# UNISON Scotland consultation response
# A Severance Policy for Scotland: Consultation on severance arrangements across the devolved public sector

## Introduction

UNISON Scotland is the largest trade union with members impacted by the proposed policy, representing 155,000 members across the devolved public sector. UNISON Scotland welcomes the opportunity to respond to this consultation.

## Overview

UNISON Scotland believes that the case for changing severance payments across Scotland has not been made. The Scottish Government is under no obligation to follow the hasty and ill-conceived changes made in England and we would urge them not to do so.

The number of severance payments in recent years is a consequence of the austerity policies pursued by the UK government and the consequential job losses in the Scottish public sector. In Scotland, the bulk of the austerity cuts have been imposed on local government, hence the higher numbers in that sector.

According to the Scottish government's data analysis the number and cost of severance payments has fallen dramatically. Between 2014-15 and 2016-17, the indicative cost of exits across the devolved public sector showed over 1,000 voluntary early severance / voluntary early retirement cases reducing to 264, with related costs coming down from £46 million to £11 million. Very few exit payments in Scotland exceed the UK government's planned threshold, although more would be caught if pension payments were included. In addition, outwith local government, severance schemes already have to be approved by Scottish ministers.

Scottish ministers already have sufficient powers to address any perceived failures of governance on this issue. While there is a case to be made for common staffing frameworks, picking one issue in the name of consistency is not the correct approach. Different arrangements have been negotiated for good reasons and they remain a matter for those negotiating bodies.

The exit cap gives the impression that it is aimed at high earners. In practice, if pension strain cost were included, it would cover staff on moderate incomes. It would also mean changes to pension benefits, a clear breach of the 25-year no change guarantee.

The recovery of exit payments would bear more heavily on professions that don't have private sector counterparts and will encourage consultancy and contracting arrangements. It would also have a discriminatory impact on predominately female professions.

Very few current severance agreements in Scotland would exceed the limits being considered by the UK government. The same applies to the limited use of pension top-ups. We can see no benefits in imposing standard payback periods that would limit local flexibility in addressing organisational change.

These proposals will make the management of change more difficult to achieve and impact service planning and industrial relations negatively. Incentivising voluntary exits are an important tool when seeking to change the size and shape of an organisation.

These proposals are a solution to a problem that doesn't exist in Scotland. The financial savings would be tiny, whilst damaging industrial relations and the ability of organisations to improve service delivery.

## Consultation Questions

### 1-2. What types of bodies or bodies themselves do you think SHOULD/SHOULD NOT be covered?

Public bodies under the direction of the Scottish government are already subject to guidance on this issue. Local authorities have separate negotiating arrangements and are democratically accountable to their own communities. Best Value provisions already govern the decisions taken on recouping severance costs, as the 2016 Audit Scotland report acknowledges.

It is unclear from the consultation paper if any policy will apply to arms length bodies such as ALEOs and trusts. If pension costs are included then this will require changes to the statutory regulations of the Scottish Local Government Pension Scheme. That covers a range of scheduled and admitted bodies that are not mentioned in the consultation.

It is also unclear if staff moving to or from public bodies outwith Scotland would be covered by the policy.

### 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?

UNISON Scotland is not opposed to national staffing frameworks and has made the case for such frameworks in addressing public service reforms such as health and care integration. However, this cannot be done on a selective or piecemeal basis.

Severance arrangements have been negotiated in a number of different negotiating bodies and reflect the circumstances in that public body or sector. Such negotiations involve trade-offs that can include severance arrangements. If the Scottish government were to impose a standard scheme, then all those negotiations would need to be revisited.

In addition, severance arrangements can vary to reflect specific sectoral or local factors. For example, the NHS scheme reflects the fact that there are few alternative employers within Scotland for many health professions. In local government the same applies to a

number of professions such as social work, primarily those undertaken by women. We would therefore argue that such a policy would discriminate against female public sector workers.

**4-8. Exit payment cap.**

UNISON Scotland does not believe it is necessary to set an exit cap for the devolved public sector. A standardised cap is wrong in principle and for the reasons set out in (3) above.

By setting the cap at £95,000, the UK government is giving the impression that this is aimed at high earners. We note that they have not taken similar measures to constrain severance payments outwith the public sector.

By including pension strain payments this cap, it could bring a wide range of staff on moderate incomes within scope. This would represent an attack on staff such as midwives, nurses, social workers, environmental health officers and librarians, with long service who happen to be near retirement when their employment is terminated through no fault of their own.

Assuming most of those over the age of 55 might be entitled to the maximum statutory redundancy payment of just over £14,000 then that will only leave £81,000 for strain payments.

For example, an employee with partial rule-of-85 protection made redundant at 55 on £30,000 pa with 35 years service, the strain payment could vary depending on fund actuary between £67,750 to around £84,700. Plus the £14,000 statutory redundancy payment would put this member at risk of exceeding the cap based on the assumptions used by the fund actuary. More if they were entitled to any additional severance payments.

As time goes on it will catch more people as average retirement age increases and strain costs will increase. It is also important to remember that pension strain costs are not direct payments to staff. They are an actuarial calculation of the likely cost to the pension fund. How much an individual actually receives in pension payments largely depends on how long they live. That life expectancy is also lower in Scotland than the rest of the UK.

An exit payment cap would also require the Scottish government to change the SLGPS regulations, reducing the value of those benefits. This is a statutory provision, not simply a contractual one as may apply elsewhere in the public sector. This would breach the 25-year no change guarantee given when the most recent changes were made to public sector pension schemes.

There is also a lack of clarity on exit payments relating to early conciliation and settlement agreements. The policy appears to conflate two different circumstances – payments to avoid legal claims and those where staff are made redundant. For example, the potential impact on NHS staff using whistle blowing legislation to protect them from discrimination arising from raising concerns about patient care.

**9-14 Exit payment recovery**

UNISON Scotland does not believe it is necessary to introduce exit payment recovery arrangements. There is little evidence that this is an issue in Scotland.

There is no policy justification for penalising staff that seek employment in the public sector after redundancy, compared to those who seek work in the private sector. Particularly when that private or voluntary sector post could be providing services under contract to the public sector. It is also likely to encourage consultancy or other forms of bogus self-employment.

The policy would impact more harshly on professions that do not have significant private sector counterparts. This is one of the reasons for the NHS severance arrangements. It could also disproportionately impact on those living in island authorities and rural areas.

There also needs to be clarity on what happens to staff that gain employment in the public sector outwith Scotland and vice versa.

Enforcement mechanisms that include the possibility of dismissal add a further level of complexity. This could involve a new employer in matters that relate to the previous employer that they have no control over.

**15-17 Exit payment terms**

UNISON Scotland does not believe there is any justification for the Scottish government to interfere in exit payment terms freely negotiated across the Scottish public sector.

In practice, very few agreements exceed three weeks pay per year of service or the 15 months ceiling. If a salary has been properly evaluated for a post, then it should be the salary that applies to a severance payment. Anything else is a matter for the governance arrangements of that organisation.

We are not convinced there is any merit in setting a standard payback period across the Scottish public sector. It is wrong in principle to interfere in local government that has its own democratic accountability. In addition, there can be range of factors that organisations take into account when reaching a decision on organisational change of which the payback period is only one. This provision could halt a positive service delivery change that also has other financial benefits, just because it doesn't meet an arbitrary period imposed by the Scottish government.

There is equally no justification for ending or restricting pension top-up payments. Such payments are less often used in recent years, but remain an important incentive in particular circumstances. These are matters best dealt with at a local level to reflect sector or local factors.

**18-24 Economic and social factors**

The onus is on the Scottish government to show how severance payments are negatively impacting on the economy before imposing any changes. It is austerity that has damaged

public services and the wider economy, not the workers that have lost their jobs. Reducing exit payments is blaming the victims for the policies of governments.

UNISON Scotland believes that these proposals will make the management of change more difficult to achieve and impact service planning and industrial relations negatively. Incentivising voluntary exits are an important tool when seeking to change the size and shape of an organisation.

We have highlighted above some of the potential equalities impact of the proposals. It will clearly have a direct age discriminatory impact on long serving staff. In addition, it has an indirect discriminatory impact on professions largely undertaken by women. An Equality Impact Assessment should be undertaken before ministers make a decision.

**25-26 Case for change**

We do not agree with all the factors listed in the consultation paper.

The Civil Service Compensation scheme is an arbitrary and inappropriate benchmark for other services, which have their own circumstances, terms and conditions and industrial relations culture to consider. Consistency of application also fails to reflect these circumstances.

Taking a different approach in a UK-wide labour market is a strange factor for a government that supports, as we do, the devolution of employment law. In practice, pay and conditions are increasingly negotiated in Scotland and there is limited movement of public service staff to other parts of the UK.

Scotland's positive approach to industrial relations and Fair Work principles are more likely to attract workers to Scotland. This will become increasingly important given Scotland's demographic challenges and the impact of Brexit. Adopting the policies of a regressive UK government would be a move in the wrong direction.

**27. Options for change**

Option 1, the status quo, best reflects our view of reform of severance arrangements as set out in this paper. There is little evidence that the issues or policy framework that drives the UK plans apply in Scotland. If they do, then ministers already have sufficient powers to address any failure of governance.

Non-legislative guidance (Option 2) is already used by ministers in areas they have responsibility for. It is not appropriate to extend that guidance to local government that has its own democratic accountability.

Following the UK arrangements (Option 3) would indicate a failure to recognise the different circumstances in Scotland as well as the different policy approach.

A hybrid approach (Option 4) is an option if Scottish ministers are minded to make any changes. If ministers were so minded, it would be important to include a period of protection, particularly for staff over the age 50 who would have insufficient time to make

alternative arrangements. Most importantly, pensions should be excluded from all calculations. Any caps should be indexed in line with pay and prices.

**Conclusion**

UNISON Scotland strongly believes that these changes are unnecessary and reflect a different policy approach by the UK government that should not be adopted in Scotland. They will hinder organisational change and disrupt industrial relations. In practice they will hit long serving older staff and those on moderate incomes. This is too high a price to pay for what are likely to be minor financial savings.

**UNISON Scotland**
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