

# Consultation on reform of the Civil Service Compensation Scheme

Response by Prospect to Cabinet Office consultation on proposals to reform the Civil Service Compensation Scheme

**November 2017**

[www.prospect.org.uk](http://www.prospect.org.uk)

## **INTRODUCTION**

1. Prospect is an independent trade union representing over 140,000 professional, managerial, technical and scientific staff across the private and public sectors.
2. Tens of thousands of Prospect members are in the scope of these proposals for reforming the Civil Service Compensation Scheme (CSCS). Given the sustained level of departures from the civil service, thousands of Prospect members could be directly impacted by changes to the CSCS.
3. This submission reflects the strong views about CSCS reform that many Prospect members have conveyed to us at member meetings and through correspondence. It is important that these views, and the views of the hundreds of thousands of other workers in scope of this consultation, are addressed in the response by Cabinet Office.
4. This submission is intended to be a constructive attempt to deal with the issues being consulted on. As always, Prospect officials are available to discuss our response in more detail.

## **SUMMARY OF PROSPECT'S POSITION**

5. Prospect members are extremely frustrated that the issue of redundancy compensation and the terms of the CSCS are subject to consultation once again. These proposals are the fourth significant effort to reform the CSCS in the last eight years. On each of the last three occasions, Prospect members voted to accept the final outcome that their trade union had negotiated with the government of the day, even though each reform resulted in detrimental changes to their redundancy compensation. Each time those previous agreements have been undone or reneged on by parties other than Prospect and each time our members were subsequently hit by revised proposals that resulted in yet further detrimental changes to the CSCS. It is unacceptable for government to treat its employees this way. What employers and employees need now is a proper review of the CSCS and a fair outcome that can be the basis of an enduring solution that underpins a long period of stability regarding redundancy compensation terms for civil servants.
6. The 2010 CSCS terms are the most sensible basis for any reform of this scheme. Some adjustments will be necessary to reflect regulatory and other changes since those reforms came into effect but the overall approach was agreed to be fair by all sides then and remains appropriate now.
7. In any case, it is unacceptable to impose changes that are worse than the 2016 CSCS terms negotiated only last year. 84% of Prospect members who participated in our national ballot on those terms, voted to accept them; despite the extremely difficult context of that ballot. Prospect members

entered into that agreement in good faith, they should not be punished because the agreement was quashed due to factors outside of their control.

8. It is impossible to envisage Prospect members voting to accept terms that are worse than those they agreed to last year. As we indicated at the time, given the result of our 2016 ballot, any further proposals for detrimental changes would put us on a collision course with the government. It is also difficult to understand how worse terms could be said to be justified, when Government previously acknowledged that the 2016 terms met their stated objectives for reform. Prospect members are likely to resist the imposition of reforms that are worse than the 2016 agreement by all available means.

## **BACKGROUND**

9. It is necessary to go into some detail about the recent history of CSCS reform to put the current consultation into proper context.
10. The CSCS terms that had been in place since 1987 were attacked by the last Labour government for being inflexible and expensive and not compliant with age discrimination regulations. After a long and difficult set of negotiations, that government announced an agreement on reform of the CSCS with five of the six main civil service trade unions in February 2010. Prospect members endorsed that agreement in a subsequent ballot. On 11 May 2010, the High Court ruled in favour of a legal challenge taken by PCS and quashed the amendments to the CSCS that implemented that agreement.
11. Following the High Court judgment, the newly elected Coalition government announced it would legislate to limit compensation from the CSCS even further – 12 months' salary on compulsory redundancy and 15 months in other cases. The Superannuation Bill was introduced to Parliament on 15 July 2010 to implement these changes. At the same time as the Superannuation Bill was progressing through Parliament, the Coalition government entered into negotiations on reform of the CSCS with the trade unions. On 7 October 2010, the government announced that it had concluded negotiations with five of the six main civil service trade unions. This resulted in an agreement that represented a significant improvement over the terms of the Superannuation Bill (eg the limit on compensation in redundancy cases was increased to 21 months' salary, there was a salary underpin to protect the lower paid, members over minimum pension age were guaranteed access to an unreduced pension). Prospect members voted overwhelmingly to accept these terms. This agreement was also subject to legal challenge but on this occasion the judicial review was not successful.
12. The then Conservative Minister for the Cabinet Office described the 2010 CSCS terms as "fair for civil servants and fair for other taxpayers" and also said "we now have a scheme which is fair, protects those who need the most support, addresses the inequities in the current system and is right for

the long term"<sup>1</sup>. Consequently it was a shock to all civil servants when, shortly after the 2015 general election, the majority Conservative government reneged on the 2010 agreement and started consultation on further detrimental changes to the CSCS. Notwithstanding those circumstances, Prospect and the other civil service trade unions engaged fully in that consultation process. Yet again a difficult agreement was reached that Prospect members subsequently endorsed in a national ballot. Yet again that agreement was challenged through a Judicial Review by trade unions that were not party to that agreement and this time the Judicial Review was successful (see next section).

13. To summarise:

- Shortly before the 2010 general election, Prospect members voted for an agreement on CSCS reform that was subsequently quashed by Judicial Review. Worse terms were threatened.
- Shortly after the 2010 general election, Prospect members voted for another agreement on CSCS reform that was subsequently reneged on by government. Worse terms were threatened.
- Shortly after the 2015 general election, Prospect members voted for yet another agreement on CSCS reform that was subsequently quashed by another Judicial Review. Worse terms are being threatened.

14. So on three separate occasions in less than eight years, Prospect members have signed up to difficult reforms of the CSCS in good faith, only for each agreement to be undone due to reasons outside their control. Each time their good faith was spurned and government returned with even more detrimental proposals. The current proposals represent the fourth time in less than eight years that government has sought to punish Prospect members for government's own inability or unwillingness to keep to agreements that Prospect members had honoured. The treatment of Prospect members in relation to CSCS reform by successive governments has been nothing less than shameful.

15. Government should finally match the good faith Prospect members have shown and honour the past agreements on CSCS reform. For reasons explained later in this submission, it would be most appropriate to base any further reforms of the CSCS on the 2010 agreement but it would certainly be unacceptable to implement any reforms that are more detrimental than the 2016 terms.

## **JUDICIAL REVIEW**

16. The judgment in the Judicial Review that quashed the 2016 CSCS terms is cited in the consultation document; it is important to be clear about what the High Court found.

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<sup>1</sup> <https://www.gov.uk/government/news/civil-service-compensation-scheme-reformed>

17. The Judicial Review was taken on four different grounds but, very broadly, raised two main issues: (1) did government undertake the correct process in reforming the CSCS in 2016 and (2) were the 2016 reforms a violation of the rights of civil servants? Essentially these are questions around process and substance.
18. The High Court quashed the 2016 terms because it ruled that government had breached the consultation requirements imposed by the relevant legislation. The 2016 terms were undone on process grounds.
19. The High Court essentially found that 2016 terms in themselves could not have been undone simply because they violated civil servants' rights. The 2016 terms were not undone on grounds of substance.
20. In the course of the Judicial Review it was common ground between the parties that the 2016 terms interfered with civil servants "possessions". However the High Court accepted the government's argument that there was objective justification for this and dismissed the counter arguments.
21. However, in its own representations, the government itself argued that the 2016 terms were objectively justified because they met the government's declared objectives. If the 2016 terms can meet the government's own objectives, it surely follows that the current proposals, that go much further, are disproportionate and hence cannot be objectively justified. Prospect would certainly seek to test any detrimental reforms that went beyond the 2016 terms in the High Court.

## **DETAILED COMMENTS**

22. The questions in the consultation document are addressed below.

### **Question 1: Is there any other reform principle the Government should consider?**

23. The principles set out in the consultation document appear to be designed to deliver the government's desired outcome.
24. Some of the gaps in the government's principles for reform are hugely telling.
25. Government should not have to be prompted to set a principle around fairness to underpin a process like this. However, they have failed to set one out in the consultation document, so Prospect would suggest the following additional principle:

- to treat employees fairly

26. Treating employees fairly should encompass honouring past agreements as far as possible. It should also involve acknowledging their reasonable

expectations. Government should also recognise the past service of their employees under this principle.

27. After a number of reforms to the CSCS in a short number of years, there is also some value in an enduring solution that provides a level of certainty for employers and employees alike. Prospect would also suggest the following additional principle:

- to deliver an enduring solution that allows employers and employees to plan for the future

28. It is also important to recognise important underlying features of the labour market in any reform of the CSCS.

29. For example, statistics show that it can be harder for older workers to find re-employment at a similar level after redundancy. As a result, the impact of redundancy can be more significant on older workers. It is appropriate to recognise this in a redundancy compensation scheme through allowing for an unreduced pension to be payable in the case of redundancy over a certain age.

30. It is also the case that the impact of redundancy can vary by type of employer. An employee working for a start-up company may not expect significant redundancy compensation because they realise that their position may be riskier than one offered by a more established employer like a large utility company or the government. An employee of a start-up company may be more interested in other elements of remuneration such as share options rather than redundancy compensation. It is also appropriate to recognise such differences through more stable employers offering better than statutory minimum redundancy terms. Consequently the appropriate comparator for the CSCS is not the statutory minimum compensation offered by some employers but the compensation offered by other private sector employers who offer similarly secure employment.

31. Prospect would also suggest the following additional principle:

- To allow for certain features of the labour market

**Question 2: If you do not agree with the proposal, what alternative proposal would you suggest that fulfils the objectives set out in this consultation?**

32. Prospect strongly objects to the proposal being consulted on. It would be much more appropriate to base any reforms on the 2010 CSCS terms.

33. We recognise that there have been developments since 2010 that have to be allowed for and that some elements of the CSCS terms were unreformed in 2010. It would be reasonable to adjust the 2010 reforms to reflect these areas.

34. Consequently it would be appropriate to:

- Reflect the increase in pension age arising from public sector pension reform, by increasing the age at which an employer top-up to fund an unreduced pension on redundancy is payable.
- Recognise the impact of the Enterprise Act 2016, by capping redundancy compensation for the highest earners.
- Reform the Inefficiency terms so that they are in line with Voluntary Redundancy terms.

35. Other elements of the agreement on the 2010 CSCS reforms should be honoured.

36. Please see the Annex to this submission for the full details of Prospect's proposal.

**Question 3: If you have provided an alternative proposal, please explain how you think it meets the objectives set out in the consultation to a greater extent than the Government's proposals.**

37. It is important to assess Prospect's alternative proposal against the criteria set out in the consultation document and also the additional criteria that Prospect believes it is appropriate to apply to this process.

38. It is also the case that the proposal in the consultation document does not meet all the objectives set out in that document and we have outlined areas where we feel the government's proposal falls short of its own criteria below.

- Align with the principles of public sector compensation reforms

39. While this is a relevant principle to apply, it is not the key objective against which different proposals should be assessed. Consistency across different workforces is important but it is more important to have an outcome that enables employers to restructure efficiently while treating employees fairly.

40. The Treasury framework for public sector redundancy compensation reform contained five main elements.

41. Prospect's proposal acknowledges the requirement to increase the age at which an employee is able to receive an employer funded pension top up to 55 and to then track 10 years behind the State Pension Age.

42. Prospect's proposal also involves a taper on the amount of lump sum compensation an individual is entitled to receive as they get closer to their normal pension age.

43. Prospect's proposal does not involve a maximum salary on which an exit payment is based but does recognise the impact of the cap in the Enterprise Act 2015 on compensation payable which achieves a similar effect.

44. Prospect's proposal allows for a higher standard tariff (one month's pay rather than three weeks) and a higher ceiling (21 months rather than 15). However the Treasury's framework acknowledges the case for some flexibility within the overall framework as part of a negotiated agreement.
45. In the case of the CSCS, it is reasonable to allow for the starting point of the 2010 agreement and the statutory requirement to negotiate with a view to reaching agreement with the trade unions. Given this overall context, Prospect's proposal is not out of line with this principle.
- Supporting employers in reshaping and restructuring their workforces
46. This is an important and relevant objective to assess proposals against.
47. Prospect agrees that a voluntary process is better for both employees and employers for the reasons given in the consultation document.
48. Prospect's proposal gives employers more flexibility than the proposal under consultation and hence is better suited to supporting employers in reshaping and restructuring their workforces.
- Cost savings and appropriate use of taxpayers' money
49. The High Court judgment in the Judicial Review of the 2016 CSCS terms made it clear that cost savings was a relevant objective.
50. The Cabinet Office claims that "the costs of the 2010 scheme had been greater than expected when it was introduced and expected savings had not been realised".
51. However the NAO found that the "savings achieved by the revised Civil Service Compensation Scheme [ie the 2010 terms] by comparison with the old one are 40-50 per cent"<sup>2</sup>.
52. It is difficult to reconcile the Cabinet Office's claim with the NAO's finding because the Cabinet Office has not published detailed workings to support its assertions about expected savings from the 2010 CSCS reforms not being realised.
53. In the context of The High Court finding, that entitlements under the CSCS qualify as possessions under Article 1 of Protocol 1 to the ECHR, a key issue is clearly how much of a reduction in these entitlements can be objectively justified.
54. As the government itself was satisfied that the 2016 terms could be objectively justified, it follows that the proposal currently under consultation is disproportionate. There is no justification for imposing further cuts than allowed for under the 2016 terms.

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<sup>2</sup> <https://www.nao.org.uk/wp-content/uploads/2012/03/10121795.pdf>



55. However Prospect's counter proposal is a more appropriate response to the issue of cost savings.
56. The Cabinet Office's own explanation for the reported shortfall in savings after introducing the 2010 CSCS terms is that "the demographics of those leaving under the CSCS proved to be different than had been expected, with a greater proportion than had been expected coming from those with long periods of service, or from those in the 50-54 age group, who were entitled to employer-funded access to their pension, which is generally the form of exit that carries the greatest cost to the employer".
57. Prospect's proposal deals with the greater cost of departures in the 50-54 age group.
58. The Cabinet Office has not supplied Prospect with any information on how length of service on departure differed from expectations before the 2010 terms came into effect so it is not possible to quantify the impact of this. Prospect is open to discussing this issue further if the Cabinet Office can provide evidence about the scale of the problem. However it should be noted that there are good reasons for compensation being related to length of service.
59. Prospect's proposal also reduces cost through the implementation of a cap on compensation (please see below for further detail on how Prospect believes the cap on compensation should apply in practice).
- Ensure early access to pension remains appropriate
60. This is an appropriate reform principle.
61. There have been a number of significant changes since the 2010 CSCS terms were agreed that need to be allowed for. In particular the higher normal pension age and minimum pension age in Alpha means that unreduced pensions on redundancy for people aged 50-54 can have a higher value now than originally envisaged. As a result it is appropriate to change the minimum age that employer funded top-ups to pension are paid from.
62. Prospect's proposal is the same as the government's proposal in relation to early access to pension on redundancy.
- Ensure efficiency compensation payments are appropriate
63. This is an appropriate reform principle.
64. Prospect also proposes changing the efficiency compensation tariff to be the same as the Voluntary Redundancy tariff (albeit Prospect proposes a different Voluntary Redundancy tariff).
- Support the flexible use of voluntary exits

65. This is an appropriate reform principle.
66. Government has acknowledged the arguments the trade unions previously made about the unfair impact of setting the Voluntary Exit tariff higher than for Voluntary Redundancy.
67. Prospect's proposal takes the same approach to this issue.
- Where possible seek agreement of the trade unions
68. This is an important reform principle.
69. Public sector workers in general and civil servants in particular, have endured significant challenges over the past number of years. Amongst other issues, they have had to deal with significant pay restraint, pension reform and job cuts. As explained previously, the current consultation represents the fourth effort to reduce redundancy compensation terms in a very short period.
70. In this context it is vital that government secures member agreement to any proposals to cut redundancy compensation from the 2010 terms. Imposing detrimental changes would further damage morale across an already stretched civil service.
71. Clearly it is also important for government to meet the statutory requirement to consult with a view to reaching agreement.
- Treat employees fairly
72. As previously noted, it is disappointing that government has to be prompted to include treating its employees fairly in its principles for reform.
73. Prospect hopes that, on reflection, government accepts that treating employees fairly should be a key objective.
74. Treating employees fairly must mean taking the 2010 CSCS terms as a starting point. As noted previously, these terms were described by the then Minister for the Cabinet Office as "fair for civil servants and fair for other taxpayers". The then Head of the Civil Service called the reformed scheme "sustainable, affordable and fair".
75. Prospect has outlined areas where it is accepted that changes in circumstances justify amending the 2010 agreement on CSCS terms.
76. Government has particularly highlighted the cost of employer top-ups for people aged 50-54. As normal pension age has been increased, the value of employer top-ups has also increased and this justifies increasing the minimum age for employer top-ups to 55 (to track ten years behind State Pension Age).

77. Government has also highlighted the issue of redundancy compensation for the highest earners. Reflecting the priority put on this and the 2015 general election manifesto commitment, Prospect's proposal also allows for a cap on compensation for the highest paid but with two important provisos: (1) the cost of employer top-ups should not be included in assessing whether the cap applies because this could bring relatively low earners into a cap that should be targeted at the highest earners and (2) the ability to partially buy out pension reduction when the cost of full buy-out is above the cap must be reinstated.

78. The proposal under consultation involves significant further detrimental changes to the CSCS terms. The proposed maximum tariff for calculating compensation and the proposed ceiling are much lower than the terms agreed in 2010.

79. As entitlements under the CSCS are a possession under Article 1 of Protocol 1 to the ECHR government must objectively justify further detrimental changes.

80. Government has already argued that the 2016 terms met its principles for reform, so it follows that the further cuts currently under consideration are disproportionate and cannot be justified.

81. The case for cutting the maximum tariff and ceiling on compensation depends on the government's argument that departures since the 2010 terms came into effect cost more than expected.

82. However the NAO found that departures in the first year of those terms applying were 40-50% lower than the previous terms that applied. The proposed changes to the minimum age for employer top-ups and caps on compensation deliver further savings. Government has not shown how much higher the cost of departures under the 2010 terms were or why; it has fallen short of showing that the changes to the maximum tariff and ceiling are fair or objectively justified.

- Deliver an enduring solution that allows employers and employees to plan for the future

83. This is an appropriate reform principle that government should allow for as part of this process.

84. The background to the almost continual reform of the CSCS over the past number of years has already been set out in this submission. The uncertainty created by government's inability to keep to the long-term agreement it struck only a few years ago makes it difficult for employers and employees to plan.

85. The proposal put forward by Prospect has a greater chance of widespread agreement from the trade unions and hence a lower risk of being challenged legally and therefore offers more certainty for all stakeholders.

- To allow for features of the labour market

86. This is an important reform principle that government should allow for as part of this process.

87. Prospect's proposal reflects the fact that being made redundant from a permanent job from a large, stable employer like the civil service makes more of an impact than losing less stable employment. Prospect's proposal is closer to the redundancy compensation offered by similar private sector employers.

## **Annex**

Prospect's proposal for reform of the CSCS is based on the 2010 agreement but allows for developments since then.

The main details are:

- a standard tariff for calculating exit payments of one month pay per year of service;
- Voluntary Exit payments to be capped at 21 months' pay and flexibility in the terms to be maintained;
- Voluntary Redundancy capped at 21 months' pay;
- Compulsory Redundancy capped at 12 months' pay;
- exit payments capped at 6 months' pay for people over normal pension age;
- a taper on the amount of lump sum compensation an individual is entitled to receive as they get closer to their normal pension retirement age;
- efficiency compensation aligned with Voluntary Redundancy terms;
- employer funded top up to pension from age 55 and for this to track 10 years behind State Pension Age;
- cap on compensation payments of £95,000 but employer funded top up to pension not to count against the cap;
- salary underpin for calculating compensation of £24,500.