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Statutory guidance

Government response to the draft statutory guidance on Special Severance Payments consultation

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1. Introduction

1.1. The government is committed to ending excessive exit payments in the public sector. As part of taking this commitment forward, we consulted on draft statutory guidance for local authorities in England. This guidance was proposed to be made under section 26 of the Local Government Act 1999, the Best Value duty set out in section 3 of that Act and form part of the existing Best Value regime.

1.2. Section 26(2)(c) of the Local Government Act 1999 places a duty on the Secretary of State to consult the authorities concerned or persons appearing to them to represent them before issuing statutory guidance on the Best Value duty. On 2 July the draft guidance was provided to key stakeholders (see [Annex A](#)) and on 8 July it was sent to all local authority chief executives. The consultation closed on 20 August.

1.3. The intention of the guidance was to limit the use local authorities make of Special Severance Payments (SSPs). These were defined in the guidance as payments made to employees, officeholders, workers, contractors, and others outside of statutory, contractual or other requirements when leaving employment in public service. Specifically, the draft guidance sets out the government's view of:

- the criteria local government employers should consider before making an SSP;
- the kinds of truly exceptional circumstances in which SSPs may be appropriate;
- the disclosure and reporting requirements for SSPs.

1.4. This document summarises the responses received in that consultation and sets out the government's response to them, as well as next steps.

1.5. We are grateful to all those who took the time to respond on these proposals.

2. General summary of consultation responses

General points

2.1. Sixty-one responses were received in time for inclusion in this response and [Annex B](#) contains a list of respondents. The responses received broke down as follows:

Fully supportive: 2

Generally supportive: 15

Neutral: 33

Opposed: 11

2.2. The overall approach was felt to be reasonable with some reservations mainly around clarity of definitions and the proposed accountability mechanism. These comments are dealt with in more detail in the relevant sections below. Some general views expressed by respondents included:

- The use of statutory guidance was welcome as it was seen as a more useful and flexible approach than the regulations made last year to put a cap of the total value of all exit payments in the public sector;
- Two responses suggested that the government should consider how much notice local authorities should have before it came into effect and whether any transitional measures were appropriate;
- The guidance is clearly intended to apply to all forms of severance and not just redundancy, but the wording at times only seemed to reference redundancy situations;
- It was felt that numbering of paragraphs would be helpful in using the guidance.

2.3. Responses were received from LGPS Administering Authorities, their professional advisers, other local authorities, trade unions and representative bodies.

Government response

2.4. The document has been reviewed in the light of these comments. Some minor drafting changes have been made and paragraph numbering has been added. As the draft guidance has already been seen in draft and should not have a detrimental effect on any individual's exit terms we do not think that any further notice or transitional period is necessary.

3. Definition of Special Severance Payments

3.1. The proposed definition of SSPs inevitably as a new term in local government gave rise to a number of queries and challenges

3.2. Nearly every response asked for greater clarity on when strain costs paid by employers to Local Government Pension Scheme Administering Authorities were in scope of this guidance. Strain costs can be due from employers in a number of situations. Some of these are discretionary, such as voluntary uplifts in pension benefits paid by the employer, while others are clearly member entitlements, such as the right to early payment of unreduced pension benefits when made redundant past age 55.

3.3. Three of the employer representative bodies and several local government employers challenged in their responses the assumption that a council's redundancy policy, as required under Regulation 7 of the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006, gave rise to a contractual right to receive benefits in line with it. The Local Government Association response argued that a local authority should avoid fettering the discretion granted by the 2006 Regulations by incorporating the terms of its policy into individual contracts of employment. Responses suggested that contractual redundancy entitlements were more likely to occur as a consequence of these terms being protected following a TUPE transfer into local government service.

3.4. Twenty-four responses commented on the treatment of Pay In Lieu Of Notice ("PILON"). These responses suggested that the guidance needed to be reconsidered, with the consensus being that it should be outside the scope of this guidance, unless it was extended beyond the contractual notice period.

3.5. Five responses queried whether smaller write-offs or the recording of bad debts should be within the scope of this guidance. Partly this was because these were not awarded to the individual leaving but were essentially commercial decisions that attempt to enforce the employer's rights against the person leaving and would not offer value for money.

3.6. The unions Unison, Unite and NAHT all expressed concerns that the guidance would make it more difficult to agree settlements or compromise agreements to employment disputes. This view was also supported by some employers. However, other respondents took a different view and said that the considerations and processes matched their current arrangements. There were also a number of comments that sought to clarify when settlements were excluded, e.g. were settlements brokered by ACAS before cases were lodged with the Employment Tribunal covered, or disputes being pursued through different tribunals with jurisdiction to hear employment disputes.

3.7. Hymans Robertson (an actuarial firm which advises on LGPS matters) and some representative bodies also queried the definition of ill health retirements. They questioned whether it was only those ill-health retirements for which a payment became due to the pension fund under Regulation 68(1) of the LGPS Regulations 2013 which were intended to be excluded from the scope of the draft guidance.

Government response

3.8. We will amend the draft guidance to give greater clarity on exactly when strain cost payments should be considered SSPs. We will also make changes to provide greater clarity on PILON and ill-health retirements. We have considered whether it would be better to exclude compromise agreements from the scope of this guidance but decided that this would not be appropriate. We recognise that the ability to make these payments is an important tool for employers in managing change and dealing with disputes. The intention of this guidance is to ensure that these kinds of payments are made only after proper consideration of their value for money, and that there has been sufficient scrutiny.

4. Relevant considerations

4.1. Respondents generally acknowledged that the considerations listed in the draft guidance were appropriate and were consistent with current best practice. The Association of Local Authority Chief Executives (ALACE) wished to see an explicit recognition from the government that there was a legal basis for the making of special severance payments.

4.2. However, some of the considerations were not felt to be appropriate. The comparison with private sector practices attracted the most comments. A large number of responses pointed out that practice in the private sector was so variable that it was not easily distilled into a useful benchmark for a local authority's own practice. London Councils and others expressed the view that private sector employers are not subject to the same standards of transparency and regulation as public sector bodies so it is not possible to carry out systematic research, or understand how severance terms relate to the rest of an employee's benefit package.

4.3. The other consideration that was challenged by some respondents was what other possible uses of money SSPs could be put to. These responses emphasised that a business case for an SSP needed to be judged on its own merits.

4.4. Some other considerations that were suggested by respondents for inclusion in this section of the guidance were:

- The need to carry out equality monitoring in order to ensure compliance with the Public Sector Equality Duty ("PSED") imposed by the Equality Act 2010;
- What might broadly be called compassionate grounds or "human factors" particular to that individual's situation as it was put in the response from the Kent Fire and Rescue Service;
- Risk to service delivery, morale or working relationships from not making the payment (particularly in payments related to the resolution of employment disputes).

Government response

4.5. The government remains of the view that a comparison with exit arrangements in the wider economy is an appropriate consideration and one that local taxpayers would expect. Detailed study of arrangements in the private sector is not required by this guidance and it is recognised that practice will be varied. However, it is important that those who put together or approve exit packages have some familiarity with developments in HR practice both inside and outside of the public sector.

4.6. The government also stands by the statement in the guidance that other potential uses of the money should be considered. The finances of a local authority are inevitably constrained and elected members will be familiar with the setting of priorities and making difficult choices. Data collected from local authorities by this Department show that last year over £250m was spent on exit payments, of which £35m was in the form of SSPs. That is a considerable amount of public money and local taxpayers may well query whether this was the best possible use of their contributions.

4.7. The government fully accepts the importance of the public sector equality duty in decisions around exit payments. A key feature of the general equality duty is that it requires public authorities to integrate consideration of equality and good relations into their day-to-day management and business decisions. Local authorities should therefore have some means to monitor and review their practice in the award of SSPs, and the guidance has been amended to recognise this. There is an acknowledgement of this in the introduction but we will also add a further reference to the PSED in this chapter as well.

5. Exceptions

5.1. A number of responses from county councils and representative bodies for local government suggested that in determining severance benefits employers should have the flexibility to recognise past service with the NHS, in particular in relation to those employees affected by the transfer of public health functions from the NHS to local government. While this was the only specific example given, it was suggested that there may be service with other employers that ought to be recognised, especially those who would not be considered to have been granted continuity of employment by virtue of the Redundancy Modification Order^{[\[footnote 1\]](#)}.

5.2. There was also a suggestion that payments made under a compromise agreement where there was a non-disclosure agreement (NDA) in place should be outside of the scope of this guidance.

Government response

5.3 The government accepts the comments made in relation to the recognition of past service with the NHS and potentially other employers. The guidance will be amended to exclude the award of continuous service in these circumstances from the scope of this guidance. However, the government is committed to increasing the transparency and accountability of severance payments and to exclude payments made under an NDA would undermine that purpose. Local authorities should have regard to the content of this guidance, and the rest of the Best Value regime and their transparency obligations, before committing itself to particular non-disclosure terms.

6. Accountability

6.1. A significant number of responses maintained that the proposed approval process for special severance payments was too burdensome and time-consuming. It was argued that sign-off from both the Leader and the Chief Executive would delay decisions, and lead to unnecessary costs arising from the continued salary for the individual and legal action. Many respondents noted that existing schemes of delegated authority (as determined by s101 of the Local Government Act 1972) provided accountability and were more suited to variations in local circumstances. Some respondents also

stated that it was inappropriate for the executive of a local authority to be involved in operational staffing decisions. It was suggested that the requirement for approval by the Leader and Chief Executive could be amended to approval by a senior officer in the local authority, and that local authorities could provide greater transparency by members agreeing a policy and process for approving special severance payments that would be published.

6.2. It was noted that the suggested guidance did not include a reference to [existing guidance \(https://www.gov.uk/government/publications/openness-and-accountability-in-local-pay-supplementary-guidance\)](https://www.gov.uk/government/publications/openness-and-accountability-in-local-pay-supplementary-guidance) to section 40 of the Localism Act 2011 for all special severance packages above the value of £100,000 to be voted on by full council, which would cut across the proposed approval process. Some respondents also noted that some special severance payments can be relatively small and suggested a de minimis amount on the level in which approval by the Leader and Chief Executive would apply (one respondent suggested £5,000, another suggested £30,000).

6.3. Some respondents highlighted that the process was unclear if the severance package related to one of the senior officers involved in approvals. It was suggested that there should be information within the guidance on a senior officer excusing themselves and deferring to another officer or an independent disputes committee within the local authority.

Government response

6.4. We are committed to ending excessive special severance payments, and it is essential that there are robust controls in place before significant payments are approved. We recognise, however, that controls must be proportionate to the value of money involved. We therefore propose to revise the guidance to set out a three-tier system of approvals:

- Any special severance payment of £100,000 and above is to be voted on by full council before they are approved, as set out in the Localism Act 2011;
- Any special severance payment from £20,000 and below £100,000 is to be personally approved by the Head of Paid Service with a clear record of the Leader of the local authority's approval;
- Any special severance payment below £20,000 is to be approved through the scheme of delegation within a local authority. We expect that local authorities should be transparent about their policy and process for approving payments.

Where a proposed special severance payment is to a Head of Paid Service, this is to be approved by a panel including at least two Independent Persons.

7. Transparency

7.1. Most respondents welcomed the proposals for greater disclosure and transparency. Some respondents raised concerns that it would be difficult to anonymise data in the case of smaller local authorities and suggested that payments could be reported as an aggregated whole or averaged over several years. One respondent suggested that a suggested template would be helpful for local authorities. It was noted that caution should be applied when interpreting published data on payments, as not all strain payments are required to be paid by an employer as soon as they arise.

7.2. The Accounting and Audit Regulations 2015 provide that staff with a salary of £150,000 or more per year should have their remuneration named in annual accounts, while senior employees with a salary of above £50,000 should be listed by job title.

7.3. Some respondents noted that reference should be made to the HM Treasury's [Guidance on Public Sector Exit Payments: Use of Special Severance Payments \(https://www.gov.uk/government/publications/public-sector-exit-payments-guidance-on-special-severance-](https://www.gov.uk/government/publications/public-sector-exit-payments-guidance-on-special-severance)

[payments](#)), and to the Account and Audit Regulations 2015, regulation 7(3) and Schedule 1.

Government response

7.4. There is a balance to be struck between transparency of special severance payments and the protection of individual staff. Publishing a total or average would not provide the same level of transparency and we do not propose any major changes to the guidance as suggested. We will work with local authorities on how to provide the data to best meet data protection requirements.

8. Bodies in scope

8.1. Consultation responses did not suggest that the list of bodies covered was incorrect in the sense that they were all Best Value authorities in respect of whom guidance like this could be issued. However, responses did raise a couple of issues of consistency between different kinds of bodies carrying out similar functions.

8.2. One example was schools, where the guidance stated that it applied to local authority employed staff in a maintained school but not staff of other kinds of school, such as academies or free schools (neither of which are “Best Value” authorities). Responses also queried whether it was appropriate for local government staff in maintained schools to be covered since they were employed under a delegation to school heads and governors.

8.3. The other example was about staff working in fire and rescue services, some of which were standalone services, while others had been incorporated into a Combined Authority (under a “metro mayor”) joined with the Police and Crime Commissioner (PCC) function.

Government response

8.4. The government’s preference is to take forward these measures as broadly as possible while retaining valuable certainty as to coverage. Further discussions are being undertaken across government to ensure that a comprehensive and effective set of controls are in place across the public sector. While that is being undertaken, we will clarify that at present this guidance will not apply to any staff working for a combined authority or a fire and rescue authority, nor will it apply to staff working for a PCC or a Police Fire and Crime Commissioner. In addition, it will not apply to those local government staff employed in a maintained school.

Annex A: Bodies directly consulted

- The LGPS Advisory Board
- Local Government Association
- LGPS Technical Group
- ALACE
- GMB
- UNISON
- Unite
- Lawyers in Local Government
- Barnet-Waddingham
- Aon
- Mercer
- Hymans

- CIPFA
- The Society of District Council Treasurers
- The Association of Local Authority Treasurers
- The Society of Municipal Treasurers
- The Society of London Treasurers
- The Society of County Treasurers
- The Society of Unitary Treasurers
- Local Authority Chief Executives in England

Annex B: List of respondents

- Association of Local Authority Chief Executives (ALACE)
- Association of School and College Leaders (ASCL)
- LB Barking and Dagenham
- Barnett Waddingham LLP
- Blackburn with Darwen Borough Council
- Bracknell Forest Council
- Broads Authority
- Buckinghamshire County Council
- Cambridge City Council
- Cornwall Council
- Craven District Council
- Cumbria County Council
- Devon County Council
- East Midlands Councils
- Essex County Council
- Exeter City Council
- Hampshire County Council
- Hereford & Worcester Fire and Rescue Service
- Hertfordshire County Council
- Huntingdonshire District Council
- Hymans Robertson
- Kent County Council
- Kent Fire and Rescue Service
- Lawyers in Local Government
- Leeds City Council
- Local Government Association
- London Councils
- Local Pensions Partnership Administration (LPPA)
- Luton Borough Council
- NAHT
- North Herts Council
- North Kesteven District Council

- North Somerset Council
- Nottinghamshire County Council
- NW Employers
- Prospect Union
- Royal Borough of Windsor and Maidenhead
- Rochford District Council
- Rotherham Metropolitan Borough Council
- Selby District Council
- Sevenoaks District Council
- Society of Unitary Treasurers
- South Staffordshire District Council
- Southend-on-Sea Borough Council
- St Albans City and District Council
- St Helens Borough Council
- St Helens Borough Council (Chief Executive in personal capacity)
- Surrey County Council
- Surrey Pension Fund
- Telford & Wrekin Council
- TfL
- UNISON
- Unite the Union
- Watford Borough Council
- Wealden District Council
- West Mids Employers
- West Sussex County Council
- Wiltshire Council
- Winchester City Council
- Wyre Forest District Council
- Yorkshire Dales National Park

1. Under the Employment Rights Act 1996 employees need two years service with their current or an “associated employer” to qualify for a redundancy payment. The purpose of the Redundancy Payments (Continuity of Employment in Local Government, etc.) (Modification) Order 1999, as amended, is to provide a statutory list of ‘associated employers’ for the purposes of redundancy payments. The list set out in the Order includes all local authorities as well as various other, but not all, other local public service providers.

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