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FDA RESPONSE TO HMT CONSULTATION ON EXIT PAYMENT RECOVERY REGULATIONS

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HMT CONSULTATION ON DRAFT PUBLIC SECTOR EXIT PAYMENT RECOVERY REGULATIONS

FDA RESPONSE

Introduction

1. The FDA represents 20,000 senior managers and professionals in public service. We responded to the previous consultation on public sector exit payment recovery policy and were signatories to the ‘lasting agreement’ reached with the Minister for the Cabinet Office on reform to the Civil Service Compensation Scheme in 2011.
2. We note that our response to the earlier consultation, as those of the majority of respondents, has been ignored and none of the relevant information relating to this policy consideration provided either in the response to the last consultation, this new consultation or at any point in the intervening time.
3. There is almost no relevant evidence provided in this consultation, the FDA reiterates here the evidence that we believe should be provided before further changes are imposed. To quote from the FDA response to two of the questions posed in the earlier consultation:

“Question 3: Are you able to provide additional information in relation to instances of rehiring shortly after redundancy that would be relevant to this consultation?”

The FDA is concerned that no evidence is provided in this consultation that relates to the civil service. Since the reforms in 2010 there has been provision for the recovery of exit payments for those rehired shortly (within six months) after

redundancy yet no statistics have been provided showing how many times this has occurred. Given no information is provided we would suggest that this means that there have been few, if any occurrences in the last four years. Similarly it would be logical for government to support the case for change by showing how many civil servants in this situation have been rehired between six and twelve months after exit, in terms of assessing impact this information is important and we would request it is provided before any decisions are made.

Question 4: What additional information or data is relevant to the government's assessment of existing exit payment arrangements as set out above? Do you agree with this assessment?

As reflected in the response on question 3 above, there are a number of pieces of information that should be sought and made available. The FDA believes if this transparency was forthcoming, government would find an alternative course of action: the prioritisation of a viable redeployment policy across the civil service more cost effective and successful - to the benefit of both the public and civil servants.

Additional data relating to civil servants earning £80,000 and over that the FDA sees as relevant to these proposals:

- Number of exit-rehires 2010-14 including the proportion being rehired within six months, between 6 and 12 months and over 12 months;
- Average and total amount recouped through the existing recovery arrangements;
- Potential amount that would have been recouped if recovery was required for individuals rehired between six and twelve months of exit;

- Cost of relevant administrative changes required by these proposals;
 - Assessment of number of individuals likely to return some or all of their exit payment as a result of these proposals;
 - Assessment of amount of money likely to be recovered as a result of these proposals;
 - Assessment of the cost of delaying the hiring of qualified individuals who would be disinclined to return to the civil service as a result of these proposals;
 - Assessment of the cost of enforcing these proposals including the cost of providing all the necessary information individuals will require in order to ensure they meet their legal obligations as proposed in this consultation; and,
 - How many consultants (on any salary) currently working for the civil service have previously received exit payments following employment as a civil servant.”
4. It appears that the government does not have any of this information which supports the view that this is neither about fairness nor finance but is purely an attack on public sector workers.
5. The FDA opposes the extension of the exit payment recovery terms in the civil service in the way set out in this second consultation. We believe a more efficient, effective and fair approach would be to redeploy staff rather than pay an exit payment and then demand it back if an individual finds work with a year (outside the private sector). Despite raising the lack of redeployment in the senior civil service repeatedly in the previous consultation and in our submissions to the Senior Salaries Review Body, there has been no development of such an approach. The absence of a redeployment strategy means skilled, experienced public servants are lost from the civil service. While one civil service employer makes an individual redundant (at a cost to the taxpayer), another ends up paying a 30% external

hire premium to recruit someone with the same skills (at a cost to the taxpayer). The FDA's proposal meets the policy objectives set out by government, this latest iteration of an exit payment recovery policy, does not.

6. The FDA does not believe the extension of the scope of this policy to apply to an individual returning to *any* work in the public sector is either workable or fair. The government states in the consultation a commitment 'that work must always pay' (chapter 2) the exception to this seems to be the public sector. A senior manager who has taken an exit package from the civil service would have to return their payment if they decided to take a role as a junior support worker for a care provider. The FDA cannot see how it benefits the public, the individual or the hiring authority for this scenario to be overlaid with a bureaucratic process that will end up being prohibitive. We recognise the issues with perceived conflicts of interest and what are known as 'revolving door' appointments, but the disproportionate response in this consultation defies logic.
7. A further concern is the impact of this policy on public sector redundancy schemes. In the civil service, individuals are encouraged to opt for voluntary exit packages in order to a) speed up the process of reducing staff numbers, and b) to avoid compulsory redundancies. Those earning over £80,000 will now be discouraged from volunteering as they know that their compensation, sometimes for decades of public service, will be taken away should they work anywhere else in the public sector. Few civil servants return to the civil service after exit though moving to another part of the sector is not unusual for individuals with a commitment to public service. The result will be fewer staff volunteering for exit which will lead to longer redundancy exercises and more compulsory exits with the associated impact on morale and workforce planning that this entails.
8. In the civil service it is already the case that if someone is reemployed in the civil service within 28 days their compensation is returned. In addition

however, their continuity of service is restored. The FDA would argue that if an exit payment is returned, the individual should have continuous service as reflecting their continued commitment to public service.

9. The FDA is deeply concerned at the changes proposed in this consultation which not only ignore the issues raised in the previous consultation but also make the situation markedly worse in some areas, as well as confusing the implementation of the policy significantly.
10. The extension of the policy to recover early retirement provisions in the Local Government Pension Scheme is at odds with the original consultation which specifically excluded this option as to do so “reflects the government’s belief that recent reforms to public service pensions represent a settlement which should last for at least 25 years, if not longer.” Members of all public sector pension schemes should be told if a decision has been taken to change that belief.
11. Secondly, the consultation states at paragraph 2.6 that these payments from the LGPS will now be in scope for recovery, yet the table in chapter 4 says payments in scope are those “for loss of employment, including discretionary payments to buy out actuarial reductions to pensions”. In neither the LGPS nor the Civil Service Compensation Scheme are these payments ‘discretionary’.
12. This consultation only invites specific comments on the draft regulations and Schedule 1 so this section of the response will focus on the practical application of this policy and the problems in both drafting and concept the FDA sees with the approach being taken. At this point we also wish to highlight the lack of proper impact assessment for this revised policy.

Regulations

13. 3(1)(g) - How is 50% of an individual's 'self-employment' measured when, as a contractor they are likely to have multiple contracts with a range of hiring authorities?
14. How are multiple employments treated under these regulations?
15. 3(4)(e) - If a settlement is repayable in these circumstances then it follows that any claim the individual had is reinstated and should be deemed only as 'stayed' for the period they were not employed. This would as a minimum lead to some very problematic discussions when seeking an amicable settlement to a dispute, in fact it is more likely to preclude them completely.
16. 3(7) - is either self-evident or is incorporated for a specific purpose, if the latter there is no explanation of what that purpose may be.
17. 4 (and subsequent) - regulations refer to information being kept in written or electronic form. In what circumstances in the 21st century should such records not be kept electronically?
18. 5(a) - presumably the reference to death is a drafting error. This is indicative of the need to take sufficient time in the consideration of regulations before they are rushed into statute.
19. 5(e) - Given this exemption, why are settlement agreements not similarly exempt? This regulation encourages individuals to go to court rather than resolve the case efficiently.
20. 6(2) - should be clear that this does not have to be in one lump sum payment, which will be impossible in circumstances where the exit payment has been utilised to pay off debt or in situations when finances are subject to other legal proceedings (such as divorce).

21. 6(3) - By whom should the repayment amount be calculated and what mechanism is there to dispute the amount if it is incorrect? Such a mechanism would need to be a fast track process as an individual's employment may be on hold while this is happening, causing significant disruption for them and their new employer (as well as to the public who ultimately benefit from the work of public servants).
22. 8(5) is an inequitable list given it may be the responsible authority's fault the amount has not been repaid. There is no incentive for the responsible authority to act promptly or reasonably as it is the individual and new employer who will suffer the consequences in terms of dismissal and the need for the hiring authority to re-advertise the post. The FDA does not agree that the regulations should expressly make dismissal an appropriate sanction. This unnecessarily fetters the new employer's discretion. We do not believe it is acceptable that the regulations should interfere with an employee's statutory rights under the Employment Rights Act. Whilst we recognise the Regulations require the employer to *consider* dismissal, we are concerned that by expressly including this as a sanction, it will lead employers to move to dismissal almost automatically. In many cases there will be good reasons not to dismiss, for example a dismissal would not seem to be appropriate where: there was a genuine mistake or misunderstanding; the old employer had not made the duty clear enough; the new employer needs the individual to carry out the role for operational reasons; or, the time and expense of dismissal and a new recruitment process would be disproportionate.
23. 9(1) - It is crucial that the individual also receives this confirmation, not just the hiring authority.
24. 9(2) - is presumably a drafting error, but this confirmation should also be sent to the individual.

25. 10 - The FDA believes this is a very complicated procedure for small organisations classified as public sector but who would not have the connection with major organisations that these regulations propose.
26. 10(b) - The information should still be sent to the individual.

Schedule

Part One

27. Neither the response to the previous consultation nor this one explain how an individual is supposed to know what employers are in the public sector at any point.
28. The following inclusions in the list illustrate some of the areas of confusion:
- Age Concern Wiltshire is included in the Schedule, but not Age Concern Somerset (or indeed any other part of the organisation).
 - AMC Bank Ltd is included although it is part of the Lloyds Banking Group and is a financial institution, many of which are exempt.
 - The consultation says that Housing Associations are exempt yet organisations like Aire Valley Homes and the Anvil Trust as well as all ALMOs are included, what is the distinction between an exempt Housing Association and these organisation? In some cases organisations are listed twice, A1 Homes for example is an ALMO so why does it require specific mention?
 - Aggregator Vehicle Ltd was reclassified by the ONS in August 2014 as public sector. Is the Schedule to be updated each month when the ONS issues their classification report? If not, how is an individual supposed to know that the job they are applying for is on the list? Similarly, if an organisation is removed from the list, how will individuals know unless the Schedule is updated?

29. In terms of organisations not covers in this list, the FDA would like to see the rationale for each of the exempt organisations and a clear process by which other organisations can seek an exemption.

Part Two

30. The FDA is concerned that the inclusion of some of the public sector offices listed, as well as some other organisations like pay review bodies, will mean that experienced, qualified individuals who could make a valuable contribution to these roles will be dissuaded from applying for 12 months. This will deny the public their timely experience and increase the likelihood that they will have moved away from the public sector in that time.

Conclusion

31. The FDA urges government to rethink its approach and engage in proper consultation and discussion before imposing any regulations that will be wasteful of public money and destructive to the delivery of workforce management in the public sector.