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# **FDA RESPONSE TO HMT CONSULTATION ON THE RECOVERY OF PUBLIC SECTOR EXIT PAYMENTS**

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## **RECOVERY OF PUBLIC SECTOR EXIT PAYMENTS**

### **FDA RESPONSE**

The FDA is a leading trade union representing senior managers and professionals in public service. Our 20,000 members include civil service administrators, policy advisers, tax inspectors, schools' inspectors, lawyers, economists, diplomats, museum staff and statisticians. We were central in the negotiations reforming the Civil Service Compensation Scheme in 2010 leading to an agreed package of reforms that the government assured us would be a lasting arrangement. We are therefore deeply disappointed that HM Treasury is proposing to impose further changes without, as far as we can tell from this consultation, any evidence suggesting a requirement to do so.

The consultation itself proposes few changes to the civil service approach to exit payments all of which, even when combined, would not warrant the cost of this consultation process and administrative changes proposed. In terms of value for money therefore, the FDA questions the financial sense of these proposals.

Notwithstanding the reform of the Civil Service Compensation Scheme in 2010 which was agreed with this government and presented as comprehensive, there are currently a plethora of consultations/reforms affecting this area of civil servants' core terms and conditions that seem, at best, uncoordinated. If an area of such significance as redundancy process and compensation is to be reformed again, the FDA would prefer a holistic approach with government setting out its objectives and initiating an informed and engaged dialogue, including where contractual changes are sought, negotiation.

### **Consultation Questions – FDA Responses**

**Question 1: Are there additional exit payment arrangements in the public sector not captured in this section which the government should be aware of? If so please provide information and examples.**

N/A

**Question 2: What other recovery provisions are you aware of in the public sector that the government should be aware of?**

N/A

**Question 3: Are you able to provide additional information in relation to instances of rehiring shortly after redundancy that would be relevant to this consultation?**

The FDA is concerned that no evidence is provided in this consultation that relates to the civil service. Since the reforms in 2010 there has been provision for the recovery of exit payments for those rehired shortly (within six months) after redundancy yet no statistics have been provided showing how many times this has occurred. Given no information is provided we would suggest that this means that there have been few, if any occurrences in the last four years. Similarly it would be logical for government to support the case for change by showing how many civil servants in this situation have been rehired between six and twelve months after exit, in terms of assessing impact this information is important and we would request it is provided before any decisions are made.

**Question 4: What additional information or data is relevant to the government's assessment of existing exit payment arrangements as set out above? Do you agree with this assessment?**

As reflected in the response on question 3 above, there are a number of pieces of information that should be sought and made available. The FDA believes if this transparency was forthcoming, government would find an alternative course of action: the prioritisation of a viable redeployment policy across the civil service more cost effective and successful – to the benefit of both the public and civil servants.

Additional data relating to civil servants earning £80,000 and over that the FDA sees as relevant to these proposals:

- Number of exit-rehires 2010-14 including the proportion being rehired within six months, between 6 and 12 months and over 12 months;
- Average and total amount recouped through the existing recovery arrangements;
- Potential amount that would have been recouped if recovery was required for individuals rehired between six and twelve months of exit;
- Cost of relevant administrative changes required by these proposals;

- Assessment of number of individuals likely to return some or all of their exit payment as a result of these proposals;
- Assessment of amount of money likely to be recovered as a result of these proposals;
- Assessment of the cost of delaying the hiring of qualified individuals who would be disinclined to return to the civil service as a result of these proposals;
- Assessment of the cost of enforcing these proposals including the cost of providing all the necessary information individuals will require in order to ensure they meet their legal obligations as proposed in this consultation; and,
- How many consultants (on any salary) currently working for the civil service have previously received exit payments following employment as a civil servant.

The FDA's assessment of the situation outlined in chapter three of the consultation is that there has been a chronic failure of redeployment. In the case of the civil service, the government has removed any redeployment policy for the Senior Civil Service (the group of civil servants most likely to be covered by these proposals). There is no agreed protocol for addressing SCS redundancies, no system of supporting redeployment and no incentive for employers to assist their staff in finding alternative employment in the sector.

In the background section of this consultation, it states, in paragraph 1.4 that "Employers will normally make every effort to find alternative employment for employees where their services are no longer required." This is not the FDA's experience. We believe the more effective approach to ensuring fairness and value for money for the taxpayer would not be through imposing a legal obligation to return exit payments (which entails significant practical obstacles) but by introducing a comprehensive and effective redundancy handling and redeployment policy. The FDA would be very happy to enter into discussions with government about the provisions of such a policy and have made this request repeatedly.

**Question 5: Do you agree that the government should introduce nationally determined rules on the recovery of exit payments where higher earning employees re-enter the public sector?**

No, the FDA does not agree that employee management by legislation is a sensible way to proceed. As reflected above, we believe that attention should be given to an effective redeployment and redundancy handling process not a series of legislative provisions that are administratively cumbersome, probably unworkable and introduce an unnecessary inflexibility that will make it harder for civil service employers to manage their workforce.

The consultation seems to propose a rationale that because there are perceived issues in the NHS and local government with exit payments and rehiring that there should be cross public sector legislation to address these. The FDA does not believe this is an appropriate or proportionate response and any judicious assessment of the likely costs and benefits of this approach in the civil service would be bound to conclude that it did not meet any value for money test either.

**Question 6: What alternative proposals would better achieve the government's aims? Please provide evidence, examples and/or data to support your response.**

If government provided data on the rehires since 2010 that would have been covered under these proposals it would be possible to examine what, if any, redeployment assessments took place and why they were not sufficiently effective to prevent this situation emerging.

As set out above, in the civil service there is no redundancy handling and redeployment policy for the SCS and the FDA believes this situation should be rectified before any arbitrary changes to exit payment recovery are imposed.

**Question 7: Under the government's proposals, do you agree with the proposed approach to defining the subsectors across which exit payments would be recoverable? If not what alternatives would you suggest and why?**

The FDA is concerned that the approach being taken is unworkable and as a result of the obligation to be placed on the individual, potential skills that would be available to the civil service will be denied as individuals decide the risk is too great and are dissuaded from taking up employment with the civil service.

The definition of the 'civil service' sector is unclear. The ONS data referred to in the consultation is not designed for this purpose, and the regular updates to their tables ably illustrate the issue of the accuracy of information an individual may have at any point. It is not clear whether the assessment of sector is made at the time of exit or rehire as it is perfectly possible for one or other organisation to have, a) not existed when the exit payment was made, b) not been in the same sector when the exit payment was made, or c) the original organisation may no longer exist. If government does proceed with this proposal, significantly more clarity will be required.

Currently, there are approximately 870 organisations listed under the 'central government' category of the ONS data set. This list includes museums and museum related organisations that the consultation states (but does not define) are exempt, we are aware there are lists of National Museums for the purposes of financial freedoms and other arrangements but clarity on the definition will be required. In addition there are a myriad of corporate and other organisations that are 'linked' to civil service departments. The FDA believes that is an untenable number and variety of organisations for an individual to be aware of when seeking new employment (which presumably the government does expect staff who have been made redundant to do).

**Question 8: Do you agree that similar limits should apply to employee benefits from early retirement on unreduced pension (where this option is available) on the basis outlined above?**

The FDA appreciates the reference to the government's belief that the "recent reforms to public service pensions represent a settlement which should last for at least 25 years, if not longer ." (Para 4.7) However, in this context it is difficult to reconcile this with the HM Treasury announcement that the minimum benefit age of public sector schemes will rise to 57 and beyond.

On early retirement individuals commonly utilise a lump sum provision to clear mortgage or other debts. Requiring the repayment of this amount will be likely to require further borrowing and cost which will all be at the individual's expense. Abating the pension in payment for the period of the subsequent employment is the process that has previously been used to ensure an appearance of fairness in this situation, unravelling complex financial arrangements is both costly for the individual and unnecessarily complex for the administration of the scheme – a cost that is then paid by employers. This seems unnecessarily punitive and a somewhat pyrrhic move as it will actually result in greater cost to employers should any individual actually return to the civil service within the stipulated timescale (which, as we have indicated above, we believe to be very rare).

**Question 9: Do you agree that the payments listed above should be in scope for the purposes of recovery on reemployment within the public sector under the terms set out in this consultation? Are there further payments that the government should include? Do you believe certain payment types should be excluded? Please provide a rationale and examples.**

The FDA believes it is fundamentally wrong, and contrary to natural justice and fairness for government to seek to unilaterally change individuals' contractual entitlements. We therefore do not accept that it is appropriate to include contractual compensation, payment in lieu of notice payments or payments representing the value of fixed term contracts. In addition it is impractical to include payments that do not have an actual monetary value as an arbitrary value would have to be attributed to them which is both cumbersome and contrary to the intention of such elements.

Redundancy payments, voluntary exits, discretionary payments, efficiency payments and special severance arrangements will be devalued as a result of these proposals. Already it is the case that most, if not all, or these arrangements for the highest earners are scrutinised by one or more of the Secretary of State, Cabinet Office and HM Treasury. Instead of seeking repayment, the FDA suggests greater effort is placed on finding alternative employment. Penalising individuals who may have made binding financial decisions on exit because the redeployment option was not properly explored is unfair and counterintuitive. Before any provision is made to introduce these more punitive arrangements, the FDA seeks a genuine engagement from the government, as employer, on a redeployment process for the Senior Civil Service.

**Question 10: Do you agree with the proposed terms for the recovery of exit payments on reemployment? What alternative approaches would you suggest and why?**

The recovery approach is administratively complicated and has a significant likelihood of costing more to police and enforce than the value of the monies recovered. The FDA contends that this does not therefore meet the government's own value for the taxpayer tests.

The consultation does not make clear how an individual is supposed to repay an employer for buying out an actuarial reduction without incurring consequential tax relief and other issues. Abatement in these circumstances is a simpler mechanism but the FDA recognises that to re-introduce abatement would constitute a further breach of the government's 25 year commitment on pension reform.

**Question 11: Do you agree with the proposed measures for compliance and enforcement of recovery of exit payments?**

The FDA is deeply concerned about the obligation placed on the individual to abide by such a complex, changeable and ill-defined set of processes. Requiring the individual to understand whether or not 'they have received an exit payment in scope of the policy' is not likely to secure compliance, not least as the myriad of employers government intends to be covered



by this policy are not clearly listed anywhere (including on the ONS list referenced in the consultation) and change on a monthly basis. All the documents surrounding exit payments will have to be rewritten to inform individuals of their obligation and provide clear guidance on how they are supposed to meet them. The FDA would also suggest the government provides dedicated support resource to assist individuals who may or may not fall into this situation.

**Question 12: Do you agree with the proposed mechanism for targeting the recovery provisions? If you disagree, what alternatives would better achieve the government's aims as set out in this document?**

Having tapering further complicates an already prohibitively complex proposal. HM Treasury should produce evidence that the money recovered from those covered by tapering would exceed the cost of implementing it. Again, if the obligation is on the individual to know they are in scope, clear communication is imperative. The consultation does not mention any indexing of amounts. Both the £100,000 threshold and the tapering to £80,000 seem utterly arbitrary. Is government's intention that over time more individuals will be covered by this policy?

**Question 13: Do you agree that the government has established the correct scope of bodies for the implementation of this policy?**

We do not think the government has made clear the scope of bodies covered by this intended policy. There is no clear definition either in this consultation or on the ONS website. There is no list provided of 'National Museums' or in fact 'Armed Forces'. The FDA contends that as the consultation recognises for the Armed Forces, "Compensation and resettlement payments make up a core part of the overall remuneration and reward package" and the arbitrary restriction of these elements has a negative impact on employers' capacity for flexibility and responsiveness.

Individuals caught by this policy should be sent a list of the relevant employers regularly during the 12 month period, without this it will be prohibitively difficult for them to comply. Inevitably this is likely to deter individuals from applying for employment with the organisations listed.

**Question 14: Do you believe that there is a more appropriate way of delivering the government's stated aims, either through use of a different definition or a different approach to setting the scope of the policy?**



Given the cost of the exercise and ongoing cost of compliance, the FDA believes that is not possible for government to meet its objectives and the value for money test by means of these proposals.

**Question 15: Do you agree with the proposed terms for the exemption of the recovery of exit payments on reemployment?**

The FDA believes it will be necessary to exempt payments made to settle statutory or similar disputes if government intend for these settlements to take place. We do not believe many individuals would deem it acceptable to settle a claim with such a major caveat in place.

As set out above, exit arrangements in the civil service are already heavily scrutinised and we do not see any benefit in adding a further layer of bureaucracy to a process that is already unnecessarily complex yet lacking in the crucial area of redeployment. We see a better approach to redeployment and the best means of achieving value for money for the taxpayer and fairness for those employed in public service.

**Question 16: Are there other impacts not covered above which you would highlight in relation to the proposals in this consultation document?**

As stated above, before proceeding the FDA urges government to make a proper assessment of the costs of introducing, implementing and enforcing this policy. This would include the cost of any potential legal challenges and the opportunity cost of discouraging qualified, experienced individuals from returning to work in the sector and the cost of continuing to employ individuals for whom the employer would have otherwise been able to negotiate an exit. As no information has been provided in relation to the civil service so far, we are unable to comment further.

**Question 17: Are you able to provide information and data in relation to the impacts set out above?**

Given the lack of clarity in these proposals and incomplete evidential basis we are not able to provide additional information at this stage.