

## **Consultation on Administrative Controls Process for Public Sector Exits**

### **Response of the Association of School and College Leaders**

#### **A. Introduction**

1. The Association of School and College Leaders (ASCL) represents over 22,000 education system leaders, heads, principals, deputies, vice-principals, assistant heads, business managers and other senior staff of state-funded and independent schools and colleges throughout the UK. ASCL members are responsible for the education of more than four million children and young people across primary, secondary, post-16 and specialist education. This places the association in a strong position to consider this issue from the viewpoint of the leaders of schools and colleges of all types.
2. ASCL welcomes the opportunity to contribute to this consultation.

#### **B. Key points**

3. ASCL is opposed to the proposals in the consultation. In ASCL's view, it is completely unreasonable to include pension 'strain' costs as netted off against all exit, regardless of the value of any severance payment or arbitrary trigger for referral. A significant number of ASCL members working in the academy sector, affected by this proposal, are members of the Local Government Pension Scheme (LGPS). Strain costs currently apply to any such members facing redundancy over the age of 55 as mandatory on the part of the employer. ASCL was strongly opposed to the £95k Exit Cap as introduced in 2020. ASCL was pleased (but not surprised) when it was scrapped shortly after in February 2021, such strain costs being a statutory legislative right for our members in LGPS. These proposals seek to circumvent the statutory right by effectively legislating for a veto to processes that may give rise to it. Moreover, the linking with any special severance payment depresses this discretion due to the compulsory aspect of strain cost in referring a proposal to the Secretary of State and Treasury.
4. If the system moves, as is the government's intention, towards a fully Multi Academy Trust (MAT) model, mergers will inevitably lead to perceived economies of scale. Such efficiencies, be they at Chief Executive Officer (CEO), or Business Leader level, will trigger both severance payments and, if aged over 55, strain costs. ASCL will argue for the best redundancy terms for members and this proposal will severely limit scope for fair settlement severance when statutory strain costs are included.
5. ASCL is strongly opposed to the exit repayment proposals in the consultation. As many of the current first generation of CEOs come closer to retirement, many in the succession pipeline will consider the high risk not worth taking with such erosion in security. This will exacerbate an already concerning situation in leadership. The inability

to secure a similar post within a year without financial detriment following an invariably traumatic process will be a further disincentive.

6. Finally, ASCL sees potential tension between the much-heralded autonomy of MATs and the ability of government to override this autonomy in the case such local decisions.

### **C. Answers to specific questions**

**Question 1: do you agree with the proposed scope of bodies covered? If not, please give reasons.**

7. No. As explained in the response to Question 2, the scope of inclusion will cover academies (but not maintained schools). We do not agree with the proposal because of the detrimental impact on our members working in the academy sector. As the system moves to more of a MAT model, our members will be disproportionately affected.

**Question 2: Is it clear from the description above whether your body would be in scope of the guidance? If not, please explain why.**

8. No. The consultation simply states that “the guidance is intended to apply to all bodies that are classified as ‘Central Government’”. However, this encompassing term refers to Central Government Departments and their Arms-Length Bodies (ALBs), Executive Agencies, Non-Departmental Public Bodies, Non-Ministerial Departments, and any other non-market bodies controlled and mainly financed by such departments. To this end, ASCL assumes that this will include academies directly funded by the Department for Education (DfE).

**Question 3: do you agree with the proposed categorisation of the types of exit payment? If not, please give reasons.**

9. Disagree. The categorisation, albeit in two sections, is lengthy and all-encompassing. Statutory exit payments, especially where strain cost is incorporated, rapidly exceed the threshold even for middle income members. This subsequently leaves little headroom for further settlement which increases risk of litigation. ASCL believes this is an unnecessary upheaval to facilitate, at best, no significant pecuniary advantage to public finances.
10. The guidance document lacks sufficient clarity to enable those tasked with applying the same to do so without confusion. For instance, section 2.10 of the guidance document suggests that pay in lieu of notice may constitute a contractual or special severance payment, depending on the terms of the individual's contract, but fails to elaborate on precisely how this will be determined. Furthermore, it is not agreed that gardening leave should be categorised as a type of payment likely to constitute a special severance payment as it is commonly found as an express contractual provision (s.2.11 (d) of the guidance).

**Question 4: do you agree with the proposed approval process for high value exit payments? If not, please give reasons.**

11. Both disagree and agree on different aspects. The approval process as proposed relates to the employer decision to seek an exit, as opposed to the actual compensatory payment to the member. The need for Treasury or DfE to scrutinise each case undermines academy autonomy whilst being excessively burdensome in the need to delineate a business case. ASCL disagrees with this.

However, ASCL agrees with the need for a compelling reason for the exit and a thorough exploration of whether there are any reasonable alternatives to such an exit.

**Question 5: do you agree with the proposed approval process for special severance exit payments? If not, please give reasons**

12. Disagree. Any exit which passes the approval process will award the employee the full payment. Consequently, employers will need to ascertain full strain cost prior to submitting for approval. The statutory element will severely limit any headroom for negotiation. ASCL would argue for strain costs to be outside of the scope of the exit payment containing the settlement agreement.
13. It is also asserted that an approval process for a special severance payment for academies, as proposed, is not necessary considering the existing financial framework in which academies operate. Academies are already required to comply with the Academy Trust Handbook (formerly known as the Academies Financial Handbook) which outlines what must be considered prior to a staff severance payment above statutory or contractual entitlements being awarded. Requiring academies to comply with two separate compliance structures would, in ASCL's view, create an unnecessary and overly complicated framework.

**Question 6: do you agree with the proposed £95,000 threshold for approval? If not, please give reasons.**

14. ASCL disagrees with the arbitrary £95k first mooted in 2015. Whilst ASCL does not agree with the principle of the threshold, it should be recognised that indexing for inflation this now equates to over £117k.

**Question 7: do you agree with the proposed criteria for approval of high value exits? If not, please give reasons.**

15. Agree. The criteria given in sections 4.8 and 4.9 of the guidance are sound and reflect the criteria that any good employer would hopefully use.

**Question 8: do you agree with the proposed criteria for approval of special severance payments? If not, please give reasons.**

16. Disagree. This leaves little scope for agility. The strain cost will be vectored into the total exit cost and will be calculated prior to submission. This will severely limit any headroom for negotiation, especially in light of the catch-all scope of payments included in the proposal. ASCL would argue for strain costs to be outside of the scope of the exit payment containing the settlement agreement. As written, the proposal suggests that approval will only be granted in exceptional circumstances. This will severely increase the risk to members in a high stakes position and serve to suppress the academy leadership pipeline. The inherent removal of insurance within the proposal will disincentivise members at a time when many of the first generation of academy and MAT leaders are moving towards retirement.
17. Section 4.12 suggests that 20 working days should be allowed for HM Treasury to assess and scrutinise individual cases. ASCL makes the following points in response to this suggestion:
  - a. Making provision for what is a working calendar month, for approval, is usually not possible for employers where such an exit is being considered. This is often due to a

breakdown in the working relationship between the parties. In many instances, a swifter resolution is necessary.

- b. Based on ASCL's experience with other bodies responsible for approving severance payments, this is unrealistic. Subject to the number of cases where HMT approval is being sought, the number of days suggested underestimates how long the process is likely to take in practice. This may consequently jeopardise potentially agreed exits for ASCL's members, to their detriment.

18. The consultation, as well as the associated guidance, fails to explain the way any decision-maker responsible for assessing applications will approach decision-making. For instance, section 4.20(c) of the guidance suggests that legal advice that a severance payment appears to offer good value for money for an employer may not be conclusive on the basis that the wider public interest is not being factored into the advice. The lack of further guidance and detail in respect of how this will be determined or assessed exemplifies the inherent difficulty that ASCL's members, where asked to apply such a criterion, will face. Alternatively, no guidance is provided as to how much evidence, or what type of evidence, needs to be submitted to demonstrate that attempts have been made to resolve a grievance (section 4.20(a)). These examples are not intended to be exhaustive; they are aimed at illustrating the inherent flaws in the current proposal.

**Question 9: do you agree with the proposed enhanced reporting requirement? If not, please give reasons.**

- 19. Disagree because of the large number of payments included within the payment reporting mechanism and the negation of any kind of disaggregation.

**Question 10: do you agree with the outline approach to repayment obligations for special severance payments? If not, please provide reasons.**

- 20. ASCL disagrees as it applies to our members in academies who will most likely be CEOs or Business Leaders. Having exited via the proposed approvals process, robust due diligence from both HMT and the relevant government department will have ensured both necessity and value for money. There, the phrase "moving between jobs" is superfluous. Members will have been made redundant. This will likely have had an impact on member's wellbeing. There needs to be a safety-net for members involved in ongoing organisational change. Moreover, subsequently and positively ascertaining a new position in another academy, or being requested to do so, should be welcomed without financial penalty as it would negate the original process.

**Question 11: does the guidance adequately support employers to follow the approvals process for exits and special severance payments? If not, please provide details.**

- 21. No. ASCL recognises an in-built tension for our CEO and Business Leader members working in academies both being affected by the trigger and in implementing adverse proposals. Our members currently have the security of their contingency planning on current rules and are mindful of unintended consequences. This consultation, in ASCL's view, fails to make a case for this significantly worse provision that erodes security for our members.

**Question 12: is the guidance sufficiently clear on how repayment obligations should be used for special severance payments? If not, please provide details.**

22. Yes, it is clear.

**Question 13: are there any additional impacts which you would highlight in relation to the proposals above, including equality impacts? Please give details.**

23. Additionally, to those highlighted in SS4.4-4.6, impacts tend towards our members who form part of leadership teams in academies such as CEOs and Business Leaders. The skills and experience commensurate imply a tendency towards older workers. However, as it relates to succession planning the proposals will disproportionately impact on younger members in the leadership pipeline who will weigh up increased risk against application.

#### **D. Conclusion**

24. ASCL is opposed to the proposals in the consultation. There are serious concerns about the consequences of limiting total exit payments that encompass effectively all parameters within a figure first mooted in 2015. The negation of settlement payments and inclusion of strain costs will have detrimental consequences both on members currently in scope, and on succession. The repayment mechanism is a disincentive to reengage valuable human resource within the system whilst potentially affecting wellbeing.

25. I hope that this response is of value to your consultation. ASCL is willing to be further consulted and to assist in any way that it can.

Jacques Szemalikowski  
Conditions of Employment Specialist | Pensions  
Association of School and College Leaders  
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