Authority this would require a meeting of members

where authority could be granted. It is conceivable that the circumstances highlighted above could constitute “exceptional circumstances” but it is our view there should be a specific exemption dealing with discrimination on the grounds of protected characteristics or trade union membership/activities and there should not be any requirement to obtain consent from members of a fire authority where a trade union and an employer agrees a termination package because existing legislation has been contravened.

The FBU is concerned about the number of bodies (particularly financial bodies) that the government is considering exempting from the proposals. No detailed explanation is provided as to why these bodies should be excluded and there seems no justifiable reason for this.

Question 3: Do you agree that the payments listed above should be subject to a cap on exit payments under the terms set out above? If you believe certain payment types should be excluded please provide a rationale and examples.

The Treasury proposals state that the exit payments covered in this document include early access to unreduced pensions. The FBU believes this has a grave unintended consequence for the pensions arrangements of firefighters, which the government must address by exempting the fire and rescue service.

Firefighters’ pension schemes

In the case of the firefighters’ pension schemes this proposal directly contradicts assurances given by the DCLG fire minister and Secretary of State in December 2014.

The FBU continues to raise concerns that increasing the normal pension age for firefighters means that a significant number will be unable to maintain their operational fitness beyond age 55 and will ultimately face the choice of being sacked on capability grounds or face a huge reduction in their pension. The evidence to support this concern has been submitted to government on various occasions and was also reflected in the last government’s own Williams report (January 2013).

In response, the last government provided assurances that a firefighter aged over 55 who was unable to maintain their operational fitness, through no fault of their own, would be redeployed within role or given an unreduced pension. The process for providing the unreduced pension would be through the authority initiated early retirement (“AIER”) route.

On 15 December 2014, the DCLG fire minister (Penny Mordaunt) confirmed this guarantee to parliament. The extract from Hansard where this guarantee was given is below.

Hansard debate on the revocation of the Firefighters’ Pension Scheme
(England) Regulations 2014
HC Debates, columns 1142 to 1168

Mr Peter Bone (Wellingborough) (Con): It is a great pleasure to follow the hon. Member for Middlesbrough (Andy McDonald), and I certainly agree with his tribute to firefighters. I find myself in a very difficult position tonight in deciding how to vote on this statutory instrument. The very first debate I ever had in Westminster Hall was on Rushden fire station, which the Conservatives were fighting to keep open and the Labour county council wanted to close. In Northamptonshire we have an excellent fire and rescue service. In some respects it leads the whole of Europe. [Interruption.] Does the hon. Member for Corby (Andy Sawford) want to intervene? I will tell the hon. Gentleman, while I am at it, that Tom Pursglove, the excellent Conservative candidate for Corby, and I are today launching a campaign for more fire cover for north Northamptonshire. We will go up there tonight and—[Interruption.] Does the hon. Member for Corby want to intervene?

Turning to firefighters' pensions, there is one issue that seems to cut through all of this. I have spoken with the chief fire officer and the FBU representatives and seen firefighters on the picket line, and I went to see Green Watch in Wellingborough. In all these disputes, we should ignore the FBU and the employers and listen to the actual firefighters and what they tell us. The one problem is that firefighters are genuinely worried that when they get to 55 they might, through no fault of their own, lose their pension. If the Minister could give me an assurance that those firefighters would be redeployed or—

Penny Mordaunt: I am very happy to give those assurances— [Interruption.] We have done that.

Mr Deputy Speaker (Mr Lindsay Hoyle): Order. I want to hear the answer, and I am sure the rest of us will gain from what the Minister has to say.

Penny Mordaunt: If someone fails a fitness test through no fault of their own and they do not qualify for ill health retirement, they will get a redeployed role or an unreduced pension. That will be put on a statutory footing in the national framework—a full, unreduced pension, if not an alternative role.

Mr Bone: Having heard the words of the Minister, I think the whole House can now support the statutory instrument.

This guarantee was also confirmed by the Secretary of State, Eric Pickles. On 16 December 2014 the government amended the Fire and Rescue National Framework made under the Fire and Rescue Services Act 2004 to reflect the fact that Fire Authorities should provide AIERs in this situation and that the Secretary of State has the power to intervene where they don't comply.

The FBU is particularly concerned that:

- This Treasury proposal ignores and counteracts the guarantee to parliament to ensure that if a firefighter aged 55 was unable to maintain their operational fitness, through no fault of their own, they would be redeployed within their role or given an unreduced pension
- This proposal actually means that a fire authority faced with a situation where they should award an AIER will be unable to do so as they are compelled to restrict the unreduced pension in line with this cap
- This proposal will affect firefighters who are unable to continue in their employment due to the fitness requirements but will not be able to access the unreduced pension in line with the scheme rules, the government guarantee and the framework legislation.

The proposal will not have any impact on members of the Firefighters' Pension Scheme 1992 (FPS). There is no provision in the FPS which permits the early payment of a pension. It will affect members of the 2006 New Firefighters' Pension Scheme (NFPS), but the numbers immediately affected may not be significant because their pensionable service is likely to be no more than nine years. These two groups are relatively small and shrinking, because most members of both schemes have or will transfer to the Firefighters' Pension Scheme 2015 (the 2015 Scheme). The guarantees referred to above related very specifically to the introduction of the 2015 Scheme. They will be very seriously affected by the proposed cap in future years, in direct contradiction of the guarantees given.

Fire and Rescue Authorities will not be able to grant AIER except in “exceptional circumstances”. The guarantees given to Parliament are not limited to cases which are “exceptional”. They envisage that AIER will be the normal outcome if a firefighter is unable to meet the fitness requirements of the fire and rescue service, and there are no redeployment opportunities.

The consultation document lists certain payments and groups of workers who that are exempt from this proposal. We would hope that in line with the parliamentary guarantee, the framework amendment's, and scheme rules that this exemption is broadened to include firefighters in the situation outlined.

The FBU has already written to the DCLG fire minister Mark Francois (11 August 2015) requesting an exemption and further discussion on this important issue.

Fire control staff pensions

These proposals also have implications for fire control staff, the majority of whom are FBU members and who belong to the Local Government Pension Scheme (LGPS). It is important to understand the levels of pay for workers in fire control. The annual salary for a fully-trained control employee is currently £26,790. That compares to average weekly earnings for the whole economy of £488 per week, or £25,376 per annum.

The additional cost that is in issue for these workers, if they are made redundant, is the cost of waiving an actuarial reduction. It is not the case that they are

credited with the years of pensionable service that they will not be able to complete because they are made redundant.

They are also workers in a sector where the workforce is shrinking and redeployment opportunities are rare.

Yet the inclusion of redundancy pension costs in the scope of the exit payments addressed by the consultation means that control workers who are aged between 55 and state pension age are caught by the proposed cap. In short, they are moderate earners who are caught in the trap of being made redundant with limited future employment prospects. They are not the high earners that the consultation paper appears to be addressed at.

The FBU notes the statistics presented in the consultation paper, which say that there were a total of 72,445 exit payments worth more than £100,000 in 2013-14. What is not clear is how many of these payments related to early payment of pensions, and of those payments, what the average pension in question amounted to. Without that breakdown, it is impossible to say how much of a problem early pension payments are.

There may be legitimate policy reasons for limiting the payment of large one-off lump sums on early termination of employment (unless the reason for payment is to settle a legal claim), but we cannot see any justification for reducing the pensions that hard-working and long-serving employees on very ordinary earnings will receive if they are made redundant. In particular:

- If the cap includes pension payments, it will affect only workers who are over the age of 55. These are precisely the workers who will find it hardest to find alternative employment
- The turnover of staff in fire control is low. If the cap is applied to pension payments as well as termination lump sums, it is the longest-serving workers who will be affected
- If redundancies have to be made and volunteers are sought, it is this group of workers which is most likely to volunteer if they can afford to do so. If their pensions are reduced by half and they have limited alternative employment prospects, they will not do so. It becomes far more likely that compulsory redundancies will be made, causing industrial relations difficulties
- Whilst we can see that fire authorities will retain a discretion (under the proposed revised LGPS Regulations) to allow an immediate and unreduced pension, and will have a further discretion in "exceptional circumstances" not to apply the proposed cap to pensions, we find it inconceivable that fire authorities will permit early retirements with a unreduced pension if fire control workers are made redundant over the age of 55. Having discussed the issue with authorities in the context of possible early retirements for uniformed staff, we know that the likely reaction will be sympathetic, but any discretion will not be exercised in favour of redundant workers for financial reasons.

The LGPS that was introduced in April 2014 included a 25 year guarantee outlining that unless the cost cap was breached there would be no need for further amendments. This guarantee was consistent with other public service pension proposals. Fire control staff will feel betrayed if the right to early retirement with an unreduced pension, if they are made redundant, is taken away from them less than two years later.