

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

This response is submitted by the Workforce Team of the Local Government Association (the LGA), on behalf of local authorities. The LGA is the national voice of local government. We work with councils to support, promote and improve local government. The LGA covers every part of England and Wales and includes county and district councils, metropolitan and unitary councils, London boroughs, Welsh unitary councils (via the Welsh LGA), and fire and national park authorities. The Workforce Team of the LGA offers advice on employment issues and represents local government employer interests to central government, government agencies, trades unions and European institutions.

Thank you for the opportunity to respond to this consultation exercise. I set out more detailed answers to the numbered questions in the consultation paper below. However, I would first make some general comments.

At this stage the means by which the Government is to implement this policy is in some respects unclear. In particular, it is not exactly clear whether the intention is to change the statutory redundancy provisions as they apply to the public sector. Therefore, we seek clarification on this point. However, it seems that the mechanism for implementation will be a combination of the incorporation of statutory terms into individual contracts of employment, obliging repayment of sums received in excess of statutory entitlements (although the consultation paper is contradictory on this point), combined with measures to ensure public sector employers take the necessary steps to check whether repayment is necessary and enforce repayment.

Indeed, the consultation paper seems to indicate some inconsistency of approach and explanation about the application of the policy which raises a number of issues requiring much greater clarity before the effects of the policy could be fully considered. The interplay between statutory employment and pension law, contract law, public law and practical employment relations and HR considerations means that this is technically a very complex policy to get right. It will require considerable work on behalf of central government to clarify and provide the necessary tools to support both implementation and maintenance of the arrangements. The costs could be considerable, although it would be very difficult to assess how they will compare with any potential monies recoverable.

We note from the consultation document that over the period researched the average exit payment in local government was £18,500 compared with £37,300 in central government and £42,300 in public corporations.

The figures show that the average cost of an exit payment in local government was around half of that in central government and much lower than in public corporations. This again demonstrates that local government follows prudent financial housekeeping compared to other parts of the public sector. This is partly driven by transparency

requirements, but also reflects the fact that average pay in local government along with redundancy benefits are lower than in many other parts of the public sector.

This immediately raises the question as to whether the policy aim is more highly influenced by a knowledge of exit arrangements in central government. It also raises the question as to whether it should target high earners or those receiving high exit payments, as they are not necessarily the same cohort.

**Q1. 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?**

The question asks whether there are any additional exit payments that have not been captured. In response we would point out that the paper refers to one that no longer exists. In the part of section 2.3 of the consultation paper dealing with local government it states that there is a facility in the Local Government Pension Scheme (LGPS) to award added membership. However, this facility was removed from the LGPS for terminations occurring after 31 March 2014.

The paper refers to compensation arrangements for teachers last being changed in 1997. We would point out that in relation to compensation payments the arrangements were revised further in 2006 following the implementation of age discrimination legislation, and further changes were made in 2010 by The Teachers Pensions Regulations 2010 [SI 2010/990]. The arrangements for lump sum compensation payments for teachers in addition to any statutory redundancy payments are therefore made on a discretionary basis, similarly to local government, and, although quite likely, would not necessarily be based on all of a teacher's continuous service.

**Q.2 What other recovery provisions are you aware of in the public sector that the Government should be aware of?**

Under the provisions of the Employment Rights Act 1996 (ERA), an employee who unreasonably refuses an offer of suitable alternative employment made before the employee is dismissed, which would have commenced within 4 weeks, may forfeit their entitlement to statutory redundancy pay. The reason for the dismissal will still be redundancy, but the ERA allows the employer to withhold the statutory redundancy payment and, depending on the wording of the council's policy, any excess contractual redundancy pay may also be withheld, where the employee has either refused a suitable alternative role or terminated their contract during the trial period without good cause.

In addition, the consultation paper appears to make no reference to the effects of the Redundancy Payments (Continuity of Employment in Local Government, etc.)

(Modification Order) 1999. This amends the standard statutory redundancy provisions within the Employment Rights Act 1996, with the effect that employees employed by bodies specified in the Order under notice of redundancy who are offered and accept employment with another body specified in the Order are not entitled to the statutory redundancy payment if the offer is made before the termination of employment and the person takes it up within 4 weeks of the end of the old employment. Similar arrangements apply in the National Health Service, which has its own Modification Order.

Under the LGPS Regulations (operative from 1 April 2014) the LGPS administering authority can, depending on the level of earnings from re-employment with an employer that offers membership of the LGPS, exercise a discretion to abate the amount of pension accrued up to 31 March 2014. Each LGPS administering authority should have a policy on whether or not it will apply the abatement provisions.

### **Q.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 LGA does not gather such data, however, we would refer to the Audit Commission report *By Mutual Agreement* which looked at the instances of chief executives leaving local authorities and returning to senior posts within local government. Over a 33 month period, of the 37 chief executives that left only 6 returned. We have no evidence to contradict that finding or to indicate that the instances of return for other senior posts will be any different in scale, although during this consultation some authorities have informed us that they were aware of some employees they had made redundant returning to the public sector in lower paid jobs. It would however, appear to be natural for ex-employees of any level of pay, with particular knowledge and skills relevant to local government, to seek re-employment within that sector, and it would make good business sense for local authorities who are recruiting to consider individuals with relevant experience and ready-made skill sets. This proposal would make it less likely that a skilled worker would seek re-employment (at least within any timeframe to which 'clawback' applied) within the same sector. If this reduced the number of suitable candidates who may apply, then it would not be in the interests of the sector.

### **Q.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?**

The LGA does not collect national data on the incidence and level of exit payments. However, there must be a case for some distinction to be made between payments based on an authority's standardised approach following its expressly stated discretionary policies, and those payments which arise from a settlement agreement designed to settle any potential legal claims the employee might have against the authority. The latter would

clearly be based on individual facts and be based on compensation not only for loss of office but also to prevent potentially costly and time consuming litigation. We would envisage that in cases where individual settlements are being negotiated, the Government's proposed repayment policy will create an upward pressure on sums to settle conflicts, as employees will be aware that if they find work in the same sector within a defined timeframe, they will have to pay some of the money back. The current proposals from the Office for Tax Simplification to amend the taxation on severance payments could produce further upward pressure on settlement agreements.

Before implementing this policy, careful consideration would have to be given to the mechanisms required to ensure that payments made in settlement agreements relating to potential employment tribunal or other court cases could be legitimately recovered, or whether they should. As well as potentially increasing the cost of settlements, the proposal could make it far less attractive for an employee to settle, as presumably any award made by an employment tribunal could not be subject to similar recovery.

**Q.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?**

If payments are designed to be compensatory and related to the potential period an employee might find themselves out of work then, in the context of safeguarding the appropriate use of public money, it seems reasonable to consider some form of recovery provision. As an alternative, staged compensation payments could be considered. In either case, we believe it is a difficult issue to legislate on and recovery will create its own practical problems and administrative burdens.

We see more difficulty in attempting to recover payments made with reference to potential or actual statutory claims made for example under the Employment Rights Act 1996 or the Equality Act 2010 in the form of settlement agreements, the purpose of which is to settle the claim. Although these may not be regarded as statutory payments in the same sense as statutory redundancy payments or obligatory clauses in statutory occupational pension scheme rules, they retain a statutory footing on the basis that they arise from an individual's statutory rights and their ability to enforce them via litigation. If such payments were paid back to the ex-employer the employee may then be out of time to litigate the claim against that employer, meaning the policy could be viewed by some as legitimising unfairness and unlawful discrimination. As stated at Q4 clarity is required as to whether payments made in settlement agreements in settlement of potential employment tribunal or other court cases can be legitimately recovered without having an impact on the nature of the legally binding agreement. Also, the recovery of compensation could for some be a perverse incentive to remain out of work for longer or to change career (with the loss of skills to the "sub-sector") and it seems wrong that proposals, which are intended to be

based on ethics and values, may in practice be based on how hard the affected individual seeks work and what their future career choices are.

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

It is difficult to answer this question at this stage, as it is unclear as to how exactly the proposals in the policy will actually be implemented. The paper refers variously to a combination of incorporation of statutory terms into individual contracts of employment thereby obliging repayment, combined with measures to ensure public sector employers take the necessary steps to enforce repayment.

It is unclear whether the policy is simply about value for money or also about transparency. In respect of this, the requirement for high exit payments in local government to be signed off by full council already assures transparency, having an impact on payments ensuring they make financial sense taking into account numerous factors relating to fairness, litigation, efficiency and value for money within the context of the labour market. Perhaps as an alternative the Government could identify the extent to which some transparency and accountability is (or could be) reflected more widely in the rest of the public sector and give those arrangements time to work and only look at complex proposals such as are put forward now if the transparency arrangements fail to have an impact.

**Q.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 methodology the Government implements must be 100% clear. It must be easy for employers, employees, employment tribunals and courts to understand, otherwise this proposal will result in administrative costs and in some cases litigation in which costs could go way beyond the amount to be recovered.

If to be pursued, there must be a clear, agreed and regularly updated list of relevant bodies to which employers, employees, courts and tribunals can refer. Clarity will reduce disagreements and litigation and where litigation ensues will assist the courts and tribunals in making fair decisions.

The consultation paper refers to the inclusion of local government companies within the local government sector. This generic phrase raises questions of definition. From our experience of advising local authority employers on the bodies which are specified in the Redundancy Payments (Continuity of Employment in Local Government, etc.) (Modification) Order 1999 (referred to in answer to Question 2) we would strongly

recommend that the government- supplied list of appropriate sector bodies should list every individual legal entity and not rely on any form of generic description of types of bodies, i.e. all individual councils and local government companies should be listed and if there is to be a separate education sector list, all individual schools/federations covered by the policy should be listed. This aspect of the policy also begs the question as to whether all of the bodies currently covered by the provisions of the Redundancy Payments (Continuity of Employment in Local Government, etc.) (Modification) Order 1999 would be named in the new local government sector recovery of overpayment list.

The lists must be easily and clearly accessible to everyone on a relevant website. We do not feel that the ONS website would be appropriate and it should be on a specified Government website or the websites of all interested government departments.

In terms of subsectors, there must be great clarity in respect of education bodies and their relationship, if any, with local government. Also, the closer working between local government and public health bodies may need further thought. It appears under the proposal that where an employee is transferred from one sector to another, in the event that they were made redundant or negotiated an exit payment, they would be able to return to the previous sector without any financial penalty.

As the bodies on the relevant lists will vary from time to time the legislative measures made in order to bring this policy into force would also need a clear stance on the relevant time for the decision as to whether repayment of compensation is appropriate, i.e. should this be if the new employer is on the list:

- a) on the date the original job ceases
- b) on the date the employee is offered the new job
- c) on the date the employee commences the new job.

If there is to be a statutory obligation on ex-employers, new employers or employees it needs to be clear and it would be preferable if a dismissing employer were able to provide the departing employee with their precise obligations including the detailed list of bodies for which the employee would be obliged to report if they had gained qualifying employment and, if appropriate, where they could find the updated list.

There seems little logic in separating the civil service into numerous sub-sectors, some of which would then be very small.

**Q.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?**

In principle money paid by virtue of a decision by an employer in order to sever an employment contract comes from the same source (i.e. the employer) and so has the same impact on the employer and its provision of services and accountability to the public.

However, the fundamental difference with such pension arrangements is that the cash payment does not go to the individual employee but to the pension fund/account in order to facilitate payment of the particular element of the pension, e.g. added pension, non-actuarially reduced pension. This could result in difficulties in reclaiming the payment which could take a number of years.

**Q.9 Do you agree that the payments listed above should be in scope for the purposes of recovery on re-employment 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.**

### **Qualifying Payments**

The legislation and guidance will have to be very clear about what are qualifying payments. Generic terms which can be interpreted differently by different people, will cause confusion and potentially lead to disputes. We have already pointed out that settlement agreements which the consultation document has previously classified as a special severance payment are quite different to a number of the other payments.

Also, guidance on qualifying payments will have to clearly set out the distinction between statutory entitlements established by legislation, e.g. statutory redundancy pay, and additional discretionary compensation decided by the employer, e.g. basing redundancy pay on actual salary, additional compensatory lump sums, etc.

Likewise, there will presumably be a need to make a distinction between payment in lieu of untaken leave under the statutory provisions of the Working Time Regulations 1998 and discretionary or contractual payment in lieu of contractual annual leave entitlement, etc.

Any emphasis should be on avoiding circumventing the policy rather than undermining established statutory rights.

### **Pensions**

The Government will need to consider whether the following three matters should be caught by the policy.

Firstly, under regulation 31 of the LGPS Regulations 2013 an employer may grant additional pension of up to £6,500 p.a. to:

- a) an active scheme member, or
- b) a member who was an active member and who was dismissed by reason of redundancy or business efficiency, or whose employment was terminated by mutual consent on the grounds of business efficiency, provided the resolution to grant additional pension is made within 6 months of the date the member's employment ended.

Also, under regulation 16 of the LGPS Regulations 2013, an employer may jointly, with an active scheme member, fund additional pension for the member. The maximum additional pension that can be jointly purchased is £6,500 p.a. (so, at the extreme, the member could pay for £1 and the employer £6,499).

This facility in the LGPS means that rather than grant a termination payment of up to 104 weeks' pay (which would be caught by the clawback rules), employers could grant additional pension which would not appear to be caught by the clawback rules.

The second matter that will need consideration is what is known in the LGPS as the '85 year rule'. Under the LGPS a member can voluntarily retire at any time from age 55 but will normally suffer an actuarial reduction for retiring before Normal Pension Age. However, if the member was in the Scheme before 1 October 2006 there is a lesser reduction if the member's combined age and service (both in whole years) is 85 or more and the member

- a) starts drawing benefits on or after age 60, or
- b) starts drawing benefits on or after age 55 and before age 60 and the employer agrees that the 85 year rule should be 'switched on'.

If the employer switches the 85 year rule on in a case covered by (b) there will be a strain on fund cost which has to be met by the employer. The employer could agree to switch on the 85 year rule as part of a termination deal for leavers under age 60 (other than in the case of redundancy or business efficiency retirements as, in those cases, there is no actuarial reduction). Does the Government intend that the cost of switching on the 85 year rule should fall within the clawback provisions where switching on the 85 year rule is part of the termination agreement?

The third matter relates to the waiving of an actuarial reduction. Although the consultation paper refers to "discretionary payments made to buy out actuarial reductions" employers in the LGPS can agree to waive actuarial reductions in whole or in part. If they do so, there is a strain on fund cost which has to be met by the employer. The decision to waive the reduction in whole or in part is discretionary but the payment made to the pension fund is not a "discretionary payment" – that payment is compulsory. Is the intention that such a waiver would be caught by the clawback provisions if the waiver was part of the termination agreement?



## **Prioritisation of payments to be reclaimed**

Even when the Government establishes clearly what are and what are not the qualifying payments which may be legitimately recovered the policy would need to establish a priority order so that an employer knows whether it is to take back easily cashable sums first or pension-related payments, which may have to be reclaimed over many years.

### **Q.10 Do you agree with the proposed terms for the recovery of exit payments on re-employment? What alternative approaches would you suggest and why?**

#### **Potential breach of existing employment legislation**

The proposal that employees in the public sector who were made redundant and then found work within 28 days elsewhere within the defined sector would have to repay the whole of any severance payment could breach the existing rights to statutory redundancy pay set out in the Employment Rights Act 1996 applying generally to all employees. The Employment Rights Act establishes that an employee is not entitled to statutory redundancy pay only if the employee at the time of dismissal has a guaranteed job with the employer to commence within 28 days. This does not apply if an employee is made redundant and then at some point afterwards they are re-employed by the employer.

In local government the effect of this is modified by the provisions of the Redundancy Payments (Continuity of Employment in Local government, etc) (Modification) Order 1999 which means that if an employee is dismissed by a body covered by the provisions of the Order and, before the dismissal, received an offer of new employment with another body on the Order to commence within 28 days, they are not entitled to a statutory redundancy payment. However, if after they are made redundant they find employment with the original employer or another body on the Order then they retain entitlement to their statutory redundancy pay although lose their continuous service in relation to any subsequent statutory redundancy payments.

#### **Difficulties in relation to reclaiming pension-related payments**

Where an employer pays a strain on fund cost in order to release a pension without actuarial reduction (or with a reduced actuarial reduction) the payment will be made to the fund and the pension will become payable. The Government states that it does not wish to implement abatement provisions where they do not exist already. This leaves the situation whereby the payment has not gone directly to the employee and could raise practical difficulties in reclaiming it. The Government suggests that employers would be able to offer repayment over a period of time. This could mean an ongoing relationship with ex-employees over a number of years when the reason for the termination was to achieve a smooth, clean break.

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

The example is not a good one to illustrate the policy as it uses a base salary figure £100,000 which then also seems to be the same figure as the denominator in the adjustment factor.

The example also seems to indicate, taking into account bullet point 2 (4.2 Detailed Terms of Recovery, page 16) (contradicting the general proposition of the paper) that this is not a policy based simply on reclaiming exit payments (or a pro-rata proportion) if ex-employees gain new employment within a period of 12 months in the same part of the public sector, but that it also distinguishes to some extent by the amount of the payment. Bullet point 2 suggests that the policy of recovery will only apply if ex-employees gain new relevant re-employment within the notional period of months' pay they received as a severance payment. This must be made much clearer if this is the case. This would be fairer in general and especially for those in local government who receive smaller payments than in central government.

Also, the example fails to indicate the appropriate treatment of the statutory element of the redundancy payment.

In general, there would need to be more examples of different scenarios if this policy were to be understood and implemented, including different salary levels, different ages and pension schemes and different elements of exit payments to include statutory and discretionary or contractual elements. Clarity is also required in relation to the application to full-time workers and part-time workers and the situation where an employee returned to a part-time or a term-time role, etc.

Given the complexities of ensuring adequately that every single relevant legal entity is listed by the official government sector-specific lists it could be that it will be a difficult thing for many employers and employees to fully understand in a non-contentious way. Also, it is, we presume, unlikely that there will be any penalties on employees for non-declaration of payments to be repaid (other than the potential for a new employer to dismiss them for, presumably, dishonesty), or penalty on employers for non-enforcement of a relevant repayment.

**Q12. 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?**

Any figures set out in legislation would have to be more precise than those in the table. Would someone earning £84,950 be liable to repay 20% or 40% of the payment?

Salary levels in the public sector have risen much more slowly than in the private sector in recent years and so any established figures may work for some time but at some point the Government will need to build in some uprating mechanism.

Also, taking into account the merits of the intention of the policy, which is to use public money effectively, it might be worth setting a minimum payment amount that is worthy of recovery.

Taking into account the general proposition of the paper that exit payments would be recovered if an employee gained re-employment within 12 months we had in mind the example of a chief officer earning £83,200 who was made redundant in an authority which had set its discretionary payments policy based on actual salary only and with no compensation lump sum. Assuming the redundancy/compensation payments amounted to ten weeks' pay, this would arrive at an exit payment of £16,000 of which £4640 would be statutory redundancy payment leaving we presume a net potential sum for recovery of 20% of £11,360, i.e. £2,272. If they gained re-employment in relevant employment after 11 months on the same salary level we had assumed that the employer would be obliged to recover one twelfth of the payment and wondered whether the employer would wish to engage in potential costly recovery for a sum of around £189. This would be even less if the new salary was lower.

However, given the bullet point 2 and the example quoted it would seem to indicate that this chief officer would have no obligation to make any repayment if they gained employment after a period of ten weeks. This is a fundamental point which must be clarified.

**Q.13 Do you agree that the Government has established the correct scope of bodies for the implementation of this policy?**

It seems irrational to exclude nationalised banks from the provisions especially bearing in mind that remuneration packages and compensation payments made to secure departures of senior executives are likely to be larger than in for example local government and that these would therefore be an impediment to the banks returning to profit. This exclusion and the exclusion of the Museums on the basis that they are operating on a commercial basis begs the question if these proposals are bad for business then will they not be bad for the public sector which operates on an increasingly commercial footing within a complex labour market? Also, these exclusions would seem even more inappropriate if the Government is considering extending the impact of the policy onto private sector contractors delivering public sector contracts (as suggested in page 24 of the consultation document).

We would re-emphasise our comments made in answer to Question 7 in respect of the definition of sectors, the maintenance and publication of the list of bodies to be included and clarity of application in relation to timings of dismissal, offers of re-employment and dates of re-employment.

**Q14. 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?**

It is unclear whether the policy is simply about value for money or also about transparency and indeed whether this is a policy about high earners or high exit payments. In respect of the requirement for high exit payments in local government to be signed off by full council, please see our answer to question 6 below.

If the policy is to be pursued, there must be a much clearer and consistent definition of qualifying payments and explanation of the steps an employer must take. Given what might be the correct understanding, that the policy is aimed at recovering over the period which relates to the notional length of normal pay to which the exit payment relates, there may be merit in considering staging the payment of the 'qualifying' components (i.e. non-statutory elements) of compensation payments over that period, ceasing these at the point the ex-employee gains relevant employment. This would of course extend the relationship with the employee and could create additional tax implications if such payments straddled two tax years.

**Q15. Do you agree with the proposed terms for the exemption of the recovery of exit payments on re-employment?**

It seems wholly sensible that where severance payments have been made by a local authority, the responsibility for granting exemptions and the ability to set out relevant circumstances to consider in granting exemptions should be the responsibility of the council. However, where severance payments are small or, by virtue of time passed or the lower salary level in a new job, the resulting payments to be recovered are small, it may be appropriate to treat this like many other council functions and allow it to be delegated to a committee or officer.

Presumably the Government would specify clearly from whom exemptions would be sought in the case of the hundreds of other bodies classified within the ONS classification as 'local government'. We assume this would be direct to the Secretary of State.

In relation to maintained schools where a senior member of school staff receives a severance payment it may be paid by the local authority as the legal employer so

presumably any exemption may be sought from the council. Or is it the intention that the school governing body secure any exemption from the Secretary of State for Education?

Recovery of exit payments from employment in community schools where the local authority is the employer raises the strange scenario whereby a local authority may have to reclaim an exit payment made to a member of staff who takes up employment in another school, which is essentially in a different government-classified sector, which seems to be a position which does not apply to any other type of employer. However, they will not be subject to recovery if they gain employment in the same or any other local authority outside the education sector.

The policy of local management of schools and associated legislation remains particularly complex. The relationship to this proposal will need clarifying.

It seems unclear whether the Government would reclaim the payment if an English council employee with an exit payment went to work for a council in Wales or Scotland, or whether the requirement to recover the payment would rest with the council.

**Q16. Are there other impacts not covered above which you would highlight in relation to the proposals in this consultation document?**

When employment ends at the employer's instigation, whether that be by redundancy or a mutual termination to resolve differences, the relationship can be tested. For this reason it has always been considered preferable that there be a natural end to the relationship and a clean break in legal terms. This policy will extend the relationship for a further year, and in the event that the employer is required to recoup staged payments in relation to pension, possibly for many years.

We would wish to know whether the Government would deal with the various implications in relation to taxation which could present numerous problems for employers and employees over a number of years. For example severance payments exceeding £30,000 are subject to tax (although we are aware of the proposals by the Office for Tax Simplification to amend this). The consultation paper indicates only a sum net of tax would be recovered but would this not become more complex in the event of recovery over two or more tax years? If the policy is implemented there would need to be much clearer guidance on taxation arrangements to assist employers and employees in administering this.

The document hints at the likelihood that the Government may extend the scope of relevant employers to include contractors providing services to public sector bodies. We would wish to see clear proposals on how this was to be legislated for and managed before we could comment further.

The Government indicates that repayment will not be appropriate if an ex-employee returns for short periods of employment on a casual basis. The Government may also wish to consider whether and to what extent repayment is appropriate if the new appointment is for a fixed term ending before the end of the notional repayment period.

Also, the Government indicates that returning as a contractor or consultant will not evade repayment. Another possibility is that ex-public sector employees will return via employment businesses and the Government may have to amend the Conduct of Employment Agencies and Employment Business Regulations 2003 to preclude employment agencies supplying workers to public sector employers who have received a compensation payment for a period of 12 months (or the notional period of months' pay received as an exit payment) unless the relevant part of the payment has been repaid.

Although the public sector may benefit from the ability to attempt to recover an exit payment or proportion of an exit payment the policy may well have a negative impact on the ability of public sector employers to recruit the best staff at any particular point in time, as many individuals will be reluctant to consider a post under which repayment of their compensation payment would be required.

We would expect that the Government's costs of facilitating this policy, including implementing the necessary legislation and maintaining the appropriate lists of bodies, court time, etc., along with the ongoing HR costs involved with explaining, monitoring and implementing this policy will be considerable in relation to the sums recovered.

**Q17. Are you able to provide information and data in relation to the impacts set out above?**

It seems certain that the proposal would encourage upward pressure on settlement agreements although it is very difficult to provide data in relation to the impacts when the policy remains so uncertain and there are many technical areas to be clarified.

Thank you for giving me this opportunity to respond to this consultation. Please contact me if we can be of assistance in the further development of the detail of the policy.



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