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FDA RESPONSE TO HMT CONSULTATION ON A PUBLIC SECTOR EXIT CAP

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HMT CONSULTATION ON A PUBLIC SECTOR EXIT CAP

FDA RESPONSE

Introduction

1. The FDA represents almost 20,000 senior managers and professionals working in the civil service, public bodies and the NHS. We are deeply concerned about the consequences of imposing the proposed public sector exit payment cap in the absence any consideration of the repercussions for the management of the public sector. The FDA believes the policy is flawed, will provide poor value for money for the taxpayer, make the management of change more difficult and fail in its objectives. This policy will further demoralise an embattled public sector that is already facing a further five years of pay restraint, hundreds of thousands of job cuts and increased workloads.
2. The FDA urges the government to rethink its approach and engage in positive dialogue with unions in order to achieve its stated objective rather than initiate a rushed consultation and policy imposition without any appropriate safeguards.

Summary

3. This submission sets out the FDA's views on both the process and content of the consultation launched on 31 July 2015. Our reasoning and evidence is set out in detail below.

In summary our views are as follows:

- This consultation is flawed and does not comply with the Cabinet Office Consultation Principles contrary to the statement made in the consultation.
- The current approach, requiring Ministerial approval for any proposed exit payment valued at £95,000 or above, already heavily restricts exit payments for both longer service individuals and higher paid individuals. This is to the detriment of the smooth running of the service and legislating to inhibit any mitigation of the problems caused by this approach will worsen this situation still further.

- The Government should honour the recent agreements reached in good faith with Ministers and not seek to impose arbitrary policies on workforces without any tangible consultation or engagement.
 - The Government's intended policy will cap the exit payments of the public sector's longest serving employees who have dedicated their working lives to public service, some of whom earn below the UK average wage.
 - Government should introduce redeployment processes for public sector workers where no such processes currently exist such as for the Senior Civil Service.
 - The impact of the proposals on public sector employers has not been reflected in this consultation. In isolation these proposals will make the delivery of other government objectives and the management of change significantly more difficult.
4. This submission details each of these points below before briefly addressing the specific questions set out in the consultation document.

Consultation

5. The consultation states in paragraph 2.6 that it is being run in accordance with the Government's Consultation Principles. The FDA disputes this.
6. The consultation was launched on 31 July 2015 with a deadline of 27 August 2015. The Consultation Principles state that: "Timeframes for consultation should be proportionate and realistic to allow stakeholders sufficient time to provide a considered response and where the consultation spans all or part of a holiday period* policy makers should consider what if any impact there may be and take appropriate mitigating action." The footnote to this paragraph makes clear that the holiday period includes "Summer (August) = 22 Working Days (4.2 Weeks)". This is the entire period of this consultation (save for 31 July itself when the consultation was launched). The FDA does not believe this timeframe is either proportionate or realistic.
7. The timeframe is not realistic because it does not give unions time for full consultation with members. It does not allow enough time to gather the relevant evidence (from civil service and other public sector employers) to provide as considered and evidence based a response as the FDA would normally submit. We do not believe that "the capacity of the groups being consulted to respond" has been taken into consideration as is stipulated in the Consultation Principles.

8. According to the information referred to in the consultation there are thousands of employers and therefore hundreds of thousands of employees that come under the scope of these proposals, yet no efforts seem to have been made to inform them of this fact. Organisations from the Aberdeen Harbour Board to the Zoos Forum are on the ONS public sector list however, it is very unlikely that all these employers, let alone their employees, will be aware that their views are being sought.
9. The timeframe is not proportionate because there has been no prior discussion with those affected by this policy or their representatives. There has been no engagement of civil servants (or other public servants) or their representatives in the policy making process. The information contained in the consultation is sketchy and in part misleading. To take one example, the consultation claims that “Employers will normally make every effort to find alternative employment for employees where their services are no longer required.” [Paragraph 2.1] For civil servants, and particularly senior civil servants (the SCS) this is simply not the case. As the FDA pointed out in response to the previous government’s consultation ‘Recovery of Public Sector Exit Payments’ [available here: <http://www.fda.org.uk/Media/Whats-new/FDA-response-to-recovery-of-public-sector-exit-payments.aspx>], while it would clearly be in the interests of the individuals concerned and the taxpayer, there is currently no functioning, resourced, workable policy of redeployment for the Senior Civil Service. The FDA has continually sought to engage with HM Treasury and Cabinet Office in order for such a process to be introduced but so far with no demonstrable success. This consultation therefore presents a misleading image of the handling of redundancies in the civil service.
10. The FDA calls on the Government to engage in meaningful consultation with the FDA prior to conclusions being reached and proposals implemented.

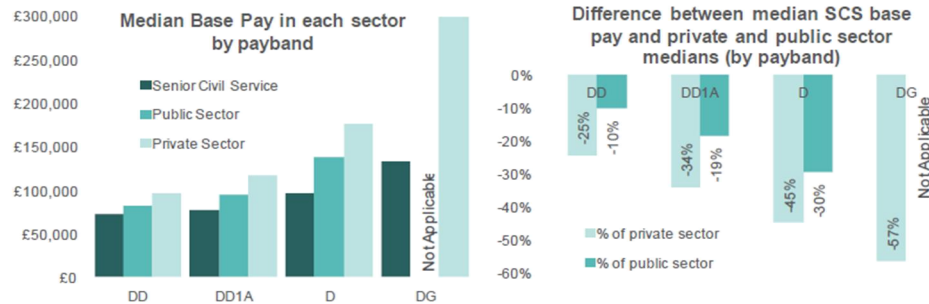
Civil Servants’ Exit Payments

11. In 2010 the FDA and certain other civil service unions agreed a set of reforms to the Civil Service Compensation Scheme with the then Cabinet Office Minister, Francis Maude. The Civil Service Compensation Scheme is the key scheme applicable to civil servants who are made redundant or who volunteer to exit the civil service (at the employers’ instigation, usually as part of a redundancy mitigation exercise). This agreement, which has produced significant savings for the taxpayer since its introduction, is integral to the FDA’s response to this consultation and is discussed further below.

12. The Government consultation does not describe the current process for ‘high value’ exits in the civil service. Since July 2014 the Cabinet Office has authorised (or not) any exit under the Civil Service Compensation Scheme that is valued (on the same basis as this consultation values an exit payment) at £100,000 or more. More broadly the Minister has always had discretion in regard to the granting of exit payments to civil servants. Authorisation is only granted when such an exit meets the criteria set down by the Minister for the Cabinet Office. Since 23 June 2015 this threshold has been reduced to £95,000 and the current Minister for the Cabinet Office has taken personal charge of the authorisation of such exit payments. It follows therefore that every exit over and above the cap now being proposed has been deemed by the government to be appropriate. If this is the case, what is the justification for further legislation?
13. The Civil Service Compensation Scheme provides payment for civil servants exiting the service either voluntarily through voluntary exit or voluntary redundancy, or compulsorily through compulsory redundancy. The voluntary provisions are primarily used by employers to reduce the size of the workforce without recourse to compulsory redundancies. Employers across all sectors, not just the public sector, appreciate that achieving workforce reductions and changes to the employee profile through voluntary exits is preferable to a process reliant on compulsory exits.
14. The statutory redundancy scheme and almost all private sector redundancy arrangements provide greater exit payments for those with longer service. In part this is in recognition of the length of time employees have worked for, and been loyal to, an employer. In fact, the ACAS guide for employers on redundancy handling includes early retirement as a viable measure for minimising or avoiding compulsory redundancies. The Civil Service Compensation Scheme follows this model. The voluntary exit terms can vary, given the relevant Cabinet Office approval, but at the maximum possible payment (typically for voluntary redundancy) this incorporates a facility for employees to take early retirement without enduring a crippling (potentially 50%) reduction to their pension on top of the lost working years that exiting the service necessarily brings. The importance of this provision is often overlooked by the Government (though not individual employers faced with managing down the size of their workforce).
15. Public servants, and civil servants in particular, often devote decades of their lives to public service. Many could earn greater salaries in the private sector

but they continue to work in the public sector. These charts below are from the Government’s own 2014 evidence to the Senior Salaries Review Board:

Pay is behind other sector comparators and the differential is larger for the most senior posts. The gap widens when total remuneration (bonuses and benefits) is taken into account.



16. The civil service has empirically more employees with longer service than the private sector (a feature also common to in other areas of the public sector) yet the Government’s proposed policy does not seem to recognise this fact. On the contrary, this proposal seeks to apply direct detriment to longer serving employees whose only ‘fault’ is to dedicate their careers to public service.

17. The absence of a viable redeployment process for many in the civil service, most notably the SCS, runs in contravention of value for money for the taxpayer; normal practice for large employers embarking on redundancy exercises; and ACAS guidance for employers on redundancy handling which states, “Employers should consider whether employees likely to be affected by redundancy can be offered suitable alternative work. Where alternative work is available within the employer’s own organisation or with an associated company, the employee should be given sufficient details to enable him or her to decide whether to accept or not. The search for alternative employment should extend, if possible and appropriate, throughout the group of which the company forms a part.” The FDA believes the civil service should follow best practice in this regard and institute, ahead of any imposition of an arbitrary cap, an appropriate redeployment process for all civil servants including the Senior Civil Service. This would require a resourced process for civil servants and their employers to be aware of redeployment opportunities throughout the civil service, not solely with their current employer as is generally the case now.

18. The current Civil Service Compensation Scheme is already capped for high earners with a maximum pay threshold set in 2010 of £149,820. Unlike the proposals in this consultation, that does limit the exit payments of higher paid individuals (as opposed to longer serving individuals).

2010 Agreement

19. On election in 2010, the previous Government sought to reduce the cost to the taxpayer of the Civil Service Compensation Scheme. This followed moves by the government before that to do the same earlier in the year. After detailed and intensive negotiation, the FDA reached an agreement with the Minister for the Cabinet Office, Francis Maude, on reforms to the Civil Service Compensation Scheme alongside Prospect, GMB and Unite. These reforms were described by the Conservative Minister as “right for the long term”.
20. Earlier this year that agreement, and those discussions in which the FDA was involved, were described in similarly positive terms by the then Minister in the House of Commons saying, “Some important reforms implemented under the coalition Government, such as changes to the civil service compensation scheme and public sector pensions, were the subject of extended and constructive discussions with a range of public sector trade unions, and I am grateful to union leaders for the forward-looking and thoughtful way in which they have engaged with the need for reform.” (Hansard 10.3.15)
21. The FDA is, therefore, surprised and angered by the lack of discussion ahead of this consultation and the apparent decision to unilaterally override the revised terms without any regard to the 2010 agreement that was deemed to be a ‘lasting agreement’ and fit for the longer term.
22. In purely practical terms, the then Minister recognised that incentivising voluntary exits was advantageous to a government that was seeking to reduce the size and cost of the civil service. The current Government is again seeking to make substantial reductions to the number of jobs in the civil service but is now seeking to greatly inhibit employers tasked with delivering on this policy objective.
23. Provisions requiring meaningful consultation on any changes to the Civil Service Compensation Scheme were a key part of the 2010 agreement. The Superannuation Act 2010¹ includes a clear requirement that future consultation on any changes must be undertaken with a view to reaching agreement. The Act requires a report to be made to Parliament setting out

¹ <http://www.legislation.gov.uk/ukpga/2010/37/section/2>

the details of the consultation that had been carried out with the relevant trade unions. These provisions were put in place to give members reassurance that the 2010 agreement to reform the Civil Service Compensation Scheme would be lasting. The intention to legislate appears to bypass the safeguards that the last Conservative Minister for the Cabinet Office put in place. It is hard to see how any consequential consultation in the civil service following the imposition of legislation can be seen as meaningful

HMT Proposal and Impact

24. As indicated above, while the Government's stated objective is to cap the exit payments of the public sector's highest earners, the reality will be quite different. The Government's policy will cap the exit payments of the public sector's longest serving employees, some of whom earn below the UK average wage.
25. When this policy was proposed ahead of the 2015 election, the Conservative press announcement stated that there would be protection for public servants earning under £27,000 [<http://www.bbc.co.uk/news/uk-politics-30662833>]. This has not been replicated in this consultation lending weight to the conclusion that the intent is to cap longer serving public servants' exit payments, not those of the highest paid.
26. Cabinet Office have confirmed that as currently defined, the cap would limit the exit payments of some current civil servants earning less than the civil service median salary of £24,730. Those individuals affected would in all circumstances be aged in their 50s and have long service as civil servants. Conversely, a high earner with very short service is likely to be unaffected as there is already a high pay threshold in the Civil Service Compensation Scheme and exit payments are linked to length of service.
27. The impact of the proposals is already being felt in the civil service due to the decision of the current Minister to block a number of exit payments agreed between employers and individual public servants, including some that were agreed prior to the general election and his appointment. This has led to employers calling a halt to voluntary exit schemes that were introduced to try to reduce the likelihood of resorting to compulsory redundancies. In other cases individuals who have been made redundant - to the extent that their job no longer exists - are stuck in employment without a viable role because the Minister has refused to authorise the exit payment.

This means the employer has to continue paying their salary and seek to find them commensurate employment. Leaving to one side the value for money issues of such an outcome, while in a large department finding appropriate work for the short to medium term may not be an onerous task, the civil service includes more than 300 employers and some of these are very small indeed and many of these have no such capacity.

28. The FDA has long argued that the status of civil service ‘employers’ needs clarification. It is currently almost embarrassingly inefficient. An individual employer can hire a civil servant, pay them, promote them, performance manage them and defend an Employment Tribunal against them; but they cannot agree an exit settlement with them in line with the national compensation scheme, nor, as discussed above, can they manage that individual’s redeployment. In more than one case of which the FDA is aware an individual has actually left their employer before it was discovered that despite the employer being ‘the employer’ for the vast majority of their employment relationship, they were not actually able to agree to terminate that arrangement without personal agreement of the Minister for the Cabinet Office.
29. The result is that the taxpayer will continue to meet the costs of employing individuals who have agreed with their employer to leave the civil service on receipt of an exit payment to which they are entitled yet are blocked by the Minister for the Cabinet Office. In some cases this means that offices are kept open when otherwise they would shut, in many it means the process of changing the workforce grinds to a halt so the planned reforms (and cost savings) do not take place. It cannot represent value for money for the taxpayer nor be tenable for individuals and employers for this situation to endure.
30. It is not a solution to demand the individual takes a lower payment; in many, if not all, cases this will mean they will not agree to leave. On many occasions the decision to leave the service is a fundamental and life changing event following decades of dedicated service, it is not a decision taken lightly. Employees will continue to be employed and denied redeployment while employers cannot encourage volunteers to leave the service when they are looking for the job cuts the government has tasked them deliver. The result is a stalemate which the employer is unequipped to address.
31. The FDA is further concerned that the approach being taken is unworkable in terms of its scope and the limited consultation time will cause significant confusion among employers and individuals who do not see themselves as

working in the public sector yet are seemingly to be covered by these proposals.

32. The definition of the public 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 or employer may have at any point. If government does proceed with this proposal, significantly more clarity will be required.
33. Currently, for illustration, there are approximately 886 organisations listed under the 'central government' category of the ONS data set, 16 more than when the previous government consulted on its Recovery of Exit Payments consultation. This list includes museums and culture related organisations that the consultation states (but does not define) are exempt. We are aware that there are lists of National Museums for the purposes of DCMS financial freedoms and other arrangements but clarity on the definition will be required, particularly where there are no direct relationships with a government department or there is part-funding by local authorities. In addition there are a myriad of corporate and other organisations that are 'linked' to civil service departments. The fact that these lists change so frequently and are not generally known to those who may find themselves affected makes the operation of this policy extremely difficult. No clarity was provided following the Recovery of Exit Payments consultation in 2014 and it seems this uncertainty is to be repeated.

Conclusion

34. The FDA is disappointed that the Government has decided to publish these ill-conceived proposals without any discussion with stakeholders. Having reached agreement with the previous Minister for the Cabinet Office on changes to the exit payments applicable to civil servants in good faith, we question the durability of agreements that these proposals suggest can simply be overridden by HM Treasury without discussion or evidence based consultation.
35. The Government's proposals set out in this consultation will not achieve the stated objective of the Government 'to end six figure exit payments for the highest paid public servants'. They will cut the payments made to the country's longest serving public servants, regardless of salary. The proposals as they stand mitigate against the flexibility that employers require to restructure and manage their operations in line with stated Government policy objectives to reform the civil service. This is a further reason that the

FDA argues these proposals do not represent value for money for the taxpayer. The scope outlined in the consultation also makes clear that the Government intends to cap exit payments far beyond the public sector, again this is not consistent with the aim set out in the manifesto commitment to which this proposal is supposed to relate.

36. As a result of the flaws in this consultation and its proposals, the FDA urges HM Treasury to withdraw these proposals and instead enter into dialogue with public servants and their representatives to affect a workable process of achieving the Government's stated objectives.

HMT Questions

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

The FDA does not believe the forms of exit costs listed are relevant and the application of these proposals will seriously damage the flexibility of the civil service leading to a further demoralised workforce and unwieldy employment context.

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?

The FDA does not agree the Government should introduce an arbitrary cap on the value of public sector exit payments.

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 exit payments included are part of the terms and conditions of employment of millions of workers in the UK today. Each was created for a specific purpose as a result of discussion and negotiation between employers and employee representatives. The introduction of an arbitrary cap overriding these arrangements undermines the trust and confidence between employer and employee and opens up numerous employee relations and management problems that had been solved through these processes and policies.

4: Are there further payments that the government should include?

As stated above, the list of payments already set out is excessive.

5: Do you agree that a cap on exit payments should be set at £95,000? If you think an alternative level would be more appropriate, please provide evidence and analysis to support your proposal.

The FDA does not believe a cap on the 'value' of exit payments is appropriate. In the civil service there is currently a higher pay threshold that is an adequate mechanism for limiting the payments made to higher earners. The proposed cap limits the value of exit payments of longer serving public servants, not those earning higher salaries.

6: Are there other ways to ensure such arrangements are consistent with the cap on lump sum payments?

The FDA believes that the reforms agreed with the previous Minister, Francis Maude in 2010 are, as he stated, fair to the taxpayer and fair to civil servants.

7: Do you agree with the proposed approach of limiting early retirement benefits with reference to the cost for the employer? What alternative approaches would you suggest and why?

As stated in response to the question above, the FDA believes that the reforms agreed with the previous Minister, Francis Maude in 2010 are, as he stated, fair to the taxpayer and fair to civil servants.

8: Do you agree that the government has established the correct scope for the implementation of this policy?

The FDA believes the scope of this policy is unworkable and will cause significant disruption to employers who will not welcome this interference with their employment relations management. Furthermore the lack of clarity regarding the scope of the policy will lead to uncertainty and confusion as many employers will not be aware they are covered. The extremely limited consultation on this policy and the lack of dialogue with stakeholders before or during this consultation further exacerbates this situation.

9: How do you think the government should approach the question of employees who are subject to different capping and recovery provisions under TUPE rules following a transfer to (or from) the private sector and whether there should be consistency with public sector employees in general?

By definition, and in line with Government's stated objective, substantial numbers of public sector workers have now been transferred to the private sector. It would be entirely unreasonable for the Government to seek to worsen the terms and conditions of these workers further having decided to remove them from the public sector in the first place. The FDA does not support the degree to which these proposals undermine the employment relationship in the civil service. We cannot see any benefit in disrupting any further sectors.

10: Do you agree with the proposed approach for waivers to the cap on exit payments?

The approach for waiving the cap is prohibitively complicated, restrictive and arbitrary. The analogous arrangement in the civil service which reflects this approach has led to delays, inconsistencies and disruption that undermines the effective running of the civil service. This approach also leaves employers open to legal challenges from employees, a risk that seems to have been entirely overlooked in this consultation.

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

These are discussed in paragraphs 23-32 above.

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

In so far as the limited timescale for this consultation has allowed the relevant information and data is described above. If the government would accede to the FDA's request to conduct a full and open consultation on this policy we would be keen to participate.