

Agenda Item	19.
Report No	RES/31/17

HIGHLAND COUNCIL

Committee: Corporate Resources Committee

Date: 14 June 2017

Report Title: A Severance Policy for Scotland: A Consultation on Severance Arrangements Across the Devolved Public Sector

Report By: Depute Chief Executive/Director of Corporate Development

1. Purpose/Executive Summary

- 1.1 The Scottish Government is consulting on severance arrangements across the devolved public sector. The full consultation paper can be accessed at the following link:
<https://consult.scotland.gov.uk/financial-strategy/severance-policy-in-devolved-public-sector>
- 1.2 The introduction of a cap for public sector employers will be very restrictive to implementing effective organisational design and transformational change. Although we believe there could be value in seeking to take a more consistent approach across the public sector.
- 1.3 The Highland Council already regularly reviews severance policies to minimise costs where possible.
- 1.4 While it is acknowledged that government believes a single, UK-wide approach is preferable, it is our position that a 'one size fits all' approach would be an issue. In addition, it is our view that the removal of the link with local decision making by applying these proposed changes to devolved administrations and then to Scottish Local Government, would undermine local decision-making.
- 1.5 The introduction of an exit package cap would be in conflict with the current pension regulations and would necessitate a change to regulations that have only recently had a significant reform following protracted negotiations.
- 1.6 Our view is that there are clear benefits in promoting the status quo, but with requirement for public sector employers to have a business case which demonstrates a financial benefit and therefore value for money for the public sector.

2. Recommendations

2.1 Members are asked to:

- i. Consider the proposed response to the Consultation Paper, as attached at **Appendix 1**.

3. Implications

- 3.1 There are no: resource, legal, Community (Equality, Poverty and Rural), climate change/Carbon Clever, Risk or Gaelic implications arising from this report.

Designation: Depute Chief Executive/Director of Corporate Development

Date: 5 June 2017

Author: Steve Walsh, Head of People and Transformation

Background Papers: Consultation as per link at paragraph 1.1

Appendix 1

Highland Council Proposed Response to Consultation

Question 1: What types of bodies or bodies themselves do you think SHOULD be covered?

All Public Sector organisations should be covered. This approach would ensure that policies are fair and equitable across the sector. The focus should be on delivering value for money to the people of the Highlands and across Scotland.

Please give reasons for your response.

The priority should be to achieve consistency; any exceptions would not support this principle and would undermine any arrangements. It should be noted that exit payments across local government are low compared to other parts of the public sector. The Highland Council would be concerned that any measures applied across the board could have the potential to increase costs.

Question 2: What types of bodies or bodies themselves do you think SHOULD NOT be covered?

See Question 1 above – ‘All Public Sector organisations should be covered’

Please give reasons for your response.

N/A

Question 3: Given the variation exit in schemes across the public sector, is there benefit in seeking to make this more consistent to deliver best value and Fair Work outcomes?

Yes. We would agree with the principle of seeking to adopt a consistent approach in exit terms across the public sector in Scotland.

Please give reasons for your response.

The data gathered on severance schemes has highlighted large differences. We believe there is scope to achieve a more consistent application of certain exit terms by introducing ceilings (e.g. number of week's pay for redundancy and maximum payback periods). The requirement for public sector employers to have robust business cases which demonstrate value for money would also help to control exit costs and promote fairness.

Question 4: Do you think it is necessary to set an exit payment cap for the devolved public sector?

No. Although we believe there is value in seeking to take a more consistent approach across the public sector, an exit cap similar to the UK Governments

proposals would be restrictive to organisational redesign and could hinder transformational change.

Please give reasons for your response.

Implementation of such a cap is likely to have a significant impact on our ability to manage and re-organise our workforce to deliver more efficient services.

As outlined in the consultation document there is already best value scrutiny and reporting within each Council and Audit Scotland have acknowledged in a recent report on local government that - "Councils' decisions on reducing their workforces through exit packages are supported by business cases which set out associated costs and potential savings."

In addition, very few exit payments in Highland exceed the UK government's planned threshold, although the number might rise if pension payments were included.

Due to automatic access to accrued pension benefits and the associated strain costs, the level of the cap could impact on a greater proportion of the workforce and not just high earners as originally intended. Furthermore, by implementing a cap some employee groups could be negatively impacted more than others, such as females, front line staff and particular age groups.

If yes, do you think it should be set at the same level as per UK Government policy (at £95,000)?

N/A

Please give reasons for your response.

N/A

If no, what level would be appropriate?

N/A

Please give reasons for your response.

N/A

Question 5: Which of the following exit payment arrangements (included in the UK Government's exit payment cap proposals) should Scottish Ministers include in the event that a cap was to be introduced in Scotland for the devolved public sector? Please select all you think should be included.

- Voluntary early severance / redundancy ✓
- Voluntary early retirement ✓
- ~~Compulsory redundancy~~
- ~~Contractual arrangements~~

~~• Collective agreements~~

Please give reasons for your response.

Any cap should be restricted to enhanced payments made directly to an employee on exit from public service. This would include enhanced redundancy payments, voluntary severance and payment in lieu of notice.

The cap should not extend to payments to terminate service under the conditions of a settlement agreement or linked to the employment contract.

Question 6: Are there any other exit payments situations where you think a cap should apply?

No

Please give reasons for your response.

N/A

Question 7: Which of the following exit payments (included in the UK Government's exit payment cap proposals) should Scottish Ministers include if a cap were to be introduced for the devolved public sector? Please select all you think should be included.

- Voluntary and compulsory exits ✓
- Other voluntary exits with compensation packages ✓
- ~~• Ex gratia payments and special severance payments (settlement agreements)~~
- ~~• Other benefits granted as part of exit process that are not payments in relation to employment~~
- ~~• Employer costs of providing early unreduced access to pensions~~
- ~~• Any form of pension 'top-up'~~
- ~~• Payments or compensation in lieu of notice and cashing up of outstanding entitlements~~
- ~~• Other (please specify)~~

Please give reasons for your response.

Any cap is likely to significantly hinder Local Governments ability to manage their workforce in a voluntary way. This may result in compulsory redundancies if workforce reductions are required with unavoidable Political and employee relations challenges.

If a cap is introduced we do not believe it should include any statutory redundancy element or contractual entitlements.

The inclusion of any pension provisions would also give serious cause for concern. Pension provision and protections exist (and have only recently been introduced in Scotland following successful negotiation to ensure retention) to allow unreduced access to pension entitlements in certain circumstances. The inclusion of pension provision and certain other contractual elements of pay in a cap would cut across existing legal agreements and would further burden local government and associated parties involved in renegotiating agreements.

The list makes reference to employer costs of providing early unreduced access to pension. This is not a payment to the individual employee but is a burden accepted by the employer to assume the costs of the early crystallisation of benefits. As indicated previously this is undertaken within Scottish councils on the basis of cost benefit analysis and on the premise that the release will generate significant savings, it seems contrary to this purpose to potentially restrict the ability to release certain employees and achieve savings.

Any proposal to include costs of providing early unreduced access to pensions in a cap has the potential for more females than males to be impacted by these changes. This arises from the calculation of the strain on the fund charge (early access cost) which applies an actuarial calculation taking account of the early retirement reductions (service and years to fund retirement age) and the members' age and gender to determine impact on the fund. As women statistically live longer, they will naturally draw their pension benefits for longer and as a result, any early retirement from said fund is likely to generate a higher cost for a female member than a male with similar circumstances. This requires further robust equality impact assessment to fully understand the impact on this group. A further consideration is the potential impact on those at the lower end of the pay spectrum as they are less likely to be caught by such a cap applied in the manner described. This has the potential to include those delivering front-line services and as such could have a serious impact on local government service delivery.

Question 8: Which of the following payments should Scottish Ministers exclude, if a cap were to be introduced in the devolved public sector? Please select all that apply.

- Death or injury attributable to employment ✓
- Serious ill health and retirement and certain fitness requirements ✓
- Litigation for breach of contract for unfair dismissal ✓
- Compliance with an order of court or tribunal ✓
- Other (please specify below)

Other -Employer costs of providing early unreduced access to pensions (Strain Costs) ✓

Please give reasons for your response.

We would consider the inclusion of the above payments unfair, not morally justifiable and could leave us vulnerable to legal challenge.

Question 9: **Should Scottish Ministers introduce a threshold for recovery arrangements for high-earners in the devolved public sector? Yes / No**

No

If yes, at what threshold should recovery arrangements be set?

- At £80,000
- Lower than £80,000
- Higher than £80,000

N/A

Please give reasons for your response.

We do not think it is required or appropriate to introduce exit payment recovery arrangements in Scotland for the following reasons:-

- The ability for local government employers to recruit and retain specialised skills and knowledge in the public sector may be reduced. Recruitment and retention strategies may need to be reviewed and as the introduction of clawback arrangements could impact on our ability to appoint the best person for the job.
- As outlined in this response, exit payments are already sufficiently scrutinised with business cases produced demonstrating value for money for the people of Scotland. These arrangements together with other proposed controls over the method of calculation of exit payments assist in ensuring a reasonableness test across the public sector that makes the issue of 'recovery of payment' less significant.
- Head teachers have the potential to earn more than £80k and following retirement they often become a vital resource in delivering education by undertaking supply work. Any proposed recovery arrangement could impact on this vital resource.

- The Highland Council already has re-employment restrictions in place for any employee who has received a severance package. This helps to ensure value for money is delivered locally in terms of severance payments.

Question 10: Over what time period should recovery arrangements apply?

- At 12 months
- Earlier than 12 months
- Beyond 12 months

We do not agree with the introduction of legislated recovery arrangements but if such arrangement were to be introduced, 12 months seem reasonable

Please give reasons for your response.

As outlined in earlier responses we would not support the introduction of legislated recovery arrangements but, if introduced, 12 months seem reasonable and proportionate.

Question 11: Which of the following payments should Scottish Ministers include in the exit payment recovery arrangements, if introduced for the devolved public sector? Please select all those you think should be included.

- Those for loss of employment, including discretionary payments ✓
- ~~to buy out actuarial reductions to pensions~~
- Severance payments ✓

Please give reasons for your response.

The payment made to buy-out actuarial reductions is not a payment made to the employee therefore would be inappropriate to include.

We would question whether anything other than discretionary payments could be recovered as the recovery of a statutory payment would be inappropriate.

Question 12: Do you think that enforcement mechanisms should be introduced for the devolved public sector?

Yes, if recovery arrangements are introduced

Please give reasons for your response.

As outlined in earlier responses we would not support the introduction of recovery arrangements. Introducing enforcement mechanisms through legislation or any other means would be problematic. However, without enforcement mechanisms would make any clawback arrangements ineffective.

Question 13: If in the event of an exit payment cap and recovery should Scottish

Ministers have: Please select all those you think should be included.

- ~~• The power to waive in exceptional circumstances~~
- Delegate the power to waive ✓
- ~~• Delegation within a certain threshold~~

Please give reasons for your response.

In respect of local government in Scotland, we believe that delegating the power to waive the cap to individual councils would be important. Local authorities are currently working within existing policies and rules relating to value for money which are scrutinised and monitored by Audit Scotland. In order to give flexibility in exceptional circumstances we should be able to determine the mechanism for the approval of releases in appropriate circumstances. This could be full Council, Board, a sub Committee or may be an officer devolved matter.

Question 14: Are there other forms of reporting you think would be helpful, across the devolved public sector in Scotland? Yes / No

No

Please give reasons for your response.

As indicated in the consultation document we believe that current practice in Scotland allows robust public scrutiny of severance payments across Councils (Reports to Council and externally audited by Audit Scotland).

Question 15: Do you think there would be value in changing exit payment tariff terms along the lines of the UK Government's proposals: Please select all those you think should be included.

- Three weeks' pay per year of service ✓
- Maximum level of salary on which the payment is based to £80,000 ✓
- A ceiling of 15 months on the maximum number of months' salary ✓
that can be used
- ~~• Other alternative approaches (please specify)~~

Please give reasons for your response.

As previously outlined, the data gathered on severance schemes across the devolved public sector in Scotland has highlighted big differences which don't seem justified. We believe the introduction of tariff terms outlined above would help to secure a more consistent approach across the wider public sector.

Question 16: What would be an appropriate payback period for exit payments, that balances affordability with operational effectiveness?

Max 3 years

Please give reasons for your response.

An appropriate max payback period for exit payments would be 3 years. This period would be sufficient to give local authorities flexibility to manage their workforce while delivering value for money. A consistent approach across the wider public sector would be appropriate and demonstrate value for money for the people of Scotland.

Question 17: Should Scottish Ministers apply any of the following restrictions, for devolved public sector employers?

- ~~• Cap the amount of employer funded pension 'top-up' payments to no more than the amount of the redundancy lump sum to which that individual would otherwise be entitled;~~
- ~~• Remove the ability of employers to make 'top-up' payments~~
- ~~Altogether~~
- ~~• Increase the minimum age at which an employee is able to receive an employer funded pension 'top-up', so that this minimum age is closer to or linked to Normal Pension Age~~
- ~~• Other (please specify)~~

Please give reasons for your response.

There are currently pension regulations in place which give entitlements to employees to access their pension benefits in certain circumstances. This proposal would cut across the provisions of individual's contracts and relevant pension regulations.

If none of the above, please give reasons for your response.

Given our exit payments are low compared to other areas of the public sector and there is already sufficient scrutiny to ensure best value we do not see any requirement for these restrictions.

Any proposed changes to employer-funded top ups would impact on authorities being able to enhance packages by offering compensatory added years (CAY). This

would be restrictive and likely to lead to a move away from voluntary and towards compulsory redundancy.

Question 18: You are invited to provide evidence of where an exit cap or other changes to exit payment terms would further support your organisation's ability to manage paybill costs?

The introduction of an exit cap or other changes to exit payments would likely achieve limited savings.

It is important that Councils have the ability to manage the size of their workforce in a flexible and voluntary way while delivering value for money to the people of Scotland. It is current practice in local authorities to ensure a robust business case around severance packages which demonstrate best value and achieve financial benefits. There may be value in introducing a requirement for all public sector employers to have a robust business case around severance packages which demonstrates financial benefit to the public sector.

Question 19: What do you think are the positive and negative economic and fiscal impacts of an exit cap, changes to exit payment terms and recovery arrangements?

Positive

May deliver small saving to public sector

May attract positive publicity

Negative

Introduction of a cap is likely to result in a swifter move towards compulsory redundancies raising Political and employee relations challenges.

Introduction of cap could result in equality challenges as outlined above which could result in costs for local authorities.

Proposed recovery arrangements may impact on council's ability to attract suitably qualified and skilled candidates for certain posts.

Future savings are more likely to be taken from front line services where most employees will be unaffected by cap.

What evidence do you have?

Recent analysis of the potential impact of a cap proposed by the UK Government has highlighted that it would not just be high earners affected. Depending on service and age many middle managers will also be impacted.

Question 20: What do you think are the positive and negative social impacts of an exit cap, changes to exit payment terms and recovery arrangements?

Negative

Introduction of a cap is likely to result in a swifter move towards compulsory redundancies raising Political and employee relations challenges.

Introduction of cap could result in equality challenges as outlined above which could result in costs for local authorities.

Future savings are more likely to be taken from front line services where most employees will be unaffected by cap.

It is not just high earner that would be affected by the cap and recovery arrangements. Middle management and teaching staff in local authorities would be impacted by this. This may affect education provision in getting the best person for the job.

What evidence do you have?

We assess that the cap and its application may penalise more females than males, older employees, those with most service and will impact employees at all levels of pay across local authorities and not just higher earners.

Question 21: What do you think are the positive and negative environmental and / or regulatory impacts of an exit cap, changes to exit payment terms and recovery arrangements?

Should a cap be introduced which includes pension payments this has the potential to require a review of pension regulations which have only just been agreed in Scotland following lengthy negotiations.

What evidence do you have?

Pension provision and protections exist to allow unreduced access to pension entitlements in certain circumstances. The inclusion of pension provision and certain other contractual elements of pay in a cap would cut across existing legal agreements and would further burden local government and associated parties involved in unpicking said agreements.

Question 22: What do you think are the positive and negative financial impacts of an exit cap, changes to exit payment terms and recovery arrangements?

Positive

May deliver small savings in exit payments

Negative

As outlined in this response the introduction of such arrangements will have a significant impact on our ability to manage the workforce in a voluntary way. This

could lead to a move towards compulsory redundancies and employee relations issues which could have financial and resource implications.

What evidence do you have?

The potential impact of a cap proposed by the UK Government has highlighted that it would not just be high earners affected. Depending on service and age many middle managers will also be impacted. This may lead to less volunteers and a move towards compulsory redundancies.

Question 23: What do you think are the positive and negative equalities impacts of an exit cap, changes to exit payment terms and recovery arrangements?

Negative impact

As indicated more females than males, older employees, those with most service and will impact at all levels of local authorities.

Any proposal to include costs of providing early unreduced access to pensions in a cap has the potential for more females than males to be impacted by these changes. This arises from the calculation of the strain on the fund charge (early access cost) which applies an actuarial calculation taking account of the early retirement reductions (service and years to fund retirement age) and the members' age and gender to determine impact on the fund. As women statistically live longer, they will naturally draw their pension benefits for longer and as a result, any early retirement from said fund is likely to generate a higher cost for a female member than a male with similar circumstances. This requires further robust equality impact assessment to fully understand the impact on this group.

What evidence do you have?

See above.

Question 24: What unintended consequences do you think might arise from proposals that go beyond the status quo?

Swifter move towards compulsory redundancies as certain employees will be discouraged from leaving voluntarily if impacted by changes.

Significant political and employee relations challenges.

Potential equality challenge from groups disproportionately affected.

Inability to manage the workforce efficiently and effectively.

Question 25: Do you think these are the appropriate factors to consider when making the case for change to severance arrangements in the devolved public sector? Yes / No

Yes, however we believe that the proposed changes to severance arrangements outlined in the consultation will have a negative effect on:

- Industrial relations and fair work principles
- Delivering flexible and responsive public services
- Ability on employers to continue to reshape organisations and deliver services

From the following list, please select all those you consider to be priority factors:

- ☒ Industrial relations and Fair Work principles
 - ☒ On delivering flexible and responsive public services
 - ☒ A desire to ensure that severance payments are not excessive and offer value for money
 - ☒ Ability to ensure there is greater consistency of application across sectors, including between the reformed Civil Service Compensation Scheme and devolved schemes, where that is seen to be valuable
 - ☒ Ability of employers to continue to re shape organisations and deliver services
 - ☒ The risks and opportunities presented by taking different approaches where there is a UK wide labour market
 - ☐ Other
- If other, please specify.

Please give reasons for your response.

We believe all the factors highlighted need to be considered. However, as indicated above we believe that the UK Governments proposed changes to severance arrangements will have a negative effect on:

- Industrial relations and fair work principles
- Delivering flexible and responsive public services
- Ability to continue to reshape and deliver services

Question 26: Are there any other risks you think should be part of Scottish Ministers decision making on this issue? Yes / No

Yes

Please give reasons for your response.

A number of risks have been outlined in this paper including:

- Risk of swifter move towards compulsory redundancies as certain employees will be discouraged from leaving voluntarily if impacted by changes.
- Risk of significant political and employee relations challenges.
- Risk of potential equality challenge from groups disproportionately affected.
- Risk that we will be unable to manage the workforce efficiently and effectively.
- Risk to achieving required financial savings
- Risk to Education – reducing supply teaching pool and ability to appoint best person for job if recovery arrangements implemented

Question 27: In conclusion, which of the following options best reflects your views of

reform of severance arrangements across the devolved public sector?

Please select appropriate option.

Option 1. Status quo – No reform is required as current compensation arrangements meet best value and deliver against Fair Work principles

Option 2. Non-legislative change – Consider reforms to current devolved compensation arrangements that would improve value for money and deliver on Fair Work principles but which do not require use of Regulations

Option 3. Replicating UK arrangements – Agree to make reforms in line with the reformed Civil Service Compensation Scheme arrangements and the UK Government's proposals to implement a £95,000 exit payment cap and recovery of exit payments for those who earned more than £80,000 and return to the public sector

Option 4. A hybrid approach – Agree to reform using the powers conferred on Scottish Ministers and implement a hybrid of legislative and non-legislative change which could, for example, strengthen existing severance arrangements and/or introduce some form of different cap and/or recovery arrangements.

Please give reasons for your response.

Option 2. Non-Legislative Change – No reform is required as current compensation arrangements meet best value and deliver against Fair Work principles. Although there may be scope to introduce some consistency measures as highlighted in this response, we do not feel a legislative approach is required.

Severance payments are not a significant issue in Scotland and the number and costs have fallen significantly in recent years. Reducing exit payments will inevitably make reorganisation and reform more difficult to achieve. Scotland already has an ageing public sector workforce and the UK government provisions will exacerbate this trend.

There is sufficient governance and scrutiny around severance payments already as outlined in this response.

Question 28 / final comments

Any other comments please include them here

The introduction of a cap for public sector employers will be very restrictive to effective organisational design and transformational change.

The Highland Council already regularly reviews severance policies to minimise costs where possible.

While it is acknowledged that government believes a single, UK-wide approach is preferable, it is our position that a 'one size fits all' approach would be an issue. In addition, it is our view that the removal of the link with local decision making by applying these proposed changes to devolved administrations and then to Scottish Local Government, is undemocratic.

In addition, changes to the status quo would impact on current pension legislation. The Local Government Pension Scheme (Scotland) Regulations 2014, Para 29 (7), allows automatic access to pension benefits which they must take in circumstances of Business Efficiency or Redundancy. Consideration would need to be given whether these regulations need to change to remove the automatic nature of access to pension entitlement in these circumstances (Protections are already in place in Scotland and may have to be extended in the event of a further change to the regulations).

Our view is that there are clear benefits in promoting the status quo, but with requirement for public sector employers to have a business case which demonstrates a financial benefit and value for money for the public sector.