



## **APFO / Prospect Response:**

A Severance Policy for Scotland: Consultation on severance arrangements across the devolved public sector.

### **Introduction**

This response is from the APFO Branch of Prospect. The APFO Branch represents the strategic leaders of the Fire and Rescue Service including Chief Fire Officer, Deputy Chief Fire Officers, Assistant Chief Fire Officers and Area Managers and their equivalents.

### **Background**

On the 31st March 2017, the Scottish Government announced a consultation on whether there is a case for change to severance arrangements in the devolved public sector in Scotland and if so, what that change could look like. To do this, the Severance Policy for Scotland consultation sets out current practice across the public sector landscape to manage and control severance arrangements and the underpinning policy set out by the UK Government.

The Scottish Government is not consulting on the basis of a preferred way forward, but seeks views on four broad policy options and whether recent powers should be used - or other reforms taken forward through changing exit payments arrangements, in particular through the introduction of an exit payment cap, recovery of exit payments and changing exit payment terms. This is, in part, as a result of powers conferred on Scottish Ministers by the UK Government in relation to capping and recovery of exit payments in devolved public sector bodies and existing powers that relate to exit payment terms.

***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.

## **APFO / Prospect Response to Consultation Questions:**

### **2.8 WHICH BODIES ARE IN SCOPE**

***Question 1 What types of bodies or bodies themselves do you think SHOULD be covered? Please give reasons for your response.***

APFO's broad view is that mandating restrictive employment practices across all of the public sector is both unnecessary and unduly restrictive. However, we welcome the Scottish Government's commitment to a consistent approach across all the devolved public sector bodies.

***Question 2 What types of bodies or bodies themselves do you think SHOULD NOT be covered? Please give reasons for your response.***

Please see our response to question 1.

### **3.2 EXISTING SEVERANCE SCHEMES BY WORKFORCE**

***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 / No Please give reasons for your response.***

APFO absolutely support the principle of best value for the public purse and that local authority employers should have a range of mechanisms to ensure best value is delivered whilst maintain terms that are fair and equitable to employees.

We also fully support transparency, openness, responsibility and accountability and that all local authorities should have explicit policies in place to demonstrate compliance.

However, we believe it is the role and responsibility for local authority employers to lead and manage their organisations and their workforce, and it is not for central government to interfere with the freedoms and flexibilities that local authorities must retain, to deal with individual and specific circumstances. Our view is that neither the UK Government nor the Devolved Administrations should set a maximum level for exit payments; this responsibility must remain with the employing authority.

A fairer and simpler approach would be to ensure that any capping arrangements are implemented at a local level, are employer specific and pension scheme specific. Each employer should have to justify the decisions they make and ensure that all public spending is in the interests of both efficiency and effectiveness and are subject to local audit scrutiny. Where the Scottish Government believes this is not the case they should tackle the specific employers rather than applying arbitrary rules to all of the devolved public sector.

### **4.1 LEVEL OF EXIT PAYMENT CAP**

***Question 4 Do you think it is necessary to set an exit payment cap for the devolved public sector? Yes/No Please give reasons for your response.***

***If yes, do you think it should be set at the same level as per UK Government policy (at £95,000)? Yes / No Please give reasons for your response.***

***If no, what level would be appropriate? Please give reasons for your response.***

APFO strongly believes that setting an exit payment cap is restrictive and unnecessary as it represents central interference in a matter that we believe should be determined by locally accountable authorities including the Scottish Fire and Rescue Service Board (SFRS Board). Regulations already exist to manage payments made to those leaving fire and rescue services and this cap will make that a more complicated position and undermine the process.

It is vital that all local authorities have effective governance and scrutiny arrangements in place, alongside advice from chief financial officers and transparent reporting mechanisms to ensure accountability. These measures should satisfy the Scottish Government that there should be freedoms and flexibilities built into the proposals on exit payments, so not to restrict or limit an authority's ability to effectively manage the organisation.

For many of the reasons outlined above, we do not agree that a cap should be set for an exit payment. We believe setting a cap would be counterproductive in that it would limit the opportunity for organisational restructuring, particularly at the most senior level, could potentially lead to more costly remedies in managing the exit of more senior managers and would be unfair to senior managers who should be treated with the same core values as that afforded to all other employees.

#### **4.2 SEVERANCE ARRANGEMENTS COVERED BY A CAP**

***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.***

We would reiterate our view that any such cap is restrictive and unnecessary. APFO disagree with the overarching aim of the UK Government's proposals which appear to seek to align with the worst terms and conditions of the private sector. This "race to the bottom" mentality is further devaluing the public sector. Both the UK Government and the Devolved Administrations should look to value its public sector employees, even those that are leaving public service.

It would be an unfair comparison (as the UK Government have sought to do) to examine redundancy pay between the public and private sector as a significant number of exits from the private sector workplace are dealt with through settlement agreements rather than redundancy. A significant number of private sector employers use this route rather than redundancy and yet no data is provided in this consultation document to cover this type of exit arrangement.

Statutory redundancy pay does not incentivise anyone to leave, and there are good business reasons for making an exit scheme attractive such as to facilitate restructuring in order to improve efficiency.

We are concerned that an unintended consequence of the proposed capping and tariff arrangements will be an increased use of compulsory rather than voluntary redundancy, as organisations will be unable to offer a reasonable incentive for staff to leave the organisation. Not only will this reduce flexibility but also increase costs through lengthy consultation periods and negotiations with the representative bodies.

The Scottish Government needs to ensure that the public sector continues to attract talented people. There is already evidence from some sectors of the public sector in England that the changes introduced by the UK Government are making it difficult to recruit and retain talent. APFO would suggest that the Scottish Government reflects on this before introducing further unnecessary changes.

There are many examples of collective agreements with trade unions on policies in place for circumstances such as redundancy. If a cap were to be introduced, there may be knock-on consequences for such collective agreements, impacting on general industrial relations. It may also result in less volunteers for redundancy, thereby affecting motivation and morale, service delivery and workforce planning.

Our firmly held view is that if the Scottish Government is determined to impose a cap on exit payments, the costs associated with any exit payment should be limited to the specific redundancy payment and not include payment in lieu of leave, payment in lieu of notice or other associated payments.

***Question 6 Are there any other exit payments situations where you think a cap should apply? Please give reasons for your response.***

No. Please see response to question 5.

#### **4.3 PAYMENTS INCLUDED IN A CAP**

***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.***

As a continuation of the response to question 5, our view is that APFO has considerable experience of supporting our members in reaching settlement agreements without the need for tribunals and expensive litigation. These agreements are usually only used in appropriate circumstances generally with the aim of reducing costs to taxpayers. By including special severance payments, the government runs the risk of increasing the number of conflicts that result in a complex tribunal claim for breach of statutory or contractual provision, as it would greatly affect the willingness of an individual to settle without resort to a full hearing. In doing so, such a proposal could effectively increase costs and administrative burdens on authorities.

At the more senior level, there may be genuine business reasons why employees are not able to take leave, which do not apply at lower levels within the organisation. Notice periods for senior staff are in general, longer than those for more junior staff. Whilst we understand the reasons why any government would want to ensure any exit payments are reasonable, justifiable and provide value for money, it is also important that all employees feel valued and that the organisation treats all employees fairly. Senior staff exiting an organisation are more likely to find themselves in a position whereby they are owed outstanding leave and have a longer notice period than more junior staff. Such staff are entitled to compensation for owed leave and notice periods and any such payments should be considered outside the scope of any redundancy or special severance payment. To aggregate all such payments would in our view, be grossly unfair. The inclusion of special severance payments for aggregation purposes in any cap may impact on any negotiated settlement which would deliver best value for the public purse. Scottish Government are reminded that recourse to Courts and Tribunals for remedy, are costly in terms of direct and indirect costs and that negotiated settlements are a legitimate mechanism for employers and employees to reach agreement. Adopting proposals akin to those being considered by the UK Government would, in our view, restrict the ability of the SFRS Board to effectively manage change through organisational restructuring.

APFO do not agree that other payments for untaken annual leave should be included. This is remuneration for normal ongoing activities that are part of their employment as, if a person has not taken the proportionate amount of their annual leave, the payment effectively represents pay for work they have carried out.

Including pay in lieu of notice could also cause problems for employers. Payments in lieu would not be used without good reason. Including the payment in the cap could lead to further problems in relation to potential litigation if the individual concerned effectively receives a reduced compensation payment as a result of being paid damages for breach of contract.

We would reiterate that our firmly held view is that if the Scottish Government is determined to impose a cap on exit payments, the costs associated with any exit payment should be limited to the specific redundancy payment and not include payment in lieu of leave, payment in lieu of notice or any other associated payments.

#### **4.4 PAYMENTS EXCLUDED FROM AN EXIT PAYMENT CAP**

***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)*

***Please give reasons for your response.***

Please refer to our response to Questions 5 & 6 where we have made clear our view that we do not believe the Scottish Government should place a cap on public sector exit payments; it is also important to understand our firmly held view that if the Scottish Government is determined to impose a cap on exit payments, the costs associated with any exit payment should be limited to the specific redundancy payment and not include payment in lieu of leave, payment in lieu of notice or other associated payments.

#### **4.5 RECOVERY OF EXIT PAYMENTS**

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

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

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

***Please give reasons for your response.***

We have no further comment to make in response to Question 9.

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

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

***Please give reasons for your response.***

We have no further comment to make in response to Question 10.

#### **4.6 PAYMENTS TO BE INCLUDED**

***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.***

Please see our response to questions 5 & 6.

#### **4.7 ENFORCEMENT MECHANISMS**

***Question 12 Do you think that enforcement mechanisms should be introduced for the devolved public sector? Yes / No Please give reasons for your response.***

APFO reiterate our belief that mandating a cost cap from the centre is unnecessary and unduly restrictive. It goes against the principles of localism and devolving power at a local level, something the government has thus far supported. APFO accepts that significant payments should be subject to accountability and oversight, but a number of existing audit processes are in place both internally and externally and therefore procedures in relation to exit payments are already subject to scrutiny.

Exit payments are sometimes used by organisations to achieve efficiencies and improve workforce planning. Having an arbitrary cap mandated in legislation will stifle opportunities for efficiencies and workforce planning. APFO agrees with the views expressed by the LGA in England and others these restrictions may also have the unintended consequence of discouraging people from taking voluntary redundancy and increase the chance that people will resort to litigation as this is excluded.

APFO would suggest that a better way to achieve these aims would be to ensure exit payments linked to efficiencies are subject to a pay-back period which is agreed at a local level between employees and the employer as part of a contractual arrangement.

APFO disagree with the overarching aim of the proposal which appears to seek to align with the worst terms and conditions of the private sector. This “race to the bottom” mentality is further devaluing the public sector. The Scottish Government should look to value its public sector employees, even those that are leaving public service.

#### **4.8 RELAXATION PROCESS**

***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.***

APFO do not support the introduction of an exit payment cap. Any proposal to allow councils to waive these rules in part replicates the robust procedures already in place and begs the question why such a cap is required. Although there is currently no explicit cap on payments, fire authorities in maintaining their discretionary policies must have regard to the extent to which the exercise of their discretionary powers (in accordance with the policy), unless properly limited, could lead to a serious loss of confidence in the public service. They must also be satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable costs. We would argue that the inclusion of any provision to waive the cap in

some circumstances brings into question the point of having a cap (as we discuss in our response to question 5 & 6).

#### **4.9 ACCOUNTABILITY AND TRANSPARENCY**

**Question 14** *Are there other forms of reporting you think would be helpful, across the devolved public sector in Scotland? Yes / No Please give reasons for your response.*

No.

#### **4.11 CHANGES TO THE EXIT PAYMENT TARIFF**

**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.*

Please see our response to questions 5 & 6.

#### **4.12 PAYBACK PERIOD**

**Question 16** *What would be an appropriate payback period for exit payments, that balances affordability with operational effectiveness? Please give reasons for your response.*

Generally, exit payments are only made when there is a robust local business case for doing so, and APFO believe this should continue to be the case.

#### **4.13 PENSION 'TOP-UP' PAYMENTS**

**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.*

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

None of the above.

We believe that limiting entitlement to unreduced pension benefits where the cost of providing those benefits (when aggregated with any other payments in scope) exceeds the cap is unduly restrictive and unfair, with some employees facing long-term financial hardship, since the reduction will affect the level of their retirement pension for the remainder of their lives.

The cost of providing unreduced benefits for even quite modest earners with long service can be substantial so, although the policy aim of the cap is primarily seeking to avoid large cash pay-outs to higher earners, the actual scope is likely to be much wider.

Employees who are potentially affected may need to start thinking now how they might adjust to what could be significantly altered financial circumstances on retirement.

For employers, this could have a significant effect on levels of take-up of voluntary redundancy packages by older employees, with a knock-on effect for employers' workforce planning.

## **5.1 ECONOMIC AND FISCAL IMPACT**

***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?***

As a trade union, APFO does not have any further comment to make in response to Question 18.

***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? What evidence do you have?***

As a trade union, APFO does not have any further comment to make in response to Question 19.

## **5.2 SOCIAL IMPACT**

***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? What evidence do you have?***

We believe that limiting entitlement to unreduced pension benefits where the cost of providing those benefits (when aggregated with any other payments in scope) exceeds the cap is unduly restrictive and unfair, with some employees facing long-term financial hardship, since the reduction will affect the level of their retirement pension for the remainder of their lives.

The cost of providing unreduced benefits for even quite modest earners with long service can be substantial so, although the policy aim of the cap is primarily seeking to avoid large cash pay-outs to higher earners, the actual scope is likely to be much wider.

Employees who are potentially affected may need to start thinking now how they might adjust to what could be significantly altered financial circumstances on retirement.

### **5.3 ENVIRONMENTAL AND REGULATORY IMPACT**

***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? What evidence do you have?***

As a trade union, APFO does not have any further comment to make in response to Question 21.

### **5.4 FINANCIAL IMPACT**

***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? What evidence do you have?***

As a trade union, APFO does not have any further comment to make in response to Question 22.

### **5.5 EQUALITIES IMPACT**

***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? What evidence do you have?***

Imposing a cap could pose potential discrimination risks for employers on grounds of age. For example, unless specifically addressed in any regulations, a cap will disadvantage older, longer serving employees who are not necessarily high earners.

APFO believe that there is a significant risk of both age discrimination and gender discrimination resulting from these proposals. We would reiterate that careful consideration needs to be given to the specific details contained within pension scheme legislation. It remains unclear how the exit payment cap will impact on schemes such as the Local Government Pension Scheme (LGPS) which entitles members who are made redundant to access their pension without an actuarial reduction. We would remind government that it committed to no further adverse pension changes for 25 years when it made the significant changes to public sector pensions in 2013.

### **5.6 UNINTENDED CONSEQUENCES**

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

The Scottish Government needs to ensure that the public sector continues to attract talented people. There is already evidence from some sectors of the public sector in England that the

changes introduced by the UK Government are making it difficult to recruit and retain talent. APFO would suggest that the Scottish Government reflects on this before introducing further unnecessary changes.

## **6 A CASE FOR CHANGE**

***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***

***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 (please specify)***

***Please give reasons for your response.***

Section 7 of the consultation clearly indicates that further consideration is required by the Government to understand the impact of the proposals. APFO would strongly recommend that the Government carries out further analysis and takes a wider, more strategic view of public sector reforms. There have already been unprecedented levels of reform and it is clear that there is a lack of evidence to fully analyse the considerable impact at this point in time. There are already a number of discrimination cases being heard over this reform and the Government would be wise to see the outcome of these cases prior to introducing further potentially discriminatory legislation, especially in areas where the impacts are not clearly understood.

***Question 26 Are there any other risks you think should be part of Scottish Ministers decision making on this issue? Yes / No Please give reasons for your response.***

APFO does not have any further comment to make in response to Question 26.

***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. Please see our response to question 28.

***Question 28 / final comments Any other comments please include them here***

The Scottish Government’s approach of not consulting on the basis of a preferred way forward but instead asking for comments on four broad policy options is welcome and allows for the widest range of opinions on the best outcome.

APFO absolutely support the principle of best value for the public purse and that local authority employers should have a range of mechanisms to ensure best value is delivered. We also fully support transparency, openness, responsibility and accountability and that all local authorities should have explicit policies in place to demonstrate compliance. That said, it is the role and responsibility for local authority employers to lead and manage their organisations and their workforce, and it is not for central Government to interfere with the freedoms and flexibilities that local authorities must retain, to deal with individual and specific circumstances.

APFO also believes that exit payments and pay more generally, are a matter for locally accountable politicians to determine.

Efforts by government to control these matters from the centre are anti-localist and place unnecessary restrictions on local authorities who are already making difficult decisions about reshaping and reducing services and their workforces.