NASUWT
The Teachers' Union

CONSULTATION RESPONSE

HM Treasury
Consultation on a Public Sector Exit Payment Cap
27 August 2015

1. The NASUWT welcomes the opportunity to comment on HM Treasury's Consultation on the proposed Public Sector Exit Payment Cap.

2. The NASUWT is the largest teachers' union in the UK representing teachers and school leaders.

GENERAL COMMENTS

3. The NASUWT has not replied to the specific questions in the Treasury consultation, which presume a degree of acceptance of the proposals, but has responded more generally to the claims and proposals set out in the consultation document.

4. The NASUWT does not accept the premise of the Conservative Government's announcement on 23 May 2015 that there is a need to end six-figure 'exit payments for public sector workers'. This has been presented for public consumption as a move to rein in 'fat cats' who benefit from large exit packages paid for by taxpayers. However, this presentation is deeply misleading as the Government's proposals do not specifically address this. In fact, those public financial corporations and subsidiaries which have made unacceptably high exit payments to

senior staff and executives, which have been cited by the Government, are excluded from the scope of the proposal.

5. It is simply inaccurate for the Treasury proposal to be described as a redundancy cap, as portrayed by elements of the media.

6. The Treasury proposal is that a series of statutory and contractual entitlements for many public sector workers, together with early occupational pension release, should be costed and aggregated to form a notional ‘exit package’ cost, which will be subject to the cap. The reality is that the Treasury proposal amounts to a Government attack on the terms and conditions of many public sector workers who are moderate earners and could affect many public sector workers who receive redundancy payments well below the proposed £95,000 level of the cap.

7. The NASUWT believes that the Government’s proposed public sector exit payment cap is a continuation of the onslaught on public sector workers, which follows five years of savage cuts in public expenditure, leading to widespread job loss, deep cuts to pay and increases in pension contributions. Such attacks have already reduced the living standards of public sector workers to unacceptably low levels, making millions of public sector workers intensely vulnerable. It is appalling that the Government intends to cause further hardship.

8. The costings provided by the Government do not justify the proposed exit payment cap. The Government claims that, ‘*between 2011-12 and 2013-14 the cost of exit payments in the public sector was around £6.5 billion. More than £1 billion of this cost came as a result of exit payments costing more than £100,000.’* Eighty-five per cent of the expenditure on exit payments, as defined by the Government, was on payments of less than £100,000. In any case, this total cost of £6.5 billion has been driven by the Conservative-led Coalition Government’s savage public services policies, which resulted in significant job loss between 2010-15, a process which is set to continue.

9. The NASUWT has consistently supported, as an alternative, the option that public spending should be on delivering high-quality public services, rather than on the costs of closing them down.

10. The NASUWT believes that the real purpose of the Conservative Government's proposed exit payment cap is clear when consideration is given to those cases for whom the cap would not apply. Fred Goodwin, previous CEO of the Royal Bank of Scotland, who presided over the financial meltdown of the Bank which led to its nationalisation, reportedly receives a pension of £342,500 per year after taking a £2.7 million pensions lump sum. Mark Byford, former director-general of the BBC, reportedly received a settlement of between £800,000 and £900,000 when he left the BBC. These payments and the organisations in which they worked are specifically excluded from the Conservative Government's proposed cap.

11. It is, therefore, risible for the Government to claim that the proposed public sector exit payment cap would achieve value for money to the taxpayer.

12. The NASUWT wishes to draw to the attention of the Treasury the following public sector exit payments which would not be addressed by the cap. This should not be taken as an indication that the NASUWT supports the proposed cap, or its extension to those government bodies which the Treasury currently proposes to be out of scope, but rather that, by excluding the following types of case, in addition to the cases of Fred Goodwin and Mark Byford, the proposed cap does not begin to achieve what the Government has proclaimed to be its primary purpose, that of achieving value for money for the taxpayer.

Examples of evidence which support this are listed below.

The National Audit Office has concluded that weak governance arrangements in the BBC provided poor value for money, put public trust at risk and meant that two out of three Executive Directors who were paid salary in lieu of notice received more than their entitlement. [1]

The proposed cap will not address the profligacy of public financial corporations and subsidiaries in paying salaries and bonuses:

- the current Governor of the Bank of England's £874,000 annual pay package, which includes a £5,000-a-week housing allowance;
- the decision of the Royal Bank of Scotland to give ten executives share awards totalling £3.5 million under a new pay scheme in August 2014, to circumvent new European Union rules on bankers' bonuses;
- the payment of bonuses of many thousands of pounds each to senior managers and directors of Northern Rock, as it hovered on the brink of collapse in 2008 and was being propped up by millions of pounds of taxpayers' money.

13. The Government has not demonstrated any rationale for selecting a cap figure of £95,000, other than for the emotive public impact of defining a six-figure exit payment sum as an excessive payment.

14. Of further concern is the statement in the consultation document that, '*In addition to this measure to cap the value of the highest exit payments, the government is also keen to ensure that exit payments in the public sector more widely offer a proportionate level of support to employees and are value for money to the taxpayer. The government is therefore considering further reforms to the calculation of compensation terms and to employer-funded early retirement in circumstances of redundancy.'* Exit packages for teachers facing

[1] National Audit Office, *Severance payments for senior BBC managers: supplementary note,* September 2013

redundancy are not excessive and there is no need for reform to the calculation of such compensation terms.

15. Redundancy compensation terms in schools are often determined by agreement, but where redundancy payments are higher than statutory redundancy pay, these are normally calculated on the basis of actual salaries. The NASUWT firmly believes that the level of redundancy payments should continue to be a matter of agreement between unions and employers. It is inappropriate for the Government to impose statutory redundancy pay as the only option.

16. The NASUWT also opposes the use of primary legislation to set a legal requirement that relevant public sector organisations do not compensate individuals for redundancy in excess of the £95,000 cap unless a Ministerial exemption has been granted, irrespective of how the nature of an exit payment is determined.

17. The NASUWT believes that applying the cap to all forms of exit payment may well breach the statutory and contractual entitlements of public sector workers, including teachers. The NASUWT opposes the definition set out in paragraph 3.1 of the consultation document of exit payment, which includes statutory and contractual entitlements such as redundancy payments, holiday pay and payments in lieu of notice. It is unacceptable to seek to over-ride contractual entitlements. The NASUWT also opposes the proposal that the cap should apply to exit benefits taken individually or in combination. These are unwarranted, unjust and unfair provisions.

18. There is a statutory entitlement to notice pay, which is dependent on length of service and increases up to 12 weeks' notice pay for workers with 12 or more years' of continuous employment. An arbitrary imposed cap cannot breach this.

19. Teachers' contractual entitlements to notice, which include notice pay, are a component of teachers' national terms and conditions. In

circumstances where a teacher receives a payment in lieu of notice, this is invariably by agreement with the Employer and usually at the Employer's request. In many circumstances, such payments are wrapped up in a settlement agreement amount. Such agreements are often at the Employer's request. A similar approach is often taken to holiday pay in many settlement agreement amounts – the amount reflects the salary which the teacher would receive should they continue in work until their earliest date of dismissal. It is neither fair, nor in the interests of employers and local authorities, for such payments to be included in an exit payment cap.

20. The NASUWT also opposes the definition in paragraph 3.1 of early access to unreduced pension for employees that have reached their minimum pension age as an exit payment which should fall within the scope of the cap. There is an entitlement in the Local Government Pension Scheme for members who are being made redundant at age 55 or over to receive their pension without actuarial reduction. In the Teachers' Pension Scheme (TPS), this is not an entitlement but is a discretion which employers can exercise to manage redundancies in accordance with statute, which places a duty on employers to take action to avoid or reduce the number of redundancies or mitigate the impact of redundancy. The NASUWT believes that it would militate against employers fulfilling their statutory duty in respect of redundancy should restrictions be placed on the full use of TPS flexibilities to achieve this. Employers should be allowed to continue to exercise that discretion.

21. The numbers of teachers facing redundancy and receiving early access to unreduced pension are not high and this is a discretion which has been exercised less frequently since 2010 because of pressure on school and local authority budgets. In circumstances where the discretion has been exercised, this has almost always, in recent years, taken the form of the employer or local authority meeting the cost of

mandatory premature retirement compensation only, which does not award any added pensionable years to the teachers' pension.

22. However, whichever form of premature retirement compensation is awarded, this is paid until the recipient's death by the employer or local authority. The level of the pension in payment is nearly always the determining factor in persuading a teacher, at the end of their career, who is unlikely to obtain further regular employment as a teacher, to accept any offer of voluntary redundancy. It is completely unacceptable for completed early retirement agreements to fall under the scope of the proposed cap and for the level of pensions in payment for teachers who have taken early retirement to be jeopardised. This has the potential to cause hardship to teachers who have planned their retirement and the Union will use all appropriate means at its disposal to challenge this.

23. The TPS has recently undergone a process of drastic reform, which culminated in the introduction of the reformed TPS on 1 April 2015. This process was accompanied by a guarantee on the part of the Government that there would be no further change to teachers' pensions for 25 years. A change to the Teachers' Pension Regulations, to limit the level of premature retirement compensation which scheme members can receive, would break the 25-year guarantee given to Parliament.

24. The teachers' enhanced severance regulations provide for a maximum discretionary payment of 104 weeks' pay. The NASUWT's experience is that enhanced severance payments at this level are not commonplace, but the Union firmly believes that employers should retain the flexibility to manage job loss by utilising such discretions when appropriate.

25. The 2013-14 data provided by the Treasury, for the purposes of the consultation, groups together local government, fire and local authority-maintained schools into one category, with a total exit-packages cost of

£0.75 billion. From this, 660 packages cost more than £100,000 each. It is impossible to differentiate schools within this category but, given the widespread job loss in local government and the entitlement of redundant employees in the local government pension scheme aged 55 or over to access an unreduced pension, it is a reasonable supposition that the majority of these packages will be in local government. Given the Treasury's definition of an exit package, this data could not conceivably be used to indicate excessive spending on exit packages.

26. The NASUWT is opposed to the inclusion of 'special severance payments', under the Government's definition in paragraph 3.1, being brought within the scope of the cap.

27. In addition to opposing the inclusion of settlement agreement amounts within the cap, the NASUWT considers the proposal with regards to payments made *'following litigation'* to be ambiguous. For the avoidance of doubt, the NASUWT opposes the inclusion of payments to settle litigation within the cap.

28. Whilst the NASUWT accepts that service in the Armed Forces can lead to lifelong impacts at a relatively young age, the NASUWT recognises that a case can be made for the Armed Forces to have a 'flexible and responsive set of remuneration responses. 'However, the NASUWT believes that this should apply across the whole of the public sector, including the education service.

29. The consultation document's assessment of the potential social impacts of the proposals are particularly inadequate. The reliance on 'truisms' such as *'implementing a cap on exit payments will result in some individuals receiving a lower exit payment than they would receive under the current system',* together with, '*the effects will depend partly on employer decisions as to the numbers and earnings levels of those who volunteer, or who are otherwise selected, for exit',* is unacceptable. The NASUWT expects the Treasury to take steps to

estimate the impact of its proposed policy on groups of public sector workers, broken down by protected characteristics.

30. The consultation does acknowledge the impact of the proposals on older workers. There would be an immediate potential detrimental impact on public service workers who are entitled to the highest redundancy payments, by virtue of length of service and also, currently, an unreduced pension if made redundant at age 55 or over. However, the Government has selected those parts of the public sector with a majority female workforce – education, health and local and central government – for the implementation of the proposed exit cap, and the policy is therefore potentially discriminatory on grounds of gender, at the very least.

31. In conclusion, the NASUWT strongly opposes the Government's proposal for a public sector exit cap. The Union believes that the proposal is unjust, unfair, unnecessary and potentially discriminatory. Further, it has been presented to the public on a false premise. Any 'savings' accrued by these proposals would be at the expense of the welfare and wellbeing of public sector workers and their families, often at the most vulnerable point of their lives. It is unacceptable that these workers and their families continue to bear the brunt of the Government's ideological opposition to public services, its preference to safeguard the wealthy, and its flawed policies which squander public money such as underselling public assets.

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