



Department
for Business
Innovation & Skills

The Lord Low of Dalston CBE
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Baroness Neville-Rolfe DBE CMG
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17 November 2015

Dear Lord Low,

AMENDMENT 54 OF THE ENTERPRISE BILL

I am writing to you as promised during our exchange in the Grand Committee on 4 November in relation to amendment 54 of the Enterprise Bill. Thank you for your email providing further clarification of the point on which you sought a response.

As highlighted during our exchange, the indicative regulations provide that any award that is directed by a Court is outside the scope of the cap on exit payments. Your concerns now are to address the circumstances where a settlement agreement is reached in respect of a potential claim for breaches of whistleblowing protections.

I can assure you that the exit payments cap is not intended to dis-incentivise employers from entering into early, appropriate, settlement agreements with employees. As you have noted, it would not be right to require employees to bring a claim to the Tribunal when it is fair and proportionate for the matter to be resolved without bringing such a claim. To this end, the new section 153C(1) of the Small Business, Enterprise and Employment Act 2015, which would be inserted by clause 26, of the Bill provides a power to relax the restrictions of the cap in appropriate circumstances.

Unlike Court directed payments, however, which will involve a clear finding in respect of the claim, settlement agreements are generally made before any such finding is made. Therefore, if settlement agreements relating to potential whistleblowing claims were outside the scope of the cap, I am concerned that it could encourage people to make spurious claims of public interest disclosure simply in order to avoid the effect of the cap. The Government greatly values the role of genuine whistle blowers in bringing malpractice to light, and wishes them to be able to seek resolution if they are subjected to unlawful detriment or unfair dismissal. However, we do not want to create a loophole in the public sector exit payments cap that could be exploited more widely.

Accordingly, the Government believes it is necessary to include settlement agreements relating to whistleblowing claims within the scope of the exit payments cap, in order that exceptions to the cap are made only after appropriate scrutiny. That scrutiny will ensure that it is appropriate for a settlement agreement to be entered into, and that it represents value for money to the taxpayer.

To that end, the Treasury will be issuing guidance on the exercise of the power to relax the restrictions imposed by the cap. It is envisaged that the guidance will make clear that where payments relating to potential whistleblowing claims are correct, then the power to exempt exit payments from the cap could be exercised.

I hope this reassures you and Lord Wills. I am copying this letter to him and placing a copy of this letter in the library of the House.

Best regards,

A handwritten signature in cursive script that reads "Lucy Neville-Rolfe". The signature is written in black ink and is centered on the page.

BARONESS NEVILLE-ROLFE DBE CMG